Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

CRA Decision #81
August 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF FIRST OF AMERICA BANK, NATIONAL ASSOCIATION, KALAMAZOO, MICHIGAN TO MERGE WITH FIRST OF AMERICA BANK-ILLINOIS, NATIONAL ASSOCIATION, BANNOCKBURN, ILLINOIS

July 14, 1998

I. INTRODUCTION

On April 1, 1998, First of America Bank, National Association ("FOA"), Kalamazoo, Michigan filed an Application with the Office of the Comptroller of the Currency ("OCC") seeking approval to merge with First of America Bank - Illinois, National Association ("FOA-IL"), under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"), under the charter of FOA. The resulting bank will be titled National City Bank of Michigan/Illinois ("Resulting Bank").

FOA, a Savings Associated Insurance Fund member, has its main office in Kalamazoo, Michigan and all its branches are in Michigan. FOA-IL, a Bank Insurance Fund member, has its main office in Bannockburn, Illinois, and all its branches are in Illinois. As of December 31, 1997, FOA had approximately $14.3 billion in assets and $11.1 billion in deposits, and FOA-IL had approximately $6 billion in assets and $4.8 billion in deposits.

In the Merger Application, FOA has requested that the OCC allow the Resulting Bank to retain FOA-IL's office in Bannockburn, Illinois as its main office, under 12 U.S.C. § 1831u(d)(1). Furthermore, the Resulting Bank intends to retain FOA-IL's branches and FOA's main office and branches as branches after the merger is consummated, pursuant to 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Both FOA and FOA-IL are subsidiaries of National City Corporation ("NatCity"), a bank holding company based in Cleveland, Ohio.

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 and 1831u.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks.[1] 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.[2] 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.[3] 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.[4]

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*.[5]

The Riegle-Neal Act permits a state to elect to "opt out" of 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.[6] In this Merger Application, the home states of the banks are Michigan and Illinois; neither state has opted out. Accordingly, this Merger Application may be approved under 12 U.S.C. §§ 215a-1 and 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)

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[1] 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").

[2] Id. at § 102(a) (adding new section 44, 12 U.S.C. § 1831u).

[3] Id. at § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1).

[4] Id. at § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

[5] 12 U.S.C. § 1831u(a)(1).

[6] 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws).

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. The Merger Application satisfies all these conditions to the extent applicable.

First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). According to this 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."[7] But the maximum age requirement permitted is five years.[8] In this Merger Application, while FOA and FOA-IL are combining under FOA's charter, the resulting bank will have its main office in Illinois under 12 U.S.C. § 1831u(d)(1).[9] Thus, in the context of this transaction, it is not clear which state is the host state for purposes of section 1831u(a)(5), and so which bank is subject to the age limit. On the one hand, FOA is acquiring a bank (FOA-IL) in the state of Illinois, and so Illinois could be viewed as the host state for age limit purposes. On the other hand, after the merger, the Resulting Bank's main office will be in Illinois, and so Illinois is the Resulting Bank's home state, and Michigan is the host state for the Resulting Bank going forward. Thus, Michigan could be viewed as the host state for age limit purposes as well. The OCC believes that the first view is the better interpretation for applying section 1831u(a)(5). However, we need not resolve this question here because the merger would satisfy the host-state imposed age limit under either view. The Illinois interstate bank merger statute currently contains a minimum time requirement of five years for which the Illinois bank must have been in existence.[10] Because FOA-IL was established in 1945, it satisfies the five-year requirement imposed by Illinois law under provisions of the Riegle-Neal Act. Because Michigan does not have an age requirement for interstate merger transactions, the age of FOA is irrelevant.

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

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[7] 12 U.S.C. § 1831u(a)(5)(A).

[8] 12 U.S.C. § 1831u(a)(5)(B).

[9] See Part II.B. below.

[10] 205 Ill. Comp. Stat. Ann. § 5/21.2(a) (West 1993 & Supp. 1998).

of the host state.[11] The Michigan statute requires that the state banking commissioner be notified through the filing of the federal merger application.[12] No other filings are required by the Michigan banking department.[13] FOA has provided a copy of its Merger Application to the Michigan state bank supervisor, as required by section 1831u(b)(1)(A)(ii). Thus, the FOA/FOA-IL merger satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed interstate merger transaction 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.[14] FOA and FOA-IL are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction 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")[15]; (2) take into account the CRA evaluations of any bank that would be an affiliate of the resulting bank; and (3) take into account the

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[11] 12 U.S.C. § 1831u(b)(1). 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 authority reserved 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).

[12] Michigan Statutes Ann. § 23.710(125a) (Law. Co-op. 1994 & Supp. 1998).

[13] The Illinois interstate bank merger statute does not contain any filing or notice requirements for an interstate merger transaction between two national banks or for a merger with a state bank when the resulting bank is a national bank. Illinois law does contain provisions addressing application requirements for a merger with an Illinois state bank, but these provisions apply only when an out-of-state state-chartered bank is involved and not when the out-of-state resulting bank is a national bank. See 205 Ill. Comp. Stat. Ann. § 5/21.1 (application for certificate of authority in interstate mergers with a state bank and other requirements for an out-of-state state-chartered bank); 205 Ill. Comp. Stat. Ann. § 5/20 (mergers with resulting national bank). See also 205 Ill. Comp. Stat. Ann § 5/2 (definition of "out-of-state bank" includes only state-chartered institutions; definition of national bank after May 31, 1997, includes out-of-state national banks).

[14] 12 U.S.C. § 1831u(b)(2)(E).

[15] 12 U.S.C. § 2903.

applicant banks' record of compliance with applicable state community reinvestment laws.[16] 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."[17] In this Merger Application, FOA (the bank submitting the application as the acquiring bank) has a bank affiliate in Illinois before the transaction (i.e., FOA-IL), 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 Merger Application. However, the Community Reinvestment Act itself is applicable.[18]

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.[19] As of the date the Merger Application was filed, both FOA and FOA-IL satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC also has determined that, following the merger, the Resulting Bank 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 merger transaction between FOA and FOA-IL is legally permissible under section 1831u.

B. Following the Merger, the Resulting Bank may Retain FOA's and FOA-IL's Existing Main Offices and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Merger Application has requested that, upon the completion of the merger, the Resulting Bank (National City Bank Michigan/Illinois) be permitted to retain and continue to operate FOA-IL's main office in Bannockburn as the main office of the Resulting Bank. Furthermore, the Resulting Bank desires to retain and continue to operate as branches (1) FOA's main office and its branches in Michigan and (2) FOA-IL's branches in Illinois.

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[16] 12 U.S.C. § 1831u(b)(3).

[17] 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

[18] See Part III below for further discussion.

[19] 12 U.S.C. § 1831u(b)(4).

In an interstate merger transaction 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.*[20]

The Resulting Bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]."[21] 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.*

Therefore, the Resulting Bank in this interstate merger transaction may retain and continue to operate all of the existing banking offices of both FOA and FOA-IL under 12 U.S.C. §§ 36(d) and 1831u(d)(1).[22]

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[20] 12 U.S.C. § 1831u(d)(1).

[21] 12 U.S.C. § 1831u(f)(11).

[22] 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 to 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).

Moreover, at its branches in Illinois, as well as those in Michigan, the Resulting Bank is authorized to engage in all activities permissible for national banks, including fiduciary activities.[23]

III. ADDITIONAL STATUTORY AND POLICY CONSIDERATIONS

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger or purchase and assumption transaction between insured depository institutions where the resulting institution will be a national bank. 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 that the merger may be approved under section 1828(c).

1. Competitive Analysis

The merger transaction set out in this Merger Application constitutes a transaction between affiliated institutions already owned by the same bank holding company. Therefore, the merger transaction involving FOA and FOA-IL will have no anti-competitive effects.

2. Financial and Managerial Resources

The financial and managerial resources of the two banks are presently satisfactory. As a result of the merger, the combined bank is expected to be able to improve its management and control systems through the organizational efficiencies that come with running a unified bank. In addition, future earnings will benefit from the cost savings that will result from the merger. The capital and reserves of the two banks will now be available to support activities throughout all the offices of the combined bank.

Thus, the merger has the potential to enhance the Resulting Bank's financial and managerial resources and future prospects. The financial and managerial resources of the Resulting Bank do not raise concerns that would cause this Merger Application to be disapproved. The future prospects of the resulting institution is considered favorable.

3. Convenience and Needs

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[23] 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 rights, franchises and interests, including fiduciary appointments, of the merging banks), and 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).

The Resulting Bank will help to meet the convenience and needs of the communities to be served. It will continue to serve the same areas in Michigan and Illinois that FOA and FOA-IL now serve, respectively. The application states that there will be no reductions in the banking products or services offered as a result of the merger. The Resulting Bank will offer a full line of NatCity banking products and services.

Upon approval and consummation of the merger, customers of each institution will have available to them a greater number of branches at which to bank, over a geographic area that will include Illinois and Michigan. Large corporate customers that have operations in both states will especially benefit from the convenience of a greater number of branches. It is also anticipated that the merger will permit the Resulting Bank to better serve its customers at a lower cost. The combined resources, including capital and reserves, of the currently separate institutions will provide a more substantial capital cushion for unexpected losses as well as provide business customers with higher legal lending limits.

No branches will be closed or opened as a result of this merger. NatCity's current plans do not include expansion of the existing FOA-IL branch or ATM network, nor has it formulated plans to expand further into the City of Chicago. Any future branch expansion will likely be the result of additional acquisitions in the area.

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

B. Compliance with Oakar Amendment

The merger of FOA and FOA-IL is an Oakar transaction governed by the provisions of 12 U.S.C. § 1815(d)(3) because the acquiring institution, FOA, is a SAIF-member institution and the target, FOA-IL, a BIF-member institution. An Oakar transaction may not be approved unless the resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.[24] The OCC has determined that the Resulting Bank will meet all applicable capital requirements. In fact, following the merger, the Resulting Bank will meet all of the tests to be considered well-capitalized institutions.[25]

C. Community Reinvestment Act

The CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications.[26] The types of applications that are

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[24] 12 U.S.C. § 1815(d)(3)(E)(iii).

[25] 12 C.F.R. § 6.4(b)(1). The requirements of 12 U.S.C. § 1815(d)(3)(F) do not apply to this transaction because FOA, the acquiring entity, is not a BIF member.

[26] 12 U.S.C. § 2903.

subject to review under the CRA include merger applications.[27] In undertaking this evaluation, the OCC considers the Federal CRA performance evaluation of each participating insured depository institution. Additionally, the OCC considers any public comment letter received related to any national bank participant. Based on the most recent examinations, FOA and FOA-IL have ratings of "Outstanding" with respect to CRA performance. No public comments were received by the OCC relating to the merger.[28]

The transaction is not expected to have any adverse effect on the Resulting Bank's CRA performance. It will continue to serve the same communities that the merging banks currently serve. Following the merger, the Resulting Bank, will have the same commitment to helping meet the credit needs of all the communities served by the merging banks. Furthermore, the merger and ensuing operation of interstate branches does not alter the Resulting Bank's obligation to help meet the credit needs of its communities in all the states it serves. Therefore, we find that approval of the proposed merger is consistent with the Federal CRA.

D. Other Considerations

The OCC also considered NatCity's plans to institute its CRA and fair lending policies and procedures at FOA-IL.[29]

With regard to affordable housing products and community investments, NatCity will bring additional benefits that were not available from FOA-IL. While FOA-IL offered affordable housing products, FOA-IL's practice was to originate only loans that met secondary market standards. NatCity's affordable housing product, Home at Last, can offer more flexible terms since those loans are maintained in the bank's portfolio. The underwriting criteria for these loans is less stringent than conventional products (e.g., higher debt-to-income ratios). NatCity will also manage community development investments as it does in the rest of its communities. The National City Community Development Corporation (NCCDC) will be responsible for community equity investments and originating community development loans. Local bank presidents[30] will be responsible for decisions regarding charitable contributions.

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[27] 12 C.F.R. § 25.29(a)(4).

[28] In connection with NatCity's filing to acquire First of America Bank Corporation, the Federal Reserve Bank of Cleveland received two comment letters. The allegations made in those letters, including concerns with the CRA performance record of FOA-IL, were thoroughly reviewed by the OCC in connection with NatCity's application for National City Bank of Indiana to acquire the Indiana branches of First of America, N.A., Kalamazoo, Michigan. The OCC concluded that the transaction was not expected to have any adverse effect on the Resulting Bank's CRA performance and that CRA considerations were consistent with approval of the transaction. See Decision of the Office of the Comptroller of the Currency on the application of National City Bank of Indiana, Indianapolis, Indiana to Acquire the Indiana branches of First of America, N.A., Kalamazoo, Michigan, pp. 6-13 (June 23, 1998).

[29] The OCC noted its intention to consider NatCity's plans to institute CRA and fair lending policies and procedures at FOA-IL in the decision order described in footnote 28.

[30] NatCity intends for the "local bank president" positions to be responsible for overseeing operations in their

The CRA and community development program management structure of the Resulting Bank will include local CRA officers who will have responsibility for implementing NatCity's CRA program in Illinois and for community outreach efforts. The CRA officer for the Resulting Bank will report directly to the local bank president thereby allowing some of the decision-making process to remain in Illinois.

NatCity also plans to establish a small business center in Illinois. The center will target the lending needs of small businesses throughout the state. This is consistent with the function of other small business centers throughout NatCity's communities. NatCity will also establish a Community Development Association (CDA) in Springfield, Illinois in reponse to requests from local community organizations. The CDA is a division of NCCDC and will employ a full-time outreach officer who will be responsible for identifying and helping to package community development loans and investments for submission to NCCDC. The CDA will work closely with a local advisory board, consisting of the local bank president, a CDA outreach officer and representatives from local community organizations.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of FOA and FOA-IL is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 and 1831u(a), the Resulting Bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) and 1831u(d)(1), and that the merger meets the other statutory criteria for approval. Accordingly, this Merger Application is hereby approved.

/s/ 07-14-98

Raymond Natter Date
Acting Chief Counsel

Application Control Number: 98-CE-02-0015

respective regional areas.