Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-32
June 1997

DECISION OF THE COMPTROLLER OF THE CURRENCY TO APPROVE APPLICATIONS BY FIRST BANK NATIONAL ASSOCIATION MINNEAPOLIS, MINNESOTA, TO ACQUIRE FIRST BANK, FSB FARGO, NORTH DAKOTA, AND TO ENGAGE IN CERTAIN RELATED TRANSACTIONS

May 31, 1997

I. Introduction

On March 17, 1997, First Bank National Association, Minneapolis, Minnesota (the acquiring bank), filed a series of applications with the Office of the Comptroller of the Currency to acquire its affiliated Federal savings bank, First Bank, FSB, Fargo, North Dakota (the Federal savings bank), with its main office and branches in North Dakota and additional branches in Kansas, Iowa, Wyoming and Minnesota. The Federal savings bank is wholly owned by First Bank System, Inc., Minneapolis, Minnesota (the bank holding company) and more than 99.99% of the shares of the acquiring bank are owned by the bank holding company.

As of December 31, 1996, the acquiring bank, which is a BIF member, had approximately $17 billion in assets, $11.5 billion in deposits and 102 branches. The Federal savings bank, which is a SAIF member, had approximately $5 billion in assets and $2.7 billion in deposits and 84 branches.[1]

The acquiring bank proposes to acquire the operations of the Federal savings bank in the different states in several different ways summarized as follows.

[1] The state-by-state breakdown of deposits and offices is as follows: North Dakota -- 23 offices and deposits of approximately $1.4 billion; Kansas -- 20 offices and deposits of approximately $357 million; Iowa -- 26 offices and deposits of approximately $579 million; Wyoming -- 14 offices and deposits of approximately $267 million; and Minnesota -- one office and deposits of approximately $27 million.

With respect to Minnesota, the acquiring bank proposes to acquire and operate the lone Minnesota branch of the Federal savings bank, along with associated assets and liabilities, through a purchase and assumption transaction under 12 U.S.C. §§ 24(Seventh) and 36(c) and subject to the requirements of 12 U.S.C. § 1815(d)(3) (the Oakar Amendment).

With respect to Iowa, the bank holding company proposes, through a series of applications, to divest the Federal savings bank of all of its Iowa branches, along with associated assets and liabilities prior to their acquisition by the acquiring bank. In this regard, the bank holding company proposes to establish 18 interim national banks each to acquire through a purchase and assumption transaction, under sections 24(Seventh) and 36(c) and subject to any applicable requirements of the Oakar Amendment, from one to six of the Iowa branches of the Federal savings bank and associated assets and liabilities. The bank holding company then proposes to merge these interim banks into one institution, under the authority of 12 U.S.C. § 215a, with its main office in Des Moines, retaining all of the offices of the 18 interim banks with one of the offices in Des Moines designated as the main office and the remainder of the offices retained as branches under 12 U.S.C. 36(c).[2]

With respect to Wyoming, the bank holding company proposes to establish two interim Federal savings banks, one in Casper and the other in Cheyenne, each to acquire through a purchase and assumption transaction seven of the Wyoming branches of the Federal savings bank. Each interim Wyoming Federal savings bank would then convert into a national bank, under 12 C.F.R. § 5.24, and each would retain one of the offices as a main office and the other six as branch offices under the authority of 12 U.S.C. § 36(c). The bank holding company then proposes to merge these Wyoming national banks into one national bank under the authority of 12 U.S.C. § 215a, retaining all of the offices of the combining Wyoming national banks with the main office of the Wyoming national bank located in Casper being designated as the main office of the resulting Wyoming national bank and the remaining offices of the two merging Wyoming national banks being retained as branches under the authority of 12 U.S.C. 36(c).[3]

With respect to North Dakota and Kansas, the acquiring bank proposes to acquire, through merger, the Federal savings bank, which, at that point in time, would still have its main office in North Dakota but would have branches only in North Dakota and Kansas. This transaction

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[2] Following this merger, the acquiring bank in Minnesota proposes to acquire the bank that results from this merger of the 18 Iowa interim national banks. This transaction is proposed to be undertaken pursuant to the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the Riegle-Neal Act). This transaction will be addressed in a subsequent Decision Statement.

[3] The acquiring bank in Minnesota proposes to acquire the bank that results from this merger of the two Wyoming national banks. This transaction is proposed to be undertaken pursuant to the Riegle-Neal Act and will be addressed in a subsequent Decision Statement.

is proposed under 12 U.S.C. §§ 215c, section 5(s) of the Home Owners' Loan Act (HOLA) (codified at 12 U.S.C. § 1467a(s)) and subject to applicable requirements of the Oakar Amendment.[4] The application also requests OCC approval for the acquiring bank to operate, following the merger, the branches and the head office of the Federal savings bank in North Dakota and Kansas consistent with the above provisions and 12 U.S.C. § 36(c).[5]

In addition to the authorities cited, the merger and purchase and assumption transactions mentioned above must be analyzed under the Bank Merger Act, 12 U.S.C. § 1828(c), and those transactions, as well as the applications for charters and conversions described above, must be analyzed under the Federal Community Reinvestment Act, 12 U.S.C. §§ 2901--2907.

In addition, we note that this series of applications is part of a plan by the bank holding company to combine most of its depository institutions into the acquiring bank. Consequently, the acquiring bank also has filed applications to acquire, through merger, several banks owned by the bank holding company. These banks are located in Colorado, Illinois, Nebraska, Wisconsin, and South Dakota. These transactions will be addressed in a subsequent Decision Statement. However, prior to the merger of the South Dakota bank into the acquiring bank, the bank holding company proposed to establish a de novo bank in South Dakota and transfer, through a purchase and assumption transaction, some of the assets and liabilities of the existing bank in South Dakota to the newly-chartered bank in South Dakota. The application for the chartering of the new bank in South Dakota and for this purchase and assumption transaction was approved by the OCC on April 30, 1997.[6]

The various chartering, purchase and assumption and merger transactions described above were subject to public notice and comment procedures. During the thirty day comment period, the Commissioner of the State of North Dakota Department of Banking and Financial Institutions submitted a comment raising issues about the handling of complaints lodged with respect to accounts held at the Federal savings bank and the continuation of certain commitments that the holding company had made to the state. These will be discussed subsequently in this Decision Statement. Following the close of the comment period, the

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[4] We note that the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-298, § 2201, 110 Stat. 3009 (September 30, 1996) (EGRPRA) made certain changes to the language of sections 215c, 1467a(s) and the Oakar Amendment. These revisions, however, made no substantive change to those provisions and are not relevant to the permissibility of the proposed transactions.

[5] We note that the acquiring bank has represented that, if the proposed transactions are approved, it will assume the liquidation account maintained by the Federal savings bank as a result of various acquisitions by the Federal savings bank of mutual savings associations.

[6] This bank, the bank holding company's bank in Montana and the bank holding company's affiliated bank in East Grand Forks, Minnesota, are not proposed to be acquired by the acquiring bank. While the latter was proposed in the original application to be merged into the acquiring bank, that merger application subsequently was withdrawn.

North Dakota Commissioner on May 30, 1997, submitted a legal opinion dated May 29, 1997, by the state Attorney General, which, although not challenging the validity of the merger between the Federal savings bank and the acquiring bank, disputed the applicant's contention that retention by the acquiring bank of branches in North Dakota following consummation of the merger between the Federal savings bank and the acquiring bank was permissible. See State of North Dakota Attorney General's Opinion 97-03 (May 29, 1997) (the state Attorney General's opinion). The issues raised in this submission also will be addressed in this Decision Statement.[7]

II. Summary

For the following reasons, the OCC approves, subject to other appropriate regulatory actions:

- the acquisition and operation by the acquiring bank, through a purchase and assumption transaction, of the Minnesota branch of the Federal savings bank under the authority of 12 U.S.C. §§ 24(Seventh) and 36(c) and consistent with the Bank Merger Act, the Federal Community Reinvestment Act and the Oakar Amendment.

- the chartering of 18 de novo interim national banks in Iowa under the authority of 12 U.S.C. §§ 26, 27 and 12 C.F.R. § 5.33(e)(4) to acquire the branches of the Federal savings bank in Iowa under the authority of 12 U.S.C. §§ 24(Seventh) and 36(c) and consistent with the Bank Merger Act, the Federal Community Reinvestment Act and the Oakar Amendment;

- the merger of the 18 interim national banks in Iowa and the retention of the main offices and branches of each bank as either the main office or branches of the resulting bank under the authority of 12 U.S.C. §§ 215a and 36(c) and consistent with the Bank Merger Act and the Federal Community Reinvestment Act;

- the conversion of the two Wyoming interim Federal savings banks under the authority of 12 U.S.C. § 5.24 consistent with the Federal Community Reinvestment Act and the retention of branches by each bank under the authority of 12 U.S.C. § 36(c);

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[7] We note that in submitting the state Attorney General's opinion, the Banking Commissioner stated that the submission did not constitute a protest and that state regulators were not attempting to stop the transaction because, in their view, it could be restructured and consummated pursuant to other authority. No other comments were received by the OCC in connection with any of these transactions. We note also that the banking regulators in the other states in which the Federal savings bank has offices expressed no objection to the transaction in telephone calls with OCC staff members.

- the merger of the two newly-converted Wyoming national banks retaining the main office and branches of each as either the main office or branches of the resulting bank under the authority of 12 U.S.C. §§ 215a and 36(c) and consistent with the Bank Merger Act and the Federal Community Reinvestment Act; and

- the merger of the Federal savings bank, with its main office in North Dakota and branches in North Dakota and Kansas into the acquiring bank, which will retain and continue to operate the offices of the Federal savings bank as branches, under the authority of 12 U.S.C. § 215c and section 5(s) of the HOLA and 12 U.S.C. § 36(c) and consistent with the Oakar Amendment, 12 U.S.C. § 1815(d)(3), including its interstate limitations set forth in clause (F) applying the standards of 12 U.S.C. § 1842(d), the Bank Merger Act, the Federal Community Reinvestment Act and all applicable laws pertaining to merger transactions involving national banks.

III. Analysis

The following analyzes the proposed transactions by state.[8]

A. North Dakota and Kansas

1. Merger of the Federal savings bank with its main office and branches in North Dakota and branches in Kansas into the acquiring bank in Minnesota

Section 215c, and its counterpart section 5(s) of the HOLA, were enacted in 1991 as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2302 (enacted December 19, 1991) (FDICIA), to provide the corporate authorization for national banks and Federal savings associations to engage in the combinations between BIF members and SAIF members made possible by amendments made at the same time to the Oakar Amendment.[9] The purpose of the new sections was to *facilitate* the broader range of

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[8] For purposes of clarity in setting forth the legal analysis, the discussion of the various transactions begins with the merger of the Federal savings bank into the acquiring bank assuming approval and consummation of the divestiture of the Minnesota, Iowa and Wyoming branches. These divestitures will be addressed in Part III.B., C. and D. of this Decision Statement. Beginning the analysis with a discussion of the merger of the Federal savings bank into the acquiring bank, which implicates all of the statutes involved, permits a full recitation of all of these statutes and a clearer analysis of the issues. The analysis of the Minnesota, Iowa and Wyoming transactions then incorporates those portions of this merger analysis that are pertinent to the transaction in question.

[9] Section 215c was added as section 502(b) of FDICIA. At the same time, in section 501(a) of FDICIA, parallel provisions addressing the authority of Federal savings associations to combine with any insured depository institution were added at section 5(s) of the HOLA and codified at 12 U.S.C. § 1467a(s)(1), (3).

Oakar transactions being permitted, subject to preservation of the standards in the Oakar Amendment and adherence to other statutory standards (such as those under the Bank Merger Act), that would otherwise apply to the transaction. Neither section 215c, nor section 5(s), were intended to deprive a national bank (or Federal thrift) of existing authority otherwise available in connection with a combination authorized under those sections, provided, of course, that the standards referenced in section 215c were satisfied.[10]

Title 12 U.S.C. § 215c provides:

> **(a) In general**
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> Subject to section 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.
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> **(d) Acquire defined**
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> For purposes of this section, the term 'acquire' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

The Oakar Amendment, section 1815(d)(3), which section 215c(a) expressly incorporates, permits mergers, consolidations and purchase and assumption transactions between BIF- and SAIF-insured institutions provided that the deposits of the resulting institution are proportionally insured by both BIF and SAIF. See 12 U.S.C. § 1815(d)(3)(A), (B). Section 1815(d)(3)(F) also seeks to prevent evasions of the existing standards for interstate acquisitions by bank holding companies set forth in 12 U.S.C. § 1842(d). Section 1815(d)(3)(F) provides:

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[10] That section 215c authorizes various types of combinations, but makes them subject to applicable Oakar Amendment standards, the Bank Merger Act and other existing authorities, is clear from section 215c(c) which provides:

> No provision of this section shall be construed as authorizing a national bank or a subsidiary of a national bank to engage in any activity not otherwise authorized under this chapter or any other law governing the powers of national banks.

A similar provision is included at section 5(s)(5) of the HOLA.

(F) Certain interstate transaction

> A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A), unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.[11]

Under the plain language of section 215c and the corresponding provision of the HOLA, a merger between a national bank and a Federal savings association is authorized if it comports with the Oakar Amendment, the Bank Merger Act and other applicable laws. These statutes provide no basis to reject the proposed merger simply because the target institution has branches in states other than the state of the acquiring institution. The statutory scheme places specific limitations on interstate acquisitions, but it does not prohibit them.[12] To the contrary, the standards of the Oakar Amendment, which incorporate the standards from section 1842(d), expressly accommodate interstate transactions and set criteria for them. Whether this proposed transaction comports with those statutory limitations is analyzed in Part III.A.2.a. of this Decision Statement.

The legislative history of sections 215c and 1467a(s)(1) provides no hint of the existence of interstate limitations beyond those that already existed in law. Rep. Oakar, the sponsor of the amendment, on several occasions characterized its impact in the broadest possible way. For instance, she stated:

> Finally, title V of H.R. 3768 contains the provisions of an amendment I offered at full committee. Simply stated, this title will permit any bank insurance fund [BIF] institution to combine its operations with any savings association insurance fund [SAIF] institution, and vice versa. I offered this legislation in order to encourage the injection of private sector funds into the banking and thrift systems. Title V of the bill will permit a bank to combine

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[11] Section 1815(d)(3), including the provision now codified at subparagraph (F), was originally adopted as Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 195 (August 9, 1989).

[12] The courts have long counseled that the meaning of a statute must, in the first instance, be determined based on the language that is used. See, e.g., Caminetti v. United States, 242 U.S. 470, 485 (1917). Parties who argue against the plain meaning of a statute face the "daunting standard" of showing "clear evidence that reading the statute literally would thwart the obvious purposes of the statute." Mansell v. Mansell, 490 U.S. 581, 592 (1989). In authorizing mergers between national banks and Federal savings associations, the language of section 215c could not be plainer -- if the merger is consistent with the Bank Merger Act, the Oakar Amendment including, where applicable, section 1842(d) governing interstate acquisitions, and other applicable law, then a national bank and a Federal savings association may merge.

> with a thrift -- or vice versa -- which permits them to combine their strengths and avoid the potential problem of being placed in conservatorship where the taxpayer's money must be used.

137 Cong. Rec. H 10,762-763 (daily ed. November 21, 1991) (Statement of Rep. Oakar). See also 137 Cong. Rec. H 8936 (November 1, 1991) (Statement of Rep. Oakar); House Banking Committee Mark-up (July 23, 1991) (Statement of Reps. Oakar and LaFalce).[13]

The House report on the legislation contains similar sweeping language. It states:

> [T]he Committee voted to allow any BIF or SAIF-insured depository institutions to combine with each other. This amendment was adopted because the Committee is concerned about the growing cost of thrift and bank resolutions and the increased cost to the taxpayers of these resolutions.

H.R. Rep. No. 330, 102d Cong, 1st Sess., 113 (1991); H.R. Rep. 157, 102d Cong. 1st Sess. 139 (July 23, 1991). See also 137 Cong. Rec. H 9105-9106 (Nov. 4, 1991) (House section-by-section analysis).[14]

In sum, if the transaction comports with the Oakar Amendment, including its interstate limitations, the Bank Merger Act, the Federal Community Reinvestment Act and other applicable law,[15] the *merger* is authorized under section 215c and section 1467a(s).[16] The

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[13] As the sponsor of the amendment, courts have long recognized that Rep. Oakar's views may provide a "weighty gloss" on the meaning of legislation. See, e.g., Galvin v. U.L. Press, 347 U.S. 522, 527 (1954).

[14] Likewise, courts have recognized that "Committee Reports represent the most persuasive indicia of congressional intent" and are "powerful evidence of legislative purpose." See 2A Sutherland, Statutes and Statutory Construction, § 48.06 (5th ed. 1992 & Supp. 1996).

[15] The permissibility of the proposed transaction under these statutes is addressed in Parts III.A.2. and IV.A., B., and C. of this Decision Statement.

[16] This analysis of the merger authority provided by section 215c is consistent with that set forth by the OCC in Decision of the Office of the Comptroller of the Currency on the Application to Merge Chemical Bank FSB, Palm Beach, Florida, with and into The Chase Manhattan Private Bank (Florida) National Association, Tampa, Florida and Operate Branches of Chemical Bank FSB as Branches of The Chase Manhattan Private Bank (Florida) (OCC Corporate Decision 96-60, October 31, 1996) (the Chase Decision); Decision of the Office of the Comptroller of the Currency on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, With and Into Union Planters National Bank, Memphis, Tennessee, and Operate Branches of Leader Federal Bank for Savings as Branches of Union Planters National Bank (OCC Corporate Decision 96-56, September 30, 1996) (the Union Planters Decision). See also Decision of the Office of the Comptroller of the Currency on the Application to Merge Washington Federal Savings Bank, Herndon, Virginia, With and Into The First National Bank of Maryland, Baltimore, Maryland, and Operate Branches of Washington Federal Savings Bank in Virginia, the District of Columbia and Maryland as Branches of The First National Bank of Maryland (OCC Corporate Decision 96-39, July 25, 1996) (the FNB-Md. Decision).

issue then becomes whether, following such a merger between a national bank situated in Minnesota, where it has its main office and branches, and a Federal savings bank situated in North Dakota, where it has its main office and branches, and in Kansas, where it has branches, the national bank is authorized to operate the offices of the Federal savings bank in North Dakota and Kansas as branches. As discussed below, the ability of the acquiring bank to continue to operate the acquired branches is subject to 12 U.S.C. § 36(c) and the state statutory restrictions on intrastate branching incorporated into Federal law by section 36 and applied to national banks.

2. The interstate merger and branch retention are consistent with the Oakar Amendment and 12 U.S.C. § 36

a. The transaction is consistent with the Oakar Amendment

As stated, section 215c authorizes a merger between a national bank and a Federal savings association provided the transaction is consistent with the Oakar Amendment, including its interstate limitations, as described above.[17] The interstate limitations incorporate the requirements set forth at 12 U.S.C. § 1842(d) as if the target savings association were a state bank that the acquiring bank's holding company was seeking to acquire. See 12 U.S.C. § 1815(d)(3)(F). See also the Chase Decision, the Union Planters Decision and the FNB-Md. Decision.

Thus, to determine whether the proposed merger is consistent with this provision, we must postulate that the Federal savings bank is a state bank, with a main office and branches in North Dakota and branches in Kansas, being acquired by the bank holding company. The question that arises is whether this acquisition would be permissible under section 1842(d) as amended by the Riegle-Neal Act. That section provides, in pertinent part:

> (A) Acquisition of Banks.--The [Federal Reserve] Board may approve an application under this section by a bank holding company that is adequately capitalized and adequately managed to acquire control of, or acquire all or substantially all of the assets of a bank located in a State other than the home

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We further note that the state Attorney General's opinion appears to raise no issues with respect to the conclusion that the Federal savings bank and the acquiring bank may *merge*. Consequently, there is no reason to review the analysis of that issue as set forth in the state Attorney General's opinion.

[17] With respect to capital, the Oakar Amendment provides that an Oakar transaction "shall not be approved under [the Bank Merger Act] unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction." See 12 U.S.C. § 1815(d)(3)(E)(iii). (A similar provision had previously been codified at paragraph (d)(3)(E)(iv) but was reworded and redesignated as part of the 1996 Act.) The OCC has determined that the acquiring bank meets all applicable capital requirements. In fact, both before and after the merger, the acquiring bank at least meets all of the tests to be considered a well-capitalized institution. See 12 C.F.R. § 6.4(b)(1).

> state of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1842(d)(1) (emphasis added). Consequently, whether section 1842(d) is applicable to this hypothetical transaction depends on whether the transaction would constitute acquisition of "control of . . . a bank located in a state other than the home state of such bank holding company." If the hypothetical transaction would constitute the acquisition of control of a bank located in a state other than the holding company's home state, section 1842(d) imposes certain Federal law requirements pertaining to community reinvestment, concentration limits, and the capitalization and management of the holding company, and potentially imposes certain state law requirements, incorporated into Federal law, pertaining to the age of the target bank, compliance with certain state laws requiring banks to hold a portion of their assets for call by a state-sponsored housing entity, compliance with applicable state community reinvestment laws, and compliance with applicable state anti-trust laws.

(1) Location of the Federal savings bank for purposes of § 1842(d)

It is clear that the "home state" of the bank holding company is Minnesota for purposes of this provision.[18] The next question, for purposes of section 1842(d)(1)(A), is where the hypothetical state bank with its main office and 23 branch offices in North Dakota and 20 branches in Kansas is "located."

The key statutory phraseology to be analyzed in resolving this issue is virtually identical to phraseology employed in section 1842(d) prior to September 29, 1995, when the current version of section 1842(d) took effect, and which was in effect at the time that the geographical language of the Oakar Amendment was originally adopted in 1989. Under this prior version of section 1842(d) (the Douglas Amendment), the language addressed the authority of "any bank holding company . . . to acquire . . . any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, unless the acquisition . . . of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located . . . ." (Emphasis added.)

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[18] For purposes of 1842(d)(1), the "home state" of a bank holding company is the state in which the total deposits of all of its banking subsidiaries were the largest on the later of July 1, 1966 or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C). In this case, it is clear that the home state of the bank holding company is Minnesota. The company became a bank holding company with the enactment of the Bank Holding Company Act of 1956. Thus, July 1, 1966 is the date on which to determine the bank holding company's "home state" for purposes of section 1842(d) and on that date, the total deposits of all of the company's banking subsidiaries were greatest in Minnesota. Because the home state of the bank holding company differs from the state where the target entity is located, which can only be either North Dakota or Kansas, for purposes of section 1842(d) analysis, the factors set forth in that section must be analyzed.

Thus, if this hypothetical acquisition of a state bank had been postulated before September 29, 1995, the same issue would have arisen: where would the target "state bank" be considered to be "located" for purposes of section 1842(d)? The OCC's analysis of Federal Reserve Board (the Board) precedent in applying the pre-September 29, 1995, language indicates that in applying the "located" language contained in section 1842(d) to a multistate target institution, the Board consistently determined that the institution is "located" in one state -- the state in which the institution is "predominantly located" -- for purposes of section 1842(d) analysis and analyzed the applicability of section 1842(d) to a particular transaction based only on the target institution's location in that state.[19]

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[19] In taking this approach, the Board recognized that this result is at odds with the holding in Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir.), cert. denied, 419 U.S. 844 (1974) (Bank of California) that a bank may be "situated" in more than one state for purposes of establishing branches de novo under the McFadden Act, as codified at 12 U.S.C. § 36(c), and positions of the Comptroller applying that principle to the acquisition of branches through a merger, under 12 U.S.C. §§ 36(c) and 215a, as well as through de novo establishment. The Board noted that the terms "situated," as used in section 36(c), and "located," as used in section 1842(d) (originally adopted as the Douglas Amendment), are employed to accomplish different underlying purposes and need not be construed in the same manner. See 70 Federal Reserve Bulletin 441, 444-445 and n. 11 (May 1984). As the Board stated:

> The Board recognizes that the Comptroller has approved the merger of Girard [a Pennsylvania bank] into Heritage Bank [a multi-state bank with 90 branches in New Jersey and one in Pennsylvania] as permissible under the McFadden Act. However, the Douglas Amendment applies different statutory language and addresses a different type of transaction. The McFadden Act deals with the location of national bank branches; the Douglas Amendment deals with interstate ownership of banks. The fact that Heritage Bank may, under an interpretation of the National Bank Act, expand into Pennsylvania by merger does not address the question of whether a Pennsylvania bank holding company may acquire the resulting interstate bank.

Id. at 445. A similar situation arises under the current facts.

The approach that a bank to be acquired is located in only one state for purposes of section 1842(d) appears consistent with the approach that the Board has taken, without analysis, in several decisions, involving acquisition of interstate banks following the effective date of the revised section 1842(d). See 81 Federal Reserve Bulletin 1143, 1145 n. 5 (December 1995) (in approving acquisition of First Fidelity Bancorporation by First Union Corporation, the Board discussed laws pertaining to age limits only of home states of banks being acquired though at least one was an interstate bank); 82 Federal Reserve Bulletin 239, 240 n.6 (March 1996) (similar approach taken with respect to acquisition of Chase Manhattan Corporation and Chase Manhattan Bank, N.A. and other banks owned by Chase Manhattan Corporation by Chemical Banking Corporation); 82 Federal Reserve Bulletin 558, 559 n. 5 and n. 6. (in approving acquisition by Fleet Financial Group, Inc., a bank holding company with its home state in Rhode Island, of NatWest Bank, National Association (NatWest), an interstate bank with its main office and branches in New Jersey and branches in New York, the Board, without analysis as to where NatWest should be considered to be "located" for purposes of section 1842(d), applied the aging restrictions only of New Jersey). In another transaction involving acquisition of an interstate bank by a bank holding company, the Board merely noted that the transaction complied with "applicable" state law. See Bank of Boston Corporation, Boston, Massachusetts, Order Approving the Acquisition of a Bank Holding Company (July 10, 1996) at p. 3-4 and n. 8.

In determining the state in which a target bank is located for purposes of applying section 1842(d), the Board has taken into account a variety of factors including the location of the main office, the number of branches of the target institution in each state and the amount of deposits held by the institution in each state. See 70 Federal Reserve Bulletin 518 (June 1984) (approving the acquisition by Mitsubishi Bank, Limited, a bank holding company with its home state in California, of BanCal Tri-State Corp., a bank holding company which operated Bank of California, N.A.). See also, e.g., 71 Federal Reserve Board 458 (June 1985) (permitting Midlantic Banks Inc., a New Jersey bank holding company, to acquire Heritage Bank, N.A., a national bank with 90 branches in New Jersey and one in Pennsylvania).

These tests suggest that North Dakota should be the state in which the Federal savings bank is "located" for purposes of section 1842(d). The main office, as well as 55% of the Federal savings bank's offices are located in North Dakota and North Dakota accounts for about 80% of the deposit liabilities. In the present case, however, the Federal savings bank also has a significant presence in terms of numbers of offices in Kansas -- the site of 45% of its offices. Consequently, we will also analyze the hypothetical acquisition as if the state bank were "located," for purposes of section 1842(d), in Kansas as well as North Dakota. See the FNB-Md. Decision, supra, at p. 8. Section 1842(d) imposes, or permits, the following limitations to be imposed on acquisitions of banks by out-of-state bank holding companies:

(a) Age requirements

First, the host state -- that is the state in which an out-of-state bank holding company seeks to control a bank subsidiary -- may prohibit acquisitions if the target bank is less than five years old. 12 U.S.C. § 1842(d)(1)(B). North Dakota imposes no minimum age requirement on out-of-state bank acquisitions and Kansas imposes a five year minimum age requirement. See N.D. Cent. Code § 6-08.3-02.1 (1975 & Supp. 1995); Kan. Stat. Ann. § 9-41(a) (1996). The transaction comports with the Kansas limitation because the hypothetical state bank would assume the age of the actual target which has been in existence and continuously operated since 1926.[20] Thus, if the Federal savings bank were a state bank, the state bank could be acquired by an out-of-state bank holding company despite any limitation imposed by the law of either North Dakota or Kansas.

(b) Concentration limits

Second, the acquisition could not occur if the acquiring bank and all of its insured depository institution affiliates would control (1) more than 10% of the total amount of insured deposits in the United States or (2) more than 30% of the insured deposits in the state of the bank to be

[20] The Federal savings bank was chartered in 1926 as a state building and loan association and converted to a Federal mutual savings and loan association in 1973. In 1984 it became a Federal stock savings and loan association and then a Federal stock savings bank. Thus, even if one were to date its existence only from the time it became a Federal savings association, it would still satisfy the maximum age threshold that a state may impose under 12 U.S.C. § 1842(d).

acquired or a state in which that bank has branches if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state or states. See 12 U.S.C. § 1842(d)(2)(A),(B). The transaction is consistent with these limits.[21]

(c) the Federal Community Reinvestment Act

Third, section 1842(d)(3)(A) requires consideration of the bank holding company's compliance with the Federal Community Reinvestment Act of 1977. That section requires the Federal Reserve Board (and, thus, the OCC in this instance), in determining whether to approve an application by a bank holding company to acquire an out-of-state bank, to consider bank holding company compliance with the Federal Community Reinvestment Act under section 804. Section 804 requires the "appropriate Federal financial supervisory agency" to take into account an institution's Federal Community Reinvestment Act record in its evaluation of an "application for a deposit facility." 12 U.S.C. § 2903(a). The Board is the "appropriate Federal financial supervisory agency" for bank holding companies. 12 U.S.C. § 2901(1)(B). Moreover, an "application for a deposit facility" includes the acquisition of shares of an insured bank requiring approval under section 1842. See 12 U.S.C. §§ 1813(a) and (c)(2); 2902(2) and (3)(F). Bank holding company compliance with the Federal Community Reinvestment Act is evaluated by looking to the Federal Community Reinvestment Act record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). This regulation provides:

> (a) *CRA performance.* [T]he Board takes into account the record of performance under the CRA of:
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> * * * * *

[21] With respect to the nationwide deposit concentration limit, total United States deposits of all of the bank holding company's domestic offices accounted for $24.4 billion as of December 31, 1996, less than one percent of total United States deposits as of that date. Moreover, as of December 31, 1996, total North Dakota deposits of the bank holding company's insured institutions was approximately $1.4 billion -- under 20 percent of total North Dakota deposits as of that date which, for commercial banks alone, amounted to approximately $7.3 billion. The bank holding company's total Kansas deposits of its insured depository institutions as of December 31, 1996 was approximately $357 million -- about 1.5% of total Kansas deposits which, as of that date for commercial banks alone, amounted to approximately $24.5 billion. We further note that section 1842(d)(2)(C) states that "no provision of this subsection shall be construed as affecting the authority of any State to limit . . . the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company. . . ." North Dakota and Kansas, respectively, have imposed statewide deposit concentration limits of 25% and 15%. See N.D. Cent. Code § 6-08.3-03.1.1. (1975 & Supp. 1995); Kan. Stat. Ann. § 9-520(a) (1996). Consequently, even if applicable to this transaction, the transaction is consistent with these limits.

> (2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:
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> * * * * *
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> (ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank [or] to cause a bank to become a subsidiary of a bank holding company . . . .[22]

In this regard, we note that the applicant bank has an "outstanding" Federal Community Reinvestment Act rating as does one of its affiliates, Colorado National Bank. The remaining affiliated depository institutions, including the Federal savings bank, have satisfactory Federal Community Reinvestment Act ratings. No public comments or protests were received by the OCC relating to the Federal Community Reinvestment Act and the OCC has no other basis to question the bank holding company's performance in complying with the Federal Community Reinvestment Act. The community reinvestment performance of the acquiring bank and the Federal savings bank will be more fully discussed in Part IV.B. of this Decision Statement.

(d) State Community Reinvestment Act compliance

Fourth, section 1842(d)(3)(B) requires consideration of the bank holding company's record of compliance with applicable state community reinvestment laws. The bank holding company has advised that prior to its acquisition in 1994 of United Bank of Bismarck, North Dakota ("United"), under state statutes in effect at that time governing acquisitions by out-of-state holding companies, the acquirer was to submit a statement to the state describing how the acquisition would bring net new funds into the state and that the description of net new funds must be filed with the application and annually thereafter stating the amount of capital funds, including the increase in equity capital that will result from the acquisition and a description of the net increase in loanable funds. The statute also required a statement of how the acquisition will provide a level of developmental loans as required by the state banking board. The bank holding company was to maintain a percentage of developmental loans to total loans at a level no less than the percentage of developmental loans to total loans on the bank

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[22] The legislative history underlying section 1842(d)(3)(A) explicitly states that the Board, in passing on interstate bank acquisitions, would continue to review applications in accordance with existing regulations such as 12 C.F.R. § 228, known as Regulation BB. See H.R. Rep. 103-651, 103d Cong., 2d Sess., 48 (1994). This Report also explicitly mentioned the Board's Regulation Y, 12 C.F.R. 225. Id. That regulation, however, with respect to bank acquisitions by holding companies, merely states the Board's need to take into account the Federal Community Reinvestment Act and Regulation BB. See 12 C.F.R. § 225.13(b)(3).

holding company's consolidated statement with respect to all of its bank subsidiaries.[23] The bank holding company made commitments consistent with these requirements and in connection with acquisition of the Federal savings bank in North Dakota and the merger of United into the Federal savings bank in 1995 confirmed to the Federal Reserve Board that it intended to continue to comply with those commitments following that acquisition and merger. See 81 Fed. Reserve. Bull. 169, 175, n. 40 (December 23, 1994). In his comment letter of April 17, 1997, the North Dakota state banking commissioner asserted that if the OCC approves the application, the bank holding company must be required to continue to submit net new funds commitments and annual reporting to the state banking board. The bank holding company has confirmed to the OCC that, following consummation of the transactions it now proposes, it will continue to comply with the commitments made in connection with the acquisition of United. The bank holding company also has represented to the OCC that it will continue to file annual reports with the North Dakota banking board demonstrating compliance for the remainder of the reporting period under which the commitments were made. In his letter of May 30, 1997, the North Dakota Banking Commissioner acknowledged that the holding company has reaffirmed these commitments.

We note further that of the other two states directly implicated in this transaction, Minnesota and Kansas have state community reinvestment laws that either incorporate or are substantially similar to the Federal Community Reinvestment Act. See Minn. Stat. Ann. § 8.93(Subd.4)(5) (West 1996); Kan. Stat. Ann. § 9-533 (b),(c),(d) (1996). Of the other states in which the bank holding company has depository institutions or branches of the Federal savings bank, Colorado, Illinois, Nebraska, South Dakota, Iowa and Montana do not have state community reinvestment laws. Wisconsin and Wyoming have state community reinvestment laws that either incorporate or are substantially similar to the Federal Community Reinvestment Act. See Wisc. Stat. Ann. § 221.0901 (1996); Wyo. Stat. § 13-9-303(a)(ix) (1993 & Supp. 1996**).**

Thus, no issues arise under state community reinvestment laws that would require a rejection of the pending application. Moreover, as stated, no protests or comments, other than, as discussed, the comment by North Dakota banking regulators, have been raised to this application based on state community reinvestment grounds.

(e) Capital and management

Finally, we note the condition of the bank holding company, including its capital position and management, is consistent with approval of the acquisition of this hypothetical state bank

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[23] The North Dakota banking board defined developmental loans as including operating loans for farmers and family farms; loans to create or expand farm and nonfarm businesses; loans guaranteed by the Small Business Administration or the Farmers Home Administration; investments in community development corporations or projects; low-or-moderate income housing loans; student education loans; loans made in distressed areas; and loans made under the Bank of North Dakota's agricultural loan programs and commercial loan programs.

under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment.

Consequently, we conclude that the transaction comports with the standards set forth in section 1842(d) as incorporated into the Oakar Amendment at 12 U.S.C. § 1815(d)(3)(F).[24]

b. Branch retention under 12 U.S.C. § 36

The next question is whether branch operation by the acquiring bank of the Federal savings bank's branches in North Dakota and Kansas is authorized under section 36. The retention of the North Dakota branches that is part of this aspect of the transaction has been questioned by the North Dakota regulators.

While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. § 36(b)(2), that provision applies where the target in a merger is a national bank or a state bank -- not a Federal savings association. See, e.g., Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A., Bloomington, Illinois and Related Purchase and Assumption Transactions, p. 3 at n. 3 (Conditional Approval 69, November 12, 1992). Retention of branches acquired from a Federal savings bank is governed by 12 U.S.C. § 36(c). Id. In this regard, we note that while section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980).

Title 12 U.S.C. § 36(c) provides:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication

[24] Title 12 U.S.C. § 1842(d)(4) also provides that no provision of this section shall be construed as affecting the applicability of Federal or state antitrust laws. Since the two merging entities already are affiliated, the transaction would have no impact on competition under Federal antitrust laws. State antitrust laws, even assuming their applicability to a merger between a national bank and a Federal savings bank, appear to pose no obstacle to the proposed transaction. While each of the three states has state antitrust laws, no state or other party has raised any issue citing state antitrust laws. Moreover, Minnesota's antitrust laws, by their own terms, would not appear to be applicable to the transaction. See Minn. Stat. Ann. § 325D.55(Subd.2)(a) (West 1995 & Supp. 1997) (providing that the law does not apply to actions permitted or regulated under the statutory authority of the United States).

> or recognition, and subject to restrictions as to location imposed by the law of the State on State banks.

With respect to the North Dakota and Kansas branches, the question is whether the acquiring bank is "situated" in those states for purposes of section 36(c)(2) permitting it to retain the branches of the Federal savings bank following the merger transaction. For the following reasons, we conclude that the acquiring bank, following the merger, is situated in those states for purposes of section 36(c)(2).

The courts have since 1974 recognized that a national bank, for purposes of 12 U.S.C. § 36(c), is situated in any state where it has branches. See Bank of California at p. 51 (California bank with grandfathered branch in Washington State is situated in Washington for section 36(c) purposes and may establish new branches there in the same way as other Washington-situated banks). Moreover, the OCC, since long before the passage of section 502 of FDICIA, has recognized that an interstate national bank is located, for purposes of section 215a, governing mergers between banks located in the same state, in the state where it has branches as well as the state in which it has its main office. The OCC recognized that such a bank could merge with a bank located solely in the branch state and retain, under the McFadden Act, the branches of the target bank. See Decision of the Comptroller of the Currency on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, National Association, Jamesburg, New Jersey, Under the Charter of the Latter and with the Title of Mellon Bank (East) National Association reprinted at [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,925 (March 28, 1984). Likewise, before the passage of FDICIA, the OCC recognized that when a bank with branches in one state and its main office in a second state merged into a national bank with its main office and branch offices in the second state, the acquiring national bank, under the section 36, following the merger was "situated," for purposes of section 36(c), in each state where the acquiring bank or the target bank had main offices or branches. Thus, the OCC concluded that the acquiring bank could retain branches of the target bank in each state in which the target bank had branches. See Decision of the Comptroller of the Currency on the Application of State Savings Bank, Southington, Connecticut, To Convert Into a National Banking Association, State Savings Bank, N.A., and on the Application to Merge State Savings Bank, N.A., Into Connecticut National Bank, Hartford, Connecticut (Merger Decision 91-7, April 8, 1991), available in 1991 OCC Ltr. LEXIS 73 (the OCC Shawmut Decision).

The OCC Shawmut Decision held that a converting interstate state savings bank, which comes into the national banking system with offices legally located in more than one state (in this case Connecticut and Rhode Island), was situated following the conversion in each state in which it had branches and, thus, under the authority of 12 U.S.C. § 36(b)(1)(A), incorporating the standards of 12 U.S.C. § 36(c), could retain its branches in both states. See the OCC Shawmut Decision at p. 5-6.

The OCC Shawmut Decision next analyzed branch retention following the merger, authorized under 12 U.S.C. § 215a, of the newly-converted target interstate national bank into a national bank with all of its offices located in Connecticut. It, likewise, concluded that the acquiring bank was situated, following the merger, in each state in which the target bank and the acquiring bank had a main office or branches prior to the merger and, thus, pursuant to 12 U.S.C. § 36(b)(2)(A), also incorporating the standards of 12 U.S.C. § 36(c), could retain its branches in both states. Id. at p. 9.[25]

We believe the same result is appropriate here, where a national bank is acquiring the main office and branches of an interstate Federal savings association pursuant to a statutorily authorized merger. This case, as did the OCC Shawmut Decision, involves an analysis of branch retention based on the standards of 12 U.S.C. § 36(c) and, like the previous cases, involves the acquisition of those branches, legally established by the target institution, through a statutorily authorized merger with an interstate depository institution. While the authorizing statute in the previous cases was section 215a and in the present case the authorizing statutes are sections 215c and section 5(s) of the HOLA, the reasoning supporting this result is the same.[26]

Nevertheless, as stated, while the state Attorney General's opinion does not challenge the validity of the merger of the Federal savings bank in North Dakota into the acquiring bank in Minnesota, it does dispute the authority of the acquiring bank to continue to operate as branches the North Dakota home office and branch offices of the Federal savings bank. However, this construction would effectively render the merger authority, so clearly provided by section 215c, as described above and recognized by the state Attorney General, a nullity. Moreover, the predicates for the state Attorney General's conclusion are mistaken. In this regard, the state Attorney General's opinion at page 4 takes issue with the OCC's analysis of branch retention issues following mergers between Federal savings banks and national banks, under the authority of section 215c and the Oakar Amendment, as expressed in the FNB-Md. and Chase Decisions. The state Attorney General argues that the FNB-Md. Decision is not supported by the Bank of California case which holds, as previously stated, that a national bank is situated in the state where it has its main office and also the state or states in which it has branches. Bank of California did not address acquisitions by national banks, through merger, of interstate banks or interstate savings associations. However, the analysis in the FNB-Md. Decision, as well as the Chase and Union Planters Decisions, did not rest solely on

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[25] Moreover, we note that the OTS has recognized that a Federal savings association is considered to be situated or located in each state in which it has either a main office or a branch. See OCC Interpretive Letter 92/CC-59 [1992-1193 Transfer Binder] Fed. Banking L. Rep. ¶ 82,545 (December 24, 1992).

[26] For a full discussion of the applicability of the OCC Shawmut Decision in situations involving facts similar to those presented by the current application, see the Chase Decision, the Union Planters Decision and the FNB-Md. Decision.

Bank of California. Rather, as previously described, the analysis in those decisions constituted an interpretation of 12 U.S.C. § 36 (c), as developed in the OCC Shawmut Decision and utilized in numerous decisions thereafter pertaining to the acquisition by national banks of interstate national banks (see, e.g., the Chase Decision at p. 20 and n. 34 for a listing of some of these decisions) and employed in an analogous context involving the acquisition by national banks of an interstate Federal savings bank ultimately dependent on the same or analogous statutory authority. The OCC Shawmut Decision did not hold that, prior to the merger, the acquiring bank had to have a branch in each state in which the target bank had branches to be "situated" following the merger in each of those states.

The state Attorney General's opinion also contends at page 4 that the Chase Decision is not precedent for the proposed transaction because the Chase Decision involved a situation where the target interstate Federal savings association was located in the same state, Florida, as the acquiring national bank as well as being located, through the existence of a branch in another state, California. In the present case, the acquiring bank and Federal savings bank have no states in common. However, nothing in the Chase Decision analysis regarding retention of the California branch was dependent on the acquiring bank and the target Federal savings association being located in the same state. See the Chase Decision at pp. 18-22.[27]

Therefore, we conclude that following the merger, the acquiring bank, for purposes of section 36(c), is situated in North Dakota and Kansas, just as the national bank in Connecticut, for instance, was determined, in the OCC Shawmut Decision, also to be situated in Rhode Island. Having determined that following the merger the national bank is "situated" in North Dakota and Kansas, its branching rights in those states are governed by North Dakota and Kansas branching statutes, as incorporated and applied to national banks under section 36(c). Both of these states permit statewide branching. See Kan. Stat. Ann. § 9-1111 (Supp. 1996)[28]; N.D.

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[27] In addition, the state Attorney General's opinion cites at pages 5-6 two cases which it believes support its opposing branch retention in North Dakota following the merger -- Ghiglieri v. Sun World, National Association, 942 F. Supp. 1111 (W.D. Tex. 1996) (Sun World) and Ghiglieri v. Ludwig, U.S. District Court for the Northern District of Texas, Dallas Division, Civ. No. 3:95-CV-2001-H, Slip opinion (May 22, 1996) (Ludwig). Both struck down OCC approvals permitting interstate main office relocations involving branch retention in the former main office state accompanied by establishment of a new branch at the former main office site. The OCC has fully explained why it believes these cases were incorrectly decided. See Decision of the Office of the Comptroller of the Currency on the Applications of First & Ocean National Bank, Newburyport, Massachusetts (OCC Corporate Decision 97-10, February 10, 1997). Both cases are on appeal. Sun World appeal docketed No. 96050847 (5th Cir. Nov. 5, 1996); Ludwig appeal docketed No. 96-10818 (5th Cir. July 10, 1996). Moreover, we note that those judicial decisions were decided based on interpretations of 12 U.S.C. §§ 30 and 36 involving branch retention following main office relocations. The court in Sun World specifically distinguished branch retention following conversions and mergers under sections 36(b)(1) and (b)(2). See Sun World at n. 5. As stated, branch retention following conversions and mergers covered by those provisions specifically relies on section 36(c) as does branch retention in the present situation.

[28] The Kansas statute provides that a branch application shall be granted if there is a need for the branch in the community to be served; there is reasonable probability of the usefulness and success of the proposed branch; the bank's financial history is sound; and the proposed branch can be established without undue injury to

Cent. Code 6.03-13.1 1975 & Supp. 1995).[29] Consequently, we conclude that the acquiring bank is permitted to continue to operate the North Dakota and Kansas offices of the Federal savings bank following consummation of the proposed merger transaction.[30]

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properly conducted existing banks. Id. at 9-1111(h). Continued operation by the acquiring bank of these branches following its acquisition of the Federal savings bank satisfies these standards. Because these branches represent continued operation of longstanding existing and operating depository institution offices, they have a demonstrated record of need, usefulness and success which should not be altered simply by transferring them to a national bank nor, for that reason alone, do they pose the prospect of undue injury to competitors. Upon the merger, if the acquiring bank could not continue to operate these facilities, the communities where these branches are located would lose access to banking services already provided. In contrast, continued operation assures access to all of the services that the national bank will make available. Moreover, as discussed, the financial history of the acquiring bank is sound.

[29] The North Dakota statute requires that, in approving a branch, the regulator consider the convenience, needs and welfare of the community to be served; the financial strength of the bank in relation to the cost of establishing and maintaining the facility; and whether other banks will be seriously injured by the approval of the application. Id. at § 6-03-13.3. Continued operation of these already existing and operating branches of the Federal savings bank by the acquiring bank clearly serve the convenience, needs and welfare of the community. Because these branches represent continued operation of longstanding existing and operating depository institution offices, they have a demonstrated record of serving the community's convenience, needs and welfare which should not be altered simply by transferring them to a national bank. Upon the merger, if the acquiring bank could not continue to operate these facilities, the communities where these branches are located would lose access to banking services already provided. In contrast, continued operations assures access to all of the services that the national bank will make available. In addition, because these branches represent the continuation of operations of existing branches, they will not cause serious injury to other banks. Finally, we conclude that the financial strength of the bank is more than sufficient to acquire and maintain these branches.

[30] The state Attorney General's opinion also contends that retention of the North Dakota branches following consummation of the merger violates North Dakota law. Specifically the opinion cites a North Dakota statute providing that " . . . any national bank doing business in this state, may maintain and operate separate and apart from its banking house [branch] facilities . . . ." N.D. Cent. Code § 6-03-13.1 (1987 & Supp. 1995). The opinion contends that because the acquiring bank would not be "doing business" in North Dakota prior to consummation of the proposed transaction it would have no branching rights in North Dakota. See state Attorney General's opinion at p. 5. As the state Attorney General's opinion appears to recognize, however, the merger between the Federal savings bank in North Dakota and the acquiring bank is clearly permissible under section 215c. Under these circumstances, it is implausible to contend, even under state law as cited by the state Attorney General's opinion, that the acquiring bank, following its acquisition through merger of the Federal savings bank in North Dakota, is not "doing business" in North Dakota and could not maintain the branches acquired in the merger by virtue of section 6-03-13.1. At any rate, however, the state statute could not prohibit the operation of the branches at issue which are authorized, as discussed above, under Federal law. See 12 U.S.C. §§ 36(c), 215c, 1467a(s), 1815(d)(3) and state law incorporated into Federal law under 12 U.S.C. § 36(c). Any attempt to interpret the state statute in this manner would both be preempted as in direct conflict with applicable Federal law and would violate the Commerce Clause of the Constitution because it would pose an impermissible burden on interstate commerce. For a more thorough discussion of the impact of preemption and the Commerce Clause on state laws that prohibit branching otherwise permissible under Federal law, see Decision of the Office of the Comptroller of the Currency on the Applications of Union Planters Bank, N.A., West Memphis, Arkansas, and Union Planters National Bank, Memphis, Tennessee, pp. 49-54 (OCC Corporate Decision 96-48, August 28, 1996); the Chase Decision at n. 45.

c. The Bank Merger Act, the Federal Community Reinvestment Act and other applicable law

Title 12 U.S.C. § 215c and the Oakar Amendment also require that a merger approved under those provisions be subject to the Bank Merger Act, codified at 12 U.S.C. § 1828(c), and all other applicable laws. Thus, while we conclude that this proposed transaction may be approved under 12 U.S.C. §§ 215c and section 5(s) of the HOLA and consistent with the interstate and capital limitations of the Oakar Amendment, 12 U.S.C. § 1815(d)(3), and that the branches of the target institution may be retained under 12 U.S.C. § 36(c) and applicable state law, it is also necessary to analyze the permissibility of the transaction under standards set forth in the Bank Merger Act, 12 U.S.C. § 1828(c), and the Federal Community Reinvestment Act, 12 U.S.C. §§ 2903(2), 2902(3)(E). Because the Bank Merger Act is relevant to all of the mergers and purchase and assumption transactions addressed in this Decision Statement, and the Federal Community Reinvestment Act is relevant to the approval of the proposed charters and conversions (see 12 U.S.C. § 2903(2), 2902(3)(A); 12 C.F.R. § 25.29(a)(4)) as well as the mergers and purchase and assumption transactions addressed in this Decision Statement, they will be addressed in Part IV.A. and B. of this Decision Statement following the discussion of the authority for each transaction and for the corresponding branch retention. In addition, the requirement that transactions undertaken under the authority of 12 U.S.C. §§ 215c and section 5(s) of the HOLA comply with other applicable law will be addressed in Part IV.C. of this Decision Statement.[31]

B. Acquisition of one Federal savings bank branch in Minnesota and associated liabilities and certain associated assets

As stated, the acquiring bank also has proposed to acquire one Minnesota branch of the Federal savings bank (located in Moorhead) and the associated liabilities -- including SAIF insured deposits -- and certain associated assets, through a purchase and assumption transaction. This transaction would occur prior to the merger of the Federal savings bank into the acquiring bank and the restructuring of the Wyoming and Iowa operations of the Federal savings bank within the bank holding company system. These transactions are discussed, respectively in Part III.A., C. and D. of this Decision Statement.

1. Authority for the acquisition

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872 (8th

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[31] We also note that the Office of Thrift Supervision (OTS) has acknowledged compliance by the Federal savings bank with its notification requirements, codified at 12 C.F.R. §§ 563.22(b)(1)(i) and 563.22(h)(1), applicable to this transaction. See Letter from Bruce E. Benson, Regional Deputy Director, OTS Midwest Region, to John Cooney (April 10, 1997).

Cir. 1931). Because, however, the transaction involves acquisition of SAIF-insured deposits by a BIF-member bank, it also must be reviewed for compliance with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). In addition, the transaction also must be reviewed for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c),[32] and in the context of the requirements of the Federal Community Reinvestment Act, 12 U.S.C. §§ 2901-2907.

2. The Oakar Amendment

As discussed, the Oakar Amendment provides that an Oakar transaction "shall not be approved . . . unless the . . . resulting depository institution will meet all applicable capital requirements upon consummation of the transaction." 12 U.S.C. § 1815(d)(3)(E)(iii). As stated, the OCC has determined that the acquiring bank meets these requirements.

The next issue involves the relevance and applicability of paragraph (d)(3)(F) of the Oakar Amendment requiring that such transactions comply with the requirements of 12 U.S.C. § 1842(d) as if the SAIF member involved in such transaction was a State bank that the bank holding company was applying to acquire. As stated, section 1842(d) permits a bank holding company "to acquire control of, or acquire all or substantially all of the assets of . . . a bank located in a State other than the home State of such bank holding company." See 12 U.S.C. § 1842(d)(1)(A).

To determine whether a proposed transaction is consistent with paragraph (d)(3)(F) of the Oakar Amendment and section 1842(d), the OCC has postulated that the Federal savings bank involved in the transaction is a state bank similarly situated. See the FNB-Md. Decision at p. 6; the Union Planters Decision at p. 12; the Chase Decision at p. 7. Consequently, because in the transaction at issue the only office of the Federal savings bank being acquired is located in Minnesota, we postulate that the "state bank" being acquired is a state bank with offices located in solely in Minnesota.[33] Because, as discussed, the holding company, for purposes of 12 U.S.C. § 1842(d), and the hypothetical state bank are located in Minnesota, this

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[32] In this regard, we note that transactions subject to approval under the Bank Merger Act are not subject to the requirements of 12 U.S.C. § 371c governing certain transactions with affiliates. See 12 C.F.R. § 250.241 (1996). Title 12 U.S.C. § 371c-1 also is inapplicable to this transaction because it does not apply to transactions between affiliated banks and, for purposes of section 371c-1, savings associations are treated as banks. See 12 U.S.C. §§ 371c-1(a)(2), (d)(1) and 1468(a)(2).

[33] The OCC's Chase, Union Planters and FNB-Md. decisions did not involve acquisition from a multi-state Federal savings bank under the Oakar Amendment of the savings bank's branches located only in one state. It is clear, however, that in these situations, the location of the hypothetical state bank being acquired, for purposes of undertaking the analysis in 12 U.S.C. §§ 1815(d)(3)(F) and 1842(d), must be that of the branches being acquired and not some other state where the savings bank has its main office or branches. One problem with postulating that the hypothetical state bank is located in another state -- for instance, North Dakota, in this transaction -- is that it leads to the implausible result that the acquisition by a Minnesota bank, owned by a Minnesota holding company, of a branch located in Minnesota would be analyzed as an interstate transaction and subject to the laws of North Dakota.

transaction simply does not fall within the scope of section 1842(d). Therefore, its requirements and the interstate requirements of section 1815(d)(3)(F) are inapplicable.

3. Branching requirements

As stated, under 12 U.S.C. § 36(c), the authority of a national bank to operate a branch at a particular location in its state depends on whether state branching law grants state banks that authority. Under Minnesota law, a state bank could operate a branch in Moorhead upon findings pertaining to the capital adequacy, management quality, and asset condition of the bank, whether the proposed facility will improve the quality or increase the availability of banking services in the community and whether the proposed facility will have an undue effect upon the solvency of existing financial institutions in the community. Minn. Stat. Ann. § 47.54 Subd. 2 (West 1988 & Supp. 1997). We find that these standards are satisfied. The acquiring bank's management, capital and asset quality are all, at least, satisfactory. Moreover, upon acquisition of the Federal savings bank by the acquiring bank, if the acquiring bank could not continue to operate the branch, the community would lose significant access to banking services. In contrast, continued operation assures access to all of the services that the acquiring bank could make available as a national bank. Additionally, customers of the branch would have access to their accounts through the acquiring bank's network of 102 branches in Minnesota as well as the other states in which the acquiring bank may operate branches. Likewise, customers of the acquiring bank, particularly those in Minnesota, would gain access to their accounts through the branch in Moorhead. Finally, because this branch represents the continuation of operations of an existing branch of the Federal savings bank, it would not have an undue impact upon the solvency of existing financial institutions in Moorhead.

Minnesota branching statutes also prohibit bank branches within 50 feet of branches of other banks and 100 feet of the main office of other banks. Id. at § 47.52(b).[34] While four other banks operate main offices or branch offices in Moorhead, the acquiring bank has represented that its office is not within 100 feet of any of those offices. Consequently, these proximity limitations are satisfied.

Thus, applying the standards of Minnesota branching law, as incorporated by 12 U.S.C. § 36(c) and applied to national banks, the acquiring bank may acquire and operate the Moorhead branch.

4. The Bank Merger Act, the Federal Community Reinvestment Act, and other laws

[34] Minnesota branching law, at section 47.52(a)(5), applies certain other requirements to the establishment of branches in towns of less than 10,000; however, these are inapplicable to the Moorhead branch which is located in a town of over 32,000.

While we conclude that this transaction is permissible under 12 U.S.C. §§ 24(Seventh), 36(c), and the Oakar Amendment, it is also necessary to analyze the permissibility of the transaction under standards set forth in the Bank Merger Act, 12 U.S.C. § 1828(c), and the Federal Community Reinvestment Act, 12 U.S.C. §§ 2903(2), 2902(3)(E). As discussed, because the Bank Merger Act is relevant to all of the mergers and purchase and assumption transactions addressed in this Decision Statement and the Federal Community Reinvestment Act is relevant to the approval of the charters and the conversions as well as to the mergers and purchase and assumption transactions, these acts will be addressed in Part IV.A. and B. of this Decision Statement following the discussion of the authority for each transaction and for the corresponding branch retention.[35]

C. Iowa

As stated, the acquiring bank has proposed and ultimately plans to acquire the Iowa branches, and associated liabilities -- including SAIF-insured deposits -- and certain associated assets, of the Federal savings bank. This proposal will be addressed in a subsequent Decision Statement. However, prior to the merger of the Federal savings bank into the acquiring bank and the restructuring of the Wyoming operations discussed in Part III.A. and D. of this Decision Statement, and following the restructuring of the Minnesota operations of the Federal savings bank as discussed in Part III.B. of this Decision Statement, the bank holding company has proposed that the ownership of the Iowa branches, and associated liabilities and certain associated assets, will be transferred within the holding company system in the following manner.

First, the holding company has applied to establish 18 interim national banks (the Iowa interim national banks) in 18 Iowa cities or towns. Each Iowa interim national bank will purchase from the Federal savings bank a number of branches, along with associated liabilities -- including the SAIF-insured deposit liabilities -- and certain associated assets, consistent with 12 U.S.C. § 24, Iowa branching law as incorporated into 12 U.S.C. § 36(c), the Bank Merger Act, the Federal Community Reinvestment Act and other applicable law. Second, the 18 Iowa interim national banks will merge into one national bank in Iowa (the resulting Iowa interim national bank) retaining all of the former Federal savings bank offices acquired by the 18 Iowa interim national banks.

The following analyzes these transactions.[36]

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[35] We also note that the OTS has acknowledged compliance by the Federal savings bank with its notification requirements, codified at 12 C.F.R. §§ 563.22(b)(1)(i) and 563.22(h)(1), applicable to this transaction. See Letter from Bruce E. Benson, Regional Deputy Director, OTS Midwest Region, to John Cooney (April 10, 1997).

[36] In the third and final step through which the acquiring bank in Minnesota will acquire what had been the Iowa branches of the Federal savings bank, it is proposed that the resulting Iowa interim national bank will be merged into the acquiring bank under the Reigle-Neal Act. As stated, this transaction will be addressed in a

1. Chartering of the 18 Iowa interim national banks

The Federal savings bank has 26 branches in Iowa with assets of approximately $609.7 million and deposit liabilities of approximately $579 million as of December 31, 1996. The bank holding company has proposed to establish 18 interim banks in the following cities or towns each to acquire a varying number of the branches along with their liabilities -- including deposits insured by the SAIF -- and certain associated assets. The following lists the location, the number of offices to be acquired (including offices that will be designated as the main office), the amount of assets as of December 31, 1996, and the amount of deposit liabilities as of December 31, 1996:

Place	*No. of offices*[37]	*Assets*[38]	*Liabilities*[39]
Altoona	1	$18.4	$17.5
Ankeny	1	$17.8	$16.9
Carlisle	1	$7.1	$6.8
Clear Lake	1	$26.2	$24.9
Davenport	1	$0.365	$0.125
Des Moines	6	$122.8	$116.6
Doon	1	$3.2	$3.0
Hampton	1	$20.7	$19.7
Iowa Falls	1	$25.8	$24.5
Knoxville	1	$43.2	$41.1
Mason City	3	$101.1	$96.1
Nevada	1	$52.1	$49.5
Pella	1	$32.5	$30.9
Red Oak	1	$20.5	$19.5
Rock Valley	1	$40.8	$38.8
Wellman	1	$25.3	$24.0
West Des Moines	2	$30.3	$28.8
Williamsburg	1	$21.6	$20.5

OCC regulations provide for the establishment of interim banks to accomplish a "business combination," that conditional approval for an interim bank is granted when the OCC acknowledges receipt of the application for the related business combination and that an

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subsequent Decision Statement.

[37] These figures include the offices to be designated as the main office of each interim bank. Thus, only three of the interim banks -- Des Moines, West Des Moines, and Mason City -- will have branches.

[38] Dollar amounts are expressed in millions.

[39] Dollar amounts are expressed in millions.

interim bank becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim bank's duly executed articles of association and organization certificate. OCC acceptance occurs on the date the OCC advises the interim bank that its articles of association and organization certificate are acceptable or on the date the interim bank files articles of association and an organization certificate that conform to OCC requirements. See 61 Fed. Reg. 60,342, 60372-60,373 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.33(e)(4)). A "business combination" includes "the assumption by a national bank of deposit liabilities of another depository institution." Id. at 60,372 (to be codified at 12 C.F.R. § 5.33(d)(1)). Because the transaction pursuant to which the 18 interim national banks are being established constitutes a "business combination" and because the requirements of section 5.33, with respect to interim banks, are satisfied, as well as the standards for chartering a new bank set forth in 12 U.S.C. §§ 26 and 27, the interim banks are approved.[40]

2. The purchase and assumption transactions and the merger transaction

a. Authority for the transactions

As stated, national banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872 (8th Cir. 1931). As discussed, where insured deposits are being acquired by an insured national bank,[41] the transaction must be reviewed by the OCC for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c),[42] and in the context of the requirements of the Federal

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[40] In addition, we note that because each of the interim banks in Iowa will exist for only a moment in time and not open for business, the applicant has submitted a written request that director residency requirements, as set forth in 12 U.S.C. § 72, be waived. Section 72, as amended by section 2241 of the EGRPRA, provides in pertinent part that:

> [A]t least a majority of the directors must have resided in the State . . . in which the association is located, or within 100 miles of the location of the office of the association, for at least one year immediately preceding their election and must be residents of such state or within a one-hundred mile territory of the location of the association during their continuance in office, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency.

Under the circumstances presented, and in accordance with the representations of the applicant regarding the temporary existence of each of these banks, the Comptroller has determined to waive the residency requirement.

[41] Interim Federally-chartered depository institutions, which will not open for business, are considered to be FDIC-insured upon issuance of the institution's charter by the Federal agency. 12 U.S.C. § 1815(a)(2).

[42] For the reasons set forth in footnote 32, supra, 12 U.S.C. 371c and 371c-1 are inapplicable to these transactions.

Community Reinvestment Act, 12 U.S.C. §§ 2901 through 2907. The subsequent transaction in which 17 of the Iowa interim national banks merge into the Iowa interim bank with its main office in Des Moines is authorized under 12 U.S.C. § 215a. Likewise, this transaction is subject to review under the Bank Merger Act and the Federal Community Reinvestment Act.[43]

b. Branch acquisition by the interim banks

Assuming approval of the transactions, as set forth above, because three of the interim banks -- those with main offices in Des Moines, Mason City, and West Des Moines -- propose to acquire as branches offices from the Federal savings bank, it is necessary to review applicable Federal and state law to determine the permissibility of the retention of those Federal savings bank branches. As previously stated at Part III.A.2.b. of this Decision Statement, the authority of a national bank to establish intrastate branches is dependent on state law as incorporated into Federal law by 12 C.F.R. § 36(c) and applied to national banks. Iowa branching law provides that:

> No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.
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> * * * * *
>
> 2.a. A state bank may establish bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, subject to the following conditions and limitations:
>
> (1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than four bank offices.
>
> (2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred

[43] We also note that the OTS has acknowledged compliance by the Federal savings bank with its notification requirements, codified at 12 C.F.R. §§ 563.22(b)(1)(i) and 563.22(h)(1), applicable to the purchase by the 18 Iowa interim national banks of the Iowa branch offices of the Federal savings bank. See Letter from Bruce E. Benson, Regional Deputy Director, OTS Midwest Region, to John Cooney (April 10, 1997). In addition, the application and approval requirements of the Bank Holding Company Act, codified at 12 U.S.C. § 1842(a)(3), with respect to the formation of the 18 Iowa interim national bank have been waived. See Letter from JoAnne F. Lewellen, Assistant Vice President, Federal Reserve Bank of Minneapolis, to John Cooney (April 25, 1997).

> thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.
>
> (3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than six bank offices.

Iowa Code Ann. § 524.1202 (West 1993 & Supp. 1997). The branches to be established by the Iowa interim national banks with their main offices in Des Moines, West Des Moines and Mason City are permissible under these standards. First, each bank will establish branches only in the municipal corporation in which it is located. Secondly, according to the 1990 census, Des Moines had a population of between 100,000 and 200,000 thus authorizing that bank to operate up to five offices in addition to its main office; and West Des Moines and Mason City each had populations of under 100,000 thus authorizing each bank to have up to four offices in addition to its main office. These numerical limits are satisfied.

c. Branch retention authority following the Iowa roll-up

Assuming approval of the merger of the 18 Iowa interim national banks, as set forth above, it is necessary to review applicable Federal and state law to determine the permissibility of the retention by the resulting national bank with its main office in Des Moines, of the rest of its offices as well as those of the other 17 Iowa interim national banks. As stated, 12 U.S.C. 36(c) governs branching by national banks, through establishment or acquisition, and incorporates relevant state law. See State of Washington v. Heimann, 633 F.2d 886, 889-890 (9th Cir. 1980). Thus, if following a particular transaction, a state bank can operate a branch under the provisions of state law, so can a national bank following the same transaction. See Decision of the Comptroller of the Currency to Approve Applications by TCF Financial Corporation., Minneapolis, Minnesota, to Convert Federal Savings Banks located in Minnesota, Michigan, Illinois, and Wisconsin and to Establish De Novo Banks in Ohio and Colorado and to Engage in Certain Related Transactions, p. 6-7 (OCC Corporate Decision 97-13, February 24, 1997) (the TCF Decision).[44]

Iowa law provides that following a merger of affiliated banks located in the state and that have been in existence and operated as banks continuously in the state for at least five years, the resulting entity shall be a united community bank. See Iowa Code Ann. § 524.1213.3. (West 1993 & Supp.1997) (subsection 3). These requirements are met: the banks are

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[44] While 12 U.S.C. § 36(b)(2) generally governs retention of branches by a national bank following a merger with another national or state bank, it has long been held that section 36(c) provides an alternative source of authority for the operation by an acquiring bank of branches of a target bank that do not fit precisely within paragraph (b). See, e.g., 36 Op. Att'y Gen. 116, 119 (1929). Thus, it is unnecessary to determine whether the offices proposed to be retained in this transaction were "in operation" within the meaning of 12 U.S.C. § 36(b)(2).

affiliates for purposes of this statute and they are located in Iowa. Moreover, under section 524.1213.4A, enacted into law on April 18, 1997, they satisfy the state aging requirements. With regard to aging requirements, that provision states:

> For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

See id. at 1997 Iowa Acts H.F. 475 (enacted April 18, 1997) (to be codified at § 524.1213.4A.). Each of the 18 interim banks has been chartered for the sole purpose of acquiring control of a branch owned and operated, as of January 1, 1997, by an affiliated savings association[45] and will not open for business prior to that acquisition. Moreover, as discussed, the Federal savings association which sold the branches is more than five years old; consequently, under section 524.1213.4.A., each of the interim national banks is considered to be more than five years old.

A united community bank may retain and operate the offices of the parties to the merger.[46] The resulting bank also may retain the remaining principal places of business of the banks that are parties to the merger. Id. at § 524.1213.3.b.; 12 U.S.C. § 36(c). Consequently, it may retain as branches the offices of the banks in Altoona, Ankeny, Carlisle, Clear Lake, Davenport, Doon, Hampton, Iowa Falls, Knoxville, Nevada, Pella, Red Oak, Rock Valley, Wellman, and Williamsburg and main offices of the banks in West Des Moines and Mason City. Finally, the state statute provides that the resulting national bank may retain and continue to operate as retained bank offices any of the bank offices that are being operated as of the date of the merger by any of the banks that are parties to the merger. Id. at §

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[45] The Federal savings association is a savings association within the meaning of this statute, which incorporates the definition of savings association set forth in 12 U.S.C. § 1813(b)(1) and which includes Federal savings associations.

[46] Of course, a national bank must designate in its organization certificate, the place of its operations (see 12 U.S.C. § 22) and the location of its main office is not dependent on state law. See, e.g., 12 U.S.C. § 30(b); Ramapo Bank v. Camp, 425 F.2d 333, 341-42 (3d Cir.), cert. denied, 400 U.S. 828 (1970). Thus, while the state statute at section 524.1213.a. explicitly provides that a united community bank shall retain and operate as its principal place of business one of the principal places of business of the banks that are parties to the merger, we need not rely on that authority in permitting the resulting interim national bank in Des Moines to designate its main office prior to the merger as its main office after the merger.

524.12133.c.; 12 U.S.C. § 36(c). Thus, the resulting bank may retain as branches the other offices of the interim banks in Des Moines, West Des Moines and Mason City.[47]

d. The Bank Merger Act and the Federal Community Reinvestment Act

As discussed, the Bank Merger Act applies to the purchase and assumption and merger transactions described above and the Federal Community Reinvestment Act applies to the granting of the bank charters as well as to the purchase and assumption and merger transactions. These laws will be discussed in Part IV.A. and B. of this Decision Statement.[48]

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[47] We note, in this context also, that paragraph 4.A., as cited above, provides that for purposes of section 3, an interim bank and the target savings association branches are considered to be in continuous existence and operation. Consequently, there can be no question that the branches are considered for purposes of paragraph 3.c. as being operated as of the date of the merger.

The Iowa statute also requires that an office retained under the authority of section 524.1213 have a united community bank office board at least half of the members of which are residents of the county in which the bank office is located. Id. at 524.1213.2. The applicant has represented that these boards will be formed, as required by Iowa law, prior to the operation of the offices as offices of any bank.

In addition, the statute requires that offices of a target bank cannot be retained following a merger if it would cause the resulting bank to exceed the numerical limits on offices within a municipality. Id. at § 524.1213.11. As discussed, prior to the merger, each of the 18 Iowa interim national banks comports with the numerical office limitations of Iowa law in each municipality. Id. at § 524.1202.2.a. Because none of these banks have offices in any municipality in which another of these banks has an office, the resulting bank also will comport with these numerical limitations.

[48] According to counsel for the bank holding company, following consultations with the FDIC, the 18 Iowa interim national banks would be considered to be members of the SAIF since they are being formed to take over deposits of a SAIF-insured savings bank. Cf. Decision of the Office of the Comptroller of the Currency on the Application to Merge Fleet Bank of New York, National Association, Schenectady, New York, with and into NatWest Bank National Association, Jersey City, New Jersey, Under the Charter of the Latter and with the Title, Fleet Bank, National Association, p.7 n.7 (OCC Corporate Decision 96-20, April 12, 1996). Consequently, these transactions would be solely between SAIF-member banks and would not constitute Oakar transactions.

We note, however, that even if the 18 Iowa interim national banks were considered to be BIF members, rendering the purchase and assumption transactions as Oakar transactions involving acquisitions by an out-of-state holding company, the transactions are consistent with the Oakar Amendment. For the reasons discussed in connection with the acquisition of the Minnesota branch, we postulate that the target involved in each transaction is a state bank located only in Iowa. Consequently, each hypothetical transaction to be analyzed constitutes the acquisition of a state bank in Iowa by a bank holding company in Minnesota. The criteria for these transactions are satisfied. First, each resulting Iowa interim national bank meets all of its applicable capital requirements. See 12 U.S.C. § 1815(d)(3)(E)(iii). Secondly, while these would constitute acquisitions by an out-of-state holding company, the requirements of 12 U.S.C. §§ 1815(d)(3)(F) and 1842(d)(1)(A) are satisfied. As discussed in connection with the acquisition of the Federal savings bank in North Dakota and Kansas, the holding company satisfies the requirements pertaining to management and capital and the holding company's performance under the Federal Community Reinvestment Act is consistent with approval. Likewise, as previously discussed, no issues arise under state community reinvestment standards or the nationwide deposit concentration limit. No issues arise

D. Wyoming

As stated, the acquiring bank also has proposed and ultimately plans to acquire the Wyoming branches, including associated liabilities and certain associated assets, of the Federal savings bank. This proposal will be addressed in a subsequent Decision Statement. However, prior to the merger of the Federal savings bank into the acquiring bank, which has been discussed in Part III.A. of this Decision Statement, and following the restructuring of the Iowa and Minnesota operations of the Federal savings bank, which are discussed in Parts III.B. and C. of this Decision Statement, the applicant has proposed that the ownership of the Wyoming branches, including associated assets and certain associated liabilities, will be transferred within the holding company system in the following manner.

First, the bank holding company will establish two interim savings banks (the Wyoming interim savings banks), First Interim Bank of Casper, fsb, Casper, Wyoming, and First Interim Bank of Cheyenne, fsb, Cheyenne, Wyoming.[49] In turn, each of these Wyoming interim savings banks will acquire seven of the Federal savings bank's fourteen Wyoming branches

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under Iowa antitrust laws which, on their face, are inapplicable to this transaction. See Iowa Code § 553.6(4) (1987 & Supp. 1996) (providing an exemption for actions expressly approved or regulated by a regulatory body under the authority of the United States). Likewise, the transaction is consistent with the 30% statewide deposit concentration limit established by the Riegle-Neal Act. The total amount of the bank holding company's deposits in Iowa as of December 31, 1996 was approximately $579 million which is about 1.5% of the total deposits held by state commercial banks alone as of that date -- a figure exceeding $35 billion. In addition, even if applicable to this transaction, the state concentration limit of 10 percent (Iowa Code Ann. § 524.1802.1. (West 1993 & Supp. 1997)) is satisfied. Finally, the five year Iowa aging threshold would apply. See Iowa Code Ann. § 524.1805.1 (West 1993 & Supp. 1997) (subsection 1). These limitations are satisfied because under a recently enacted Iowa statute, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by an affiliated savings association, as defined at 12 U.S.C. § 1813(b)(1), which includes Federal savings associations, assumes the age of the savings association to be acquired. See 197 Iowa Acts H.F. 475 (enacted April 18, 1997) (to be codified at § 524.1805.3A). As discussed, the savings association is over 70 years old and the hypothetical state bank would be considered to be over 70 years old.

Moreover, we note that under no scenario could the subsequent merger between the 18 Iowa interim national banks be considered to be an Oakar transaction because they all would be either BIF members or SAIF members. Of course, if the resulting Iowa interim national bank is considered to be a SAIF member, its merger into the acquiring bank in Minnesota would be considered an Oakar transaction. As discussed, that transaction will be analyzed in a subsequent Decision Statement.

[49] The applicant has represented that the Federal savings bank has a limited number of trust relationships in Wyoming which it will retain prior to the transfer of the Wyoming branches to the interim Federal savings banks. These relationships, in turn, will be transferred, as part of the merger of the Federal savings bank into the acquiring bank which was discussed in Part III.A. of this Decision Statement.

in two separate purchase and assumption transactions (the Wyoming purchase and assumption transactions).[50]

Immediately following the Wyoming purchase and assumption transactions, the bank holding company proposes to convert the Wyoming interim savings banks into two national banks (the Wyoming national banks) called First Interim Bank of Casper, National Association, (the Casper bank) and First Interim Bank of Cheyenne, National Association (the Cheyenne bank). Immediately following the conversions, the Cheyenne bank will merge with and into the Casper bank.[51]

1. The conversions of the Wyoming interim savings banks and the subsequent merger

a. Authority for the conversion

Regulations of both the OCC and the OTS permit the direct conversion of a Federal savings association to a national bank. See 61 Fed. Reg. 60,342, 60,368 (November 29, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.24) (OCC regulations providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing the application); 12 C.F.R. § 552.2-7 (providing that a Federal stock

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[50] One of the interim savings banks would have its main office in Casper, Wyoming. The applicant projects that this bank would have about $94 million in assets and $89 million in deposits. The other interim bank would have its main office in Cheyenne, Wyoming. The applicant projects that it would have about $188 million in assets and $178 million in deposit liabilities.

[51] Certain of these transactions are subject to relevant action by the OTS and the Board. The OTS has approved the formation of the interim savings associations in Casper and Cheyenne, the proposed acquisition by each of branch offices of the Federal savings bank and the conversion of each into a national bank. See Letter by Bruce E. Benson, Regional Deputy Director, OTS Midwest Region (May 6, 1997). In addition, the establishment of the interim savings banks in Casper and Cheyenne by the bank holding company have been approved under the Bank Holding Company Act, codified at 12 U.S.C. § 1843(c)(8), (i)(1), and the application and approval requirements of the Bank Holding Company Act, codified at 12 U.S.C. § 1842(a)(3), with respect to the creation of the two Wyoming banks have been waived. See Letters by JoAnne F. Lewellen, Assistant Vice President, Federal Reserve Bank of Minneapolis, to John Cooney (April 25 and May 9, 1997).

In addition, for the reasons discussed in n. 40, supra, and under the conditions set forth in that footnote, we grant the applicant's request for a waiver of the director residency requirements, as set forth in 12 U.S.C. § 72, with respect to each of the national banks to be in existence for a brief period of time in Wyoming.

We further note that the acquiring bank in Minnesota proposes that following the merger of the two Wyoming national banks, it will acquire, through merger, the resulting national bank with its main office in Casper. As previously mentioned, this transaction will be discussed in a subsequent Decision Statement.

association may convert to a national charter after filing a notification or application with the OTS[52]). See also the TCF Decision at p. 4-5.

In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. See 61 Fed. Reg. 60,342, 60,369 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.24(d)). A review of the applications demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. Id. at pp. 60,366, 60,369 (to be codified at 12 C.F.R. §§ 5.13(b) and 5.24(d)). A review of the record discloses nothing that indicates that these factors provide a basis for denial of either of these applications.[53] In addition, as will be discussed, the conversion application must be reviewed in light of Federal Community Reinvestment Act considerations, 12 C.F.R. § 25.29(a)(4), which will be discussed in Part IV.B. of this Decision Statement.

b. Authority for the merger

Following the conversion of the two Wyoming interim savings banks to Wyoming national banks, the latter may merge under 12 U.S.C. § 215a. As will be discussed, this merger must be consistent with the Bank Merger Act and the Federal Community Reinvestment Act. These statutes are discussed in Part IV.A. and B. of this Decision Statement.[54]

c. Branch retention following the conversion and the merger

Assuming approval of the conversion and the merger described above, the question arises as to the authority of the Cheyenne bank and the Casper bank (both before and after the merger) to retain the Wyoming branches of the Federal savings bank. Title 12 U.S.C. § 36, governing branching by national banks, does not expressly address the retention of branches of a Federal savings bank following its conversion to a national bank. Section 36(b)(1), relating to branch retention following conversions, specifically addresses conversion only of state banks.

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[52] As discussed at n. 51, supra, the OTS has approved these conversions.

[53] Following the conversions, each of the Federal savings banks would remain SAIF-insured. For a discussion of the retention of SAIF insurance by a national bank following such conversions, see OCC Corporate Decision 97-13 at p.5, n.7.

[54] Because both Wyoming national banks, following their conversions from SAIF-insured savings banks, would be considered to be SAIF members, the merger would not constitute an Oakar transaction. As discussed, it is proposed that the Wyoming national bank that survives the merger will be merged into the acquiring bank in Minnesota, a transaction that would constitute an Oakar transaction. This merger will be addressed in a subsequent Decision Statement.

Nevertheless, 12 U.S.C. § 36(c) would permit a national bank resulting from the conversion of a Federal savings bank to continue to operate the branches of the Federal savings bank if a state bank resulting from the conversion of a Federal savings bank could continue to operate the branches. This could occur if state law permitted state banks to establish a branch at the site de novo or if state law permitted a state bank, following its conversion from a Federal savings association, to operate a branch at the site. See, e.g., OCC Corporate Decision 97-13, at pp. 6-7 (and cases cited therein). Wyoming branching law permits state banks following their conversion from a Federal savings bank to retain, operate, and maintain the offices of the Federal savings bank. See Wyo. Stat. § 13-4-109(a) (1996). Consequently, both national banks, following their conversions from Federal savings banks, may also retain, operate and maintain the branches of the Federal savings banks. Likewise, following the merger of the two Wyoming national banks into the Casper bank, the Casper bank may retain the branches and the main office of the Cheyenne bank as branches because a state bank following a merger may retain the banking offices of the target bank as branches and may retain its own branches. See 12 U.S.C. § 36(c)[55]; Wyo. Stat. § 13-4-104(b) (1996).

d. The Bank Merger Act and the Federal Community Reinvestment Act

As discussed, the applicability of the Bank Merger Act to the merger of the two Wyoming national banks and of the Federal Community Reinvestment Act to the Wyoming conversions and the merger of the two Wyoming national banks will be discussed in Part IV.A. and B.of this Decision Statement.

IV. The Bank Merger Act, the Federal Community Reinvestment Act and other laws

A. The Bank Merger Act

The Bank Merger Act requires the OCC's approval for any merger or purchase and assumption transaction between insured depository institutions where the resulting institution will be a national bank.

Thus, it applies to the purchase by the acquiring bank of the Minnesota branch of the Federal savings bank; the purchase by the 18 Iowa interim national banks of branches of the Federal savings banks along with associated assets and liabilities, including insured deposits; the merger of the 18 Iowa interim national banks; the merger of the two Wyoming national banks following their conversion from Federal savings bank charters; and the merger of the Federal savings bank, with offices in North Dakota and Kansas, into the acquiring bank. The OCC generally may not approve a merger or purchase and assumption transaction that would substantially lessen competition. Additionally, the "banking factors," which include the

[55] As previously discussed, it is unnecessary to determine whether the branches may also be retained under the authority of 12 U.S.C. § 36(b)(2).

financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served, must also be considered. For the reasons stated below, we find that the merger and purchase and assumption transactions described above may be approved under 12 U.S.C. § 1828(c).

1. Competition

With respect to the requirement in the Bank Merger Act that merger and purchase and assumption transactions not substantially lessen competition, we note that because each of the merger or purchase and assumption transactions listed above would constitute a transaction between affiliated institutions owned by the same bank holding company, the transactions do not have anticompetitive effects.

2. Financial and managerial resources and future prospects

With respect to the requirement in the Bank Merger Act that merger and purchase and assumption transactions be evaluated based on the financial and managerial resources of both the existing and proposed institutions, we find that the financial and managerial resources of the acquiring bank and the Federal savings bank are presently satisfactory. The above described transactions are the first part of a series of transactions that will result in the combination of the acquiring bank and the Federal savings bank, including its branches in Minnesota, Iowa, Wyoming, Kansas and North Dakota. The bank plans to immediately follow the above-described transactions with a merger of the resulting Iowa and Wyoming banks into the acquiring bank. Assuming that these mergers are approved and consummated, the future prospects of the existing institutions, individually and combined, are favorable. The resulting bank will be well capitalized.[56]

Again, assuming approval and consummation of all aspects of the proposed transactions, the bank holding company expects to achieve efficiencies by operating the offices of the Federal savings bank as branches of the acquiring bank rather than as a separate corporate entity. The geographic diversification of its operations will also strengthen the combined bank. Thus, we find the financial and managerial resources factor is consistent with approval of the these merger and purchase and assumption transactions.

3. Convenience and needs

With respect to the requirement in the Bank Merger Act that mergers and purchase and assumption transactions help meet the convenience and needs of the community to be served, we find that the proposed transactions, taken individually and together, assuming that the

[56] In addition, we note that the banks to be formed in Iowa and Wyoming prior to their acquisition by the acquiring bank will meet capital requirements and will have appropriate management. Because they will exist for only a brief period of time, it is irrelevant to analyze their future prospects.

mergers of the resulting national banks in Iowa and Wyoming into the acquiring bank are approved and consummated, satisfy these requirements. Specifically, the transactions subject to this standard which are addressed in this Decision Statement are the acquisition of the Minnesota branch of the Federal savings bank, through a purchase and assumption transaction, and the acquisition of the Federal savings bank, with branches in North Dakota and Kansas, through a merger, by the acquiring bank; the purchase and assumption by the 18 Iowa interim national banks of branches, along with associated assets and liabilities, including deposit liabilities, of the Federal savings bank in Iowa, and the subsequent merger of the 18 Iowa interim national banks into one national bank in Iowa; and the merger of the two national banks in Wyoming. Following the transactions, and assuming approval and consummation of the merger transactions not addressed in this Decision Statement, the acquiring bank will help to meet the convenience and needs of the communities to be served. The acquiring bank will continue to serve the same areas in Minnesota where it has branches as well as the areas in North Dakota, Kansas and Minnesota where the Federal savings association has branches and which are being directly acquired by the acquiring bank in accordance with this Decision Statement. Further, assuming approval and consummation of the acquisition by the acquiring bank of the national banks being formed in Iowa and Wyoming, as described above, which are facilitated, in Iowa, by the purchase and assumption transactions by the 18 interim national banks and their subsequent merger, and, in Wyoming, by the merger of the two Wyoming national banks, it will add the Federal savings bank's offices in Iowa and Wyoming. The combined bank will continue to offer a full line of banking products and services.

Upon completion of the transactions approved in this Decision Statement and assuming approval and consummation of the merger of the resulting Iowa and Wyoming national banks with the acquiring bank, customers of each institution will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across state lines or for business customers who have operations in more than one state. Following the combination, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. The combination will permit the acquiring bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate institutions will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

No branch closings are contemplated as a result of this merger since the two institutions serve different areas. However, as part of its ongoing business plans, the bank holding company evaluates branches and may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

In this respect, we also note a comment from the North Dakota Banking Commissioner stating that they have received "a considerable number of complaints" regarding the handling of certain deposit accounts by the Federal savings bank. The complaints arise with respect to deposits that had been held in Metropolitan Federal, FSB, Fargo, North Dakota (Metropolitan), which was acquired by the holding company in 1995 and which became part of the Federal savings bank. The Commissioner stated in his comment that his office refers these complaints to the OTS. The Commissioner expressed concern that if the proposed merger of the Federal savings bank into the acquiring bank is consummated it will become more difficult to resolve these complaints and asked that a North Dakota bank officer be designated as responsible for responding to these complaints. In responding to this comment, the applicant contended that its current centralized process for dispute resolution has functioned properly in this situation and led to appropriate resolutions of the problems. This process involves the maintenance by the applicant's Regulatory Compliance Department in Minneapolis of a central clearinghouse which logs in each complaint received through state or Federal regulatory agencies, refers it to the appropriate branch office or product or operations group representatives with authority to address the problem and tracks the timeliness of the response. The applicant explains that this process enables managers with responsibility for managing the applicant's various products and services to deal with the issues and, if a problem with the structure of a product becomes apparent through multiple complaints, places the manager in a position to address the problem not only in isolated branches but throughout the corporate family.[57] The applicant has stated that it intends to continue to use this same centralized process following consummation of the transaction. The OCC evaluated this complaint resolution process and independently inquired into the background of complaints arising from the Metropolitan transaction and has concluded that the complaint resolution process should properly address any remaining problems that arose from the acquisition of Metropolitan.[58]

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of these applications.

B. The Federal Community Reinvestment Act

The Federal Community Reinvestment Act requires the OCC, in evaluating various types of applications, to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when

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[57] With respect to the Metropolitan acquisition, the applicant states that the volume of complaints arising from Metropolitan accounts acquired in that transaction has diminished significantly and that in the first quarter of 1997 no complaints from North Dakota customers were referred by the OCC or OTS.

[58] We note that in his letter of May 30, 1997, the North Dakota Banking Commissioner stated that his office would forward any unresolved consumer complaints that have been directed to it to the applicant's Director of Compliance and to the OCC's Midwestern District Office.

evaluating certain applications. The types of applications involved in this series of transactions that are subject to review under the Federal Community Reinvestment Act are applications for charters, conversions, mergers and purchase and assumption transactions. See 12 U.S.C. §§ 2902(3)(A),(E) and 2903; 12 C.F.R. § 25.29(a)(4). More specifically, with respect to this series of applications, the applications subject to Federal Community Reinvestment Act review are: the acquisition of the Minnesota branch by the acquiring bank; the chartering of the 18 interim national banks in Iowa; the purchase and assumption transactions entered into by each of the 18 interim national banks in Iowa of Iowa branches and certain associated assets and liabilities, including insured deposits, of the Federal savings bank; the merger of the 18 interim national banks in Iowa into one national bank in Iowa with its main office in Des Moines and retention of the other offices as branches; the conversions to national bank charters of the two interim Federal savings banks in Wyoming with associated branch retention; the merger of the two newly-converted national banks in Wyoming with associated branch retention; and the merger of the Federal savings bank, with offices in North Dakota and Kansas, into the acquiring bank with associated branch retention.

In undertaking this evaluation, the OCC considers the Federal Community Reinvestment Act performance evaluation of each participating insured depository institution. Additionally, the OCC considers any public comment letters received relating to any national bank participant, whether received prior to the filing of the applications or during the OCC's processing of the applications.

The OCC has reviewed the most recent Federal Community Reinvestment Act performance evaluation of the acquiring bank. The acquiring bank received a detailed on-site Community Reinvestment Act evaluation as of August 30, 1995. That evaluation resulted in an overall Community Reinvestment Act performance rating of "outstanding."

The OCC also reviewed its public comment and complaint files concerning the acquiring bank. Only one public comment was received by the OCC in connection with this application relating to the community reinvestment act concerns. That comment, filed by the Commissioner of the State of North Dakota Department of Banking and Financial Institutions noted that the bank holding company, in connection with a 1994 bank acquisition, was required under state law to make commitments regarding net new funds and to make annual reports so that the state could monitor compliance with these commitments.[59] The applicant has represented that it will be responsible for the performance of the outstanding community reinvestment commitments and agreements of the Federal savings bank following the acquisition. Moreover, as previously discussed, the applicant has represented specifically that, following the acquisition of the Federal savings bank in North Dakota by the acquiring bank, it will carry forward its commitments regarding net new funds and reporting in

[59] These commitments are more fully explained in Part III.A.2.a.(1)(d) of this Decision Statement.

accordance with the terms of the original commitments.[60] A review of the OCC's public file regarding Community Reinvestment Act compliance showed that no comments had been filed about the acquiring bank or any of the national banks owned by the bank holding company. The OCC's review of its complaint file with respect to the acquiring bank disclosed only one item relevant to the acquiring bank's Community Reinvestment Act performance. That complaint, which alleged that the acquiring bank had discriminated in the pricing of an used car loan to a Native American, was resolved on May 13, 1996, following an OCC investigation which showed no discrimination based on an analysis of all similar transactions during the relevant time period.

The OCC also has reviewed the OTS detailed on-site Community Reinvestment Act evaluation of the Federal savings bank as of November 6, 1995. That evaluation resulted in an overall Community Reinvestment Act performance rating of "satisfactory."

The proposed transactions, taken individually and together, and assuming approval and consummation of the mergers of the resulting Iowa national bank and the resulting Wyoming national bank into the acquiring bank, are not expected to have any adverse effect on the acquiring bank's Federal Community Reinvestment Act performance. The acquiring bank will continue to serve the same communities that the combining institutions currently serve. The acquiring bank will continue its current Community Reinvestment Act programs and policies as well as the Community Reinvestment Act programs and policies of the Federal savings bank in each of the states that they serve. At each step of the transaction, the resulting bank will retain all of the branch offices of the Federal savings association. As a general matter, the acquiring bank will have the same commitment to helping meet the credit needs of all the communities it serves as the acquiring bank and the Federal savings bank have today as separate institutions and, as stated, has represented that it will be responsible for the performance of the Federal savings bank's outstanding community reinvestment commitments and agreements. The merger and operation of interstate branches do not alter the acquiring bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed transactions, taken individually and together, assuming approval and consummation of the resulting Iowa and Wyoming national banks into the acquiring bank, is consistent with the Federal Community Reinvestment Act.

C. Other laws

It is also necessary to determine whether transactions accomplished under the authority of 12 U.S.C. § 215c(a) are in accordance with other laws governing national bank mergers or to determine that those laws do not apply to this merger. In the present series of applications, the only transaction accomplished under the authority of section 215c is the merger of the Federal savings bank, with its main office and branches in North Dakota and branches in

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[60] As stated, in his letter of May 30, 1997, the North Dakota Banking Commissioner has acknowledged that the applicant has renewed these commitments.

Kansas, into the acquiring bank.[61] A review of other statutes applying to mergers and interstate branching involving national banks demonstrates that these statutes -- 12 U.S.C. §§ 215a, 215a-1, 36(d) and 36(g) -- are inapplicable to the transaction at issue which involves the merger of a Federal savings bank into a national bank, and the continued operation of interstate branches of the Federal savings bank.[62]

In addition, we note that the statutory language of the Riegle-Neal Act explicitly demonstrates that, at least through June 1, 1997, the Riegle-Neal Act is not considered to be the exclusive avenue by which national banks can establish, acquire or operate branches in states other their main office state or states in which they already have branches. Thus, 12 U.S.C. § 36(e)(1) provides:

> Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home state . . . or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.[63]

Consequently, nothing in the Riegle-Neal Act, at least prior to June 1, 1997, prohibits national banks from acquiring, establishing or operating branches in states other than their home states or states in which they already have a branch if otherwise authorized under applicable Federal law and, effective June 1, 1997, this exclusivity provision applies only in states where the bank does not already have either its main office or branches.[64]

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[61] As discussed, the other merger or purchase and assumption transactions are accomplished under other sources of statutory authority. The Minnesota and Iowa branch acquisitions are authorized under 12 U.S.C. § 24(Seventh) and the Iowa and Wyoming merger transactions are authorized under 12 U.S.C. § 215a.

[62] This conclusion is consistent with that reached in the OCC's Chase, Union Planters and FNB-Md. Decisions, supra which provide a complete analysis with respect to why these statutes are inapplicable to this type of transaction.

[63] The Riegle-Neal Act included a similar provision, codified at 12 U.S.C. § 1828(d)(3)(A), with respect to state nonmember banks. Provisions governing national bank branching are applicable to state-chartered member banks as a result of the operation of 12 U.S.C. § 321; consequently, it was unnecessary in the Riegle-Neal Act to address member banks separately.

[64] For a more thorough discussion of the exclusivity provision of the Riegle-Neal Act, see, e.g., Applications of Union Planters Bank, N.A., West Memphis, Arkansas, to change the location of its main office to Memphis, Tennessee and establish a new branch at the former location of its main office and then merge with and into Union Planters National Bank, Memphis, Tennessee, pp. 32-34 (OCC Corporate Decision 96-48, August 28, 1996).

V. Conclusion and approval

For the reasons set forth above, we find that First Bank National Association, Minneapolis, Minnesota, under the authority of 12 U.S.C. §§ 24(Seventh) and 36(c), and consistent with the Bank Merger Act, 12 U.S.C. § 1828(c), the Federal Community Reinvestment Act, 12 U.S.C. §§ 2901-2907, and the Oakar Amendment to the Federal Deposit Insurance Act, 12 U.S.C. § 1815(d)(3), and other appropriate regulatory actions, may acquire the Moorhead, Minnesota, branch, and certain associated assets and liabilities including insured deposits, of First Bank, FSB, Fargo, North Dakota.

We also approve, subject to other appropriate regulatory action, the establishment by First Bank System, Inc., of interim national banks in Altoona, Ankeny, Carlisle, Clear Lake, Davenport, Des Moines, Doon, Hampton, Iowa Falls, Knoxville, Mason City, Nevada, Pella, Red Oak, Rock Valley, Wellman, West Des Moines, and Williamsburg, Iowa, under the authority of 12 U.S.C. §§ 26 and 27 and 12 C.F.R. 5.33(e)(4) and consistent with the Federal Community Reinvestment Act. In this respect, we further approve the subsequent purchase and assumption by these banks of the Iowa branches of First Bank, FSB, along with certain associated assets and liabilities, including insured deposits, under the authority of 12 U.S.C. §§ 24(Seventh) and 36(c) and consistent with the Bank Merger Act, the Federal Community Reinvestment Act and the Oakar Amendment. We also approve the merger of all of these interim national banks into the interim national bank with its main office in Des Moines under the authority of 12 U.S.C. § 215a and consistent with the Bank Merger Act and Federal Community Reinvestment Act, and the retention of the offices of each of the interim banks as branches under the authority of 12 U.S.C. § 36(c). With respect to the 18 Iowa interim national banks and the national bank resulting from the merger of those entities, based on the representations made by the applicant, we grant the request, under 12 U.S.C. § 72, to waive the director residency requirements.

We also approve, subject to other appropriate regulatory action, under the authority of 12 C.F.R. § 5.24 and consistent with the Federal Community Reinvestment Act, the conversion of the two interim Federal savings banks in Cheyenne and Casper, Wyoming, and the retention by those banks of the offices of the converting Federal savings banks as branches under the authority of 12 U.S.C. § 36(c). In addition, we approve, under the authority of 12 U.S.C. § 215a and consistent with the Bank Merger Act and the Federal Community Reinvestment Act, the merger of the Cheyenne and Casper national banks into a national bank with its main office in Casper and the retention by the national bank in Casper of the offices of the Casper and Cheyenne banks as branches under the authority of 12 U.S.C. § 36(c). With respect to the two national banks created by the conversion of the two interim Federal savings banks and the national bank that results from the merger of those two national banks, based on the representations made by the applicant, we grant the request, under 12 U.S.C. § 72, to waive the director residency requirements.

Finally, under the authority of 12 U.S.C. §§ 215c and 5(s) of the HOLA, and consistent with the requirements of 12 U.S.C. §§ 36(c), 1815(d)(3) and 1842(d) and the Bank Merger Act, the Federal Community Reinvestment Act, other applicable law and other appropriate regulatory action, we approve the merger of First Bank, FSB, into First Bank National

Association and the retention of the North Dakota and Kansas branches of First Bank, FSB, by First Bank National Association.

Accordingly, for the reasons set forth above, including the representations and commitments made by the applicants, these applications are hereby approved.

/s/ 05-31-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 97-MW-01-0006; 97-MW-01-0007; 97-MW-02-0009 through 97-02-0028; 97-MW-02-0030; 97-MW-02-0031.