Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-23
April 1997

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
ASSOCIATES NATIONAL BANK (DELAWARE), WILMINGTON, DELAWARE
TO PURCHASE SUBSTANTIALLY ALL OF THE ASSETS OF
TEXACO CREDIT CARD BANK, NATIONAL ASSOCIATION, OMAHA, NEBRASKA AND JCPENNEY NATIONAL BANK, HARRINGTON, DELAWARE**

April 9, 1997

I. Introduction

On January 2, 1997 and January 7, 1997, applications were filed with the Office of the Comptroller of the Currency by Associates National Bank (Delaware), Wilmington, Delaware, ("Associates" or "applicant") for approval to purchase substantially all of the assets of Texaco Credit Card Bank, National Association, Omaha, Nebraska ("Texaco"), and JCPenney National Bank, Harrington, Delaware ("JCPenney"), respectively. These transactions are proposed under the authority of 12 U.S.C. § 24 (Seventh) and are subject to the provisions of the Bank Merger Act, codified at 12 U.S.C. § 1828(c)(2) . The proposed transactions do not involve the assumption of deposit liabilities.

Associates engages solely in the activities of a national credit card bank as defined in the Competitive Equality Banking Act of 1987. Associates is a wholly-owned subsidiary of Associates First Capital Corp., which in turn is owned by Ford Motor Company. As of December 31, 1996, Associates had approximately $328 million in assets and $96 million in deposits. Associates will acquire approximately $635 million in credit card receivables from Texaco and two affiliates and will acquire approximately $740 million credit card receivables from JCPenney. Associates has represented in its application that it will retain a small portion of the credit card receivables and that the remaining portion will be sold, without recourse, to an affiliate immediately upon consummation of the acquisitions.

II. Summary

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to the business of banking under the authority of 12 U.S.C. § 24 (Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2nd 870, 872 (8th Cir. 1931). Where all or substantially all of the assets of a depository institution are being acquired, the transaction must be reviewed for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c)(2). In addition, the transaction must be reviewed in context of the OCC's responsibilities under the Community Reinvestment Act ("CRA"), codified at 12 U.S.C. § 2903(a)(2) and 12 U.S.C. § 2902(3)(E).

The OCC received comments on the applications from three community groups, each of which opposed the applications on various grounds.

In letters dated January 20, 1997, January 30, 1997, February 7, 1997, March 3, 1997 and March 13, 1997, Inner City Press/Community on the Move ("ICP") opposed the applications. ICP commented on Associates' marketing and lending practices, criticizing the bank for allegedly unjustly charging higher rates to protected classes and unnecessarily raising rates on purchased credit card portfolios. ICP criticized certain aspects of Associates' previous consumer compliance practices. ICP further criticized the marketing and lending practices of Associates' non-bank affiliates, and criticized the competitive effects of Associates' proposed acquisition of the Texaco credit card receivables.

In letters dated February 7, 1997, February 12, 1997 and March 4, 1997, the Delaware Community Reinvestment Action Council, Inc. ("DCRAC") opposed the JCPenney application on grounds that Associates had not adequately met its CRA responsibilities in New Castle County and that JCPenney will close its Delaware operation, adversely affecting the Harrington Delaware community. DCRAC also criticized Associates repricing of purchased credit card portfolios. In a letter dated February 11, 1997, the Citizens Coalition for Tax Reform ("CCTR") also opposed the JCPenney application, stating it would eliminate jobs in Harrington, Delaware and would deprive citizens of Harrington of banking services. CCTR also criticized Associates repricing of purchased credit card portfolios.

In response to the comments raised by ICP and DCRAC, the OCC conducted a targeted review of Associates that included a thorough assessment of the issues raised by the protestants.

The above issues raised by protestants are addressed under **III.1. The Bank Merger Act** and **III.2. The Community Reinvestment Act**. Additional specific issues raised by the protestants are addressed in separate letters, which are attached to this Decision as Appendices A, B and C and incorporated herein by reference.

III. Analysis

1. The Bank Merger Act

The Bank Merger Act ("the Act"), 12 U.S.C. § 1828(c), requires the OCC's approval for any transaction where all or substantially all of the assets of a depository institution are being acquired and the acquiring institution will be a national bank. Under the Act, the OCC generally may not approve such a transaction that would substantially lessen competition. Additionally, the Act also requires the OCC to consider 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 that the applications may be approved under 12 U.S.C. § 1828(c).

a. Competition

Associates and its affiliates offer a variety of credit card products, including the Amoco-branded private label card, and credit cards issued under the Visa and MasterCard trademarks. Texaco offers a Texaco-branded private label credit card, which is used to purchase goods and services at Texaco-branded retail outlets. Texaco-branded retail outlets generally accept not only Texaco-branded credit cards, but also major credit cards, including Visa, MasterCard, Discover, and American Express, as payment for products and services. Thus, at Texaco-branded retail outlets, Associates and Texaco compete against other issuers of major credit cards.[1]

JCPenney issues credit cards under the Visa and MasterCard trademarks. Thus, Associates and JCPenney also compete against other issuers of major credit cards.

The relevant geographic market for credit card products is nationwide. Competition between issuers of major credit cards is intense, and consummation of these transactions will not have a significant adverse effect on competition in the relevant market. The Department of Justice reviewed the proposals and advised the OCC that the transactions present no significant adverse effect on competition.[2]

b. Financial and managerial resources and future prospects

---

[1] In one of its letters, ICP argued that competition will be impaired if the proposed acquisition of Texaco credit card accounts is approved, and Associates becomes the sole issuer of two oil companies' branded credit cards. As the discussion above indicates, however, major oil companies and their branded retail outlets accept more forms of payment than their own credit cards. Associates and Texaco thus compete with hundreds of issuers of general purpose credit cards, and competition will not be significantly impacted by the fact that, upon consummation of this transaction, Associates will issue both Texaco and Amoco-branded credit cards.

[2] See Department of Justice Competitive Effects Report for the period January 17 - 30, 1997.

We have carefully considered the financial and managerial resources and future prospects of the applicants. All of the banks are in satisfactory condition with histories of safe and sound operations and adequate capital. As noted in the I. Introduction, Associates will retain only a small portion of the acquired credit card receivables and will sell the remainder, without recourse, to an affiliate immediately upon consummation of the acquisitions. The resulting bank will be well-capitalized and profitable. Management of Associates will not change and is considered competent to oversee the operations following consummation of these transactions. The future prospects of the resulting institution are considered to be favorable.

c. Convenience and needs

Associates currently operates on a nationwide basis and will continue to help meet the credit card needs of the combined customer base. Associates has indicated that it will not reduce the number of products offered or customer services because of the proposed acquisitions. Associates currently has earmarked $700 thousand to fund below market rate small business loans, home purchase loans, and home improvement loans for low-and-moderate-income individuals. Also, since 1994, Associates has made contributions totaling $155 thousand to various established local development organizations and has budgeted an increase in 1997. The acquisition of the credit card receivables from Texaco and JCPenney should not have an adverse effect on Associates' performance.

Several commenters referred to the possible elimination of jobs by JCPenney in the Harrington, Delaware, area should the proposed acquisition of JCPenney credit card accounts be completed. The effect of the proposed acquisition on employment in a particular community where the selling institution is located is not a factor required to be considered under the Act. Nevertheless, we consulted with JCPenney concerning the loss of jobs. JCPenney estimates that only a small number of jobs are likely to be affected. Additionally, JCPenney has programs in place designed to minimize any adverse effect on employees.

Several commenters also expressed concern that if this transaction is consummated, the citizens of Harrington will be deprived of access to credit and other banking services. The proposed transaction involves the acquisition of JCPenney's bank card portfolio only, however, and does not involve the local banking business it conducts.

Credit card services will continue to be available to Texaco and JCPenney customers through Associates. Commenters alleged that, in the past, Associates unfairly repriced purchased credit card portfolios, unjustly charging higher rates to protected classes. The OCC conducted a targeted review to investigate the allegations and found that in the past Associates made its pricing decisions based on objective criteria designed to measure risk. A review of a sample of files showed that these criteria were fairly and neutrally applied, without discretion or deviation.[3] The OCC has recently commenced a scheduled full scope fair lending, CRA, and

---

[3] See also Appendix A, letter to Inner City Press/Community on the Move.

compliance examination of Associates, and should any matters of concern be found, the OCC will take the appropriate supervisory action.

Commenters expressed concern that Associates' repricing of the Texaco and JCPenney portfolios will adversely affect convenience and needs since customers will be charged higher interest rates. As noted above, Associates uses risk-based repricing. Our targeted review of Associates' past practices showed that some customers had rate decreases, reflecting the risk-based nature of the repricing. Associates gave cardholders whose interest rates were increased the option of rejecting the new terms and paying off their existing balances under the interest rate and payment terms of their existing credit card agreements. Associates has represented that it will give the same option to Texaco and JCPenney cardholders.

2. The Community Reinvestment Act (CRA)

The CRA requires the OCC to take into account the applicants' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, when evaluating certain applications, including applications processed under the Bank Merger Act. See 12 U.S.C. § 2903. The applicant, Texaco and JCPenney, all have satisfactory records with respect to their CRA performance.

Commenters indicated that they believe Associates' CRA performance is unsatisfactory because it allegedly makes credit available at unequal rates and terms to lower income and minority geographies. However, the OCC reviewed this issue in a targeted review, and found no evidence that cardholders are charged higher rates on a prohibited basis. [4]

One commenter, DCRAC, stated that Associates needs to substantially improve its CRA investments in the local community. Associates is a limited-purpose credit card bank permitted to engage only in "credit card operations" under federal law, 12 U.S.C. § 1841(c)(2)(F). Nonetheless, Associates is obligated under the CRA to help meet community credit needs. OCC conducted a full scope CRA examination of Associates during 1995 and concluded that the bank had a satisfactory record of helping to meet community credit needs. The examination also found no evidence of discrimination or any other illegal credit practices. Further, our targeted review to investigate the issues raised by the commenter did not identify any other issues that would cause us to conclude Associates' CRA performance would be less than satisfactory.

As stated above, Associates has placed $700 thousand in long-term, low interest bearing certificates of deposit with a full service financial institution and a credit union in Delaware.

---

[4] Commenters also criticized Associates' record of consumer complaints and violations and criticized the lending practices of non-bank affiliates. OCC also reviewed those issues and found the bank's compliance record to be satisfactory. See Appendix A addressed to ICP and Appendix B addressed to DCRAC.

The deposits are earmarked to fund below market rate small business loans, home purchase loans, and home improvement loans for low-and-moderate-income individuals. Associates has also supported the economic development and affordable housing initiatives of various established local development organizations through annual monetary contributions and technical assistance. Since 1994, Associates has made contributions to these organizations totaling $155 thousand and has budgeted an increase in 1997. In addition, Associates has been an active member of the Community Affairs Group of Delaware, which consists of representatives from local government agencies, community organizations and financial institutions who meet to discuss community development opportunities.

Based on our review, we have concluded that these acquisitions should not diminish Associates' responsiveness to the credit needs of its community and thus, should not adversely affect Associates' CRA performance. The bank will maintain its current policies and procedures for helping to meet the credit needs of its community under CRA and will continue to serve New Castle County consistent with its policies. Associates will also continue to offer credit cards nationally. As previously noted, OCC commenced a scheduled full scope examination of Associates' CRA performance this month. Associates was designated a limited-purpose bank pursuant to 12 CFR § 25.25(b) on January 8, 1996. Examiners, therefore, will evaluate the bank under the community development test, which focuses on a bank's community development loans, qualified investments, and community development services, as appropriate.

IV. Conclusion and approval

For the reasons set forth above, we find that Associates National Bank (Delaware), Wilmington, Delaware, is authorized to acquire substantially all of the assets of Texaco Credit Card Bank, National Association, Omaha, Nebraska, and JCPenney National Bank, Harrington, Delaware, pursuant to 12 U.S.C. § 24 (Seventh). In addition, we conclude that these transactions meet the criteria for approval under the Bank Merger Act and the Community Reinvestment Act.

/s/ 04-09-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 97-NE-02-0003 and 97-NE-02-0004

Attachments - unavailable in electronic format