



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**Corporate Decision #99-40
December 1999**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
PLATTE VALLEY NATIONAL BANK, SCOTTSBLUFF, NEBRASKA, AND
PLATTE VALLEY NATIONAL BANK-MORRILL, MINATARE, LYMAN,
MORRILL, NEBRASKA**

November 9, 1999

I. INTRODUCTION

Platte Valley National Bank, Scottsbluff, Nebraska, ("PVNB-Scottsbluff") and Platte Valley National Bank-Morrill, Minatare, Lyman, Morrill, Nebraska, ("PVNB-Morrill") filed this group of applications to reorganize their banking operations, transferring PVNB-Morrill's Nebraska offices and some of its business to PVNB-Scottsbluff, and to relocate the main office of PVNB-Morrill (with PVNB-Morrill's remaining business) from Morrill, Nebraska, to Torrington, Wyoming. At the time of the main office relocation, PVNB-Morrill will not have branches in Nebraska. After the reorganization and relocation, PVNB-Scottsbluff will be located in Nebraska, and PVNB-Morrill will be located in Wyoming; neither bank will have branches in the other state.

First, PVNB-Scottsbluff applied to the Office of the Comptroller of the Currency ("OCC") for approval to purchase certain assets and assume certain liabilities from PVNB-Morrill, including PVNB-Morrill's branches in Minatare and Lyman, Nebraska, under 12 U.S.C. §§ 24(Seventh), 36(c) & 1828(c) (the "Purchase and Assumption Transaction"). In connection with the Purchase and Assumption Transaction, PVNB-Morrill also applied to the OCC for approval to declare a dividend and for a reduction in capital, under 12 U.S.C. §§ 56, 59 & 60. Second, PVNB-Morrill applied to the OCC for approval to change the location of its main office from Morrill, Nebraska, to Torrington, Wyoming, under 12 U.S.C. § 30(b) (the "Main Office Relocation"). Third, PVNB-Scottsbluff applied to the OCC for approval to establish a branch at the former location of PVNB-Morrill's main office in Morrill, Nebraska, under 12 U.S.C. § 36(c) (the "Branch Establishment"). The transactions will occur in the order set out.

The two banks are affiliates; both are wholly-owned subsidiaries of Platte Valley Financial Service Companies, Incorporated (“Holding Company”).¹ The two banks currently provide accommodation services for each other which allow customers of each bank to transact most of their business at locations of the other bank. See 12 U.S.C. § 1828(r). The banks will continue the existing accommodation services arrangement after the transactions.

For the transfer of business from PVNB-Morrill to PVNB-Scottsbluff, the banks planned the realignment of assets and liabilities with several goals, including retaining sufficient business, employees, reserves, and other resources in PVNB-Morrill so that it could operate as a viable, competitive separate bank in Wyoming, having the group’s Wyoming-based business in the PVNB-Morrill charter, minimizing disruption to customers, and reducing the chances that a customer would inadvertently exceed FDIC insurance coverage limits. When the transactions are completed, the banks project that the PVNB-Morrill charter will have total assets of approximately \$18 million (with \$7.3 million in investment securities and \$7.5 million in loans) and approximately \$15.5 million in customer deposits. Afterwards, customers, particularly those with a Wyoming zipcode, will be contacted and will have the opportunity to move other accounts.

The Wyoming Banking Commissioner and a competitor bank, First National Bank of Torrington, sent letters to the OCC objecting to the Main Office Relocation. Both protests questioned the legal authority for the transaction. The First National Bank of Torrington also argued the relocation should be denied because the Torrington area already has six banks and the entry of another bank into the market would lead to overly aggressive competition which would be detrimental to customers and to the banks. The objections are discussed later in this Decision.

II. LEGAL AUTHORITY

A. The Purchase and Assumption Transaction, including the acquisition of the two Nebraska branches, is authorized under 12 U.S.C. §§ 24(Seventh) and 36(c).

In the first transaction, PVNB-Scottsbluff will purchase and assume some, but not all, of the assets and liabilities of PVNB-Morrill. Included in the Purchase and Assumption Transaction is PVNB-Scottsbluff’s acquisition of PVNB-Morrill’s branches in Minatare and Lyman, Nebraska.

The Purchase and Assumption Transaction is authorized under 12 U.S.C. § 24(Seventh). National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh).² Such

¹ The Holding Company also owns nonbank subsidiaries, two of which (Platte Valley Agricultural Credit Company and Platte Valley National Mortgage Corporation) are engaged in lending activities in Wyoming and have an office in Torrington.

² See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

purchase and assumption transactions are commonplace in the banking industry. Accordingly, PVNB-Scottsbluff may acquire the assets, and assume the liabilities, involved in this transaction from PVNB-Morrill.

While section 24(Seventh) authorizes the purchase and assumption of assets and liabilities, additional authority is required for PVNB-Scottsbluff to acquire the Minatare and Lyman branches and operate them as branches of PVNB-Scottsbluff. The acquisition of branches in a purchase and assumption transaction, as well as the *de novo* establishment of branches, within the state in which the bank is situated is governed by section 36(c).³ Under section 36(c), a national bank may establish new branches at any point within the state in which the bank is situated if state banks may establish such branches under state law. Nebraska law does not permit unrestricted branching within the state. *See generally* Neb. Rev. Stat. § 8-157. Nebraska does permit a bank to establish a branch by acquiring the assets and assuming the deposits of a branch of another financial institution in Nebraska and converting the branch into a branch of the acquiring bank, provided the acquired branch has been in operation for more than 18 months. Neb. Rev. Stat. § 8-157(4). The Minatare and Lyman branches have been in operation for more than 18 months. A Nebraska state-chartered bank could acquire and operate them under Neb. Rev. Stat. § 8-157(4). Thus, PVNB-Scottsbluff may acquire and operate the Minatare and Lyman branches under section 36(c).

In connection with the Purchase and Assumption Transaction, the banks also propose to reallocate capital between them. In essence, capital supporting the assets that are being transferred to PVNB-Scottsbluff will similarly be transferred to PVNB-Scottsbluff, and capital supporting the assets kept at PVNB-Morrill will stay with PVNB-Morrill. To carry out the reallocation, PVNB-Morrill applied to the OCC for approval to declare a dividend from undivided profits and for a reduction in capital, and the Holding Company in turn immediately will inject the funds into PVNB-Scottsbluff. The payment of dividends by a national bank is authorized by, and subject to limits under, 12 U.S.C. §§ 56 & 60. PVNB-Morrill's proposed dividend meets the conditions of section 56 and 60. A national bank may reduce its capital, subject to OCC approval, under 12 U.S.C. § 59. PVNB-Morrill has filed the appropriate requests to the OCC for approval under sections 59 and 60 and 12 C.F.R. § 5.46. There are no supervisory or other issues related to the the dividend and capital reduction. Thus, they are permissible under sections 56, 59, and 60.

B. PVNB-Morrill may relocate its main office from Morrill, Nebraska, to Torrington, Wyoming under 12 U.S.C. § 30(b).

In the next transaction, after PVNB-Morrill's branches have been acquired by PVNB-Scottsbluff, PVNB-Morrill will relocate from Morrill, Nebraska, to Torrington, Wyoming, a distance of approximately fifteen miles. This relocation is authorized under 12 U.S.C. § 30(b).

National banks are authorized to change the location of their main office to any location within 30 miles of the limits of the city where the main office is currently located. 12 U.S.C.

³ *See, e.g., State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980). The acquisition of branches in an in-state merger is governed by 12 U.S.C. § 36(b)(2).

§ 30(b). The statute does not limit the authority to relocate the main office to the same state; indeed, language limiting relocations to places within the same state was removed in 1959. Nor does the operation of section 30(b) refer to or incorporate state law.⁴ PVNB-Morrill's proposed relocation here is similar to a number of prior OCC approvals in which a bank with no branches relocated to a new location across state lines.⁵ Many of those prior approvals involved related transactions, as here, in which branches and some business were transferred to an affiliated bank before the bank relocated into the new state. Several of these earlier approvals were challenged, and the courts upheld a national bank's authority to relocate its main office to a location in a new state under section 30.⁶

Later changes in section 30 confirm that a national bank may relocate its main office to another state. In the Riegle-Neal Act,⁷ Congress added a new subsection 30(c) to provide for new limitations on a national bank's authority to retain existing branches in its original state when it relocates its main office to a new state:

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State from which the bank relocated such office only to the extent authorized in section 5155(e)(2) of the Revised Statutes [12 U.S.C. § 36(e)(2)].

12 U.S.C. § 30(c). Clearly, this provision contemplates that national banks may relocate their main offices from one state to another. OCC decisions addressing this other kind of main office relocation -- *i.e.*, one in which the bank has branches and proposes to retain them when it moves its main office to another state -- have also reiterated the authority to move the main office itself.⁸

⁴ See, e.g., *Ramapo Bank v. Camp*, 425 F.2d 333, 340-46 (3d Cir.), *cert. denied*, 400 U.S. 828 (1970) (in-state relocation); *McEnteer v. Clarke*, 644 F.Supp. 290, 292-94 (E.D. Pa. 1986) (interstate relocation).

⁵ See, e.g., Decision on the Applications of the First National Bank of Polk County (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision on the Application of the First National Bank of Spokane (1991) (relocation from Washington into Idaho); Decision on the Application of SouthTrust National Bank (1989) (relocation from Alabama into Georgia); Decision on the Application of the Bank of New Jersey, N.A. (1986) (relocation from New Jersey into Pennsylvania).

⁶ See *State of Idaho Department of Finance v. Clarke*, 994 F.2d 1441, 1444 (9th Cir. 1993); *Synovus Financial Corporation v. Board of Governors of the Federal Reserve System*, 952 F.2d 426, 428 & n.1, 435 (D.C. Cir. 1991); *McEnteer v. Clarke*, 644 F.Supp. 290, 292 (E.D. Pa. 1986).

⁷ Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (codified in scattered sections of 12 U.S.C.) (the "Riegle-Neal Act").

⁸ See, e.g., Decision on the Applications of Sun World, N.A. (OCC Corporate Decision No. 96-40, August 2, 1996) (Part II-A-1); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995) (Part II-A-1). Some of these decisions involving a main office relocation with branch retention were challenged in court. But the challenges were to the authority to retain branches in the original state, not to the authority to relocate the main office itself across state lines into a new state. Even courts that disagreed with the OCC's analysis of branch retention authority acknowledged the authority to relocate the main office. See, e.g., *Ghiglieri v. Sun World, N.A.*, 942 F.Supp. 1111, 1114-15 (W.D. Tex. 1996), *rev'd*, 117 F.3d 309 (5th

Accordingly, then, PVNB-Morrill is authorized to move its main office from Morrill to Torrington. The Wyoming Bank Commissioner ("Commissioner") and a competitor bank, First National Bank of Torrington, sent letters to the OCC objecting to the Main Office Relocation. The Commissioner contends that the transaction is a sham, that the bank in Torrington will be an empty shell with no assets and no deposits, not a continuation of PVNB-Morrill but a new bank, and that the Holding Company seeks to circumvent Wyoming law, which does not permit *de novo* interstate branching into Wyoming, by ultimately merging the PVNB-Morrill in Torrington into PVNB-Scottsbluff, turning the Torrington office into a branch of PVNB-Scottsbluff.

The Commissioner's contentions are misplaced. First, as discussed earlier, the application indicates that PVNB-Morrill will have approximately \$18 million in assets, including \$7.5 million in loans, and \$15.5 million in customer deposits. It is also anticipated that the bank will add two to four outside directors from the Torrington area to the board to give the bank even greater connection to that community. A significant portion of PVNB-Morrill's business will be retained when it relocates. The relocated bank will have substantial assets, deposits, customers, and business. It will not be empty.

Second, more generally, Wyoming customers currently represent a significant portion of PVNB-Morrill's and PVNB-Scottsbluff's business and stockholders. The banks currently have approximately 500 Wyoming-based checking, savings and CD accounts with over \$4.5 million in balances and over \$21 million in outstanding loans and commitments to Wyoming-based customers. The banks intend to move as many Wyoming-based accounts to the Torrington location as possible, both immediately in these transaction and over time by contacting customers. The main office relocation is being done for the legitimate business purpose of providing better, more convenient service to the banks' current customers and potential future customers.

Finally, there is no indication that the Holding Company plans to merge the two banks for the foreseeable future. The applications did not refer to any such plans, and the banks' representatives informed the OCC that the Holding Company currently does not plan to merge the banks and expects it would be at least three years before such a merger would be contemplated.⁹

A competitor bank, First National Bank of Torrington ("FNB Torrington") also objected to the Main Office Relocation. FNB Torrington raises two issues. First, like the Commissioner, FNB Torrington alleges the transaction is a circumvention of branching limits. As discussed above with regard to the Commissioner's protest, this characterization of the transaction is incorrect: PVNB-Morrill will be a separate bank.

Cir. 1997) (reversing on branch retention, agreeing with district court on main office relocation itself, 117 F.3d at 313 n. 3). Since the earlier cases cited in note 6, the authority of a national bank that has no branches to relocate its main office into another state under section 30 has not been seriously questioned.

⁹ Moreover, even if the Holding Company did plan to merge the banks in the future, the proper forum to raise legal issues relating to the authority to obtain a branch in Wyoming in such a merger is in that future merger application, if any, not the present applications. In the context of the present applications, such potential legal issues are merely speculative.

Second, FNB Torrington argued the relocation should be denied because the Torrington area already has six banks and the entry of another bank into the market would lead to overly aggressive competition which would be detrimental to customers and to the banks. However, the OCC has long held that the marketplace is normally the best regulator of economic activity, and competition within the marketplace promotes efficiency and better customer service. Thus, it is the OCC's policy to approve proposals to establish or relocate banks or branches that have a reasonable chance of success and that are operated in a safe and sound manner. It is not the OCC's policy to ensure that a proposal is without competitive risk to the bank or to protect other institutions from competition from another bank or branch. *See, e.g.*, 12 C.F.R. § 5.20(f)(1); 12 C.F.R. § 5.30(e)(3)&(4). Moreover, PVNB-Morrill and PVNB-Scottsbluff, both directly and through their affiliates, already compete in the Torrington area. The banks have customers there, and a significant portion of the loan and deposit accounts representing this business will remain in the relocated bank in Torrington. The banks' affiliate, Platte Valley Agricultural Credit Company, already has an office in Torrington. PVNB-Morrill may be able to compete more effectively, once it is located in Torrington; but it is already doing business there.

We do not believe the issues raised by the two protests warrant denial of PVNB-Morrill's application to relocate its main office from Morrill to Torrington.

C. PVNB-Scottsbluff may establish a branch in Morrill under 12 U.S.C. § 36(c).

PVNB-Scottsbluff also has applied to establish a branch in Morrill at the former location of PVNB-Morrill's main office. As noted above, Nebraska law does not permit unrestricted branching within the state. However, Nebraska's branching law does permit a bank to branch into a community without regard to the branching law's geographical and numerical restrictions, if a financial institution has ceased doing business in the municipality and no other financial institution operates an office in that municipality. Neb. Rev. Stat. § 8-157(7). The statute further provides that, if thirty days or less have elapsed since the financial institution ceased operation, only a bank that has its place of business in the same county as the municipality or a contiguous county may establish a branch in the municipality. *Id.* PVNB-Morrill is the only financial institution in Morrill. Upon its main office relocation, it will have ceased operations in Morrill, and there will be no other financial institution in Morrill. PVNB-Scottsbluff is in the same county as Morrill. A similarly situated state bank would be permitted to establish a branch in Morrill under Neb. Rev. Stat. § 8-157(7). Therefore, PVNB-Scottsbluff may establish a branch in Morrill at the former location of PVNB-Morrill's main office under section 36(c).¹⁰

¹⁰ Bank counsel represents that the applicability of Nebraska branching law in these circumstances was confirmed with legal counsel of the Nebraska Department of Banking and Finance. The Nebraska Department has not raised any concerns about the transaction with the OCC.

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 mergers between insured institutions, including purchase and assumption transactions, where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a transaction which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Purchase and Assumption Transaction involved in these applications may be approved under section 1828(c).

1. Competitive Analysis.

Since both banks are already owned by the same bank holding company, the Purchase and Assumption Transaction will have no anticompetitive effect.

2. Financial and Managerial Resources.

The financial and managerial resources of both banks are presently satisfactory. The rearrangement of business between the two banks should not have a material effect on the banks' financial and managerial resources. The future prospects of the institutions are favorable. We find the financial and managerial resources factor is consistent with approval of the Purchase and Assumption Transaction.

3. Convenience and Needs.

The Purchase and Assumption Transaction will not have an adverse impact on the convenience and needs of the communities to be served. After all the transactions, PVNB-Scottsbluff will operate the offices in Morrill, Minatare, and Lyman, continuing to provide banking services to those communities. There will be no reductions in products or services offered, and no offices will be closed. Accordingly, we believe the impact of the Purchase and Assumption Transaction on the convenience and needs of the communities to be served is consistent with approval of the application.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of the community, including low- and moderate-income neighborhoods when evaluating certain applications. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction.

A review of the record of these applications and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. PVNB-Scottsbluff received a Satisfactory CRA rating as of August 8, 1997, and PVNB-Morrill an Outstanding CRA rating as of November 21, 1997. The OCC received no adverse CRA comments and found no adverse information concerning the banks' performance in complying with the Community Reinvestment Act.

The transactions are not expected to have an adverse effect on the two banks' CRA performance. The transactions will change the assessment areas of the banks. PVNB-Scottsbluff will add areas around its Morrill, Minatare, and Lyman offices, to the extent not already in its assessment area. After its main office relocation, PVNB-Morrill's assessment area will change to Torrington, Wyoming, and its surrounding areas. We find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that (1) PVNB-Scottsbluff's purchase of assets and assumption of liabilities from PVNB-Morrill, including PVNB-Scottsbluff's acquisition of the Minatare and Lyman branches, (2) PVNB-Morrill's dividend and reduction in capital, and the related injection of capital into PVNB-Scottsbluff, (3) the relocation of PVNB-Morrill's main office from Morrill to Torrington, and (4) PVNB-Scottsbluff's establishment of a branch in Morrill are all legally authorized. The transactions also meet other statutory and regulatory criteria for approval. Accordingly, these applications are hereby approved.

_____/s/_____
Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

_____**11-09-99**_____
Date

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