Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2003-11
October 2003

STATEMENT ON THE DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE NOTICE BY COMPUCREDIT CORPORATION OF ITS INTENT TO ACQUIRE A CONTROLLING INTEREST IN AXSYS NATIONAL BANK, SIOUX FALLS, SOUTH DAKOTA OCC CONTROL NUMBER 2003-MW-11-0001

SEPTEMBER 2, 2003

Introduction

On February 6, 2003, CompuCredit Corporation ("Aquiror") filed with the Office of the Comptroller of the Currency ("OCC") a Notice of Change in Control ("Notice") pursuant to the requirements of The Change in Bank Control Act ("CBCA"),12 U.S.C. § 1817(j), and 12 C.F.R. § 5.50 with respect to Axsys National Bank ("Bank"). The Acquiror was incorporated and opened for business in 1997. The Acquiror describes itself as a credit card company primarily engaged in subprime unsecured, general-purpose Visa and MasterCard credit cards issuance through direct mail, television, telemarketing and the Internet.[1] The Bank engages in proprietary credit card lending for its parent, Fingerhut Companies, Inc. ("Fingerhut"). Fingerhut ceased issuing credit cards through Axsys. In mid-2002, the Acquiror began purchasing credit card receivables originated by the Bank.

As required by regulation, on February 13, 2003, the Acquiror published an announcement of its intention to acquire the Bank, which initiated a 20-day public comment period that expired on March 4, 2003. The OCC did not receive any comments from the public. The OCC deemed the Notice to be technically complete as of May 7, 2003.

The CBCA provides specific grounds under which an agency may *disapprove* a proposed acquisition. 12 U.S.C. § 1817(j)(A-F). The CBCA imposes a statutory timeframe of 60 days for consideration of a notice with the discretion to extend the review period for an additional 30 days. The timeframe begins when the notice is declared technically complete. 12 C.F.R. 5.50(f)(3)(ii). The review period may be extended for two additional periods of not more than 45 days each under certain circumstances. If the agency does not disapprove the notice on the

[1] Acquiror's December 31, 2002, SEC Form 10-K Report, Page 18, Heading: Risk Factors.

basis of one of six factors within the statutory timeframes, the acquisition may proceed. 12 U.S.C. § 1817(j); 12 C.F.R. 5.50(f)(3). A proposed acquisition may be disapproved because:

1. The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States.

2. The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

3. The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank.

4. The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit that person to control the bank.

5. An acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency [here, the OCC] all the information required by the appropriate Federal banking agency [again, the OCC]; or.

6. The OCC determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

Relevant Disapproval Factors

With regard to the subject Notice, as described below, the OCC made adverse findings with regard to the third, fourth and sixth factors detailed above. Our findings with regard to each factor relative to the Acquiror's Notice are as follows:

1. The financial condition of the acquiring person is such as it might jeopardize the financial stability of the Bank or prejudice the interests of the depositors of the Bank.

The Acquiror has not demonstrated that it has the financial capacity to provide the critical financial support for the Bank's operating plan to succeed. The Acquiror's earnings history is uneven, and its year-end 2002 earnings were marginal and would allow for little error in the implementation of the proposed business plan for the Bank. In addition, the Acquiror's ability to structure a securitization facility, or to find another funding vehicle for the Bank's credit card receivables that results in a reasonable cost of funds, are in question. The Acquiror's securitization activities will be adversely affected not only by its poor year-end 2002 financial performance, but also by the general instability of its earnings, and by market events that could adversely affect asset-backed securitizations involving subprime credit card lenders. The absence of a cost effective funding source would negatively impact the Bank's operation, making it difficult for the Bank to generate new credit card accounts without sacrificing asset quality and positive earnings. The instability in the Acquiror's financial condition is reflected in the following:

- Earnings for the first six years of operation have been erratic and its year-end 2001 and 2002 earnings have been weak. Future earnings performance is uncertain.
- Year-end 2002 60+ day credit card delinquencies and charge-offs have increased significantly. Further deterioration in asset quality will adversely affect its earnings and its cost of funding.
- Ability to generate adequate growth in new card accounts is in question. Significant declines in origination of new credit card accounts was experienced in 2001 and 2002. Failure to maintain adequate growth in new card accounts will negatively impact the volume of credit card receivables, which is critical to preventing a liquidity crisis through the early amortization of its securitization facilities, as well as for generating adequate earnings.
- Limited liquidity sources are available to meet anticipated and potential funding needs associated with its subprime credit card operation and securitization activities.
- Highly volatile and illiquid residual assets from its securitization of subprime credit card receivables support the majority of the Acquiror's capital. These residual assets have experienced significant losses, and may be subjected to future losses as a result of the potential adverse performance of the securitized receivables.

2. <u>The competence and/or experience of the acquiring person indicate that it would not be in the interests of the depositors of the Bank, or in the interest of the public, to permit the person to control the Bank.</u>

The Acquiror has not demonstrated an ability to operate its existing credit card business consistently and profitably, as shown above, and has not been able to stabilize earnings at adequate levels. It has faced challenges with maintaining growth in new credit card accounts, competing effectively with its competitors, and dealing effectively with the downturn in the economy. In addition, it has not demonstrated an adequate methodology to properly value its residual assets, on an ongoing basis, calling into question its ability to evaluate and maintain sufficient capital to support the risk inherent in its existing operations. The Acquiror's proposed business plan for the Bank to become an issuer of general purpose credit cards represents not only a significant change to the Bank's previous business, but also a shift to an intensely competitive segment of the credit card market, in which the Bank and the Acquiror have no discernable experience.

3. <u>The proposed acquisition could result in an adverse effect on the Bank Insurance Fund.</u>

The complexities associated with subprime credit card lending and securitizations of credit card receivables could cause significant expense to the Bank Insurance Fund (BIF) if the Bank were turned over to the Federal Deposit Insurance Corporation ("FDIC") in receivership. The failure of other credit card banks with subprime credit portfolios has shown that an extensive effort is required to identify willing investors to acquire the subprime credit card portfolio of the failed institution. In a receivership, it is likely that the FDIC would have to hire expensive outside expertise to help manage the securitization facilities.

The potential reliance on brokered deposits could lead to significant exposure for the BIF. All credit card banks are exposed to a greater level of liquidity risk due to their lack of diversified funding sources. Without strong financial support from a parent company, credit card banks generally rely upon two sources of funding for credit card receivables: (1) the securitization market, and (2) brokered deposits. The prohibitive cost of using bank lines of credit and the inability to generate a sufficient volume of receivables to effectively initiate a securitization transaction creates a high risk that the Bank would be forced to resort to using brokered deposits to fund the outstanding receivables. If the Bank decided to solicit brokered deposits as a means of funding the receivables, this would expose the BIF to significant potential losses because these brokered deposits would be insured at the maximum amount of $100 thousand.

Conclusion

Accordingly, pursuant to 12 U.S.C. § 1817(j) and based upon the OCC's adverse determinations regarding the three factors detailed above, the OCC disapproved the Acquiror's Notice of its intent to acquire control of the Bank.

/s/ *Julie L. Williams*

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Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

Date: 9-2-03