



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

March 25, 1997

L. Keith Parsons, Esq.
Watkins Ludlam & Stennis, P.A.
633 North State Street
Post Office Box 427
Jackson, Mississippi 39205-0427

Dear Mr. Parsons:

This is in response to your letter requesting a determination that an application under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) ("BHC Act"), is not required by Deposit Guaranty Corporation, Jackson, Mississippi ("Deposit"), for its proposed acquisition by merger of First Capital Bancorp, Inc. ("FCB"), and FCB's wholly owned bank subsidiary, Capital Bank ("Target"), both of Monroe, Louisiana.

The proposed transaction would facilitate the merger of Target into Deposit Guaranty National Bank of Louisiana, Hammond, Louisiana ("Bank"), a subsidiary of Deposit's wholly owned intermediate bank holding company, Deposit Guaranty Louisiana Corporation, Shreveport, Louisiana ("Deposit-Louisiana"). The transaction would proceed in two steps. First, FCB would merge into Deposit-Louisiana, with Deposit-Louisiana as the survivor. All outstanding shares of the common stock of FCB would be cancelled and converted into the right to receive shares of common stock of Deposit. Second, Target would be merged into Bank, with Bank as the survivor. These steps would occur in immediate succession. Deposit would not operate Target as a separate bank at any time. On March 7, 1997, Bank received approval from the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act to merge Target into Bank.

Section 3 of the BHC Act requires an application to the Board before a bank holding company may merge or consolidate with any other bank holding company. An application is required under this section even where the transaction is subject to review under the Bank Merger Act if, as a result of the

transaction, the bank holding company will directly or indirectly acquire shares of a bank that it previously did not control. See Girard Bank v. Board of Governors of the Federal Reserve System, 748 F.2d 838 (3d Cir. 1984). As noted above, Deposit would merge with FCB and indirectly acquire control of Bank. Such an acquisition falls within the requirements of prior approval under section 3 of the BHC Act.

In cases similar to yours, however, involving an existing bank holding company's acquisition of the stock of a bank, followed immediately by a merger of the existing bank holding company's subsidiary bank and the acquired bank, Board staff has advised that, when no issue is raised under the BHC Act and the merger is subject to the prior approval of a federal banking agency under the Bank Merger Act, it would not object to consummation of the proposal without the filing of a formal application under the BHC Act. See, e.g., letter dated January 25, 1985, to Mellon Bank, N.A., and letter dated November 19, 1982, to Florida National Banks of Florida, Inc. In such cases, the Board has required the bank holding company to submit sufficient financial and other information to the Board in order that it may evaluate the effects of the proposed merger on the bank holding company. In the absence of such a filing demonstrating no significant issue regarding the financial effect of the proposal on the bank holding company or other factors over which the Board has exclusive or primary jurisdiction, the Board would require an application under section 3 of the BHC Act.

The required information has been submitted to the Reserve Bank and Board staff. FCB does not engage in any nonbanking activities that would require approval under section 4 of the BHC Act, and there are no outstanding issues involved in this proposal with respect to section 3(d) of the BHC Act or state law considerations associated with this proposal. The OCC has approved Bank's application under the Bank Merger Act, and Deposit has represented to Reserve Bank and Board staff that all applicable requirements under state law and the Bank Merger Act would be met in completing this transaction.

Accordingly, the Secretary of the Board of Governors of the Federal Reserve System, acting pursuant to authority delegated by the Board, has determined that no regulatory purpose would be served by requiring an application in this case. This determination is based on the facts presented to the Reserve Bank and Board staff. Any change in the facts could result in a different conclusion and should be reported to the Reserve Bank. If Deposit

wishes to engage in additional activities, acquire nonbanking companies, or acquire additional banks, the Board's prior approval would be required under the BHC Act. This opinion is limited to the transaction described above and does not authorize any other transaction.

If you have any further questions about this matter, please contact Dennis White, Staff Attorney (202/452-2523) of the Legal Division of the Board.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer J. Johnson".

Jennifer J. Johnson
Deputy Secretary of the Board

cc: Federal Reserve Bank of Atlanta
Office of the Comptroller of the Currency
Louisiana Commissioner of Financial Institutions
Mississippi Commissioner of Banking and Consumer Finance