



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-75
August 1997

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
BOATMEN'S NATIONAL BANK OF ARKANSAS, LITTLE ROCK, ARKANSAS,
TWENTY-FIVE OTHER AFFILIATED BANKS, AND
NATIONSBANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA**

August 7, 1997

I. INTRODUCTION

NationsBank Corporation recently acquired Boatmen's Bancshares, Inc., and its banking and nonbanking subsidiaries.¹ These merger applications are part of the process of combining the recently acquired affiliated banks into the holding company's lead bank.

On June 2, 1997, three applications were filed with the Office of the Comptroller of the Currency ("OCC") under 12 U.S.C. §§ 215a & 1828(c) for approval (1) to merge eight other affiliated banks in Arkansas² with and into Boatmen's National Bank of Arkansas, Little Rock, Arkansas (the "Arkansas Bank" and the "Arkansas Merger"), (2) to merge three other affiliated banks in Iowa³ with and into Boatmen's Bank Iowa, National Association, Des Moines, Iowa (the "Iowa Bank" and the "Iowa Merger"), and (3) to merge ten other affiliated banks in New Mexico⁴

¹ See *NationsBank Corporation: Order Approving the Merger of Bank Holding Companies*, 83 Fed. Res. Bull. 148 (December, 16, 1996). The acquisition was effective January 7, 1997.

² The eight other merging banks in Arkansas are: Boatmen's National Bank of Batesville, Batesville, Arkansas; Boatmen's National Bank of Conway, Conway, Arkansas; Boatmen's National Bank of Hot Springs, Hot Springs, Arkansas; Boatmen's National Bank of North Central Arkansas, Bull Shoals, Arkansas; Boatmen's National Bank of Pine Bluff, Pine Bluff, Arkansas; Boatmen's National Bank of Russellville, Russellville, Arkansas; Boatmen's National Bank of Northwest Arkansas, Fayetteville, Arkansas; and Boatmen's Bank of Northeast Arkansas, Jonesboro, Arkansas.

³ The three other merging banks in Iowa are: Boatmen's National Bank of Northwest Iowa, Spencer, Iowa; Boatmen's Bank of North Iowa, Mason City, Iowa; and Boatmen's Bank of Fort Dodge, Fort Dodge, Iowa.

⁴ The ten other merging banks in New Mexico are: Sunwest Bank of Clovis, N.A., Clovis, New Mexico; Sunwest Bank of Hobbs, N.A., Hobbs, New Mexico; Sunwest Bank of Las Cruces, N.A., Las Cruces, New Mexico;

with and into Sunwest Bank of Albuquerque, National Association, Albuquerque, New Mexico (the "New Mexico Bank" and the "New Mexico Merger"). In each of these preparatory in-state mergers, all the banks in each state operate branches only within that state. In each of the three preparatory in-state mergers, OCC approval is also requested for the resulting bank in each merger (the Arkansas Bank, the Iowa Bank, and the New Mexico Bank, respectively) to retain the merging banks' main offices and branches, and the acquiring bank's branches, as branches after the mergers under 12 U.S.C. § 36(b)(2).

Also on June 2, 1997, NationsBank, National Association, Charlotte, North Carolina ("NationsBank") applied to the OCC for approval to merge the Arkansas Bank, the Iowa Bank, and the New Mexico Bank with and into NationsBank under NationsBank's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Interstate Merger"). The Interstate Merger would occur immediately after the Arkansas Merger, the Iowa Merger, and the New Mexico Merger. NationsBank has its main office in Charlotte and operates branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, the District of Columbia, Missouri, Kansas, Oklahoma, and Illinois.⁵ On June 11, 1997, NationsBank also applied for approval to merge two other banks in Arkansas -- Boatmen's National Bank of Newark, Newark, Arkansas, and Boatmen's National Bank of South Arkansas, Camden, Arkansas -- with and into NationsBank under NationsBank's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Other Interstate Merger"). The Other Interstate Merger will occur simultaneous with, or immediately after, the Interstate Merger. In the two interstate merger applications, OCC approval is also requested for the resulting bank to retain NationsBank's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain NationsBank'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).

All the banks are direct or indirect subsidiaries of NationsBank Corporation, a multistate bank holding company headquartered in Charlotte, North Carolina. In the proposed mergers, a number of the holding company's recently acquired bank subsidiaries will be combined into its lead bank.

II. LEGAL AUTHORITY

Sunwest Bank of Raton, N.A., Raton, New Mexico; Sunwest Bank of Rio Arriba, N.A., Espanola, New Mexico; Sunwest Bank of Roswell, N.A., Roswell, New Mexico; Sunwest Bank of Farmington, Farmington, New Mexico; Sunwest Bank of Gallup, Gallup, New Mexico; Sunwest Bank of Grant County, Silver City, New Mexico; and Sunwest Bank of Santa Fe, Santa Fe, New Mexico. These applications do not involve Sun World, National Association, another affiliate of NationsBank. Sun World relocated its main office from El Paso, Texas, to Santa Teresa, New Mexico, see Decision on the Applications of Sun World, N.A. (OCC Corporate Decision No. 96-40, August 2, 1996). That transaction is in litigation. See Ghiglieri v. Sun World, N.A., Nos. 96-50847 & 96-50948 (5th Cir. July 22, 1997) (upholding OCC decision), reversing 942 F. Supp. 1111 (W.D. Tex. 1996).

⁵ NationsBank's branches in these states are the result of earlier transactions. See, e.g., Decision on the Application to Merge NationsBank, N.A. (South) with NationsBank, N.A. (OCC Corporate Decision No. 97-40, June 1, 1997); Decision on the Application to Merge Boatmen's Bank of Vandalia, Vandalia, Missouri, and Twenty-Two Other Affiliated Banks with NationsBank, N.A. (OCC Corporate Decision No. 97-47, June 6, 1997)

A. The Arkansas Merger, the Iowa Merger, and the New Mexico Merger are Authorized under 12 U.S.C. § 215a, and the Resulting Bank in Each Merger may Retain the Offices of the Participating Banks in Each State under 12 U.S.C. § 36(b).

Mergers of national banks or state banks into a national bank “located within the same State” are authorized under 12 U.S.C. § 215a. In the Arkansas Merger, all of the banks are located in Arkansas. In the Iowa Merger, all the banks are located in Iowa. In the New Mexico Merger, all the banks are located in New Mexico. Thus, in each in-state merger, the banks are located in the same state, and the mergers are authorized under section 215a.

Branch retention by the resulting national bank in a merger under section 215a is covered by the McFadden Act. See 12 U.S.C. § 36(b)(2). Retention of the branches of the merging (or “target”) banks and of the acquiring (or “lead”) bank in a merger are addressed in different paragraphs of section 36(b)(2). Under section 36(b)(2)(A), the resulting bank may retain the main offices or branches of the target banks if the resulting bank could establish them as new branches of the resulting bank under section 36(c). Under section 36(b)(2)(C), 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 in which a state bank is the resulting bank.

The resulting bank in each in-state merger here may retain the branches of all the banks participating in that merger under 12 U.S.C. § 36(b)(2). With respect to the Arkansas Merger, Arkansas permits the surviving bank in a merger to retain all of the existing offices of the banks participating in the merger. See Ark. Code Ann. § 23-48-702. Thus, the Arkansas Bank may retain the main offices and branches of the merging banks in Arkansas under section 36(b)(2)(A), and it may retain the branches of Boatmen’s National Bank of Arkansas under section 36(b)(2)(C). With respect to the Iowa Merger, Iowa permits affiliated banks to merge, and the resulting bank to retain the branches of the banks participating in the merger. See Iowa Code Ann. § 524.1213(3).⁶ Thus, the Iowa Bank may retain the main offices and branches of the merging banks in Iowa under section 36(b)(2)(A), and it may retain the branches of Boatmen’s Bank Iowa under section 36(b)(2)(C). With respect to the New Mexico Merger, New Mexico permits statewide branching. See N.M. Stat. Ann. § 58-5-3. Thus, the New Mexico Bank may retain the main offices and branches of the merging banks in New Mexico under section 36(b)(2)(A), and it may retain the branches of Sunwest Bank of Albuquerque under section 36(b)(2)(C).

B. The Interstate Merger and the Other Interstate Merger are Authorized, and the Resulting Bank may Retain the Offices of All the Participating Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

⁶ The banks must be at least five years old; each of the banks in the Iowa Merger is at least five years old. In addition, the resulting bank’s branches within a municipality remain subject to the numerical limits in Iowa law. See Iowa Code Ann. §§ 524.1202 & 524.1213(3)(d), (9) & (11). The Iowa Merger will not cause the resulting bank here to exceed those limits.

After the preparatory in-state mergers, the banks resulting from each merger -- the Arkansas Bank, the Iowa Bank, and the New Mexico Bank -- will be merged into NationsBank in the Interstate Merger. In addition, two additional banks in Arkansas also will be merged into NationsBank in the Other Interstate Merger.

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). 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 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).⁷ In the Interstate Merger and the Other Interstate Merger, the home states of the banks are North Carolina, Arkansas, Iowa, and New Mexico. None of these states has opted out. Accordingly, these merger applications 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

⁷ 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).

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.

These merger applications satisfy all these conditions to the extent applicable. First, they satisfy 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 these interstate merger transactions, NationsBank is acquiring by merger banks in the host states of Arkansas, Iowa, and New Mexico. Arkansas, Iowa, and New Mexico all have a five year age requirement. See Ark. Code Ann. §§ 23-45-102(18) & 23-48-903; Iowa Code Ann. § 524.1805; N.M. Stat. Ann. § 58-1C-5(C). The banks here -- the Arkansas Bank, Boatmen's National Bank of Newark, Boatmen's National Bank of South Arkansas, the Iowa Bank, and the New Mexico Bank -- all are more than five years old. Thus, the Riegle-Neal Act's age requirement is met.

Second, the proposed mergers meet 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).⁸ 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 commissioner. 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.* NationsBank provided a copy of its OCC merger applications to the Arkansas

⁸ 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 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).

state bank commissioner, as required by section 1831u(b)(1), and applied for a certificate of authority from the commissioner. Iowa similarly requires that an "out-of-state bank or out-of-state bank holding company that is organized under laws other than those of this state is subject to and shall comply with the provisions of chapter 490, division XV, relating to foreign corporations, and shall immediately provide the superintendent of banking with a copy of each filing submitted to the secretary of state under that division." Iowa Code Ann. § 524.1805(5). Chapter 490, division XV, contains the provisions for out-of-state nonbanking corporations to qualify to do business in Iowa. See Iowa Code Ann. § 490.1501 *et seq.* NationsBank provided a copy of its OCC merger application to the Iowa state banking superintendent, as required by section 1831u(b)(1), and is obtaining a certificate of authority under the Iowa filing requirement. Finally, the New Mexico interstate bank merger statute does not appear to contain a filing requirement when the New Mexico bank is a national bank.⁹ NationsBank provided a copy of its OCC merger application to the New Mexico state bank supervisor, as required by section 1831u(b)(1). The Riegle-Neal Act's filing requirement is met.

Third, the proposed interstate merger transactions 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). NationsBank and all the merging banks are affiliates; thus section 1831u(b)(2) is not applicable to these mergers.

Fourth, the proposed interstate merger transactions 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 these applications, NationsBank (the bank submitting the application as the acquiring bank) has bank affiliates in Arkansas, Iowa, and New Mexico (*i.e.*, the merging banks), 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 these merger applications. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

⁹ The provision requiring an out-of-state bank that will be the resulting bank in an interstate merger to notify the state banking supervisor, provide a copy of its federal application, and pay a fee applies only to "an interstate merger transaction involving a New Mexico state bank." N.M. Stat. Ann. § 58-1C-7 (emphasis added).

Fifth, the proposed mergers satisfy 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 applications were filed, all the banks 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, NationsBank 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 Interstate Merger and the Other Interstate Merger are permissible interstate merger transactions under section 1831u.¹⁰

2. Following the mergers, the resulting bank may retain all the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the mergers, NationsBank (as the resulting bank in the mergers) be permitted to retain and continue to operate its existing main office in Charlotte as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main offices and branches of the Arkansas Bank, Boatmen's National Bank of Newark, and Boatmen's National Bank of South Arkansas in Arkansas, the Iowa Bank in Iowa, and the New Mexico Bank in New Mexico. 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:

¹⁰ Some of the merging banks have subsidiaries, as listed in the applications. By operation of the mergers, the subsidiaries will become subsidiaries of the resulting banks, ultimately NationsBank, see 12 U.S.C. § 215a(e). Most of the subsidiaries are currently subsidiaries of national banks, and the resulting bank is authorized to acquire them. One of the state banks, Boatmen's Bank of North Iowa, has a subsidiary (Boatmen's Insurance Services of Iowa, Inc.) that engages in insurance agency activities on a multistate basis from its sole location in Mason City, Iowa, a town of more than 5,000 in population for purposes of 12 U.S.C. § 92. NationsBank is seeking to sell Boatmen's Insurance Services of Iowa, Inc., and anticipates consummating a sale within one year following the mergers. NationsBank has requested permission to retain and operate the insurance agency pending such sale. OCC policy allows acquiring banks in mergers a reasonable time to divest or conform nonconforming assets (including nonconforming subsidiaries) or activities. See 12 C.F.R. § 5.33(e)(5). Based on NationsBank's representations and the reasonableness of the possibility that the subsidiary can be sold or brought into conformance with applicable standards relative to insurance sales, a two-year divestiture period is reasonable. Accordingly, the resulting bank, NationsBank, is authorized to acquire Boatmen's Insurance Services of Iowa, Inc., subject to the requirement that it be divested or conformed within two years. In addition, all but one of the merging banks owns a minority interest in BBI Merchant Processing Company, which was established in 1996 pursuant to the Bank Service Corporation Act. Collectively, the merging banks' interests total approximately 20%. NationsBank itself currently owns approximately 71%. As a result of the present mergers, NationsBank will succeed to the ownership interests of the merging banks, and then will own approximately 91% of BBI Merchant Processing Company. BBI Merchant Processing Company is engaged in activities permissible for national banks (namely, merchant transaction card processing services), and NationsBank's ownership interest is authorized.

(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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, NationsBank, the resulting bank in these interstate merger transactions, may retain and continue to operate all of the existing banking offices of all the participating banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).¹¹

Moreover, at its branches in Arkansas, Iowa, and New Mexico, as well as those in the other states in which it operates, NationsBank 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* Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997); 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.

¹¹ 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).

§ 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

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 these merger applications may be approved under section 1828(c).

1. Competitive Analysis.

Since all the banks are already owned by the same bank holding company, the mergers will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of all the banks are presently satisfactory. NationsBank expects to achieve efficiencies by operating the offices of the target banks as branches rather than a separate corporate entities. The geographic diversification of its operations will also strengthen the combined bank. 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 merger applications.¹²

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. NationsBank will continue to serve the same areas in North Carolina and its other states, and it will add the target banks' offices in the new states. The proposed mergers will result in an expansion and enhancement of banking services in the markets served by the target banks because of the broader array of products and services offered by NationsBank and the geographic scope of NationsBank's branch and automated teller networks. There will be no reductions in products or services as a result of the mergers. The combined bank will continue to offer a full line of

¹² A former employee of Boatmen's Bancshares, Inc., in Iowa wrote a letter to the Iowa Department of Banking concerning certain management and banking practices at Boatmen's banks in Iowa. A copy of the letter was provided to the OCC. Although the letter was not a protest or comment on the applications and does not raise issues relating to community convenience and needs or CRA performance, the OCC reviewed the letter and determined it did not raise matters that warranted denying, conditioning, or delaying these applications.

banking products and services. The mergers will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

Upon completion of the mergers, customers of all the banks 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 the state lines or for business customers who have operations in more than one state. Following the merger, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. NationsBank has identified twenty-one branches in the three states that will be consolidated with other branches or will be closed in connection with the mergers. These branches were listed in the applications and the published notices for the mergers, and the required notices were sent to branch customers. In addition, as part of its ongoing business plans, NationsBank and NationsBank Corporation continually evaluate its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. The closures already identified, and any other such later 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.

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

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. NationsBank has an outstanding rating with respect to CRA performance. All of the target banks have ratings of outstanding or satisfactory with respect to CRA performance. No comments concerning CRA performance were received by the OCC on these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The mergers are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. NationsBank will continue its current CRA programs and policies in North Carolina and its other states. NationsBank will carry forward the same CRA programs and policies and assessment areas that the target banks have today, and over time will adapt them to the programs of NationsBank. Moreover, NationsBank has represented that it will honor all CRA-related commitments made by the target banks. 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 NationsBank and the target banks 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 approval of the proposed mergers is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the Arkansas Merger, the Iowa Merger, and the New Mexico Merger are authorized under 12 U.S.C. § 215a, and the resulting banks may retain and operate the offices of the banks under 12 U.S.C. § 36(b)(2), that the Interstate Merger and the Other Interstate Merger are authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of the banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that these mergers meet the other statutory criteria for approval. Accordingly, these merger applications are hereby approved.

_____/s/_____
Steven J. Weiss
Deputy Comptroller
Bank Organization and Structure

08-07-97
Date

Application Control Numbers:

- 97-ML-02-0020 (the Arkansas Merger)
- 97-ML-02-0021 (the Iowa Merger)
- 97-ML-02-0022 (the New Mexico Merger)
- 97-ML-02-0023 (the Interstate Merger)
- 97-ML-02-0024 (the Other Interstate Merger)