



**Comptroller of the Currency
Administrator of National Banks**

Washington, D.C. 20219

**Corporate Decision #97-53
July 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
BANK OF AMERICA ILLINOIS, CHICAGO, ILLINOIS, WITH AND INTO
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
SAN FRANCISCO, CALIFORNIA**

June 25, 1997

I. INTRODUCTION

On January 21, 1997, Bank of America National Trust and Savings Association, San Francisco, California ("BANTSA") applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge Bank of America Illinois, Chicago, Illinois ("BAI") with and into BANTSA under BANTSA's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). BANTSA has its main office in San Francisco and operates branches in California, Alaska, Arizona, Idaho, Nevada, New Mexico, New York, Oregon, and Washington. BAI has its main office in Chicago, Illinois, and does not have any domestic branches. BAI engages primarily in an institutional and wholesale-oriented banking and trust business. In the Merger Application, OCC approval is also requested for the resulting bank to retain BANTSA's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain BANTSA's branches and BAI's main office, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Both BANTSA and BAI are subsidiaries of BankAmerica Corporation ("BAC"), a multistate bank holding company headquartered in San Francisco, California. In the proposed merger, two of BAC's existing bank subsidiaries will be combined into one bank with branches.

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 & 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. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

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

12 U.S.C. § 1831u(a)(1).¹ The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between 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 Merger Application, the home states of the banks are California and Illinois; neither state has opted out. Accordingly, this Merger Application may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the 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.

BANTSA's and BAI's 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). 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

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

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 Merger Application, BANTSA is acquiring by merger a bank (BAI) in the host state of Illinois. In a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Illinois interstate bank merger statute currently contains no minimum time requirement for which the Illinois bank must have been in existence.² Thus, the Merger Application satisfies the Riegle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).³ The Illinois interstate bank merger statute does not contain any filing or notice requirement 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.⁴ BANTSA and BAI submitted two copies of the OCC Merger Application to the Illinois state bank commissioner, as

² The Illinois legislature passed a bill amending the state's interstate bank merger statute to introduce a five-year age requirement, but that legislation has not yet been enacted and therefore is inapplicable to the present transaction. See Senate Bill 690, Illinois 90th General Assembly. Moreover, BAI has been in existence for more than five years, and so the five-year age limit, if it were applicable, would be met.

³ 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).

⁴ The Illinois statute does contain provisions addressing application requirements for a merger with a national bank, and these provisions apply only when an out-of-state state 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 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). In addition, the filing requirements of section 1831u(b)(1) apply only with respect to the host states that will become host states as a result of the merger transaction under review in the application, not the host states in which the acquiring bank already operates branches. See Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 7, note 9). Thus, for this merger transaction, BANTSA must comply with the filing requirements of section 1831u(b)(1) for Illinois, not for California, Washington, Oregon, Idaho, and the other states in which it already operates branches.

required by section 1831u(b)(1)(ii), along with a letter notifying the commissioner of the proposed merger. BANTSA advises that it was informed by the commissioner's staff that nothing further was required. Thus, the Merger Application satisfies the Riegle-Neal Act requirement of compliance with state 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. See 12 U.S.C. § 1831u(b)(2)(E). BANTSA and BAI 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"), 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 this Merger Application, BANTSA (the bank submitting the application as the acquiring bank) has a bank affiliate in Illinois before the transaction (i.e., BAI), 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, 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, both BANTSA and BAI 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, BANTSA 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 BANTSA and BAI is legally permissible under section 1831u.⁵

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

The applicants have requested that, upon the completion of the merger, BANTSA (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in San Francisco 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 office of BAI in Chicago. 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.

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

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, BANTSA, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both BANTSA and BAI under 12 U.S.C. §§ 36(d) & 1831u(d)(1).⁶

⁵ BAI currently has a number of subsidiaries, as listed in the Merger Application. By operation of the merger, they will become subsidiaries of BANTSA. BAI was a national bank before its conversion to a state bank in 1994, and its subsidiaries are permissible for a national bank. Accordingly, BANTSA may acquire them in the merger.

⁶ 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

Moreover, at its branch in Chicago, as well as those in its other host states, BANTSA 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 operation 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).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

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

1. Competitive Analysis.

Since BANTSA and BAI are already owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of both banks are presently satisfactory. BANTSA expects to achieve efficiencies by operating the office in Chicago as a branch rather than as a separate corporate entity. 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 Application.

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).

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. BANTSA will continue to serve the same areas in California and the other states where it has branches, and it will add BAI's office in Chicago. BANTSA currently offers a full line of banking services and will continue to do so at its existing locations. The branch in Chicago will continue to engage in the same business that BAI is currently engaged in, which is primarily a wholesale-oriented banking and trust business. In addition, BANTSA and other BANTSA affiliates currently offer some financial services in Chicago. Thus, there will be no reduction in the products or services offered as a result of the merger. No branch closings are contemplated as a result of this merger since the two banks serve different areas. However, as part of its ongoing business plans, BANTSA continually evaluates its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

The OCC received comment letters on the Merger Application from twenty-one interested parties. The vast majority were favorable and praised BAI for its commitment to the City of Chicago and for BAI's record of lending to small businesses. One commenter -- Shorebank Corporation -- praised BAI's record and community leadership and also expressed its hope that the merger would not reduce the strength of BAC's local commitment and local decision-making authority.

Two other commenters expressed more reservations about the potential for loss of local control that might occur when BAI merged into BANTSA. One of those commenters, Neighborhood Housing Services of Chicago, Inc. ("NHSC"), praised BAI's record but also expressed serious concerns about the loss of local control issue. The other commenter expressing concerns, the National Training and Information Center ("NTIC"), criticized BANTSA and BAI, alleging shortcomings in various areas, as discussed below, and protested the Application.

After the initial NTIC protest letter of February 19, 1997, was received, the OCC removed this Merger Application from expedited processing. The NTIC protest letter, and NHSC's comment letter of February 20, 1997, suggested the need for greater analysis of the prospective impact of the merger on the convenience and needs of the customers of the combined financial institution and of the CRA performance of the two banks. In gathering additional information, OCC staff in Chicago met with representatives of NTIC on March 21, 1997, and requested additional information from NTIC. NTIC sent in additional material in letters dated March 27, 1997, and April 11, 1997. BANTSA, BAI, and BAC also supplied additional information.

NTIC objected to the merger, and NHSC raised concerns, on the basis that the merger would result in loss of local control over the day-to-day activities of the banking operations in Chicago and the branch in Chicago would not have the ability to make important lending and investment decisions that affect the Chicago market and neighborhoods. (NTIC also criticized BANTSA's and BAI's performance under the Community Reinvestment Act, as discussed in Part

III-B below.) The OCC reviewed BAI's current operational structure and compared it to the planned structure after the merger. BankAmerica Corporation ("BAC") acquired BAI in 1994. Since then, the ultimate control of BAI has rested with its corporate parent, and today many activities are managed and coordinated on a company-wide basis throughout all BAC's subsidiaries. Certain decisions and other daily operating practices are delegated to its local managers. After the merger, when BAI becomes a branch of BANTSA, these coordinating and reporting relationships will continue. BANTSA also has stated its expectation to have local advisory boards to provide advice to BAC and BANTSA on local matters. A more detailed discussion of issues relating to local control is contained in the OCC's letters to NTIC and NHSC, which are attached as Appendices A and B, respectively, and incorporated by reference in this decision statement.

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger 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. BANTSA has an outstanding rating with respect to CRA performance. BAI, a state member bank, has a satisfactory rating assigned by the Federal Reserve System.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance or on the CRA-related loans, investments, or services offered in BANTSA's and BAI's assessment areas. BANTSA will continue its current CRA programs and policies in California and the other states where it has branches. After BAI is merged into BANTSA, its Chicago office will remain open as a branch of BANTSA. The Chicago branch's local community, or assessment area, will be the same area as BAI's (Cook County, Illinois), and it will continue the same CRA program that BAI had in effect. Moreover, BANTSA has represented that it will honor all CRA-related commitments made by BAI. BANTSA expects that, at this time, the Chicago branch directly will engage primarily in the wholesale-oriented banking and trust business currently engaged in by BAI. BANTSA, through nationwide consumer and business lending programs that are administered from California, also offers certain consumer and small business lending products in Chicago.

In its protest, NTIC expressed concern over BAI's wholesale orientation and alleged that this allowed BAI to avoid its CRA obligations. We have carefully evaluated this concern and have concluded that such avoidance will not result from the merger. While BAI is primarily a wholesale-oriented bank, it has not been designated a "wholesale or limited purpose bank" for CRA purposes under 12 C.F.R. § 25.25. The Federal Reserve Bank of Chicago ("FRBC") conducted a full-scope CRA examination as of June 26, 1995, and accorded the bank a CRA rating of "Satisfactory." The FRBC's evaluation of BAI took into account the bank's wholesale orientation. The examination did not disclose substantive violations in any area, including consumer compliance, fair lending, and CRA. After the merger, when BAI becomes a branch

of BANTSA, the OCC will evaluate the performance of BANTSA's Illinois operations as part of the OCC's evaluation of BANTSA by applying the lending, investment, and service tests set forth in 12 C.F.R. §§ 25.22, 25.23 & 25.24. Thus, the resulting bank is fully subject to CRA. While BANTSA as a whole is a full-service bank that includes extensive retail operations, its business strategy in Chicago will be one of several factors the OCC will take into account in determining the performance context when evaluating BANTSA's CRA performance, consistent with applicable regulatory provisions. In addition, BANTSA may request that OCC consider the activities of its affiliates when evaluating its CRA performance.

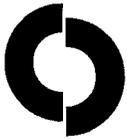
NTIC also criticized BAC's, BANTSA's, and BAI's lending and service records in the Chicago area, stating that they do not fully serve low- and moderate-income communities, do not provide enough small business lending, and practice "redlining" of certain communities in mortgage lending. The FRBC's CRA examination of BAI in 1995 did not disclose substantive violations in any area including consumer compliance, fair lending or CRA. Based on our review of BANTSA's record, our discussions with representatives of the FRB regarding the 1995 examination of BAI, and discussions with the Office of Thrift Supervision regarding an affiliated BAC thrift's lending in Chicago, we find no evidence of prohibited discriminatory or other illegal credit practices. Neither the FRBC's review of BAI nor the OCC's review of BANTSA leads us to conclude that the banks' performance in this respect is less than satisfactory.

A more detailed description of the issues raised by the protest and our findings are contained in the OCC's letter to NTIC (attached as Appendix A), which is incorporated herein by reference.

In summary, our investigation and analysis of the issues raised by commenters did not find any grounds that would serve as a basis for denial or conditioning the approval of the Merger Application. Accordingly, we find that approval of the proposed merger 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 the merger of BANTSA and BAI is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), the resulting



Comptroller of the Currency
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Washington, DC 20219

ATTACHMENT A

June 25, 1997

Ms. Gale Cincotta
Executive Director
National Training and Information Center
810 N. Milwaukee Ave.
Chicago, IL 60622-4103

Re: Merger Application filed by Bank of America, NT&SA, San Francisco, CA, and Bank of America Illinois, Chicago, IL
Application Control Number 97-ML-02-0001

Dear Ms. Cincotta:

This is to notify you that the OCC has approved the merger between Bank of America, NT&SA, San Francisco, CA ("BANTSA") and Bank of America Illinois, Chicago, IL ("BAI"), as described in the attached copy of our decision statement. In reaching this decision, the OCC considered the comments you made in your letters of February 19, March 27, and April 11, 1997, and those that you, and your associate, Lindsay Durr, expressed at a meeting with OCC staff on March 21, 1997. We also considered comments received from others. As you know, we removed the application from our expedited review procedures in order to fully explore the issues raised in your written and oral comments.

In reviewing a merger application of this type, the OCC is required to consider, among other factors, the potential effect of the transaction upon competition, the convenience and needs of the community, and the applicants' records of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods. In fulfilling this responsibility, and in analyzing the comments that you submitted, the OCC reviewed the Community Reinvestment Act ("CRA") record of the applicant, BANTSA, as well as the record of BAI, and conducted additional inquiries to further explore the specific concerns that you raised. In particular, during the course of our additional inquiries, we were able to obtain information and representations from BANTSA addressing the issues you raised.

The remainder of this letter discusses in detail, by topic area, your concerns and how we dealt with the issues in our analysis of the proposed transaction. The specific issues that you raised generally fall under five topic areas: 1) local control; 2) the experience of other community organizations; 3) BAI's wholesale orientation; 4) serving the convenience and needs of the community; and 5) BANTSA's plans to meet the community's needs.

Local Control

In your letters, you expressed concern that the proposal to merge BAI into BANTSA will result in a loss of local control and that, with power and control located in California-headquartered BANTSA, BAI's management will no longer have the ability to make important lending and investment decisions that affect the Chicago market and neighborhoods.

In response to your concerns, the OCC carefully reviewed BAI's current operational structure and compared it to BANTSA's planned structure after the merger. In several respects, we sought specific clarifications and representations from BANTSA in connection with this subject. In summary, the key facts are as follows:

BankAmerica Corporation ("BAC") acquired BAI, the former Continental Bank, on September 1, 1994. As indicated in the merger application, the CRA programs of BAC subsidiary banks are currently coordinated and monitored by the Corporate Community Development Department of BANTSA. BANTSA's Social Policy Committee (a subcommittee of BANTSA's Managing Committee) and its Public Policy Committee (a committee of BANTSA's Board of Directors) today provide management and board-level oversight of all CRA programs throughout BAC, including those currently carried out at BAI. BAC delegates certain decisions and other daily operating practices to local officials, including the management of each subsidiary bank. BANTSA has a CRA officer in each state in which it has branches, and BAI has a CRA officer in Illinois who, along with other community development staff, reports to state-level management. BAI also has a Local Advisory Board which provides general business advice to BAI's management. In addition, all but one of the members of the Board of BAI's Community Development Corporation are from the local area. In BAI's designated assessment area, Cook County, certain retail products and additional community development activities are delivered by its affiliated thrift institution, Bank of America FSB ("FSB").

In his March 6, 1997, letter to the OCC, a copy of which was also sent to you, BAC's Executive Vice President, Donald Mullane, identified additional mechanisms that BAC has put in place to support its understanding of and responsiveness to local needs in Chicago. These include: the establishment of a Mid-West CRA/Fair Lending Coordination Team and a Community Development Group in Illinois, increasing the number of community members on the Community Development Advisory Board, and requiring that grants, investments in local initiatives, and the terms and conditions of community development loans, be reviewed locally. In his May 30, 1997, letter to the OCC, a copy of which was also sent to you, Mr. Mullane noted that the Board of Directors of BAI's Community Development Corporation consists mostly of community members who have provided valuable input on local community development needs and opportunities in Chicago.

After the merger, BAI will become a branch of BANTSA. Mr. Mullane has stated in his March 6 letter that, after the merger, BAC will continue the mechanisms that it has put in

place, as described above, to support its understanding of, and responsiveness to, local needs and has committed to continue existing programs in Chicago. In its merger application, BANTSA represents that it will delineate Cook County as its sole CRA assessment area within Illinois. BANTSA indicates that it plans to maintain and enhance local responsiveness and to support its goal of achieving an "Outstanding" CRA rating in each state in which BANTSA has an assessment area, including Illinois. In support of this goal, BANTSA states that there will be virtually no change in its internal processes that affect CRA performance. To ensure sensitivity to the local market, CRA programs in Illinois will maintain their community-level focus: loans will continue to be processed in the same regional processing centers; local marketing staff in the various states will continue to work with regional marketing hubs; and affordable housing and government-guaranteed small business lending will still be provided by Bank of America FSB.

After the merger, the main office of BAI will be known as the MidWest Regional Headquarters of BANTSA. In Cook County, existing BAI units will continue to provide community development loans, investments and grants, and small business loans. BANTSA will continue to maintain a community-based CRA officer and community development staff in Illinois. Furthermore, BAC will continue to apply the resources of all relevant affiliates to support its CRA goals in each state in which it has an assessment area, including Illinois. In addition, the CRA plan contained in the application stated that all CRA commitments made by BAI will be honored by BANTSA. Mr. Mullane, in his May 30, 1997, letter also indicated that, if further internal restructuring occurs, BAC expects to retain the Community Development Corporation's board as a local advisory board to provide advice to BANTSA's Chicago branch. BAC also has stated that, after the merger, the current BAI Local Advisory Board will continue to provide business advice to BANTSA management in Illinois. Thus, on the basis of all the foregoing, we are unable to conclude that the merger would negatively effect BANTSA's responsiveness to local needs.

Experience of Other Community Organizations

You commented that, after speaking with a number of organizations that have had experience with Bank of America branches, you became concerned that BANTSA will apply pre-developed programs that may not be suitable in the Chicago area.

The OCC contacted representatives of the community organizations that you suggested were dissatisfied with the services they received from BANTSA or its affiliates. We were unable to confirm that these organizations were dissatisfied with BANTSA's performance. Ms. Connie Hogland of the Boise Neighborhood Housing Services, Inc. reported that her organization has had a "good, long-standing and mutually beneficial relationship with Bank of America Idaho/California since 1992." OCC representatives also met with Ms. Malloy, Executive Director of the Portland Housing Center, on May 16, 1997. Although Ms. Malloy expressed some dissatisfaction with previous BAC participation in community revitalization efforts, she reported that recent meetings with BAC representatives have resulted in increased commitment to her project and a renewed commitment to fund a program for reducing

affordable mortgage down payments and closing costs. OCC representatives also contacted a representative of the Texas Neighborhood Housing Services in San Antonio, who declined to provide any comments for the public record of this application.

In addition, the OCC received 17 letters supporting the merger from a variety of community organizations and minority and small business owners in the Chicago area. For example, Ms. Sylvia Ruffin, Vice President of the Chicago Urban League, wrote to express her satisfaction with BAI's support of her organization. Ms. Ruffin stated that her organization has an excellent relationship with BAI and feels assured that the same level of service and commitment will continue after the merger with BANTSA.

BAI's Wholesale Orientation

You have also expressed concern over BAI's wholesale orientation and the implications for compliance with the CRA.

The Federal Reserve Bank of Chicago conducted a full-scope CRA examination of BAI as of June 26, 1995, and accorded the bank a CRA rating of "Satisfactory." The FRB's evaluation took into account the bank's wholesale orientation. The examination did not disclose substantive violations in any area, including consumer compliance, fair lending or CRA. The FRB noted that, in general, the bank did not serve consumers and had divested all retail accounts except for those for high net worth customers in 1988. The report also indicated that the bank's lending patterns were similar to those evident in the bank's customer calling program, which was declining in low- and moderate-income and minority areas.

After the merger, the former BAI operation will become a branch of BANTSA. The OCC will evaluate the performance of BANTSA's Illinois operations as part of the OCC's CRA evaluation of BANTSA by applying the lending, investment and service tests set forth in 12 CFR §§ 25.22, .23 and .24.

Under the lending test, the OCC evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering the bank's home mortgage, small business, small farm, and community development lending. Under the investment test, the OCC evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader area that includes the assessment area(s). Under the service test, the OCC evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

In your letters, you questioned whether BANTSA's activities at its Illinois branch will satisfy those CRA tests if the branch maintains the former BAI operation's focus on wholesale activities. The answer will depend on the type and volume of activities performed by the bank in Cook County, and on other factors described below. In particular, the OCC will

consider: (1) the “performance context” of the bank’s activities; (2) all of BANTSA’s activities in the Cook County assessment area, whether performed by the Illinois branch or by other BANTSA units; and (3) if BANTSA requests, the activities of BANTSA’s affiliates in the assessment area.

First, under the CRA regulations, the OCC must consider the performance context in which a bank renders its activities. The performance context includes consideration of the bank’s product offerings and business strategy; demographics of BANTSA’s assessment areas; opportunities for lending, investment, and services in those areas; BANTSA’s institutional capacity and constraints; its past performance; the performance of similarly situated lenders; and any other relevant information. *See* 12 CFR § 25.21(b). Thus, a business decision to offer limited types of banking services would be one, but only one, of the factors the OCC would take into account in determining the performance context when evaluating a bank’s CRA performance.

Second, in order to evaluate BANTSA’s performance in its Cook County assessment area, the OCC will consider all of the activities offered by BANTSA in that assessment area. This review will include the activities offered directly by the Illinois branch as well as those provided by BANTSA’s other units. For example, the OCC will consider the small business loans offered in the assessment area by BANTSA’s Business Banking Unit and, at BANTSA’s request, the consumer loans made in Cook County by BANTSA’s National Consumer Assets Group.

Finally, the OCC will also consider, if BANTSA requests, the activities of BANTSA’s affiliates in the assessment area. Under the CRA regulations, a bank may ask the OCC to consider loans made by an affiliate of the bank as part of the bank’s CRA performance evaluation. *See* 12 CFR § 25.22(c). The regulations recognize that a holding company may, for business reasons, choose to transact different aspects of its business in entirely different subsidiary institutions. The method by which loans are allocated among the institutions for CRA purposes must reflect actual decisions about the allocation of banking business among the affiliated institutions and may not be designed solely to enhance their CRA evaluations.

In the attached interagency interpretive letter dated February 21, 1996, the federal financial institutions supervisory agencies clarified that the decision to allocate loans among affiliates is subject to two important restrictions. The first restriction prohibits more than one institution from counting the same loan origination or the same loan purchase. Thus, BANTSA may ask the OCC to consider loans made by FSB in the Cook County assessment area *only* if FSB informs its regulator not to consider the same loans during FSB’s CRA evaluation. And, BANTSA must provide data on the FSB loans that it wishes the OCC to consider before our examiners will consider those loans during BANTSA’s evaluation.

The second restriction requires a bank that elects to count loans originated or purchased by an affiliate in a particular category, such as home mortgages, to count all of the loans in that lending category made in that area by all affiliated institutions. The February 21, 1996,

interagency letter clarifies how this restriction would be applied to affiliated institutions, such as BANTSA and FSB, that share overlapping assessment areas and are both subject to CRA. In that context, *each* loan origination and purchase in the assessment area made by BANTSA or FSB must be considered in the CRA evaluation of *either* BANTSA *or* FSB. However, the letter clarified that *all* of the loan originations and purchases do not have to be considered in the CRA evaluation of only one of the institutions. Subject to these restrictions, as part of BANTSA's CRA evaluation for its Cook County assessment area, BANTSA may ask the OCC to consider FSB's lending in that area.

Serving the Convenience and Needs of the Community

You also expressed concern about BAC's commitment to meeting the convenience and needs of the Chicago area and, as evidence, cited BAC's lending goals outlined in Exhibit CRA 2 of the application, as well as other loan and deposit statistics.

Small Business Lending:

The 10-year goals described in Exhibit CRA-2 of the application are corporation-wide goals set in 1992, for certain types of loans made in connection with BAC's acquisition of Security Pacific Corporation. When BAC acquired Continental, in September 1994, it made a commitment that between January 1, 1995, and December 31, 1999, BAI would extend \$1 billion in loans to businesses in low- or moderate-income census tracts, small business loans, or financing for affordable housing or economic development. As of December 31, 1996, BAI had already lent \$710.6 million under this commitment, including \$78 million in loans to small and minority- and women-owned businesses.

You also expressed concern that BAI is not providing direct lending to small businesses. As noted above, BAI has made a significant number of loans to small businesses since it was acquired by BAC less than three years ago. The average size of the loans in 1995 and 1996 that BAI considers small business loans is within the definition of small business loans adopted by the federal bank regulatory agencies, which include business loans with an original amount of \$1 million or less. Almost 24% of BAI's small business loans were in low- and moderate-income Chicago census tracts. This performance is consistent with business demographics for Cook County in that 26% of Cook County businesses, with sales of less than \$1 million, are located in low- and moderate-income census tracts.

As previously noted, the OCC received 17 letters from a variety of community organizations and minority- and small-business owners in the Chicago area expressing satisfaction with BAI's CRA performance. For example, we received comments praising BAI's small- and minority-business lending record from Pugh, Jones & Johnson, P.C., a 10-person African-American owned law firm that stated: "The Bank's commitment to us as a minority-owned business has been essential to our ability to compete successfully." In addition to these 17 letters, we also received a letter from Ron Grzywinski, chairman of Shorebank Corporation,

complimenting BAI's leadership in helping Shorebank with its community development activities.

Mortgage Lending:

You also expressed concern over the adequacy of mortgage lending to low- and moderate-income areas currently (noting limited mortgage lending by BANTSA in Chicago), and after the proposed merger. As noted earlier, the FRB's most recent CRA examination of BAI did not find any evidence of redlining. Chicago is not presently a part of BANTSA's CRA assessment area and, therefore, BANTSA is currently under no obligation to make or purchase mortgages in Chicago.

BAI has supported affordable housing programs in Cook County in numerous ways. It provides the not-for-profit Neighborhood Housing Services of Chicago with a \$40 million revolving credit line and has made a \$60 million commitment to the Community Investment Corporation for rehabilitating multifamily rental properties. In addition, BAI has funded construction loans for the Woodlawn development on Chicago's south side and for projects involving the Chicago Urban League Development Corporation, the Neighborhood Housing Services Redevelopment Corporation, and the Near West Side Community Development Corporation, among others.

After the merger, Cook County will become one of BANTSA's assessment areas. In future CRA examinations, as noted earlier, OCC examiners will be apply the lending, investment, and service tests when evaluating BANTSA's performance in Cook County. In this connection, we will consider BANTSA's mortgage lending in Cook County and, if the bank requests, mortgage lending by its affiliates.

Bank of America FSB:

You expressed concern about the adequacy of services provided by FSB in the Chicago area. FSB's CRA performance was rated "Outstanding" by the OTS at its most recent examination, on January 13, 1995. BAC has advised us that as of March 1997, FSB has established 30 financial service centers that promote loan availability and 96 ATMs in Cook County. Five of the financial service centers are in low-and moderate-income areas. You also questioned whether FSB had established any operations on the west side of Chicago. BAC advised us that FSB has established presences in three Jewel and Jewel-Osco stores on the west side of Chicago, on North Kostner, North Paulina, and West Harrison streets.

You also expressed concern that FSB was expanding in Jewel stores only to obtain deposits. It is our understanding that, to date, the deposit taking activity of the FSB in Cook County has been nominal. As of year end 1996, FSB's deposits from all of its offices in Illinois totaled \$48 million. In its HMDA disclosure statement, FSB reported booking \$479 million in residential loans in Illinois in 1996.

You also questioned the appropriateness of BAC claiming FSB's home loans and small business loans as justification for BAI not doing direct consumer lending. As explained above, under the CRA regulation, a bank may ask the OCC to consider loans made by an affiliate of the bank as part of the bank's CRA performance evaluation. Subject to the restrictions explained in the attached interagency letter, BANTSA may ask the OCC to consider FSB's lending in the Cook County assessment area as part of OCC's evaluation of BANTSA in that area.

You also indicated that FSB's record suggests that it excludes low- and moderate-income Chicago neighborhoods, individuals, and small businesses. As we previously noted, the OTS' most recent CRA evaluation of FSB resulted in an "Outstanding" rating. The public evaluation from that examination reported positively on the three relevant FSB operations. Of the FSB's Community Development Division, OTS stated, "In essence, this division's sole business is the making of loans that fulfill the purposes of the CRA, providing not only take-out financing, but also construction financing for multi-unit affordable housing and economic development. The division has taken a leadership role in participating in public/private partnerships to finance local community development and redevelopment projects throughout its community." The OTS described FSB's Housing Services Division's specialized line of business as effectively serving lower-income areas. Finally, OTS concluded that the FSB's Mortgage Division had "an excellent record of lending in lower income segments of its markets." The OTS evaluation did not indicate exclusions of the type you described. However, the OTS evaluation generally described the FSB's aggregate operations and did not specifically address its activities in Chicago. When OCC conducts its CRA examinations after the merger, it will provide conclusions about BANTSA's performance in the Cook County assessment area as part of its public evaluations.

Plans to Meet the Community's Needs

You also expressed concern that BAC is not sufficiently specific about how BANTSA will meet its Chicago area CRA obligations after the merger. In evaluating merger applications, the OCC looks at both the applicants' CRA records and the probable effects on the convenience and needs of the affected community. BANTSA's most recent CRA rating (May 9, 1995) is "Outstanding" and BAI's most recent rating (May 26, 1995) is "Satisfactory." No information available to the OCC indicates that more recent events would result in a conclusion that the CRA records of performance of these banks are inconsistent with approval of the application. Although the applicants are not required to describe their detailed plans for seeking an "Outstanding" CRA rating, in response to a request from the OCC, Mr. Mullane provided, in his May 30 letter, additional information on how BAC's CRA plan for Illinois addresses the CRA evaluation criteria.

In light of the current records of performance, the applicants' stated goals, and representations made in connection with this application, we are unable to conclude that the effects on the convenience and needs of the community would be adverse or inconsistent with approval of the transaction. After considering all relevant matters, including the issues that you raised, the

OCC determined to approve the transaction. We appreciate your interest in the merger and your raising issues that warranted our review. A copy of our decision document relating to the acquisition is attached for your convenience. If you have any questions, please feel free to call me at (202) 874-5060.

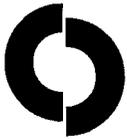
The OCC also welcomes your input on how well you believe BANTSA and other national banks are meeting their obligations under the Community Reinvestment Act, not just when they file applications with us, but on an on-going basis.

Sincerely,

/s/

Alan Herlands
Director for Licensing Policy and Systems

Attachments



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

ATTACHMENT B

June 25, 1997

Mr. Bruce A. Gottschall
Executive Director
Neighborhood Housing Services of Chicago, Inc.
747 N. May Street
Chicago, IL 60622

Re: Merger Application filed by Bank of America, NT&SA, San Francisco, CA, and Bank of America Illinois, Chicago, IL
Application Control Number 97-ML-02-0001

Dear Mr. Gottschall:

Please be advised that the OCC today approved the merger between Bank of America, NT&SA, San Francisco, CA ("BANTSA") and Bank of America Illinois, Chicago, IL ("BAI"), as described in the attached copy of our decision statement. In reaching this decision, the OCC considered the comments you made in your letter of February 20, 1997. As you know, we removed the application from our expedited review procedures as a result of your and other comments. Overall, although you were complimentary of BAI's relationship with your organization, you expressed concern that the transaction would result in a loss of local control that would not be beneficial to Chicago's neighborhoods. This letter summarizes how we addressed the issue in our analysis of the proposed transaction.

In response to your concern, the OCC carefully reviewed BAI's current operational structure and compared it to BANTSA's planned structure after the merger. In several respects, we sought specific clarifications and representations from BANTSA in connection with this subject. In summary, the key facts are as follows:

BankAmerica Corporation ("BAC") acquired BAI, the former Continental Bank, on September 1, 1994. As indicated in the merger application, the CRA programs of BAC subsidiary banks are currently coordinated and monitored by the Corporate Community Development Department of BANTSA. BANTSA's Social Policy Committee (a subcommittee of BANTSA's Managing Committee) and its Public Policy Committee (a committee of BANTSA's Board of Directors) today provide management and board-level oversight of all CRA programs throughout BAC, including those currently carried out at BAI. BAC delegates certain decisions and other daily operating practices to local officials, including the management of each subsidiary bank. BANTSA has a CRA officer in each state

in which it has branches, and BAI has a CRA officer in Illinois who, along with other community development staff, reports to state-level management. BAI also has a Local Advisory Board which provides general business advice to BAI's management. In addition, all but one of the members of the Board of BAI's Community Development Corporation are from the local area. In BAI's designated assessment area, Cook County, certain retail products and additional community development activities are delivered by its affiliated thrift institution, Bank of America FSB ("FSB").

In his March 6, 1997, letter to the OCC, a copy of which was also sent to you, BAC's Executive Vice President, Donald Mullane, identified additional mechanisms that BAC has put in place to support its understanding of and responsiveness to local needs in Chicago. These include: the establishment of a Mid-West CRA/Fair Lending Coordination Team and a Community Development Group in Illinois, increasing the number of community members on the Community Development Advisory Board, and requiring that grants, investments in local initiatives, and the terms and conditions of community development loans, be reviewed locally. In his May 30, 1997, letter to the OCC, a copy of which was also sent to you, Mr. Mullane noted that the Board of Directors of BAI's Community Development Corporation consists mostly of community members who have provided valuable input on local community development needs and opportunities in Chicago.

After the merger, BAI will become a branch of BANTSA. Mr. Mullane has stated in his March 6 letter that, after the merger, BAC will continue the mechanisms that it has put in place, as described above, to support its understanding of, and responsiveness to, local needs and has committed to continue existing programs in Chicago. In its merger application, BANTSA represents that it will delineate Cook County as its sole CRA assessment area within Illinois. BANTSA indicates that it plans to maintain and enhance local responsiveness and to support its goal of achieving an "Outstanding" CRA rating in each state in which BANTSA has an assessment area, including Illinois. In support of this goal, BANTSA states that there will be virtually no change in its internal processes that affect CRA performance. To ensure sensitivity to the local market, CRA programs in Illinois will maintain their community-level focus: loans will continue to be processed in the same regional processing centers; local marketing staff in the various states will continue to work with regional marketing hubs; and affordable housing and government-guaranteed small business lending will still be provided by Bank of America FSB.

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Development Corporation's board as a local advisory board to provide advice to BANTSA's Chicago branch. BAC also has stated that, after the merger, the current BAI Local Advisory Board will continue to provide business advice to BANTSA management in Illinois. Thus, on the basis of all the foregoing, we are unable to conclude that the merger would negatively effect BANTSA's responsiveness to local needs.

After considering all relevant matters, including the issue you raised, the OCC determined to approve the transaction. Nevertheless, we appreciated your interest in the transaction and your raising an issue that warranted our review. If you have any questions, please feel free to call me at (202) 874-5060.

As you know, OCC would welcome your keeping us apprised of your perception of how well BANTSA and other national banks are meeting their obligations under the Community Reinvestment Act of 1997, not just when they file applications with us, but on an on-going basis.

Sincerely,

/s/

Alan Herlands
Director for Licensing Policy and Systems

Attachment - Interpretive Letter #710 (March 1996)