



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

December 31, 1996

Mr. Matthew Lee
Executive Director
Inner City Press/Community on the Move
P.O. Box 416
HUB Station
Bronx, New York 10455

Dear Mr. Lee:

This is in response to your request that the Board reconsider, modify, vacate and/or stay its approval of the applications of NationsBank Corporation and NB Holdings Corporation, both of Charlotte, North Carolina ("NationsBank"), to acquire Boatmen's Bancshares, Inc., St. Louis, Missouri ("Boatmen's").^{1/} In addition, your comments which were not received in time to be presented to the Board when it considered the applications have been included as part of your request for reconsideration.

The Board's Rules of Procedure provide that a request for reconsideration must present "relevant facts that, for good cause shown, were not previously presented to the Board." 12 C.F.R. 262.3(k). Your request raises a number of matters that you previously have argued would support denial of the proposal. The Board carefully considered your comments on the applications at the time it reviewed NationsBank's proposal, including your comments and allegations regarding NationsBank's compliance with fair lending laws and its record of performance under the Community Reinvestment Act ("CRA"); litigation and administrative regulatory actions regarding securities-related activities by NationsBank's securities brokerage subsidiary; the trade

^{1/} See NationsBank Corporation, 83 Federal Reserve Bulletin __ (1997) (Order dated December 16, 1996) ("Order"). Your request for reconsideration and a stay was filed on behalf of Inner City Press/Community on the Move, Bronx, New York, Mid-South Peace and Justice Center, Memphis, Tennessee, and the New Mexico Alliance, Questa, New Mexico.

practices and lending activities of NationsBank's nonbank subsidiaries, including NationsCredit Consumer Corporation ("NationsCredit"); branch locations and closings; the competitive impact of the proposal on the El Paso, New Mexico, and Memphis, Tennessee, banking markets; the effect of NationsBank's surcharges on the use of automatic teller machines; and interstate banking issues in New Mexico and Missouri. In light of all the facts of record, including your comments, and for the reasons discussed in the order, the Board concluded that your comments did not warrant denial of the proposal.

Your letters raise two new matters in support of your request for reconsideration of the applications. You allege that NationsBank did not provide complete disclosure of all pending and past litigation involving NationsBank's nonbank subsidiaries. You have provided information and documents relating to certain civil actions filed against the nonbank subsidiaries which were not disclosed by NationsBank in response to requests for information from Board staff. You also allege that a deposition taken of a former employee of NationsCredit in the Mississippi lawsuit provides evidence that NationsBank made misrepresentations to the Board in connection with this proposal about improving the practices of the consumer lending business acquired by NationsCredit from Chrysler First Inc. ("Chrysler") in 1993. You further allege that NationsBank made misrepresentations to the Board about the practices of Chrysler when it applied to acquire the assets of that company, and has failed to comply with commitments made to the Board at that time to improve the operations of that consumer lending business.^{2/}

As noted in the order, the Board carefully reviewed your allegations that NationsCredit and other NationsBank nonbank subsidiaries engaged in deceptive trade practices and other improper lending activities, including allegations that NationsCredit targeted minority borrowers for loans

^{2/} You have alleged that the processing of your request under the Freedom of Information Act ("FOIA") for documents relating to NationsCredit and other nonbank subsidiaries of NationsBank was delayed, and that you did not receive any documents in response to this request until after the applications to acquire Boatmen's were approved by the Board. These allegations raise no issues under the Bank Holding Company Act, however, you may seek review of your claims under the FOIA. Your recent appeal of the withholding of certain documents related to NationsCredit and other nonbank subsidiaries of NationsBank is being processed under the Board's FOIA procedures.

that have high rates of interest. In connection with that review, the Board considered information about pending and past litigation against NationsBank. The information provided by NationsBank included a list of what it considered to be the most significant cases currently pending against NationsBank and Boatmen's, and all class action lawsuits involving certain NationsBank nonbank subsidiaries that had been settled. The civil actions discussed in your request for reconsideration currently are being litigated and no conclusions of wrongdoing in those cases have been made.

At the time of the acquisition of the assets of Chrysler, Nationsbank indicated that it would apply its own underwriting criteria and operating guidelines to the origination and servicing of loans after consummation of the proposal and that these criteria and guidelines would be in full compliance with all applicable laws and regulations. The Board reviewed NationsBank's fair lending policies and procedures in connection with this proposal, and noted that examinations of NationsBank's subsidiary banks found no evidence of illegal discrimination and favorably commented on NationsBank's fair lending policies and procedures to prevent illegal practices. In addition, the Board noted that NationsCredit had a consumer compliance program in place, and that staff of the program performed compliance reviews for NationsCredit and worked closely with the compliance group responsible for overseeing the compliance program for the NationsBank subsidiary banks. In addition, the Board noted that NationsBank's internal audit department performs consumer compliance reviews of NationsCredit.

After reviewing all the facts of record, the Board concluded that the allegations about NationsCredit did not warrant denial of the proposal, and that managerial and other factors were consistent with approval. Furthermore, as noted in the order, the Board retains sufficient supervisory authority to take appropriate action against NationsBank if a court determines, or an examination finds, that NationsBank has engaged in illegal activities. The Board also may take appropriate action if evidence indicates that NationsBank made

misrepresentations to the Board or did not comply with commitments made to the Board in connection with any application or notice.^{3/}

Your request has been presented to the members of the Board to give them an opportunity to determine whether your request warrants reconsideration, rescission or modification of the order or a different finding under the statutory factors that the Board is required to consider under the Bank Holding Company Act (12 U.S.C. §1842). Based on all the facts of record in these matters, including the considerations discussed in this letter, no member of the Board has requested such reconsideration, or determined that the Board's decisions should be altered. Accordingly, your request is hereby denied.

You also have requested that the Board stay its order. In considering a request for a stay of a Board order, the Board applies the same factors that the courts must consider in acting on such requests.^{4/} Courts have stated that a request must establish: (1) whether the movant will suffer irreparable injury absent a stay; (2) whether a party will suffer substantial injury if a stay is issued; (3) whether the movant has demonstrated the likelihood of success on appeal; and (4) the public interests that may be affected.^{5/}

Your request fails to present facts demonstrating that consummation of this proposal would harm your organization or any member or affiliate of your organization, much less cause irreparable harm. In addition, for the reasons discussed in this letter, and in light of all the facts of record, the Board believes that its findings and conclusions are supported by substantial evidence, and that there is not a substantial possibility that you would prevail on the merits in this matter. Furthermore, a stay of the order may have adverse

^{3/} You have alleged that NationsBank violated the Board's ex parte rules because it did not provide you with certain CRA-related information at the time that the information was submitted to the Board. The record indicates that you were provided with the information on November 27, 1996, and had an opportunity to and did provide comments to the Board after that date.

^{4/} See, e.g., Board letter to Mr. James B. Weidner dated May 6, 1987.

^{5/} McClendon, et al. v. City of Albuquerque, et al., 79 F.3d 1014 (10th Cir. 1996).

economic effects on NationsBank and Boatmen's that would not be warranted in light of the unlikelihood that you would prevail on the merits. Accordingly, your request for a stay is hereby denied.

Very truly yours,

A handwritten signature in black ink, reading "Jennifer J. Johnson". The signature is written in a cursive style with a long horizontal flourish at the end.

Jennifer J. Johnson
Deputy Secretary of the Board

cc: Paul J. Polking, NationsBank Corporation
Juan Montes, Co-Chair, New Mexico Alliance
Rita J. Harris, Executive Director, Mid-South Peace & Justice Center
Welford S. Farmer, Executive Vice President, Federal Reserve
Bank of Richmond