Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-19
April 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF THE CANAAN NATIONAL BANK, CANAAN, CONNECTICUT, TO ESTABLISH A BRANCH IN SOUTH EGREMONT, MASSACHUSETTS

March 20, 1997

I. INTRODUCTION

On August 12, 1996, The Canaan National Bank, Canaan, Connecticut ("CNB") filed an application with the Office of the Comptroller of the Currency (OCC) to establish a branch in South Egremont, Massachusetts, under 12 U.S.C. § 36(g) (the "Branch Application"). The application was amended on December 12, 1996.[1] CNB's main office is in Canaan, Connecticut. The proposed branch would be CNB's first branch in Massachusetts and its only branch office. No protests have been filed regarding CNB's Application. As of December 31, 1996, CNB has approximately $64.2 million in assets.

II. LEGAL AUTHORITY

A. The statutory framework: Under 12 U.S.C. § 36(g), an out-of-state national bank may establish an initial de novo branch in a host state if the host state has a law that meets the provisions of section 36(g)(1) and the bank meets the conditions of section 36(g)(2).

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1 The property where the branch will be located is within the South Egremont Village Historic District which is listed in the National Register of Historic Places. The OCC, in consultation with the Massachusetts Historical Commission, determined that the Bank's proposal would have no adverse effect on the historic district. On March 6, 1997, the Advisory Council on Historic Preservation concurred with this determination.

CNB has applied for approval to establish an initial de novo branch in another state under 12 U.S.C. § 36(g). Section 36(g) authorizes a national bank to establish such a branch, subject to the requirements of the section:

> Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if --
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> (A) there is in effect in the host State a law that --
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> (I) applies equally to all banks; and
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> (ii) expressly permits all out-of-State banks to establish de novo branches in such State; and
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> (B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

12 U.S.C. § 36(g)(1) (Revised Statutes § 5155, as added by section 103(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, 2352 (enacted September 29, 1994) (the "Riegle-Neal Act")). In this Branch Application, Connecticut is CNB's home state, and Massachusetts is the host state.[2]

The availability of the authority for a national bank to establish an initial de novo branch in a host state under section 36(g) therefore is triggered by host state law. The federal authority in section 36(g) is available only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A). However, section 36(g) appears to structure the relationship between federal authority and host state law differently than some other federal banking statutes that refer to state law. On the one hand, the federal authority in section 36(g) is triggered only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A). But section 36(g) does not prohibit host states from having other features in their interstate branching laws beyond those needed to meet the provisions of paragraph 36(g)(1)(A). Nor does section 36(g) provide that the federal authority is ineffective if the state adds other features. That is, the state may add other features to its interstate branching law, and, as long as those features do not cause the state law

[2] For purposes of section 36(g), the following definitions apply: The term "home State" means "the State in which the main office of a national bank is located." 12 U.S.C. § 36(g)(3)(B). The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." 12 U.S.C. § 36(g)(3)(C). The term "de novo branch" means a "branch of a national bank which (i) is originally established by the national bank as a branch, and (ii) does not become a branch of such bank as a result of (I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution or (II) the conversion, merger, or consolidation of any such institution or branch." 12 U.S.C. § 36(g)(3)(A). Moreover, section 36(g) applies only to a national bank's initial de novo branch in a host state. Once the bank already has a branch or branches in the state, then that state is not one "in which the bank does not maintain a branch." In such states, subsequent branching by a national bank is governed by the other subsections of section 36, as appropriate.

to fail to meet the provisions of paragraph 36(g)(1)(A), the federal authority in section 36(g) continues to be available.[3]

Thus, in evaluating an application for an initial de novo branch in a host state under section 36(g), the OCC must determine, first, whether the host state (in CNB's case, Massachusetts) has a law that meets the provisions of paragraph 36(g)(1)(A) and, second, whether the applicant bank has met the conditions in section 36(g)(2). We now address these requirements in turn.

B. Massachusetts has a law that meets the provisions of 12 U.S.C. § 36(g)(1)(A).

Since CNB is applying to establish an initial de novo branch in Massachusetts, the branch may be approved under section 36(g) only if Massachusetts has "a law that -- (i) applies equally to all banks; and (ii) expressly permits all out-of-State banks to establish de novo branches in such State." 12 U.S.C. § 36(g)(1)(A). Massachusetts enacted legislation, effective August 2, 1996, that permits interstate branching. See M.G.L. c.167 Section 39C. The statute includes provisions that expressly permit de novo branches in Massachusetts by out-of-state banks:

> A foreign bank, out-of-state bank, or out-of-state federal bank, if such bank does not operate a branch in the commonwealth, may, upon approval by the commissioner of an application thereof in prescribed manner and form and in accordance with the requirements of section thirty-nine B, establish and maintain a branch de novo in the commonwealth or may purchase a branch of a Massachusetts bank without purchasing the bank; provided, however, that in each instance the laws of the jurisdiction in which such bank has its principal place of business expressly authorize, under conditions no more restrictive than those imposed by this chapter as so determined by the commissioner, a Massachusetts bank to establish therein a branch de novo or to acquire a branch of a bank without acquiring the bank. M.G.L. c. 167 Section 39C.[4]

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[3] Yet, section 36(g), once triggered, singles out and specifically incorporates into the federal authority only certain features of state law referenced in section 36(g)(2).

[4] Massachusetts law defines "foreign bank" as "any association or corporation authorized to do a banking business the main office of which is located outside the commonwealth and which exists by authority of a country other than the United States;" "out-of-state bank" as "any association or corporation authorized to do a banking business the main office of which is located outside the commonwealth and which exists by authority of any state of the United States other than the commonwealth;" and "out-of-state federal bank" as a national banking association, savings and loan association or savings bank which exists by authority of the United States the main office of which is located outside the commonwealth." M.G.L. c. 167 Section 1. Massachusetts law also expressly provides for the establishment and maintenance of interstate branches through the merger, consolidation or purchase and assumption of a Massachusetts bank. See M.G.L. c. 167 Section 39B. The term "Massachusetts bank" means "any bank, other than an association or corporation chartered pursuant to chapter one hundred and seventy-one [credit unions]." M.G.L. c. 167 Section 1.

Massachusetts law also provides that an out-of-state federal bank shall be subject to "all laws of the commonwealth

Thus, it would seem clear that Massachusetts has "opted-in" to interstate branching through de novo branches for purposes of section 103 of the Riegle-Neal Act. However, one feature of the Massachusetts law casts uncertainty on the conclusion that Massachusetts has a law that successfully meets the provisions of paragraph 36(g)(1)(A). Massachusetts has placed a condition of nationwide reciprocal treatment on an out-of-state bank's establishment of a de novo branch in Massachusetts. An out-of-state bank may establish a de novo branch in Massachusetts only if the home state of the out-of-state bank permits Massachusetts banks to establish de novo branches in that state under conditions no more restrictive than those in the Massachusetts statute.[5]

The reciprocal treatment condition means that, for the time being and until all states enact suitable interstate branching laws, out-of-state banks from some states would not in fact be permitted to establish de novo branches in Massachusetts under the terms of the Massachusetts law. This raises a question whether Massachusetts indeed has a law that "applies equally to all banks" and "expressly permits all out-of-State banks to establish de novo branches" as set forth in paragraph 36(g)(1)(A) (emphasis added). Reciprocal treatment is a condition that limits which banks actually may enter Massachusetts.

However, we believe that the fact that a state's opt-in law contains conditions on entry and so some banks would in practice not be permitted to branch into a state under the state law's terms cannot itself be sufficient to make the law fail to meet the terms of paragraph 36(g)(1)(A). It is unlikely that any state would have a law that had absolutely no conditions on entry by out-of-state banks. But, if we were to adopt a strict reading of section 36(g)(1)(A), only a state law that allowed every out-of-state bank to enter without qualification would fulfill the provisions of section 36(g)(1). This could render section 103 of the Riegle-Neal Act a nullity, and so we believe Congress did not intend such a strict reading. Instead, for purposes of meeting the terms of section 36(g)(1)(A), the proper inquiry is the nature of the conditions. This means, in terms of the statutory language, the important criteria are (1) that the state law opens the state for all out-of-state banks to apply under the same standards ("applies equally to all banks"); and (2) that the state law does not discriminate among banks -- i.e., it does not by its own terms exclude a fixed class of banks, whether by type of bank such as national bank, state commercial bank, or state savings bank or by listed state of origin ("expressly permits all out-of-state banks").

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relative to community reinvestment, consumer protection, fair lending, establishment of intra-state branches and the application or administration of any tax or method of taxation ... and to such other laws of the commonwealth as are applicable to a national bank with its main office in the commonwealth." M.G.L. c. 167 Section 39C.

[5] The nationwide reciprocal treatment condition also applies to the establishment of an interstate branch in Massachusetts through acquisition of a branch. But the issue at hand would not arise in that context. In the Riegle-Neal Act, the acquisition of branches is treated as a type of merger transaction authorized in section 102, see 12 U.S.C. § 1831u(a)(4), and the provisions under which states may "opt-in" to interstate merger transactions in the period before June 1, 1997, specifically address state imposition of a nationwide reciprocal treatment condition. See 12 U.S.C. § 1831u(a)(3)(B)(I). By contrast, section 103 of the Riegle-Neal Act, 12 U.S.C. § 36(g), does not have a provision for nationwide reciprocal treatment.

Under the Massachusetts statute, including its nationwide reciprocal treatment condition, all out-of-state banks would be subject to the same standard, and the entry requirements would apply to the same degree to any bank seeking to establish a branch. Nor does the Massachusetts law discriminate among types of banks or exclude banks from a fixed list of states. From the perspective of Massachusetts, the Massachusetts law lets in all out-of-state banks. Nothing in the Massachusetts law needs to be changed for out-of-state banks from every state to enter Massachusetts. Thus, we believe that Massachusetts has a law that meets the provisions of paragraph 36(g)(1)(A).[6]

C. CNB meets the conditions in 12 U.S.C. § 36(g)(2).

An application by a national bank to establish and operate an interstate branch is also subject to certain conditions set forth in 12 U.S.C. § 36(g)(2). These conditions are incorporated from the provisions for approval of an interstate merger transaction by the appropriate federal banking agency under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u. Specifically, the conditions are those contained in paragraphs (1), (3), and (4) of 12 U.S.C. § 1831u(b), in subsection 1831u(c), and in subsection 1831u(d)(2). These conditions are: (1) compliance with state filing requirements, (2) community reinvestment compliance, (3) adequacy of capital and management skills, (4) applicability of certain state laws, and (5) additional branching authority in the host state subsequent to the initial branch. The first three conditions apply to the establishment of the section 36(g) branch; the others apply to ongoing operations but may also have some bearing upon initial establishment.

CNB's Branch Application satisfies all these conditions to the extent applicable. First, the proposal complies with applicable filing requirements. A bank applying for an interstate branch must (1) comply with the filing requirements of the host state as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 36(g)(2)(A)(incorporating section 1831u(b)(1)). The Massachusetts statute requires an out-of-state bank desiring to establish a de novo branch in Massachusetts to apply to the commissioner "in the prescribed manner and form and in accordance with the requirements of section thirty-nine B." M.G.L. c. 167 Section 39C. Among other requirements not relevant here (e.g., age of acquired bank and deposit concentration limit), Section 39B requires compliance with the "filing requirements of out-of-state non-banking corporations doing business in the commonwealth." As implemented to date, these requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. CNB filed a copy of its Branch Application with the commissioner and will file any required foreign corporation qualification form with the Division of Corporate

[6] As already noted, the structure of section 36(g) does not specifically incorporate state law or otherwise make state law applicable to national banks, except as provided in section 36(g)(2). The reciprocity condition contained in the Massachusetts law is met here, however, and therefore does not present a separate issue.

Registry in Massachusetts.[7] Therefore, CNB it has complied with the applicable state filing requirements in accordance with the provisions of sections 36(g)(2)(A) and 1831u(b)(1).

Second, the proposal satisfies all requirements relating to community reinvestment compliance. In determining whether to approve an application under section 36(g), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any affiliated banks of the applicant bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3) (as incorporated by section 36(g)(2)(A)). The CRA requires the OCC to take into account CNB's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, CNB has an outstanding rating with respect to CRA performance. CNB is the only bank subsidiary of Canaan National Bancorp, Inc. and has no bank affiliates; consequently, there are no other CRA records to review. The State of Connecticut does not have community reinvestment laws applicable to CNB.

Third, the proposal satisfies the adequacy of capital and management skills requirements. The OCC may approve an application for a de novo branch only if the bank is adequately capitalized as of the date the application is filed and will continue to be adequately capitalized and managed after the transaction. See 12 U.S.C. § 1831u(b)(4) (as incorporated by section 36(g)(2)(A)). As of the date the application was filed, CNB satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. § 1831o(b)(1)(A) and 12 C.F.R. § 6.4. Additionally, the capital requirements of 12 U.S.C. § 51 are satisfied. The OCC has also determined that following establishment of the de novo interstate branch, CNB will continue to be adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Finally, section 36(g)(2)(B) applies subsections (c) and (d)(2) of 12 U.S.C. § 1831u to de novo interstate branches of national banks established under section 36(g). None of the provisions of those subsections are applicable in determining the permissibility of the initial establishment of CNB's branch in South Egremont, Massachusetts.

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[7] By letter, dated September 30, 1996 to Gerald J. Baldwin, President, CNB, the Commissioner of Banks of Massachusetts indicated he reviewed the copy of CNB's branch application to the OCC and approved the establishment of the branch in Massachusetts. The "approval" was made subject to two conditions: (1) that the branch be opened within one year; and (2) that, in accordance with Massachusetts law, the branch be subject to all laws of the Commonwealth relative to community reinvestment, consumer protection, fair lending, establishment of intra-state branches and the application or administration of any tax or method of taxation and to such other laws of the Commonwealth as are applicable to a national bank with its main office in the Commonwealth. We note, however, that the Riegle-Neal Act does not permit a state to require that a national bank applying to the Comptroller to establish a de novo interstate branch seek the state's approval. Rather, as relevant here, the state may require only a non-discriminatory filing and a submission of a copy of the application. Neither further submissions to the state, nor any action by the state, is required for the valid approval of the branch by the OCC.

III. CONCLUSION AND APPROVAL

In conclusion, CNB's application to establish an initial de novo interstate branch in South Egremont, Massachusetts, is legally authorized under 12 U.S.C. § 36(g). Under 12 U.S.C. § 36(g), an out-of-state national bank may establish an initial de novo branch in a host state if the host state has a law that meets the provisions of section 36(g)(1)(A) and the bank meets the conditions of section 36(g)(2). The host state here, Massachusetts, has a law that meets the provisions of 12 U.S.C. § 36(g)(1)(A). CNB meets the conditions in 12 U.S.C. § 36(g)(2). The Branch Application raises no supervisory or policy concerns. Accordingly, the Branch Application is hereby approved.

/s/ 03-20-97

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