



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #280 July 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION BY FIRST UNION NATIONAL BANK, CHARLOTTE, NORTH CAROLINA, TO ACQUIRE THE MONEY STORE, INC., AND ITS DIRECT AND INDIRECT OPERATING SUBSIDIARIES

June 29, 1998

I. INTRODUCTION

On April 15, 1998, First Union National Bank, Charlotte, North Carolina (FUNB), filed an application with the Office of the Comptroller of the Currency (OCC) for approval to acquire as operating subsidiaries The Money Store, Inc., Union, New Jersey (TMSI), and its various direct and indirect subsidiaries.

TMSI, through its various subsidiaries, makes home equity loans, loans under various programs guaranteed by the Small Business Administration, commercial loans and student loans. In 1997, TMSI: (1) originated \$5.9 billion in home equity loans and had a servicing portfolio of \$11.4 billion; (2) originated \$729 million in commercial loans with a servicing portfolio of \$2.7 billion and (3) originated \$582 million in student loans with a servicing portfolio of \$1.6 billion. All loans originated are sold into the secondary market through securitization and TMSI continues to service the sold loans. As of December 31, 1997, loans serviced by TMSI totaled about \$16.5 billion of which \$2.8 billion were still held by TMSI pending sale into the secondary market.¹

The OCC received public comments concerning FUNB's proposed acquisition of TMSI, including comments received in connection with FUNB's prior application to merge with CoreStates Bank, National Association, Philadelphia, Pennsylvania.² The OCC Decision

¹ TMSI has represented that it takes about a month to package loans and sell them on the secondary market.

² This application was approved by the OCC on April 15, 1998. See Decision of the Office of the Comptroller of the Currency on the Application to Merge CoreStates Bank, National Association, Philadelphia,

Statement on that application noted that the OCC would carefully evaluate all relevant issues in its decision on this application and this Decision Statement sets forth and responds to those comments.

II. DISCUSSION

A. Activities of TMSI and its subsidiaries

TMSI is the holding company for a number of direct and indirect subsidiaries which will be retained by FUNB. Some of these subsidiaries are engaged in making, purchasing, selling, servicing or warehousing loans or other extensions of credit for the subsidiary's account or for the account of others, including consumer loans, commercial loans, residential mortgage loans, and commercial mortgage loans. These activities are permissible for a national bank.³ To the extent FUNB already has received approval to engage in these activities in other operating subsidiaries, FUNB has represented that the activities of these subsidiaries will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of those activities for any prior operating subsidiary of FUNB.⁴ FUNB also has represented that, to

Pennsylvania, with and into First Union National Bank, Charlotte, North Carolina (OCC Corporate Decision 98-21, April 15, 1998).

³ See 12 C.F.R. § 5.34(e)(2)(ii)(L). See also 12 C.F.R. § 1.3(g) (a national bank may securitize and sell assets that it holds). Subsidiaries engaged in lending are TMS Mortgage Inc., The Money Store/D.C. Inc., The Money Store/Minnesota, Inc., The Money Store/Kentucky, Inc., The Money Store Home Equity Corp., The Money Store Investment Corporation, The Money Store of New York, Inc., The Money Store Commercial Mortgage Inc., Trans-World Insurance Company (the insurance activities of this entity are addressed in Part II.B. of this Decision Statement), ClassNotes Inc., and Integrated Capital Group, Inc. In addition, a variety of subsidiaries engage in the sale of interests, through securitization, of loans originated by TMSI through its subsidiaries. These are TMS Home Holdings, Inc., TMS SPV, Inc., TMS Special Holdings Inc., TMS SBA Holdings, Inc. and TMS Student Holdings, Inc. Servicing of loans originated by TMSI and its subsidiaries is performed by The Money Store, Inc., the Money Store Investment Corporation, The Money Store Commercial Mortgage Inc., and Trans-World Insurance Company. One other subsidiary engages in activities pertaining to auto loans, though TMSI no longer engages in auto lending. The Money Store Auto Finance Inc., is the servicer of auto loans originated by TMSI prior to its departure from that business. As of December 31, 1997, the servicing portfolio of auto loans was approximately \$800 million. This subsidiary will continue to service the loans as long as they are outstanding. Another subsidiary, Princeton Escrow Corporation, holds title on deeds of trust in connection with loans made by TMSI and its subsidiaries in several states. This is a permissible activity for a national bank subsidiary See Decision of the Office of the Comptroller of the Currency on the Application of Key Bank of Washington, Tacoma, Washington, to Convert to a National Banking Association (Corporate Decision 97-14, March 4, 1997).

⁴ See 12 C.F.R. § 5.34(e)(4). We also note that, for purposes of meeting the requirements of section 5.35(e)(4), FUNB is considered to be a well capitalized institution.

the extent activities have not been previously approved, the activity will be conducted in accordance with policies contained in guidance issued by the OCC regarding these activities.⁵

Two subsidiaries will engage in furnishing business services for FUNB or its affiliates including accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, and databases or facilities authorized under 12 C.F.R. § 5.34(e)(2)(ii)(B).⁶ FUNB has represented that these activities will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding these activities.⁷

Two subsidiaries hold real estate property used by TMSI.⁸ This activity is permissible for a national banks under 12 C.F.R. § 7.1000. Moreover, FUNB already has received approval to engage in these activities in other operating subsidiaries and FUNB has represented that the activities of these subsidiaries will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of those activities for any prior operating subsidiary of FUNB.⁹

B. Branching issues

In addition, acquisition of TMSI by the Bank as an operating subsidiary and continued operation of its offices does not violate branching restrictions.¹⁰

As stated, 12 C.F.R. § 5.34(d)(3) provides that:

In conducting activities authorized under this section, unless otherwise authorized by statute or regulation (including paragraph (f) of this

⁵ See id. at (e)(2)(i).

⁶ These subsidiaries are The Money Store Service Corp. and Dyna Mark, Inc.

⁷ See id. at (e)(2)(i).

⁸ These are The Money Store Realty Inc. and Equity Insurance Agency Inc. Despite its name, FUNB has represented that the latter no longer conducts insurance agency activities. It holds title to an office building used by TMSI and is otherwise inactive. In addition, another subsidiary, Major Brokerage Inc., owns an office building that formerly housed a field office and which is now on the market for sale. This subsidiary is otherwise inactive.

⁹ See 12 C.F.R. 5.34(e)(4).

¹⁰ Because we do not address the operational independence or independent funding for TMSI and its direct and indirect subsidiaries, relative to FUNB, for purposes of this discussion we assume that the branching provisions of 12 U.S.C. § 36 would be applicable to TMSI and its direct and indirect subsidiaries.

section), applicable provisions of Federal banking law and regulations pertaining to the operations of the parent bank shall apply to the operations of the bank's operating subsidiary.

Under 12 U.S.C. § 36(j), a national bank branch is an office established by the bank at which deposits are received, checks are paid or money is lent. Consequently, if the offices to be operated by TMSI are offices at which money is lent¹¹ within the meaning of the definition of a "branch" under 12 U.S.C. § 36(j), the location of the offices could be limited by the restrictions set forth in 12 U.S.C. § 36 and OCC approval for each office would be required.

The OCC, in 12 C.F.R. § 7.1003, has interpreted the phrase "money [is] lent" as used in section 36(j). Section 7.1003 provides:

(a) *General.* For purposes of what constitutes a branch within the meaning of 12 U.S.C. 36(j) and 12 C.F.R. 5.30¹², "money" is deemed to be "lent" only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds:

(1) From the lending bank or its operating subsidiary; or

(2) At a facility that is established by the lending bank or its operating subsidiary.

(b) *Receipt of bank funds representing loan proceeds.* Loan proceeds directly from bank funds may be received by a borrower in person at a place that is not the bank's main office and is not licensed as a branch without violating 12 U.S.C. 36, 81 and 12 C.F.R. 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending bank or its operating subsidiary. A third party includes a person who satisfies the requirements of § 7.1012(c)(2), or one who customarily delivers loan proceeds directly from bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

As described in the application and supplemental letters,¹³ TMSI has 172 field offices and engages in lending as described above.

¹¹ Because TMSI engages in no deposit functions, the portions of the branching definition that pertain to deposit accounts -- receiving deposits and paying checks -- are irrelevant.

¹² This regulation reiterates the definition set forth in the statute. See 12 C.F.R. § 5.30(d)(1).

¹³ See letters dated May 22, 1998, June 3, 1998, and June 9, 1998, and June 11, 1998.

The crux of whether a particular bank site that has in-person dealings with the public¹⁴ is a branch depends, as set forth in section 7.1003, on the manner in which loan proceeds are disbursed. Based on the representations made by FUNB in its application and supplemental letters, the offices of TMSI comport with the requirements of section 7.1003 and are not branches within the meaning of 12 U.S.C. § 36 and 12 C.F.R. § 5.30.

C. Foreign activities

As a result of the proposed acquisition, FUNB would hold an indirect equity investment of about \$6 million in TMSI's foreign subsidiary, The Money Store Holdings, Ltd. (Holdings). This subsidiary is a holding company for TMSI's home mortgage lending activities in the United Kingdom (UK). Holdings owns all of the outstanding equity in The Money Store Ltd. (TMS-Ltd.), a UK entity engaged in mortgage lending. TMS-Ltd. owns all of the outstanding equity of Platform Home Loans, also a UK entity engaged in mortgage loan servicing, and 100 percent of the Class A ordinary nonvoting shares of The Money Store Sterling #1 PLC, which securitizes home mortgage loans originated by TMS-Ltd. Holdings also owns 100 percent of TSN Options Ltd. which may assume ownership of certain nonperforming loan securitizations of The Money Store Sterling #1 PLC if it were to default.

The Bank has indicated that these holdings satisfy the general consent requirements under Regulation K for investments by a national bank in a foreign subsidiary, 12 C.F.R. § 211.5(c)(1), and the provisions of Regulation K for investments by a foreign subsidiary of a national bank in subsidiaries conducting lending, servicing, securitization and related activities abroad. See id. at § 211.5(d). These provisions are administered by the Federal Reserve Board.

D. Insurance Activities

Another subsidiary of TMSI that would be acquired by FUNB as a result of this proposed transaction is Trans-World Insurance Co. which reinsures certain credit life insurance written by North Central Life Insurance on mortgage loan customers of TMSI's lending subsidiaries. FUNB has represented that this is an activity not previously approved for FUNB. FUNB also notes that Money Store Insurance Services, Inc. (MSIS) is a newly formed credit life insurance agency that has not yet commenced operations. FUNB requests permission to conduct credit life insurance agency activities in MSIS, as authorized by 12 C.F.R. Part 2.

¹⁴ TMSI also has three central offices. Because these offices have no in-person contact with customers, no branching issues arise with respect to these offices. See 12 C.F.R. § 5.30(d)(1)(ii)(A). FUNB has represented that these offices, located in California, New Jersey, and Florida, have contact with customers exclusively by telephone.

Based on the information provided, including the representations and commitments made by the FUNB in the application, the acquisition of the subsidiaries that will engage in the proposed activities is permissible.¹⁵

National banks have broad authority to underwrite, reinsure, and sell as agent, credit-related insurance products.¹⁶ As we have previously noted, credit-related insurance products assist bank customers in meeting loan obligations when unfortunate circumstances, such as death, disability or unemployment, occur. Credit-related insurance products also enhance a lender's ability to receive repayment for its loans. By underwriting and reinsuring credit-related insurance, banks generate new sources of income for credit risks banks assume when lending to customers. Banks' involvement in underwriting and reinsuring credit-related insurance products may also promote competition and expand customer choices. The OCC has therefore found credit-related insurance products to be an integral part of credit transactions and thus part of, or incidental to, a bank's lending authority and the business of banking.

E. Divestment of inactive subsidiaries

FUNB represents in its application and supplemental letters that TMSI has several inactive subsidiaries for which there are no current plans.¹⁷ FUNB has represented that these inactive subsidiaries that are not activated in accordance with applicable OCC procedures will be liquidated or divested within two years of consummation of FUNB's acquisition of TMSI.

TMSI also has two other newly-formed subsidiaries that were formed to hold a proposed equity investment in a joint venture to engage in debt consolidation services.¹⁸ FUNB has represented that it will comply with the applicable OCC procedures and requirements,

¹⁵ A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, pursuant to 12 U.S.C. § 24(Seventh). 12 C.F.R. § 5.34(d)(1). Underwriting, reinsuring, and selling as agent, credit-related insurance is, therefore, permissible for a bank's operating subsidiary.

¹⁶ See 12 C.F.R. Part 2; Corporate Decision 97-92 (October 17, 1997) (authorizing Bank of America's application to establish an operating subsidiary to underwrite and reinsure credit disability and involuntary unemployment insurance sold to customers that borrow from the bank's lending affiliates); Interpretive Letter to William W. Templeton, Counsel, Fleet Financial Group, by Raymond Natter, Acting Chief Counsel (May 11, 1998) (responding to an operating subsidiary application filed by Fleet National Bank, approving the bank's application to establish operating subsidiaries to underwrite and reinsure credit life insurance, credit disability insurance, and involuntary unemployment insurance sold to customers that borrow from the bank and its lending subsidiaries).

¹⁷ These inactive subsidiaries are The Money Store UK, Inc., the Commerce Group, First Money Store Securities, Inc., Educaid Student Holdings, Inc., The Money Store Ltd. No.1, No. 2 and No. 3; The Money Store HELOC Holdings Inc., and TMS Auto Holdings, Inc.

¹⁸ These are TMS Venture Holdings, Inc. and AE Mortgage Services LLC.

including those set forth in 12 C.F.R. § 5.34, before activities are commenced through these entities.

F. Divestment of investment in mortgage company

The application states that TMSI owns less than two percent of the common stock of IMC Mortgage Company. FUNB has represented that this stock will be transferred by dividend or sale to First Union Corporation, the parent bank holding company of FUNB, immediately after the acquisition of TMS by FUNB.

III. RESPONSE TO PUBLIC COMMENTS SUBMITTED IN CONNECTION WITH FUNB/CORESTATES MERGER APPLICATION

The OCC received comments concerning FUNB's acquisition of TMSI in connection with FUNB's prior application to merge with CoreStates Bank, N.A. Commenters in that case alleged that TMSI charged high interest rates to low- and moderate-income (LMI) and minority customers, thereby taking advantage of people to whom FUNB itself refused to lend at normal interest rates. Particular concerns included the possibility that LMI and minority customers would be channeled to TMSI, where they would be charged higher rates, and that even "prime" customers applying for credit from TMSI would be charged high interest rates.¹⁹ Commenters also expressed concern that FUNB's acquisition of TMSI would not require an application and comment period, and that the subsidiary would not be examined by federal banking regulators.

The OCC decision on the FUNB/CoreStates merger application stated that the OCC would carefully evaluate all relevant issues relating to the TMSI proposal in its decision on FUNB's application to acquire TMSI. As an initial matter, the OCC notes that FUNB did file an application to acquire TMSI, and that notice of this proposal was published in the OCC's Weekly Bulletin. In reviewing this application, the OCC carefully reviewed the concerns raised by earlier commenters, as well as related issues.

The OCC has carefully considered concerns raised by commenters with respect to the interest rates charged by TMSI and the possibility that certain customers could be channeled to TMSI,

¹⁹ On June 23, 1998, the OCC received additional comments relating to this proposal. In general, these comments raised concerns similar to those previously expressed with respect to TMSI's HMDA data, interest rates, and marketing practices and the manner in which customers would be referred from FUNB to TMSI, and vice versa. As discussed below, these concerns were thoroughly reviewed by the OCC in its consideration of this proposal. These recent comments also raised issues based on press reports, pending litigation, and other allegations with respect to TMSI's relationships with home improvement contractors and other business practices. The OCC does not believe that these allegations, in light of other facts of record, warrant denial of this proposal or delay of the OCC's action in this case; however, these matters will be reviewed as part of the OCC's ongoing supervisory process, as well as the next compliance examination of FUNB and its operating subsidiaries.

or served by TMSI even if qualified for lower-rate credit, and thus required to pay higher rates. TMSI engages in a range of lending activities encompassing home equity loans (both “prime” loans and loans classified as “subprime”),²⁰ Small Business Administration (SBA) loans,²¹ and student loans. These loan products (including both “prime” and “subprime” home equity loans) are separately offered, and will continue to be separately offered, by FUNB. In reviewing these matters with respect to home equity lending,²² the OCC has considered data presented by FUNB with respect to the actual interest rates and fees charged by TMSI, as well as information relating to TMSI’s lending practices and customer profile for home equity loans.

In addition, the OCC has considered that, in connection with this proposal, FUNB has represented that it intends to establish uniform loan policies and standards for home equity loans -- including pricing policies, underwriting criteria, and credit rating standards -- for FUNB, TMSI, and all other entities in the organization offering these loans. Thus, whether an applicant will be offered credit, and the price at which credit will be offered to the applicant, will not be affected by whether the applicant approaches the organization through TMSI, FUNB, or some other company.²³ FUNB is currently developing these uniform standards and has represented that it expects to begin implementing these standards upon consummation of the TMSI acquisition. In approving this application, the OCC has specifically relied upon FUNB’s representations with respect to uniform loan policies, procedures, and standards. Accordingly, it is a condition of this approval that FUNB provide reports to the OCC -- detailing its progress in implementing this uniformity -- at the end of each calendar quarter until the implementation process is complete and this uniformity is achieved. As part of the first such report, FUNB shall submit a detailed plan, acceptable to the OCC, for internal monitoring of the pricing and assignment of credit ratings for home equity loans, with a particular focus on monitoring for differences between entities and for compliance with the fair lending laws.

²⁰ FUNB has stated that “home equity” loans include all loans, other than purchase money mortgages, that are secured by a home mortgage (regardless of lien position).

²¹ TMSI also offers “companion” small business loans when a borrower’s credit needs exceed the maximum loan amount under applicable SBA programs.

²² With respect to SBA and student loans, FUNB has indicated that the terms, pricing, and underwriting criteria for such loans are strongly influenced by governmental and secondary market requirements, and thus are very similar for both FUNB and TMSI.

²³ FUNB has indicated, however, that particular similarly-situated applicants may be offered different pricing on account of factors such as geographic market variations, overages, loan broker fees, and good customer discounts. However, these matters generally would be subject to the same limitations, policies, and procedures at TMSI, FUNB, and other relevant entities.

FUNB also has indicated that customers will be referred by TMSI to FUNB or other entities in the organization, and vice versa, only in very limited circumstances. In particular, referrals will occur only when the customer requests a referral, or when the entity contacted does not offer the loan product sought by the customer. Thus, TMSI generally will not be referring applicants for home equity loans, but may refer applicants for purchase money mortgages.²⁴ First Union Mortgage Corporation, which similarly offers a limited product line, also may refer applicants seeking home equity loans to TMSI.

FUNB has specifically indicated that referrals will not be made based on an applicant's credit rating. Because TMSI and FUNB each will offer both "prime" and "subprime" home equity loans, with the same underwriting criteria, pricing policies, and credit rating standards, TMSI will not refer any applicant (and will have no reason to refer any applicant) on the basis that the applicant qualifies for lower-priced credit at another entity. For parallel reasons, FUNB will not be referring applicants to whom it denies or would deny credit to TMSI.²⁵ In approving this application, the OCC has specifically relied upon FUNB's representations with respect to referrals between TMSI and other entities. Accordingly, it is a condition of this approval that FUNB comply with these representations after consummation of the proposal.

As noted previously, the OCC also has considered information relating to TMSI's current lending practices, including data presented by FUNB with respect to the actual interest rates and fees charged by TMSI, other loan terms, and TMSI's customer profile for home equity loans. The OCC also reviewed information with respect to data reported by TMSI under the Home Mortgage Disclosure Act, including information with respect to lending levels and denial rates for white and minority credit applicants. The OCC also considered FUNB's representation that TMSI is not subject to any pending or settled litigation, or administrative investigations or other actions, with respect to fair lending matters, and that FUNB's due diligence investigations in connection with this transaction did not raise any fair lending concerns. The OCC also has noted FUNB's representation that its fair lending program, including file reviews, mystery shopping, training, and policy and procedure reviews, will be implemented at TMSI after this proposed transaction is consummated.

The OCC also notes that no offices of FUNB or TMSI are expected to be closed in connection with this proposal. FUNB has indicated that TMSI offices are not retail marketing and sales outlets designed to handle "walk-in" traffic, but instead function as service centers that handle applications over a toll-free telephone line and conduct other activities relating to taking loan

²⁴ FUNB also has indicated that it expects to actively market banking products to TMSI customers, particularly in the geographic areas where FUNB maintains branches. FUNB has indicated that it believes TMSI has been successful in meeting the credit needs of LMI customers, and intends to leverage TMSI's products and services in ways that could enhance FUNB's own performance under the Community Reinvestment Act (CRA).

²⁵ FUNB also has indicated that referrals that may be made with respect to real estate-related loans will not involve the payment of any referral fees to any entity.

applications, answering questions about pending applications, and processing and closing loans. Thus, TMSI offices do not compete with FUNB branches, and decisions to open and close offices will be based upon each entity's independent business plans.

IV. APPLICABILITY OF EXAMINATION, COMPLIANCE AND CRA REQUIREMENTS TO TMSI

The OCC notes that, upon consummation of this proposal, because FUNB proposes to establish TMSI as an operating subsidiary, TMSI will become subject to OCC examination. Such examinations will encompass not only safety and soundness considerations, but also review TMSI's compliance with the fair lending laws and regulations and with consumer protection standards relating to its lending activities. Furthermore, FUNB has indicated that it intends to include the lending activity of TMSI as part of the bank's CRA activities in areas where FUNB maintains branches. In this event, TMSI's lending activity also would be evaluated by examiners under the CRA regulation's lending performance standards to determine whether FUNB is helping to meet the credit needs of the communities it serves, including LMI areas. Finally, the OCC notes that, under the CRA, the OCC evaluates performance using performance criteria relative to the bank's lending, investment, and services. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries. Thus, the acquisition of TMSI will increase the capacity of and concomitant responsibilities of FUNB under the CRA.

V. CONCLUSION AND APPROVAL

Based upon the facts as described, including the representations and commitments made by FUNB, we conclude that the activities proposed to be conducted by FUNB through TMSI and its direct and indirect subsidiaries are permissible activities for a national bank and its operating subsidiaries and that none of the offices of TMSI or its direct or indirect operating subsidiaries should be considered to be branches of FUNB subject to the requirements of 12 U.S.C. § 36. We also conclude that the proposal is consistent with safe and sound banking practices and OCC policy and that it does not endanger the safety and soundness of the parent national bank.²⁶

In addition, we note that all conditions of this approval referenced herein are "conditions imposed in writing by the agency in connection with the granting of an application or other request" within the meaning of 12 U.S.C. § 1818.

Accordingly, FUNB's application to acquire TMSI and its direct and indirect operating

²⁶ See 12 C.F.R. § 5.34(e)(1)(iii).

subsidiaries and to engage in credit life insurance agency activities in Money Store Insurance Services, Inc. is approved.

_____/s/_____
Raymond Natter
Acting Chief Counsel

06-29-98
Date

Application Control Number: 98-WO-08-0019