



Comptroller of the Currency
Administrator of National Banks

Northeastern District
1114 Avenue of the Americas, Suite 3900
New York, New York 10036

June 23, 2004

CRA Decision #122
July 2004

Martha A. Pampel, Esq.
Associate General Counsel
HSBC North America Inc.
2700 Sanders Road
Prospect Heights, Illinois 60070

Re: Applications to merge HSBC Bank & Trust Company (Delaware), National Association, Wilmington, Delaware, into a newly established interim national bank with the title, HSBC Bank USA, National Association, New Castle, Delaware, and the subsequent merger of HSBC Bank USA, Buffalo, New York, into HSBC Bank USA, National Association, New Castle, Delaware, under the charter number and title of the latter.

Control Numbers: 2004-NE-02-0020 and 2004-NE-02-0021

Dear Ms. Pampel:

This is to inform you that on June 23, 2004, the Office of the Comptroller of the Currency (“OCC”) conditionally approved HSBC USA, Inc.’s proposal to merge HSBC Bank & Trust Company (Delaware), National Association (“HBT”), Wilmington, Delaware, into a newly formed interim national bank with the title, HSBC Bank USA, National Association, New Castle, Delaware.

The OCC also conditionally approved, on June 23, 2004, the merger of HSBC Bank USA (“HSBC”), Buffalo, New York, into HSBC Bank USA, National Association, (“HUNA” or “Resulting Bank”) New Castle, Delaware (the resulting bank from the merger described above), under the charter and the title of the latter.¹ HSBC is currently a New York state-chartered bank regulated by the Board of Governors of the Federal Reserve System and the New York State Banking Department.

¹ HBT and HSBC, are subsidiaries of HSBC USA, Inc., a Maryland corporation, which is indirectly owned by HSBC Holdings plc, London, England. HUNA will be a direct subsidiary of HSBC USA, Inc.

Legal Authority

The merger of HBT into the HSBC Bank USA, National Association is legally authorized under 12 U.S.C. § 215a, and the merger of HSBC into HUNA is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 and 1831u. The OCC reviewed the proposed merger under the criteria of the Bank Merger Act (12 U.S.C. § 1828(c)), the Community Reinvestment Act (12 U.S.C. §§ 2901 et seq.), and applicable OCC regulations, including 12 C.F.R. § 5.33, and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider, "... the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches." (12 U.S.C. § 1828(c)(11).)² We considered these factors and believe the approval of this transaction is consistent with the statutory provisions.

Community Reinvestment Act

With respect to the Community Reinvestment Act ("CRA"), the OCC takes into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including transactions subject to the Bank Merger Act.³ Based on HSBC's CRA record of performance, the OCC found approval to be consistent with the CRA.

HBT is a national bank whose operations are limited to those of a trust company and activities related thereto. HBT does not accept deposits, and it is not an insured bank under the Federal Deposit Insurance Act. As a result, HBT is not subject to the requirements of the CRA and does not have a CRA performance rating.

HSBC's two most recent CRA examinations by the New York State Banking Department and the Federal Reserve Bank of New York ("Reserve Bank") have resulted in consecutive "Outstanding" ratings. The Reserve Bank's Performance Evaluation ("PE") dated February 24, 2003, and covering performance from January 1, 2001, through December 31, 2002, assigned an overall "Outstanding" rating under the Lending, Investment, and Service Tests. The Reserve Bank found that the total volume of mortgage and small business lending showed excellent responsiveness to credit needs in the bank's assessment areas, the overall distribution of loans to individuals of different income levels was excellent, community development lending levels were excellent, and

² OCC examiners conducted a limited on-site examination of HSBC in connection with the applications and determined that the bank is taking appropriate measures to strengthen compliance with anti-money laundering laws and regulations.

³ See 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). The special community reinvestment requirements of the Riegle-Neal Act, 12 U.S.C. § 1831 (u)(b)(3), are not applicable because HSBC and the newly formed interim national bank are affiliated banks. Thus, the Resulting Bank will not have a branch or bank affiliate immediately following the mergers in any state in which HSBC did not previously have a branch or bank affiliate.

the level of qualified investments was excellent. Overall, the bank's retail delivery systems were readily accessible to geographies and individuals of differing income levels throughout the bank's assessment areas. The Reserve Bank noted that it did not identify any violations of the substantive provisions of the anti-discrimination laws and regulations. The OCC does not expect the merger to have any adverse impact on the CRA efforts or programs of the Resulting Bank, which will be headquartered in New Castle, Delaware.

The Resulting Bank's CRA assessment area will be expanded beyond HSBC's current assessment area to include the northern half of New Castle County in the State of Delaware.⁴ This area includes the Wilmington-Newark Metropolitan Statistical Area and consists of 119 census tracts. All low-income census tracts in Delaware are located within this area.

The applicant has represented that HUNA will launch and promote a CRA program in Delaware that includes community development loans, investments and grants. In addition, HUNA will retain a full-time CRA officer to support its CRA efforts in Delaware and to develop relationships with community development financial intermediaries and community development groups, consortia, and intermediaries. During the first 12 months after consummation, the Resulting Bank, as part of a Delaware community development program, has committed to provide at least \$2 million towards community development loans and investments, and up to \$250,000 for community development grants.

The OCC received comments from one community organization. One concern raised by the commenter was that HSBC Investments (North America) Inc. ("HSBC Investments"), HSBC's intermediate parent company, will try to move its subprime operations from Household International, Inc. ("HII"), to HUNA in order to preempt the application of state consumer protection laws.⁵ However, the applicant has represented that HII's branch-based consumer lending business, conducted through Household Finance Company ("HFC") and Beneficial Corporation ("Beneficial"), will continue to be operated as a state-regulated business. Moreover, the applicant has represented that HFC

⁴ HSBC's current assessment area includes most of the State of New York and small portions of California Florida, Oregon, Pennsylvania, and Washington.

⁵ HII, which was acquired by HSBC Holdings plc, on March 28, 2003, is a direct subsidiary of HSBC Investments (North America) Inc. (Delaware). The OCC has no regulatory or supervisory authority over HII or its subsidiaries, with the exception of Household Bank (SB), National Association, a limited purpose credit card bank, which received a "Satisfactory" Community Reinvestment Act rating from the OCC as of December 16, 2003. HII and its subsidiaries are not parties to these applications.

Many of the concerns raised by the commenter related to HII and its non-bank subsidiaries. However, as noted above, the OCC currently has no regulatory authority over these entities, nor would the OCC have any regulatory authority over those entities as a result of the proposed transaction. Accordingly, the OCC was unable to address those concerns.

and Beneficial will continue to meet the commitments of the 2002 multi-state settlement agreement addressing real estate secured lending practices.⁶

The commenter also expressed concerns with HSBC's lending record to minorities and to low- and moderate-income ("LMI") applicants and census tracts in various New York markets in relation to the lending record of HFC and Beneficial to those same applicants and census tracts. Using 2002 Home Mortgage Disclosure Act ("HMDA") data, the commenter concluded that HSBC's prime lending units were lending mostly to whites, while HII's subprime units were lending mostly to minorities and LMI applicants.⁷ However, because HSBC Investments did not acquire HII until March 2003, 2002 HMDA data is not a relevant comparison for the actions of HSBC Investments. Furthermore, the applicant provided an analysis of HMDA data indicating that HSBC and its subsidiary, HSBC Mortgage Corporation, are among the leading mortgage lenders to LMI and minority applicants in New York.

The applicant also represented that HFC, Beneficial, and HSBC are cooperating in an effort to make prime and near prime products available to qualified HFC and Beneficial customers. HFC and Beneficial will deliver these products to qualifying customers either directly or on behalf of HSBC. HFC, Beneficial, and HSBC have adopted a common pricing matrix for these products, and credit underwriting is to be performed centrally. Testing of the program has already been conducted and nationwide implementation should be complete by the end of 2004.

Additionally, HSBC has engaged in a variety of efforts to assist potential homebuyers. For example, the applicant represents that it has recently launched a special mortgage program in Buffalo, Rochester, Syracuse, and Albany, in partnership with community groups, to assist homebuyers with closing costs and to provide home ownership counseling. The Reserve Bank's 2003 CRA PE recounts HSBC's implementation of flexible underwriting criteria for New York LMI borrowers for the purchase or refinancing of properties located in LMI census tracts.

In sum, based on HSBC's CRA record of performance, the OCC found approval to be consistent with the CRA.

Request for Hearing

The commenter also requested that the OCC conduct a public hearing.⁸ After careful consideration, the OCC has determined not to conduct a hearing on these merger

⁶ The \$484 million settlement agreed to by HII in 2002 will not be affected by the current applications pending before the OCC. The applicant has represented to the OCC that HII will continue to abide by the terms of this agreement.

⁷ It is important to note that HMDA data alone are not adequate 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 creditworthiness, housing prices, and other factors relevant in each of the individual markets, nor do they fully reflect the range of a bank's lending activities or efforts.

⁸ Additionally, the commenter requested that the OCC extend the public comment period. The OCC determined not to grant an extension of the comment period, because the commenter did not demonstrate

applications. The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11, which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

Since the commenter did not indicate why written submissions would be insufficient to make an adequate presentation of these and other issues to the OCC, the OCC determined that the standards for conducting a hearing were not satisfied.

For the reasons set forth above, the OCC found that the transaction met the relevant statutory criteria for approval. Inasmuch as the transaction also raised no supervisory or policy concerns, the applications are approved.

Community Development Investments

HUNA will retain previously-made community development investments under the investment authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24 concerning national bank investments in community and economic development entities, community development projects, and other public welfare investments.

First, HUNA will retain the HSBC Community Development Corporation (the “CDC”). The CDC is a wholly owned subsidiary community development corporation that has a primary purpose of community development, specifically to build affordable housing that primarily benefits LMI individuals or areas. Currently, the CDC holds no assets other than cash of \$29,000. Second, HUNA will retain equity investments of \$157,544,358 in limited partnerships and limited liability companies that finance the development and operation of affordable housing and qualify for federal low-income housing tax credits, or finance economic development and are eligible for New Markets Tax Credits. Third, HUNA will retain investments of \$14,415,610 in community and economic development entities, community development projects, or other public welfare investments. Those investments primarily benefit LMI persons, LMI-income areas, or other areas targeted by a governmental entity for redevelopment, or the investments would receive consideration as “qualified investments” under 12 C.F.R. § 25.23 of the CRA. The aggregate amount of HUNA’s community development investments will total \$171,988,968, which is less than 5 percent of its capital and surplus, and the investments do not expose HUNA to unlimited liability. The investments, therefore, are consistent with Section 24 (Eleventh) and Part 24.

that additional time was necessary to develop factual information, and no extenuating circumstances were present. *See* 12 C.F.R. § 5.10(b)(2)(ii), (iii). However, the OCC considered all comments received after the close of the comment period.

Investments in Subsidiaries

Additionally, HUNA will retain as operating subsidiaries a number of entities that HSBC currently owns. The applicant has represented that all subsidiaries will be operated in accordance with all applicable OCC regulations.

HSBC owns noncontrolling interests in two additional entities, Identrus and The Clearing House Service Company, LLC. HSBC Financial Services Corp., a wholly owned subsidiary of HSBC, holds a 7.29% ownership interest in Identrus, a limited liability company that provides digital certification services to banking institutions. HSBC Clearing Services (USA) Inc., also a wholly owned subsidiary of HSBC, holds a 7.4% nonvoting interest in The Clearing House Service Company, LLC ("Clearing House").

With regard to both of these holdings, HSBC has certified that the Resulting Bank: will be well-capitalized and well-managed at the time it acquires the investments; will have the ability to prevent each enterprise from engaging in activities that are not permissible for a national bank or an operating subsidiary because the limited liability agreements under which each of these entities was formed contains provisions to ensure that they will engage only in activities that are permitted for national banks and their operating subsidiaries, and permits a member to withdraw if the company engages in any impermissible activity; will account for its investments under the equity or cost method of accounting; and as a legal and accounting matter, does not have open-ended liability for Identrus's obligations or for the obligations of Clearing House or any of its subsidiaries and, thus, its loss exposure as a result of these investments is limited. The applicant also has certified that Identrus and Clearing House have agreed to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. § 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. § 1820a).

Moreover, the ownership by national banks of a noncontrolling interest in Identrus meets the remaining standards for the ownership of a noncontrolling interest in an enterprise. 12 C.F.R. § 5.36(e). The OCC in published precedent has recognized that national banks may hold a noncontrolling interest in Identrus. OCC Conditional Approval No. 339 (November 16, 1999); OCC Corporate Decision No. 2002-4 (February 18, 2002); and OCC Conditional Approval No. 301 (January 15, 1999). *See also* 12 C.F.R. § 5.34(e)(5)(v)(X). Likewise, the ownership by national banks of a noncontrolling interest in Clearing House meets the remaining standards for the ownership of a noncontrolling interest in an enterprise under Section 5.36(e) and the OCC has determined that national banks may hold a noncontrolling interest in Clearing House. Interpretive Letter by Julie L. Williams, Chief Counsel (May 16, 1997) (to be published).

Residency Waivers

A request for the residency waivers for the Board of Directors of the interim national bank and citizenship waiver for director Martin J. G. Glynn is approved. In addition, your request for the residency waivers for the Board of Directors of the Resulting Bank

and citizenship waivers for directors Martin J. G. Glynn, Stephen K. Green, James H. Cleave, Douglas J. Flint, and Carole S. Taylor is also approved.

Consummation Guidance

Please refer to the Business Combination booklet for the required steps to complete the organization of the interim national bank. The steps to complete the mergers are also contained in the Business Combination Booklet.

This approval is granted based on a thorough review of all information available, including commitments and representations made in the applications and the merger agreement and those of your representatives. This includes your representation that HII, an affiliate of HSBC, will continue to abide by the terms of a December 2002 multi-state settlement agreement with state attorneys general and regulatory agencies relating to its non-prime real estate secured lending.

The approval is subject to the following conditions:

1. After consummation of the merger, HUNA and its institution-affiliated parties, as that term is defined at 12 U.S.C. § 1813(u), shall continue to comply with each and every term and condition contained in the April 30, 2003 Written Agreement entered into by and among HSBC, the Federal Reserve Bank of New York (the "Reserve Bank"), and the New York State Banking Department ("Department"), docket no.: 03-012-WA/RB-SM (the "Agreement"). For purposes of clarification, references in the Agreement to 12 C.F.R. § 208.62 and/or to 3 N.Y.C.R.R. Part 300 shall hereinafter be deemed to be references to 12 C.F.R. § 21.11, and references in the Agreement to 12 C.F.R. § 208.63 shall hereinafter be deemed to be references to 12 C.F.R. § 21.21. For purposes of further clarification, references in the Agreement to obligations of HSBC to the Reserve Bank and/or to the Department shall hereinafter be deemed to be obligations of HUNA that are owed to the OCC.
2. HUNA must notify potential affiliated vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 481 and 12 U.S.C. § 1867 (c). All final Service Level Agreements and other outsourcing contracts between HUNA and affiliates must stipulate that the performance of services provided by the affiliated companies to HUNA is subject to the OCC's examination and regulatory authority. The provisions of 12 C.F.R. § 9 would be applicable to any fiduciary activities contracted out to affiliates.
3. Within two years of the consummation of the merger between HUNA and HSBC, HUNA must divest, conform, or demonstrate to the satisfaction of the OCC, the permissibility of the activities and ownership interests held by HSBC Asset Management (Americas) Inc. If, within this time period, HUNA divests or conforms the activities and holdings of this entity, please notify Large Bank Supervision.

These conditions are conditions imposed in writing by the agency in connection with the granting of any application or other requests within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

As a reminder, the district office must be advised in writing 10 days in advance of the desired effective date for the mergers so that the OCC may issue the necessary certification.

The OCC will issue a letter certifying consummation of the transactions when we receive:

1. Evidence that all required regulatory approvals, waivers, or non-objections have been received.
2. Articles of Association for the Resulting Bank.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This conditional approval, 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 agency of the OCC or the U.S.

If you have any questions, please contact me at (212) 790-4055.

Sincerely,

signed

Sandya R. Reddy
Acting Licensing Manager