



Comptroller of the Currency
Administrator of National Banks

**Corporate Decision #2001-29
November 2001**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
NEUBERGER BERMAN TRUST COMPANY, NEW YORK, NEW YORK,
WITH AND INTO
NEUBERGER BERMAN NATIONAL TRUST COMPANY, SEATTLE, WASHINGTON**

September 28, 2001

I. INTRODUCTION

Neuberger Berman National Trust Company, Seattle, Washington, (“Neuberger National”) applied to the Office of the Comptroller of the Currency (“OCC”) for approval to merge Neuberger Berman Trust Company, New York, New York, (“NBTC”) with and into Neuberger National, under the charter and title of the latter, under 12 U.S.C. § 215a (the “Merger”). Neuberger National is a national bank whose operations are limited to those of a trust company and activities related thereto. It does not accept deposits and is not an insured bank. NBTC is a New York state chartered non-depository trust company whose activities are similarly limited. It also is not an insured bank. The two institutions are affiliated under common control by Neuberger Berman Inc.

Neuberger National operates trust offices in New York City and West Palm Beach, Florida, and a trust representative office in Los Angeles, California. NBTC operates trust representative offices in Los Angeles and San Francisco, California. In the proposed Merger the operations of the two trust companies will be combined under the national charter and the resulting national bank will have its main office in Seattle, trust offices in New York City and West Palm Beach, and trust representative offices in Los Angeles and San Francisco.

II. DISCUSSION

In the proposed Merger an uninsured national bank whose main office is in Seattle would merge with an affiliated uninsured state trust company in New York. National banks may merge with other entities under several statutory provisions addressing various kinds of mergers and entities. The one relevant to the proposed Merger here is 12 U.S.C. § 215a.¹ Under section 215a,

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 Act, may merge into a national banking association located within the same State, under the charter of the receiving association.

National Bank Consolidation and Merger Act § 3(a), 12 U.S.C. § 215a(a). Section 215a has various procedural requirements that Neuberger National has met. In addition, when the target bank is a state bank, the merger shall not be in contravention of the law of the state under which the state bank is incorporated. 12 U.S.C. § 215a(d). The proposed Merger is not in contravention of state law. NBTC is incorporated under New York law. No New York law prohibits a New York trust company from merging with a national bank.²

Neuberger National and NBTC also are located in the same state. NBTC is organized under New York law and has its principal office in New York. Clearly, it is located in New York. Neuberger National's main office is in Seattle, but it has a trust office in New York. Thus, the question is whether the operation of a trust office in New York makes Neuberger National, a national bank whose operations are limited to those of a trust company (and activities incidental thereto), "located" there for purposes of section 215a.

¹ The banks have different home states, and this is an interstate merger. However, it is not an interstate merger transaction authorized by, and subject to, the Riegle-Neal Act because the banks are not insured banks. *See* 12 U.S.C. § 1831u(a) (authorizing mergers between insured banks with different home states). The banks are affiliated. However, this is not a merger between a national bank and a nonbank subsidiary or affiliate authorized by 12 U.S.C. § 215a-3 because NBTC is a state bank for purposes of 12 U.S.C. § 215a. *See* 12 U.S.C. § 215b(1) ("State bank" means any bank, banking association, trust company, savings bank . . . which is incorporated under the laws of any State . . ."). Since it is a state bank for section 215a, we believe the better view is that it would not be considered a nonbank for section 215a-3, since these are sections of the same Act. However, arguably Congress intended any subsidiary or affiliate that is not a "bank" for purposes of the Bank Holding Company Act to be included within the scope of section 215a-3. In that case, NBTC would be a nonbank affiliate for section 215a-3 (as well as a state bank for section 215a), and the Merger clearly authorized under section 215a-3. Since the proposed Merger is also authorized under section 215a, we need not decide this issue in this application.

² Indeed, New York expressly permits state banks and trust companies to merge with national banks, including out-of-state national banks. N.Y. Banking Law § 600(6). *See also* N.Y. Banking Law § 225. Under New York law, an out-of-state national bank is a national bank the main office of which is located outside New York. N.Y. Banking Law § 222(3). Neuberger National is a national bank whose main office is in Seattle. Thus, it is covered by the statute even though it is limited to trust activities and is not insured.

For many years, the OCC has considered a national bank located in a state for purposes of mergers under section 215a or consolidations under section 215 if it has its main office or a branch there.³ In the case of a national bank whose operations are limited to trust functions, however, the bank will not have “branches,” since the bank’s trust offices will not engage in core branching activities.⁴ Nevertheless, in the context of such a limited purpose trust bank, the key fiduciary activities performed at a trust office⁵ in the state give the bank the relevant presence in the state to consider the bank “located” there.⁶ A limited purpose national trust bank is located in a state through an office that performs the key fiduciary activities, since those activities are the heart of its primary line of business, just as the branching activities of section 36(j) are the heart of traditional commercial banking. Neuberger National performs such key fiduciary activities in its New York trust office.

Accordingly, Neuberger National is located in New York for purposes of section 215a by virtue of its trust office in that state. Therefore, the proposed Merger is legally authorized.⁷

³ See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A. Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1, citing earlier OCC decisions). See also *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas, May 6, 1998) (reviewing OCC Corporate Decision No. 98-19; agreeing with OCC position that out-of-state bank was located in Texas for section 215a merger purposes because it had branches there).

⁴ For national banks, a “branch” is an office “at which deposits are received, or checks paid, or money lent.” 12 U.S.C. § 36(j). An office of a national bank at which the bank engages in other banking or trust activities, but does not engage in one of the core branching activities, is not a branch. See *Clarke v. Securities Industry Association*, 479 U.S. 388 (1987) (securities brokerage activities). See also *First National Bank of McCook, Nebraska v. Fulkerson, et al.*, Civil Action No. 98-D-1024, slip op. (D. Colo. March 7, 2000) (combination of deposit production office, loan production office, and ATM is not a branch because no core branching functions are performed); *Bank One, Utah v. Guttau*, 190 F.3d 844 (8th Cir. 1999), cert. denied sub nom. *Foster v. Bank One, Utah*, 529 U.S. 1087 (2000) (ATMs excluded from definition of branch).

⁵ A trust office is an office of a national bank, other than its main office or a branch, at which the bank engages in one or more of the following key fiduciary activities: accepting the fiduciary appointment, executing the documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary assets. 12 C.F.R. § 9.2(j).

⁶ The OCC previously adopted a similar interpretation of 12 U.S.C. § 92. We concluded that a national trust bank is considered to be “located and doing business” for purposes of 12 U.S.C. § 92 where it has a trust office that performs the key fiduciary activities and, hence, may sell insurance from such office. See OCC Interpretive Letter No. 877 (December 13, 1999).

⁷ Because both Neuberger National and NBTC are not insured institutions, the Bank Merger Act and the Community Reinvestment Act do not apply to this transaction.

III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the Merger of NBTC into Neuberger National is legally authorized under 12 U.S.C. § 215a. The transaction raises no supervisory and policy concerns. Accordingly, the application is hereby approved.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the government of the United States of America ("U. S."), any agency or entity of the U.S., or an officer or employee of the U.S, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

Signed

September 28, 2001

Alan Herlands
Director
Licensing Operations

Date

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