Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-45
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE DEPOSIT GUARANTY NATIONAL BANK OF LOUISIANA, HAMMOND, LOUISIANA MERCHANTS NATIONAL BANK, FORT SMITH, ARKANSAS, COMMERCIAL NATIONAL BANK, SHREVEPORT, LOUISIANA, WITH AND INTO DEPOSIT GUARANTY NATIONAL BANK, JACKSON, MISSISSIPPI

June 4, 1997

I. INTRODUCTION

On March 20, 1997, Deposit Guaranty National Bank, Jackson, Mississippi ("DGNB") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to merge Deposit Guaranty National Bank of Louisiana, Hammond, Louisiana ("DGNB-LA"), and Merchants National Bank, Fort Smith, Arkansas ("Merchants") with and into DGNB under DGNB's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Interstate Mergers") and to merge Commercial National Bank, Shreveport, Louisiana ("Commercial") into DGNB under DGNB's charter and title under 12 U.S.C. §§ 215a and 1828(c) ("the Subsequent Louisiana Merger"). DGNB has its main office in Jackson and operates branches only in Mississippi. DGNB-LA has its main office in Hammond and operates branches only in Louisiana. Merchants has its main office in Fort Smith and operates branches only in Arkansas. Commercial has its main office in Shreveport and operates branches only in Louisiana. OCC approval is also requested for the resulting bank in each merger to retain DGNB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain DGNB's branches and the other banks' main offices and branches, as branches after the mergers, under 12 U.S.C. §§ 36(d) & 1831u(d)(1) (in the case of the Interstate Mergers) and under 12 U.S.C. § 36(b)(2) (in the case of the Subsequent Louisiana Merger).

DGNB, DGNB-La, Merchants, and Commercial are direct or indirect subsidiaries of Deposit Guaranty Corporation ("DGC"), a multistate bank holding company headquartered in Jackson, Mississippi. In the proposed mergers, four of DGC's existing bank subsidiaries will be

combined into one bank with branches in three states. For various business and operational reasons, the banks plan to consummate these mergers in a certain order over time. DGNB-LA will be merged into DGNB on June 9, 1997; Commercial will be merged into DGNB on July 14, 1997; and Merchants will be merged into DGNB on August 11, 1997.

II. LEGAL AUTHORITY

This merger application involves the interstate mergers of DGNB-LA and Merchants into DGNB, and the in-state merger of Commercial into DGNB after the merger with DGNB-LA. We review the authority for the two interstate mergers separately from the in-state merger, under the statutes relevant to each type of merger.

A. The Interstate Mergers are Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d).

1. The interstate merger transactions are authorized.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See 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"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

> (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).[1] The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between

[1] For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In the Interstate Mergers here, the home states of the banks are Mississippi, Louisiana, and Arkansas; none of these states has opted out. Accordingly, the Interstate Mergers may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

DGNB's, DGNB-LA's, and Merchant's Interstate Mergers satisfy all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In the Interstate Mergers, DGNB is acquiring by merger banks (DGNB-LA and Merchants) in the host states of Louisiana and Arkansas. An out-of-state bank may not enter Louisiana by acquisition of a Louisiana bank unless the Louisiana bank has been in existence for at least five years. See La. Rev. Stat. §§ 6:532(11) & 6:536C. DGNB-LA has been in existence and actively engaged in business as a Louisiana bank since 1934. Arkansas also requires that, in a merger with an out-of-state bank in which the out-of-state bank is the resulting bank, the Arkansas bank must have been in existence for at least five years. See Ark. Code Ann. §§ 23-45-102(18) & 23-48-903. Merchants has been in existence since 1882. Thus, the Interstate Mergers satisfy the Riegle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).[2]

---

[2] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are

The Louisiana interstate banking statute provides that an out-of-state bank shall not acquire a Louisiana bank "unless it has filed with the commissioner all applications and other information filed with any federal agency in connection with such acquisition and paid a fee as prescribed by regulation of the commissioner." See La. Rev. Stat. § 6:536A. DGNB provided a copy of its OCC merger application to the Louisiana banking commissioner. The Commissioner has not required payment of a fee. The Arkansas interstate bank merger statute requires an out-of-state bank that will be the resulting bank in an interstate merger transaction and operate branches in Arkansas to apply for a certificate of authority from the Arkansas state bank commisioner. See Ark. Code Ann. § 23-48-1001 *et seq.* (There are additional filing requirements if the merger is with an Arkansas state bank, see Ark. Code Ann. § 23-48-905.) The requirements for this certificate of authority for out-of-state banks are similar to those for out-of-state nonbanking corporations under Arkansas' general corporation law, see Ark. Code Ann. § 4-27-1501 *et seq.* DGNB provided a copy of its OCC merger application to the Arkansas state bank commissioner, as required by section 1831u(b)(1), and applied for a certificate of authority from the commissioner. Thus, the Interstate Mergers satisfy the Riegle-Neal Act's filing requirements

Third, the proposed Interstate Mergers do not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). DGNB, DGNB-LA, and Merchants are affiliates; thus section 1831u(b)(2) is not applicable.

Fourth, the proposed Interstate Mergers also do not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In the Interstate Mergers, DGNB (the bank submitting the application as the acquiring bank) has two bank affiliates in Louisiana before the transaction (i.e., DGNB-LA and Commercial), has a bank affiliate in Arkansas before the transaction (i.e., Merchants), and

---

formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the Interstate Mergers. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, DGNB, DGNB-LA and Merchants satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, DGNB will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the proposed Interstate Mergers among DGNB, DGNB-LA, and Merchants are legally permissible under section 1831u.

2. The resulting bank may retain DGNB's, DGNB-LA's, and Merchants' existing main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Applicants have requested that, upon the completion of the Interstate Mergers, DGNB (as the resulting bank in each merger) be permitted to retain and continue to operate its main office in Jackson, Mississippi, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own branches and (2) the main offices and branches of DGNB-LA in Louisiana and of Merchants in Arkansas. In interstate merger transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

> (1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State

> other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, DGNB, the resulting bank in the Interstate Mergers, may retain and continue to operate all of the banking offices of the three banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[3]

Moreover, at its branches in Louisiana and Arkansas, as well as those in Mississippi, DGNB is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

B. The Subsequent In-State Merger in Louisiana is Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a & 36(b)(2).

After the interstate merger of DGNB-LA into DGNB is consummated, DGNB will have branches in Louisiana (i.e., the offices of DGNB-LA). Approximately one month later, Commercial, an affiliated bank whose main office is in Louisiana, will be merged into DGNB. This subsequent merger of Commercial into DGNB is authorized under 12 U.S.C. § 215a, and the resulting bank may retain the offices of the banks under 12 U.S.C. § 36(b)(2). This transaction is a merger between an interstate national bank and another bank in one of the states in which the interstate bank already has branches. The OCC previously has considered such applications under sections 215a and 36(b). As discussed in section B-3 below, the Riegle-Neal Act did not change existing authority under sections 215a and 36(b). These mergers do not raise

---

[3] By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

new issues, but only the application of established precedent for applying sections 215a and 36(b) to interstate national banks.

1. The merger is authorized under section 215a.

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a provides in relevant part:

> One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association.

12 U.S.C. § 215a(a) (emphasis added). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied this section with respect to mergers with an existing interstate national bank.[4] We concluded that, just as for branching purposes under section 36, a national bank with its main office and branch offices in more than one state was "located" in each such state, for the purpose of mergers with other banks in that state under 12 U.S.C. § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This reading is consistent with the plain meaning of the statute and its legislative history. It is also supported by judicial construction of "situated" in section 36(c) and similar locational phrases in other sections of the National Bank Act. Any other reading could render section 215a largely unworkable in the case of interstate banks. Finally, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate bank may occur under relevant law for in-state mergers. See 12 U.S.C. § 1831u(d)(2) (quoted in note 5 below). The reasoning and support for this position are extensively set out in the earlier OCC decisions, such as those in note 4.

Accordingly, in the Subsequent Louisiana Merger, DGNB is located in Louisiana by virtue of its branches there (which were the previous main office and branches of DGNB-LA), and so it may merge with Commercial, which is also located in Louisiana, under section 215a.

2. The resulting bank may retain the offices of both banks under section 36(b)(2).

---

[4] See, e.g., Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank N.A. (OCC Corporate Decision No. 96-20, April 12, 1996) ("OCC Fleet/NatWest Decision"); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("OCC Midlantic/Old York Decision"); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision"); Decision on the Applications of First Fidelity Bank, N.A.(Pennsylvania) and First Fidelity Bank, N.A. (New Jersey) (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644. Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991) ("OCC Shawmut Decision") (at the time of conversion, State Savings Bank had branches in Rhode Island); Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey (March 27, 1984), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,925.

DGNB has also requested OCC approval for the bank resulting from the Subsequent Louisiana Merger (referred to in this section as "DGNB-Resulting" or the "Resulting Bank" to distinguish it from DGNB or Commercial prior to the merger) to retain the main office and branches of Commercial and the branches of DGNB as branches of the Resulting Bank after the merger. Branch retention following this merger is covered by the McFadden Act. See 12 U.S.C. § 36(b)(2). Applying the various provisions of section 36(b)(2) to the branches involved in this merger, we find that DGNB-Resulting is legally authorized to retain all the offices as branches.

a. Retention of the main office and branches of Commercial.

In the proposed merger, Commercial is the target bank, since the merger is effected under the charter of DGNB. DGNB-Resulting is authorized to retain the main office and branches of Commercial under section 36(b)(2)(A). Under section 36(b)(2)(A), the resulting bank may retain the branches or the main office of the target bank if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974).[5] In applying the branch retention provisions of section 36(b)(2)(A) in the context of mergers involving interstate banks, it is therefore necessary to determine in which state(s) the resulting bank is situated. The OCC previously concluded that the resulting bank is properly treated as situated in all of the states in which the participating banks were situated in

---

[5] Indeed, provisions in the Riegle-Neal Act have, in effect, codified the Seattle Trust interpretation of section 36 for Riegle-Neal interstate national banks, as DGNB will be with respect to Louisiana. Section 1831u(d)(2) provides:

> (2) Additional Branches. -- Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

12 U.S.C. § 1831u(d)(2). See also 12 U.S.C. § 36(g)(2)(B) (applying section 1831u(d)(2) to subsequent branches when a national bank has entered a state initially with a *de novo* branch under the Riegle-Neal Act). Thus, for any host state, a national bank resulting from a Riegle-Neal interstate merger transaction among national banks in different states may establish or acquire additional branches under the federal law applicable to branching by national banks in the host state (e.g., section 36(b)(2) with respect to branches acquired through merger, and section 36(c) with respect to branches acquired by purchase or established de novo). For example, here DGNB may establish, acquire, or operate additional branches in Louisiana at any location where DGNB-LA could have, even if state law does not address, or limits, the subsequent branching authority of out-of-state banks. The legislative history confirms the statutory language. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 50, 56 (August 2, 1994). In addition, the provisions in the Riegle-Neal Act regarding state opt-in to permit interstate branching through de novo branches apply only to the de novo establishment of a bank's first branch in another state (other than the bank's home state) "in which the bank does not maintain a branch." See Riegle-Neal Act § 103(a) (adding new subsection 36(g)). It does not apply to situations where a bank is establishing a new branch in its home state or in one of the states in which it already has a branch. In those situations, existing law under section 36(c) still applies. See also Decision on the Applications of Community National Bank (OCC Corporate Decision No. 96-22, April 19, 1996) (further discussion of these provisions).

order to then apply the section 36(c) standard, using each state's law for the branches in that state.[6] We first reached this analysis in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank, see OCC Shawmut Decision, and have applied it in subsequent decisions involving mergers with interstate banks both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-a); other OCC decisions cited in note 4 above.

Accordingly, in the Subsequent Louisiana Merger, the resulting bank, DGNB-Resulting, is situated in the states in which the participating banks were situated for purposes of sections 36(b)(2)(A) & 36(c), including Louisiana. Louisiana law allows its state banks to establish or acquire branches without limitation within the state. See. La. Rev. Stat. § 6:501A. And so a national bank situated in Louisiana could establish branches at all the locations of Commercial under section 36(c). Therefore, DGNB-Resulting may retain and operate the main offices and branches of Commercial under section 36(b)(2)(A).

b. Retention of DGNB's branches in the Subsequent Louisiana Merger.

In the Subsequent Louisiana Merger, DGNB is the acquiring or lead bank, i.e., the bank under whose charter the merger is effected. Section 36(b)(2)(C) of the McFadden Act authorizes the national bank resulting from a merger to retain and operate as a branch any branch of the lead bank that existed prior to the merger, unless a state bank resulting from a merger would be "prohibited" by state law from retaining as a branch an identically situated office of a State bank. Section 36(b)(2) differentiates between branches of target banks and branches of the lead bank. State law on the establishment of new branches applies to the resulting bank's retention of the branches of the target bank under paragraph (A); but it does not apply to the resulting bank's retention of the branches of the lead bank under paragraph (C). Instead, a different rule applies: The branches may be retained unless the state has expressly prohibited it.

In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to lead banks that have offices in more than one state. We determined that section 36(b)(2)(C) should be applied in the same manner as sections 36(c) and 36(b)(2)(A), so that the resulting national bank is treated as situated in each state in which it operates in applying section 36(b)(2)(C). Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state. We reached this conclusion in decisions both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-b); other OCC decisions cited in note 4.

---

[6] For purposes of section 36(b) and section 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state's banks within the state. State laws pertaining to the activities of the state's banks outside the state or to the activities of out-of-state banks within the state are not within the scope of what these sections of the McFadden Act refer to. See, e.g., OCC Bank Midwest Decision (Parts II-B, II-C-2, II-D, III-B-1-b).

Thus, under section 36(b)(2)(C), for each state, the resulting bank may retain the branches of the lead bank unless the state has expressly prohibited branch retention for identically situated offices in a merger between its state banks. With respect to DGNB's branches in Mississippi and Louisiana, there are no provisions in the laws of those states that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state if such offices were branches of the state-chartered bank.[7] Therefore, DGNB-Resulting may retain the branches of DGNB under section 36(b)(2)(C).

3. This existing authority for national banks under 12 U.S.C. §§ 215a & 36(b) continues after the Riegle-Neal Act.

Our analysis of the legal authority for the merger of Commercial into DGNB is based on pre-existing law for national banks, in particular 12 U.S.C. §§ 36(b), 36(c), & 215a. The Riegle-Neal Act did not alter these provisions, did not change the legal analysis and result under them, and indeed confirmed it. The statutory language and legislative history in the Riegle-Neal Act clearly contemplate that existing authority under these provisions remains in effect. The language of these sections is not changed, and the legislative history contains no indication of any intent to modify the operation of these sections. Moreover, nothing in the new sections added in the Riegle-Neal Act (in particular the provision on exclusive authority for additional branches, 12 U.S.C. § 36(e), discussed below) conflicts with any authority in these sections.

The statutory changes and legislative history of the Riegle-Neal Act show that Congress was completely aware of the OCC's prior interstate decisions. OCC decisions prior to the Riegle-Neal Act addressed interstate mergers and involved issues and analysis of sections 36 and 215a. In the Riegle-Neal Act, Congress did not change sections 36(b), 36(c), or 215a or express any disagreement with OCC's interpretation and application of them. Nor does the new section 44 authority for interstate merger transactions in the Riegle-Neal Act and the corresponding new provision authorizing national banks to engage in section 44 mergers, 12 U.S.C. § 215a-1, supplant existing merger authority possessed by national banks. Review of the statutory framework and legislative history shows that the intended operation of section 44 and section 215a-1 is that they are a separate and parallel source of authority for interstate merger transactions. They will allow interstate mergers after June 1, 1997, overriding any conflicting state laws. Section 44 permits states to opt-out or to opt in early. But it does not supplant existing federal laws for national banks that allow some forms of interstate transaction *with a bank that is already interstate*. Indeed, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate national bank are to occur under section 215a. See 12 U.S.C. § 1831u(d)(2) (quoted in note 5 above).

We therefore find no basis to conclude that the Riegle-Neal Act supersedes existing law for national banks in ways other than those explicitly set out in section 36(e), which is not

---

[7] Indeed, in both states a merging state bank would be permitted to continue the branches of the participating banks. See La. Rev. Stat. § 6:501A; Miss. Code Ann. § 81-7-7(4). At the time of the Subsequent Louisiana Merger in July, DGNB will be operating branches only in Mississippi and Louisiana, since the Interstate Merger with Merchants will not occur until August.

relevant here.[8] Thus, a transaction that can come under other existing authority continues to be authorized under that authority, provided it is consistent with the provision on exclusive authority for additional branches in section 36(e). Such is the case here. In the Subsequent Louisiana Merger, section 36(e)(1) is complied with because DGNB already has branches in Louisiana and/or the target bank's branches are retained and operated under the authority of section 36(b), a part of "this section" referred to in section 36(e)(1). Accordingly, the Subsequent Louisiana Merger can occur under section 215a.

C. Conclusion

In conclusion, the legal analysis of these mergers is similar to the analysis in prior OCC decisions. The Interstate Mergers of DGNB-LA and Merchants into DGNB are authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u, and the resulting bank may retain and operate the branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1). The Subsequent Louisiana Merger of Commercial into DGNB is authorized under 12 U.S.C. § 215a, and the resulting bank may retain and operate the branches under 12 U.S.C. § 36(b)(2). Accordingly, these mergers are legally authorized.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis

Since the all the banks are already directly or indirectly owned by the same holding company, their merger will have no anticompetitive effects.

---

[8] That provision provides in relevant part:

> 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 (as defined in subsection (g)(3)(B)) 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.

12 U.S.C. § 36(e)(1) (emphasis added). This aspect of the relationship of the Riegle-Neal Act and existing law is discussed further in the OCC Midlantic/Old York Decision (Part II-C) and the OCC Fleet/NatWest Decision (Part II-C).

2. Financial and managerial resources

The financial and managerial resources of DGNB, DGNB-LA, Merchants, and Commercial are presently satisfactory. DGNB expects to eliminate redundant costs and improve efficiency and productivity by operating the offices as one entity. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the mergers.

3. Convenience and needs

The resulting bank, DGNB, will help to meet the convenience and needs of the communities to be served. Each of the banks offers a full line of banking services and there will be no reductions in the products or services as a result of the merger. The combined bank will continue to offer a full line of banking products and services. Further, upon completion of the merger, interstate branches will enhance customer satisfaction by making banking activities more convenient for those customers who travel across state lines or for business customers who have operations in more than one state.

No branch closings are contemplated as a result of this merger since the four banks serve different areas. However, as part of its ongoing business plans, DGNB periodically evaluates its branch system and, as a part of the normal course of business, 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.

B. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC 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 evaluating certain applications. See 12 U.S.C. § 2903. DGNB, DGNB-LA, and Commercial each has a satisfactory rating, and Merchants has an outstanding rating, with respect to CRA performance. No public comments were received by the OCC relating to this application.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank, DGNB, will continue to serve the same communities that the merging banks currently serve. DGNB will continue its current CRA programs and policies in Mississippi. After DGNB-LA, Merchants, and Commercial are merged into DGNB, their main offices and branches will remain open as branches of DGNB. DGNB will carry forward the same CRA programs and policies that the bank has today. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as DGNB, DGNB-LA, Commercial, and Merchants have today as separate banks. The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that the approval of the proposed merger is consistent with the CRA.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Interstate Mergers and the Subsequent Louisiana Merger are legally authorized, the resulting bank in each merger may retain the branches of the participating banks, and the mergers meet the other statutory criteria for approval. Accordingly, these mergers are hereby approved.

/s/ 06-04-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-SE-02-0015