Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-49
July 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION BY FIRST NATIONAL BANK OF PENNSYLVANIA, GREENVILLE, PENNSYLVANIA, TO ACQUIRE A BRANCH IN BROOKFIELD, OHIO

June 19, 1997

I. INTRODUCTION

On May 13, 1997, First National Bank of Pennsylvania, Greenville, Pennsylvania ("FNBPA"), applied to the Office of the Comptroller of the Currency ("OCC") for approval to acquire and operate a branch (including the purchase of the assets, and assumption of the liabilities, of the branch) in Brookfield, Ohio ("the Brookfield Branch"), from The Metropolitan Savings Bank of Ohio ("TMSBO"), Youngstown, Ohio, under 12 U.S.C. §§ 24(7), 36(d), 1828(c) & 1831u ("the Branch Acquisition"). FNBPA is a member of the Bank Insurance Fund ("BIF") and TMSBO is a member of the Savings Association Insurance Fund ("SAIF") and both banks are "insured banks" for purposes of 12 U.S.C. § 1831u. Both banks are wholly-owned subsidiaries of F.N.B. Corporation and, thus, are affiliated. As of March 31, 1997, FNBPA had approximately $1 billion in assets and $907 million in deposits and operated 32 branches in Pennsylvania. The Brookfield Branch had, and FNBPA is acquiring, $5.6 million in assets and $8.5 million in deposits. The Brookfield Branch will be FNBPA's first branch in Ohio.

II. LEGAL AUTHORITY

A. The Purchase and Assumption Transaction is Authorized under 12 U.S.C. § 24(7).

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(7). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872-73 (8th Cir. 1931); In re Cleveland Savings Society, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act). Such purchase and assumption transactions are commonplace in the banking industry.

Accordingly, FNBPA may purchase the assets, and assume the liabilities, of the Brookfield Branch from TMSBO. If FNBPA did not also plan to acquire and operate the Brookfield Branch as a branch of FNBPA, no further authority would be needed. Additional authority is required to operate it as a branch.

B. The Interstate Branch Acquisition and Operation of the Branch are Authorized under 12 U.S.C. §§ 36(d) & 1831u.

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:

> (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) (added by the Riegle-Neal Act § 102(a)).[1] Under the Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions. See 12 U.S.C. §§ 1831u(f)(6)-(7) & 1828(c)(3). The Act permits a state to elect to prohibit interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between 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 this application, the home states of the banks are Pennsylvania and Ohio; neither state opted out.

An "interstate merger transaction" under section 1831u(a) includes a purchase and assumption transaction. A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and

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[1] The Riegle-Neal Act 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)).

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).

assumption of only a part of a bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

> An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

12 U.S.C. § 1831u(a)(4)(A). In this Application, the branch to be acquired is located in Ohio. Ohio law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in Ohio through the acquisition of a branch. See Ohio Rev. Code § 1117.01(A) (as amended by Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40).[2] Finally, Congress also provided that a national bank may maintain and operate a branch in a state other than its home state as a result of an interstate merger transaction under section 1831u(a). See 12 U.S.C. §§ 36(d) & 1831u(d)(1).[3] Accordingly, this application may be approved under 12 U.S.C. §§ 36(d) and 1831u.

In addition, an application to engage in an interstate merger transaction, including an interstate branch acquisition, 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 Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

FNBPA's application satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under

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[2] Section 1117.01(A) provides:

> Subject to section 1115.05 and Chapter 1119. of the Revised Code, a bank, regardless of the location of its principal place of business, may establish or acquire and maintain a banking office in this state.

Ohio Rev. Code § 1117.01(A).

[3] Section 36(d) provides:

> 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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Section 36(d), rather than other subsections of section 36, is the authority for the Brookfield Branch in this application because the acquisition of a branch in a purchase and assumption transaction under section 1831u(a)(4) is an "interstate merger transaction" under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u.

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 this Branch Acquisition, FNBPA is acquiring a branch in Ohio. Ohio does not have an age requirement for either an interstate merger or an interstate branch acquisition. The Branch Acquisition satisfies the Riegle-Neal Act's age requirement.

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).[4] Ohio law requires that a bank that transacts business in Ohio, the main office of which is located in a state other than Ohio, must file as a foreign corporation with the secretary of state. See Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40 (amending several sections in Ohio Rev. Code §§ 1703.01 *et seq.*). These amendments make out-of-state banks subject to the same foreign corporation filing requirements as out-of-state nonbanking corporations. FNBPA has filed the required notice, paid the requisite filing fee, and sent a copy of its OCC application to the state bank supervisor (as required by section 1831u(b)(1)(ii)). Thus, this application satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed Branch Acquisition does 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). FNBPA and TMSBO are affiliates; thus section 1831u(b)(2) is not applicable to this application.

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[4] 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. Because 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 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).

Fourth, the proposed Branch Acquisition also does 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 merger transactions 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 this application, FNBPA (the bank submitting the application as the acquiring bank) has a bank affiliate in Ohio before the transaction (i.e., TMSBO), and 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 Branch Acquisition. 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, FNBPA and TMSBO 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 Branch Acquisition, FNBPA 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, FNBPA's proposed acquisition and operation of the Brookfield Branch in Ohio is legally permissible under 12 U.S.C. §§ 36(d) & 1831u.

C. The Branch Acquisition complies with 12 U.S.C. § 1815(d).

The Branch Acquisition also complies with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). TMSBO is a member of the SAIF, and FNBPA is a member of the BIF. The assumption of any liability by a BIF member to pay any deposits of a SAIF member is a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(iii)(I). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation

of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above in section II-B, the OCC has determined the acquiring and resulting bank meets all applicable capital requirements.

In addition, a BIF member which is a subsidiary of a bank holding company may not be the acquiring and resulting bank in an Oakar transaction unless the transaction would comply with the requirements for an interstate bank acquisition of section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), if the SAIF member involved in the transaction was a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F).[5] In the case of this transaction, this analysis is self-evident because TMSBO, while a SAIF member, is in fact a *state bank* already owned by the bank holding company. Thus, this transaction is unlike the usual Oakar transaction which involves the acquisition of a SAIF-insured *thrift*. Nevertheless, we will briefly set out the analysis.

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal Community Reinvestment Act requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution. All of these are met with respect in the Branch Acquisition. First, the age limit is met, because Ohio permits out-of-state bank holding companies to acquire in-state banks without any age limitation.

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, FNBPA and all of its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). As of March 31, 1997, they controlled less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). If this transaction is not considered an initial entry in the Oakar analysis and so paragraph (d)(2)(B) is applicable to this transaction, this limit is met. F.N.B. Corporation's total Ohio deposits of its insured depository institutions is less 30% of the total Ohio deposits, as of March 31, 1997. The statewide concentration limit is satisfied.

Third, the bank holding company's compliance with the federal Community Reinvestment Act and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). In this regard, we note that the applicant

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[5] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank located in a state other than the holding company's home state. The home state of F.N.B. Corporation is Pennsylvania, and TMSBO and the Brookfield Branch are located in Ohio; and so it is necessary to undertake the analysis.

bank has an "outstanding" federal CRA rating. F.N.B. Corporation's other depository institution subsidiaries all have either outstanding or satisfactory ratings with respect to CRA performance. With respect to compliance with applicable state community reinvestment laws, none of the states in which F.N.B. Corporation has bank subsidiaries (Pennsylvania, Ohio, and Florida) has state community reinvestment laws applicable to F.N.B. Corporation's banks. No public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance, and the OCC has no other basis to question the bank holding company's CRA performance. Thus, no issues arise under the federal CRA or state community reinvestment laws that would require rejection of this application.

Finally, we note that the condition of the bank holding company, including its capital position and management, is consistent with approval of this transaction under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment. Accordingly, the Branch Acquisition complies with the Oakar Amendment.

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 transaction, including purchase and assumption transactions, between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger transaction 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 application may be approved under section 1828(c).

1. Competitive Analysis.

Since FNBPA and TMSBO are owned by the same bank holding company, the Branch Acquisition will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of both banks are presently satisfactory. The proposed interstate branch acquisition should place little additional burden on FNBPA. Its future prospects are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the application.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. FNBPA will continue to serve the same areas in Pennsylvania, and it will add the Brookfield Branch in Ohio. FNBPA will continue to offer its current range of banking products

and services. Upon completion of the Branch Acquisition, current customers of FNBPA, and new customers at the Brookfield Branch, will have the added convenience of being able to bank with the same bank across state lines. No branch closings are contemplated as a result of this transaction. Accordingly, we believe the impact of the interstate branch acquisition on the convenience and needs of the communities to be served is consistent with approval of the application.

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. FNBPA has an outstanding rating with respect to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the bank's performance in complying with the CRA.

The Branch Acquisition is not expected to have any adverse effect on the resulting bank's CRA performance. FNBPA will continue to serve the same communities that it currently serves and will continue its current CRA programs and policies. After the Branch Acquisition, it will add the community around Brookfield to its assessment areas. 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 FNBPA and the Brookfield Branch have today separately. The Branch Acquisition and operation of an interstate branch does 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 approval of the proposed Branch Acquisition is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that FNBPA's acquisition and operation of the branch in Brookfield, Ohio, is legally authorized under 12 U.S.C. §§ 24(Seventh), 36(d) & 1831u, and that the Branch Acquisition meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

/s/ 06-19-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-NE-02-0019