



Comptroller of the Currency
Administrator of National Banks

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

December 3, 2003

**CRA Decision #121
January 2004**

Richard K. Kim, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

Re: Merger of UnitedTrust Bank, Bridgewater, New Jersey into PNC Bank, National Association, Pittsburgh, Pennsylvania.
Application Control Numbers: 2003 NE 02 040 and 2003 NE 05 152

Dear Mr. Kim:

This is to inform you that on December 3, 2003, the Office of the Comptroller of the Currency (“OCC”) approved your proposal, filed on behalf of PNC Bank, National Association (“PNC and Bank”), to merge UnitedTrust Bank (“UnitedTrust”) into PNC under PNC’s charter and title. At the time of the proposed merger, PNC Bancorp, Inc. will wholly-own PNC and UnitedTrust.¹

This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and the Bank’s representatives.

The merger of UnitedTrust into PNC is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 USC §§ 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 and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects, since the banks will be affiliated at the time of the merger.

¹ On November 19, 2003, the Board of Governors of the Federal Reserve System approved the applications by PNC Financial Services Group, Inc., a financial holding company, to acquire United National Bancorp, a bank holding company, and by PNC Bancorp, Inc., a bank holding company, to merge with United National Bancorp, thereby indirectly acquiring UnitedTrust.

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.² PNC is a strong financial institution with \$61 billion in assets and \$6 billion in capital with 680 offices in 9 states, as of June 30, 2003. UnitedTrust has \$3 billion in assets and \$305 million in capital with 52 offices in 2 states. PNC's acquisition of UnitedTrust will have no significant impact on PNC's condition. Current customers of UnitedTrust are expected to have access to greater banking services than presently available at those branches.

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). We considered this factor and believe the approval of this transaction is consistent with that statutory provision.

With respect to 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 The OCC's review revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

PNC received an "Outstanding" CRA rating in the OCC's April 15, 2002 Performance Evaluation ("PE"). UnitedTrust received a "Satisfactory" CRA rating in the Federal Reserve Bank of New York's March 4, 2002 PE. Neither of the PEs disclosed any substantive fair lending concerns.⁴ The merger is not expected to alter PNC's CRA

² One community organization raised concerns regarding a deferred prosecution agreement entered this year between the United States Department of Justice and PNC ICLC Corp., a non-bank, indirect subsidiary of PNC Financial Services Group, Inc. The agreement concerns transactions that occurred in 2001. The OCC's administrative action against PNC was resolved with a Formal Agreement entered in 2002. The Agreement addressed management systems, risk management, credit administration, and internal controls. As a result of PNC's full compliance, the Agreement was lifted in September 2003. The community organization also expressed concern about a statement by PNC's Chief Executive Officer that the merger application had been reviewed with PNC's regulators. OCC policy contemplates that national banks discuss potential merger applications with the OCC to allow the OCC to identify significant policy, legal, CRA, consumer compliance, or supervisory issues that may exist. *See* Comptroller's Corporate Manual: Business Combinations (April 1998) at 14-15, 91. Additionally, the community organization complained that PNC's response to one of the organization's comments was signed by an employee who was a former Federal Reserve Board official. The commenter provided no information or legal authority to indicate that this contact was improper.

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 PNC and UnitedTrust will be affiliated at the time of the bank merger at issue. Thus, the resulting bank will not have a branch or bank affiliate immediately following the transaction in any state in which PNC did not previously have a branch or bank affiliate.

⁴ PNC's PE stated that based on public comments, consumer complaint information, Home Mortgage Disclosure Act data, and small business data, the OCC determined that a comprehensive fair lending

policies, procedures, or assessment areas, because PNC is already located in the MSAs where UnitedTrust operates.

The OCC received comments from one community organization.⁵ One concern raised by the commenter was with the decline in PNC's home purchase mortgage lending since the sale of its mortgage subsidiary, PNC Mortgage Corp., in early 2001. PNC responded that it remained committed to increasing opportunities for low-and moderate-income ("LMI") borrowers to become homeowners. Through a third party relationship, PNC offers mortgages with down payments as low as 3 percent, Federal Housing Administration products, and Fannie Mae affordable mortgage products. In addition, PNC recently added a product with a closing cost assistance grant of up to \$1000 for first-time LMI borrowers. PNC continues to offer refinance loans, a primary product line for the bank, and some home improvement loans. Additionally, PNC represented that it has a special team of underwriters to review applications from LMI individuals for mortgage loans reportable under the Home Mortgage Disclosure Act ("HMDA"). When conducting future CRA examinations of PNC, the OCC will consider PNC's record of meeting credit needs in its assessment areas through its lending activities.⁶

The commenter also expressed concerns with the potential for branch closings by PNC. PNC responded that it did plan to close some branches that were in close proximity to each other, but that none of the potential closures would be in LMI areas.⁷ PNC also indicated that it would continue to follow its procedures for assessing the impact of any branch closing prior to closing a branch.⁸ The most recent PE indicated that PNC's record of opening and closing branch offices had not adversely affected accessibility of its delivery systems to LMI individuals. Since that PE was issued, the OCC found PNC's record of opening and closing branch offices continued to not adversely affect accessibility to LMI individuals, because PNC had closed only one branch in an LMI area.

Another issue raised by the commenter concerned denial disparity ratios for conventional home purchase and home improvement loans based on 2002 HMDA data. The commenter's analysis indicated that PNC denied applications to Latinos and African Americans more often than to Whites in several MSAs. PNC responded that since selling its mortgage company in 2001, the bulk of its mortgage lending has consisted of refinancings. Additionally, PNC provided an analysis of its refinance lending indicating that PNC's denial disparity ratios in the largest MSAs cited by the commenter were

examination was not needed. UnitedTrust's PE stated that no practices violating the substantive fair lending laws were identified that would have an impact on the bank's CRA rating.

⁵ The OCC also received a consumer complaint from an individual regarding the manner in which PNC had handled a specific loan. PNC investigated the consumer complaint and responded to that individual. Customers who wish to resolve complaints against national banks are encouraged to contact the OCC's Customer Assistance Group.

⁶ The CRA does not require banks to make particular types of loans.

⁷ PNC indicated that since the April 15, 2002 PE, the bank had closed only one branch in an LMI area.

⁸ In addition, federal law 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. The OCC also considers a bank's record of branch closings in conducting CRA examinations.

generally lower or comparable to the industry average.⁹ Further, PNC pointed out that in 2002 it received a greater percentage of home improvement and refinancing applications from African Americans and Hispanics than in 2001.

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. Nevertheless, denial disparity ratios are of concern to the OCC and are evaluated in fair lending examinations.¹⁰

In sum, based on the CRA records of performance of the applicant banks, the OCC found approval to be consistent with the CRA.

The commenter also requested that the OCC conduct a public hearing.¹¹ After careful consideration, the OCC has determined not to conduct a hearing on this merger application.

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.

The commenter requested a hearing primarily to clarify information regarding HMDA data discrepancies and potential branch closings. However, the commenter did not indicate why written submissions would be insufficient to make an adequate presentation

⁹ The commenter also expressed concern that PNC's analysis did not agree with the data available to the public on the Federal Financial Institution Examination Counsel ("FFIEC") website. The OCC confirmed that the data reported by PNC bank was consistent with the data on the FFIEC website. The reason for the discrepancy noted by the commenter was that PNC reported the data using proprietary software that designates the race of the primary applicant as the race of the applicant. For the purpose of its response to the commenter, PNC determined that analyzing HMDA data with the race of the primary applicant as the race of the applicant provided a better picture of its lending efforts to minorities. The FFIEC website does not display the data this way, but instead shows all "joint race" applications separate from minority applications.

¹⁰ The commenter's submission also contained e-mails from two former PNC employees who suggested they had been victims of racially discriminatory employment practices. Because the OCC does not have enforcement authority over employment discrimination issues, the OCC did not investigate this concern. The Equal Employment Opportunity Commission has jurisdiction over such matters.

¹¹ 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 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.

of these and other issues to the OCC. Accordingly, the standards for conducting a hearing were not satisfied, and the OCC determined not to conduct a hearing.

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 application was approved.

As a reminder, the district office must be advised in writing 10 days in advance of the desired effective date for the purchase and assumption so that the OCC may issue the necessary certification. The effective date must be after the expiration of the period during which the Department of Justice may file an injunction to stop the purchase and assumption, i.e., at least 15 days after the date of this letter for applications processed under normal procedures, and at least five (5) days after this date for applications processed under emergency procedures and after all other regulatory approvals have been obtained.

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

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved the merger.
2. An executed merger agreement with Articles of Association for the resulting bank attached.
3. A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained.

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 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,

/s/ Sandya Reddy

Sandya Reddy
Senior Licensing Analyst