



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**Corporate Decision #2001-22
August 2001**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
BANC ONE MORTGAGE CORPORATION AND
FIRST CHICAGO NBD MORTGAGE COMPANY
INTO BANK ONE, NATIONAL ASSOCIATION, COLUMBUS, OHIO**

July 26, 2001

I. INTRODUCTION

Bank One, National Association, Columbus, Ohio, (“Bank One Columbus”) applied to the Office of the Comptroller of the Currency (“OCC”) for approval to merge Banc One Mortgage Corporation (“Banc One Mortgage”) into Bank One Columbus, under 12 U.S.C. § 215a-3 (the “Banc One Mortgage Merger”). Bank One Columbus is a direct wholly-owned national bank subsidiary of Bank One Corporation, Chicago, Illinois, a registered multi-bank holding company (“BOC”). Banc One Mortgage, a Delaware corporation with its principal place of business in Indianapolis, Indiana, is a direct wholly-owned operating subsidiary of Bank One Columbus. It formerly engaged in mortgage banking activities, but those activities have been transferred to Bank One Columbus, and Banc One Mortgage is currently inactive.

Bank One Columbus also applied for approval to merge First Chicago NBD Mortgage Company (“FCNBD Mortgage”) into Bank One Columbus, under 12 U.S.C. § 215a-3 (the “FCNBD Mortgage Merger”). FCNBD Mortgage, a Delaware corporation with its principal place of business in Troy, Michigan, is a direct wholly-owned operating subsidiary of Bank One Michigan, a Michigan state-chartered member bank with its main office in Detroit (“Bank One Michigan”). Like Bank One Columbus, Bank One Michigan is a direct wholly-owned bank subsidiary of BOC. FCNBD Mortgage conducts some of BOC’s mortgage banking operations, primarily secondary mortgage market activities and servicing BOC’s warehouse of mortgage loans awaiting sale, and continues to hold a mortgage portfolio of approximately \$2.5 billion. In these mergers, BOC seeks to consolidate its mortgage operations in Bank One Columbus and eliminate Banc One Mortgage and FCNBD Mortgage as separate corporate entities.

II. DISCUSSION

In December 2000, Congress amended the National Bank Consolidation and Merger Act, 12 U.S.C. § 215 *et seq.*, to add a new section 6 expressly authorizing the merger of a national bank with its nonbank subsidiaries or affiliates: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.” 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See* S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).

Banc One Mortgage is not a bank and is wholly-owned by Bank One Columbus, and so it is a nonbank subsidiary of Bank One Columbus for purposes of section 215a-3. FCNBD Mortgage, a wholly-owned subsidiary of an affiliated bank, is also not a bank, and is indirectly wholly-owned by BOC, and so it is a nonbank affiliate of Bank One Columbus for purposes of section 215a-3.¹ The two corporations engage in mortgage banking activities permissible for national banks; their merger into Bank One Columbus will not add any impermissible powers for the bank. Banc One Mortgage and FCNBD Mortgage are located in different states than Bank One Columbus. However, section 215a-3 authorizes mergers with any nonbank subsidiary or affiliate, without regard to geographic location. Both Banc One Mortgage and FCNBD Mortgage are Delaware corporations. Delaware law authorizes Delaware corporations to merge with foreign corporations, including national banks, with the foreign corporation as the surviving corporation.² Bank One Columbus represents that it, Banc One Mortgage, and FCNBD Mortgage will comply with the requirements of Delaware law for the merger of a Delaware corporation with a foreign corporation. The Banc One Mortgage Merger and the FCNBD Mortgage Merger are authorized under section 215a-3.³

¹ Since Banc One Mortgage is a wholly-owned subsidiary of Bank One Columbus and FCNBD is indirectly wholly-owned by BOC, we need not decide in this application what minimum level of ownership is required to make an entity a “subsidiary” or “affiliate” of the bank for purposes of section 215a-3. We note, however, that consideration of related statutes, namely, 12 U.S.C. § 371c (affiliate transactions) and the Bank Holding Company Act, suggests that Congress intended a similar 25% ownership threshold for section 215a-3.

² *See* Del. Code Ann. tit. 8, § 252 (merger of Delaware and foreign corporations generally). *See also* Del. Code Ann. tit. 8, § 253 (merger of parent corporation and subsidiary).

³ Bank One Columbus has also applied to the Federal Deposit Insurance Corporation for approval of the mergers under the Bank Merger Act. *See* 12 U.S.C. § 1828(c)(1)(A) (no insured bank “shall merge or consolidate with any noninsured bank or institution” without the approval of the FDIC). Both Bank One

In the FCNBD Mortgage Merger, as consideration Bank One Columbus will pay to Bank One Michigan, FCNBD Mortgage's sole shareholder, an amount, in cash, equal to the total equity capital of FCNBD Mortgage at the time of the merger. Since Bank One Columbus and Bank One Michigan are both wholly-owned bank subsidiaries of BOC, this transaction between affiliates would qualify for the exemption from covered transactions under 12 U.S.C. § 371c(d)(1).⁴ The Banc One Mortgage Merger would not be subject to section 371c since it is a transaction with an operating subsidiary. *See* 12 U.S.C. § 371c(b)(2)(A).

III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the mergers of Banc One Mortgage and FCNBD Mortgage into Bank One Columbus are legally authorized under 12 U.S.C. § 215a-3 and that the capital reduction is permissible under 12 U.S.C. § 59 and 12 C.F.R. § 5.46(h). The transactions also raise no supervisory and policy concerns. Accordingly, the applications are hereby approved.

Signed

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

7-26-01

Date

Application Control Numbers: 2001-ML-02-0023 & 2001-ML-12-0232

Columbus and Bank One Michigan are insured banks; neither Banc One Mortgage nor FCNBD Mortgage is an insured depository institution.

⁴ In addition, immediately before the merger BOC will purchase, at fair market value, from FCNBD Mortgage those assets that would be considered "low quality assets" for purposes of section 371c. This amount is currently estimated at approximately \$30 million. Immediately after the merger, BOC will contribute those assets, also at fair market value, to Bank One Columbus in order to keep those assets together with the rest of the mortgage portfolio. This contribution will increase Bank One Columbus' capital, and so Bank One Columbus also applied for a reduction in its capital surplus in like amount under 12 U.S.C. § 59 and 12 C.F.R. § 5.46(h), to be effected upon consummation of the merger and the capital contribution.