Can't Rent? Payday Shop Files to Buy A Charter July 9th, 2002

BY BEN JACKSON

American Banker

For a year, regulators and state legislatures have been tightening up rules governing ventures between payday lenders and banks.

So, it's not surprising that Ohio payday lender Check 'n Go, which has partnered with banks in the past, opted to take a different tack.

In January the investors who own Check 'n Go's parent company, CNG Financial Inc. in Mason, Ohio, created a company to buy a bank outright. In May that company, Cincinnati BancGroup Inc., applied to the Federal Reserve Bank of Chicago to become a bank holding company by acquiring Bank of Kenney in Illinois for $1.3 million. Though an application to buy a $5 million-asset bank would not normally raise eyebrows, this one has caused a stir among community activists and even some members of Congress. Apparently no payday lender has ever tried to buy a bank before.

Bank of Kenney was not looking for a buyer, its chairman said; Cincinnati BancGroup approached it.

John Bruno, Cincinnati BancGroup's president and a senior vice president with CNG, said owning a bank would mean easier access to funds from Federal Home Loan banks or other sources. In addition, according to the May 30 application to the Chicago Fed, it would help the buyer "raise equity capital ... with a greater degree of success" than it could as CNG.

But opponents argue that the group is trying to circumvent state laws that ban or restrict payday lending, and that approving the deal would encourage more mergers between deep-pocketed payday lenders and small banks with limited ability to grow on their own.

Check 'n Go has 670 outlets in 24 states. Bank of Kenney has one branch, in a town with a population of less than 400.

The Chicago Fed has received 50 comment letters on the deal, most opposing it. Philip G. Jackson, the director of the applications division at the Chicago Fed, said the last application to bring it so many comments was Banc One Corp.'s in 1998 to buy First Chicago NBD, which drew about 300 letters.

Among those protesting now are four members of Illinois' congressional delegation, Reps. Danny K. Davis, Jesse L. Jackson Jr., Bobby L. Rush, and Janice D. Schakowsky. (All are Democrats.) In an undated comment letter they questioned CNG's business plan and urged that a public hearing be held to "discuss the negative ramifications of a payday lender becoming a

bank."

"If the application is approved, we believe it will make a sham of the integrity of the banking regulatory framework by allowing Cincinnati BancGroup to use bank privileges to make predatory, high-cost payday loans," the letter said.

Dory Rand, an attorney at the National Center on Poverty Law in Chicago, said the opponents of the deal fear that the payday lender would eventually be incorporated as part of Bank of Kenney. Under the National Bank Act, the bank could then "export" to other states the high rates permitted by Illinois' usury law, Ms. Rand said.

Check 'n Go "has a history" of using federal laws to avoid consumer protection laws, Ms. Rand wrote in a comment letter for the National Center on Poverty Law. For example, Check 'n Go makes payday loans to consumers in North Carolina, where payday lending is illegal, by acting as a broker of short-term loans for $193 million-asset Brickyard Bank of Lincolnwood, Ill.

Buying Bank of Kenney would make it unnecessary for CNG to partner with another bank, according to community groups.

Such partnerships have been under attack in recent months from regulators, lawmakers, attorneys general, and consumer groups. In Indiana, a law was enacted in March that prohibits bank/payday lender partnerships. In North Carolina, a federal court is reviewing a suit filed by the state that would cap interest rates on payday loans.

Meanwhile, Goleta National Bank in Goleta, Calif., and its payday-loan partner, Ace Cash Express Inc., are fighting several lawsuits filed by borrowers and community groups.

Mr. Bruno declined to discuss the motivation for acquiring a bank, except to say that it would make funding easier.

In Illinois, the 57 Check 'n Go outlets would become part of Bank of Kenney but would retain the Check 'n Go name, Mr. Bruno said. This would enable Cincinnati BancGroup to raise money for the payday lending business, which would give consumers access to short-term loans that most banks no longer offer, he said.

"We're trying to bring the banking industry back into this market sector it has left," Mr. Bruno said.

He added that only payday loans would be offered through Check 'n Go stores, and that CNG Financial and Bank of Kenney would remain separate entities. He also said Cincinnati BancGroup would not use insured deposits to make payday loans.

Jack A. Marantz, Bank of Kenney's chairman and president, said he is not familiar with Cincinnati BancGroup's business plans and is unsure what would happen after the bank was sold.

Scott Clarke, an assistant commissioner at the Illinois Office of Banks and Real Estate, said no application for a change of control at Bank of Kenney had been filed with the state regulators. It is not unusual for companies seeking holding company status to take care of applications with the Federal Reserve first, he said.