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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219  
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Licensing Activities

October 11, 2012

**CRA Decision #151  
November 2012**

James M. Rockett, Esq.  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, California 94111-4067

Re: Application by Union Bank, National Association, San Francisco, California for prior approval to purchase certain assets and assume certain liabilities of PNC Bank, National Association, Wilmington, Delaware (Application Control Number: 2012-WE-02-0014)

Dear Mr. Rockett:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application by Union Bank, National Association, San Francisco, California (“Union”) to purchase certain assets and assume certain liabilities of PNC Bank, National Association, Wilmington, Delaware (“PNC”). This approval is granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by Union’s representatives during the application process.

### **Background**

Union seeks to acquire PNC’s Smartstreet division.<sup>1</sup> Smartstreet provides deposit and cash management services nationwide to community associations and their management companies. The acquisition consists of the assumption of the deposits included in the Smartstreet business and the purchase of associated assets, including loans, an incidental amount of fixed assets, and intellectual property consisting of trademark and proprietary computer software (the “P&A Transaction”). Union will not acquire any branches through the transaction.<sup>2</sup>

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<sup>1</sup> PNC acquired Smartstreet through its merger with RBC Bank (USA), Raleigh, North Carolina, in March 2012.

<sup>2</sup> Union has agreed to assume the lease for the Smartstreet facility in Atlanta, Georgia, where back-office cash management processing is performed. However, because the Smartstreet facility in Atlanta does not permit members of the public to have physical access to the facility for the purpose of making deposits, paying checks, or borrowing money, the facility is not a “branch” as defined in 12 U.S.C. § 36(j) and 12 C.F.R. § 5.30(d)(1)(ii)(A).

## **Legal Authority**

National banks are authorized to purchase assets and assume liabilities of other depository institutions under 12 U.S.C. § 24(Seventh).<sup>3</sup> As a purchase of assets and assumption of deposits by one national bank from another national bank, the P&A Transaction is thus permissible under Section 24(Seventh). Because Union will not acquire any branches in a new state, the transaction is not subject to the Riegle-Neal Act, 12 U.S.C. § 1831u.

## **Bank Merger Act**

The P&A Transaction is subject to review under the Bank Merger Act, 12 U.S.C. § 1828(c).<sup>4</sup> Under the Bank Merger Act, the OCC generally may not approve a transaction that would substantially lessen competition. The Bank Merger 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. 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 U.S.C. § 1828(c)(11). In addition, the OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5) (as amended by section 604(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (“Dodd-Frank Act”).

We considered these factors and found them consistent with approval under the statutory and regulatory provisions.

## **Community Reinvestment Act**

In addition to the review factors of the Bank Merger Act, the Community Reinvestment Act (“CRA”) requires the OCC to take into account the records of the institutions’ performance in helping to meet the credit needs of their communities, including low- and moderate-income (“LMI”) neighborhoods when evaluating applications under the Bank Merger Act.<sup>5</sup> The OCC considered the CRA performance evaluation (“PE”) of each bank involved in this transaction. The review of the banks’ records and other information available to the OCC as a result of its regulatory responsibilities revealed that the banks’ records of helping to meet the credit needs of their communities are consistent with approval of this application.

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<sup>3</sup> See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

<sup>4</sup> See 12 U.S.C. § 1828(c)(2), (3); 12 C.F.R. § 5.33(d)(2).

<sup>5</sup> 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

## *Union*

Union's most recent PE, dated June 1, 2009, and issued by the OCC,<sup>6</sup> assigned the bank an overall "Outstanding" rating. Among the major factors supporting the "Outstanding" overall rating were: (i) a geographic distribution of loans that was good for small businesses and adequate for home mortgages; (ii) a borrower distribution of loans that was good for small businesses, representing the bank's primary lending focus, and poor for home mortgages, which is discussed further below; (iii) excellent community development lending; (iv) strong levels of community development investments that were heavily focused on affordable housing and small business development needs; and (v) an excellent distribution of branch offices that made Union Bank's products and services readily accessible to geographies and individuals of different income levels. The bank's overall CRA rating was a blend of the ratings of the states in which the bank was located; however, California performance was weighted considerably more heavily than the other states, reflecting the fact that 99 percent of the bank's deposits were gathered from California. Likewise, Union's lending volume and branch locations were also most heavily concentrated in California.

Regarding the conclusion that borrower distribution of home mortgage loans was poor, the PE noted that the following factors were considered as providing context to the bank's lending performance. The PE noted that significant housing affordability barriers exist within the state of California. The cost of housing in California is among the highest in the country, and as such, it presents challenges for a financial institution to lend to LMI borrowers so that demographic parity (the proportion of a lender's loans made to LMI borrowers versus the percentage of such borrowers in that assessment area ("AA")) is attained. Between 2005 and 2006, the Housing Opportunity Index ("HOI")<sup>7</sup> was no greater than 14 percent in Union Bank's full-scope AAs. Thus, well over three-quarters of the families in those areas could not afford a median priced home based on their median family income. Although housing affordability eased between 2007 and 2008, this was largely the impact of prior liberal underwriting practices by some lenders that helped spur high home mortgage delinquency levels, short sales, and foreclosures. Over half of the top 10 lenders (by number of loans) noted in the 2007 HMDA peer market data in nearly all of Union's full-scope AAs were no longer operating. Rather than participate in the aggressive mortgage lending environment and potentially compromise safety and soundness standards, Union used its community development lending channels to help address the affordable housing needs of its AAs. Union also attempted to assist LMI borrowers through its Economic Opportunity Mortgage ("EOM") loan product. These loans are made available to borrowers below certain income levels and provide for underwriting standards that are flexible. The PE further noted that lending to small businesses is the bank's primary lending niche; therefore, weight was placed most heavily on this category of lending when assessing lending performance.

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<sup>6</sup> Union was examined by the OCC as a large bank under the lending, investment, and service tests. The bank received "Outstanding" ratings on the investment and service tests and a "High Satisfactory" rating on the lending test. The evaluation period for the 2009 PE was generally 2005 through 2008. PEs issued by the OCC may be found at <http://www.occ.treas.gov/tools-forms/tools/compliance-bsa/cra-perf-eval-search.html>.

<sup>7</sup> The HOI is a measure of housing affordability that quantifies the share of homes sold in an area that would have been affordable to a family earning the local median income based on standard mortgage underwriting standards.

## *PNC*

PNC's most recent PE, dated September 30, 2009, and issued by the OCC,<sup>8</sup> assigned the bank an overall "Outstanding" rating. As previously noted, the Smartstreet transaction represents only approximately 1 percent of PNC's total assets and, as such, Union's CRA and lending records will be the primary focus of this section.

### *Impact on CRA Rating*

Pursuant to 12 C.F.R. § 25.28(c), the evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. The most recent PEs for the two banks involved in this transaction noted that no evidence of discriminatory or other illegal credit practices had been identified.

Section 1025 of the Dodd-Frank Act assigns to the Consumer Financial Protection Bureau ("CFPB") exclusive examination authority, and primary enforcement authority, to ensure compliance by banks and Federal savings associations ("FSAs") with specified Federal consumer financial laws, if the bank or FSA has more than \$10 billion in assets. In response to a request from the OCC, the CFPB has not provided the OCC with any information concerning discriminatory or other illegal credit practices relative to these institutions with respect to Federal consumer financial laws.

### *Public Comments*

The OCC received one letter from the public on this application. The commenter expressed concerns with Union's record of overall lending to minority borrowers, particularly the African American community. This commenter also indicated that the concerns it expressed in its two letters submitted to the OCC on the Union and Santa Barbara Bank & Trust, N.A merger application apply to this particular transaction as well. As such, concerns raised in all three letters received by the OCC from the commenter addressing both applications are considered herein.

The primary concerns raised in the three comment letters pertain to the bank's credit practices in the context of potentially discriminatory lending, as defined by the Equal Credit Opportunity and Fair Housing Acts.<sup>9</sup> We note that these concerns are distinguished from those of a CRA nature, which pertain to a bank's record of meeting the credit needs of its local community.

Fair lending-related concerns raised by the commenter primarily focused on Union's record of overall lending to minority borrowers and, in particular, to the African American community with respect to small business and mortgage loans. The commenter alleged that Union (i) has

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<sup>8</sup> PNC was examined by the OCC as a large bank under the lending, investment, and service tests. The bank received an "Outstanding" rating on the lending test and "High Satisfactory" ratings on the investment and service tests. The evaluation period for the 2009 PE was generally 2006 through 2009.

<sup>9</sup> The commenter also made several statements regarding an August 19, 2009, FDIC receivership involving a "Union Bank." That bank has no affiliation with the Union Bank in this application.

been reluctant to provide small business loans to African American borrowers, as demonstrated by the handful of SBA loans it has made to this group; (ii) has had a significantly higher denial rate for home mortgage applications from the African American community than from other applicants; and (iii) has not provided a written commitment detailing the bank's plan to meet the needs of the African American community.

Regarding Union's small business lending, the 2009 PE indicated that both geographic and borrower distribution of small business loans within the bank's full-scope AAs in the state of California were good. The PE noted that this line of business was the bank's major focus.

Union represents that during 2009, 2010, 2011, and through March 30, 2012, it originated 1158 SBA loans, totaling \$263,433,000, throughout its AAs. The bank further represents that it offers various special loan programs designed to accommodate small business needs and to foster their development. One of the bank's more prominent programs is its Business Diversity Lending Program ("BDLP"), which focuses on making credit available to creditworthy small businesses that are at least 51 percent owned and managed by women, minorities, or service-disabled veterans. BDLP is a "special purpose credit program" under the authority of the Equal Credit Opportunity Act and Regulation B. The program employs flexible underwriting standards to provide business credit that otherwise might not be available, or would be available on less favorable terms and conditions. Based on April 30, 2012, data provided by Union, its BDLP portfolio included 151 lines of credit to African American borrowers, representing an outstanding balance of \$3,907,146.

In addition, Union represents that it is its understanding that many of the businesses that the commenter seeks to assist are located in the LMI geographies of the bank's San Francisco AA. The 2009 PE indicated that "[i]n the low-income geographies of the [San Francisco] AA, the bank's portion of small loans to businesses significantly exceeds the percentage of businesses located there and its market share of such loans significantly exceeds its overall market share. In moderate-income geographies [of this AA], the percentage of loans significantly exceeds the percentage of businesses located in these geographies. The bank's market share of loans made in moderate-income geographies significantly exceeds its overall market share."

In response to the commenter's concern that denials of home mortgage applications from the African American community are significantly higher than for other applicants, Union represents that, during the combined years of 2010 and 2011, the percentage of residential mortgage applications from African American applicants that were denied was 32.3 percent. During this same period, the bank represents that the percentage of applications from non-Hispanic White applicants that were denied was 30.7 percent. As such, based on this data, a 1.6 percentage point difference was noted in denial rates between African American and non-Hispanic White applicants. The bank further represents that for comparison purposes, aggregate national HMDA data for the year 2010 (the most recent year for which the data were available to the public) indicated a 1.73 national denial rate disparity ratio between African American and non-Hispanic White applicants.<sup>10</sup>

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<sup>10</sup> Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort and Glen B. Canner, *The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act*, Federal Reserve Bulletin, vol. 97 at 56-57, table 19 (December 2011).

The OCC believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether a bank has excluded or imposed higher costs on any group on a prohibited basis. Because of the limitations of HMDA data, the OCC has also taken into consideration other information, including examination reports that provide on-site evaluations of compliance with fair lending and other consumer protection laws, as well as information provided by Union regarding its compliance risk-management system.

Overall, despite the HMDA data noted in the comment letters, a review of Union's operations and compliance program indicates that they are adequate to ensure compliance with fair lending and other consumer protection laws and, as already noted, there is no evidence of discriminatory or other illegal credit practices.

Lastly, the commenter noted that Union has not provided a written commitment<sup>11</sup> detailing its plans to meet the needs of the African American community. The bank represents that it is committed to continuing its efforts to work with community groups with regard to their CRA and credit access concerns. As a result of the bank's dialogue with several community organizations during the Union and Santa Barbara Bank & Trust, N.A. merger application process, Union set forth the various pledges it has made involving its community-focused investments and activities. One of the pledges addresses increasing the amount of advertising the bank does in ethnic newspapers, with a goal of enhancing the bank's market share in multicultural markets. Since setting forth these additional pledges in May 2012, the bank represents that it has been developing a 2012-2013 "Multicultural Media Program," focused on increasing the amount it spends on advertising in multicultural media. Union's objectives through this program, among others, are to improve mortgage lending in multicultural and LMI areas and to multicultural and LMI borrowers.

In addition, the bank represents that it has made recent changes to its EOM loan product, which has resulted in significant increases in the volume of mortgage loans to minority, as well as LMI, consumers. In order to further its efforts to reach LMI and multicultural consumers, Union has created a new department, Community Lending and Industry Relations, which focuses on product innovation and business development to its target groups.

## **Conclusion**

In summary, our review of the application and submitted materials, the public comments and Union's responses to those comments, representations of Union, and supervisory materials of the OCC has not revealed any information inconsistent with approval of this application.

As a reminder, the Western District Licensing Office must be advised in writing in advance of the desired effective date for the P&A Transaction. If the P&A Transaction has not been consummated within one year from the date of this approval, the approval will automatically

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<sup>11</sup> Any pledges, commitments, or representations made by a bank to its community are not enforceable by the OCC.

terminate unless the OCC grants an extension of the time period. The consummation date may not be less than 15 calendar days after the date of this approval.

This 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 United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. This approval is based upon Union's representations and submissions, and upon information available to the OCC as of this date. The OCC may modify, suspend, or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the P&A Transaction. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions regarding this letter, please contact David Finnegan, Senior Licensing Analyst, at (720) 475-7653 or david.finnegan@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller for Licensing