



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-32

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
KEYBANK, NATIONAL ASSOCIATION, ANGOLA, INDIANA,
AND SOCIETY NATIONAL BANK, CLEVELAND, OHIO**

June 14, 1996

I. INTRODUCTION

On February 23, 1996, KeyBank, National Association, Angola, Indiana ("KeyBank") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to change the location of its main office from Angola, Indiana, to Bryan, Ohio, under 12 U.S.C. § 30 (the "Relocation Application"). The location in Bryan is approximately 26 miles from Angola. During and after the relocation of its main office, KeyBank would retain its existing branches in Indiana and Michigan.

On February 23, 1996, KeyBank also applied to the OCC for approval, following the relocation of its main office, to establish a new branch at the former location of its main office in Angola under 12 U.S.C. § 36(c) (the "Branch Application"). The new branch in Angola will open immediately after the main office is moved to Bryan; so there will be no interruption of banking services to the bank's customers in Angola.

On February 23, 1996, an Application was also made to the OCC for approval, after the relocation and branch establishment, described above, to merge KeyBank with and into Society National Bank, Cleveland, Ohio ("Society"), under 12 U.S.C. § 215a & 1828(c) ("the Merger Application"), under the charter of Society and with the title of "KeyBank, National Association" ("KeyBank-Resulting"). In the Merger Application, OCC approval is also requested for the resulting bank to retain the branches of both merging banks in Indiana, Michigan, and Ohio, as branches after the merger under 12 U.S.C. § 36(b).

Both KeyBank and Society are subsidiaries of KeyCorp, a multistate bank holding company with its headquarters in Cleveland, Ohio. In the proposed merger, two of the holding company's existing bank subsidiaries will be combined into one bank with branches serving three contiguous states. Society has approximately \$22.3 billion in assets and \$14.9 billion in deposits and operates 306 branch offices in Ohio. KeyBank has approximately \$4.7 billion in assets and \$3.2 billion in deposits and operates 122 branch offices in Indiana and Michigan. <NOTE: KeyBank has branches in Michigan and Indiana as a result of a prior transaction. See Decision on the Applications of Society Bank, Michigan, Ann Arbor, Michigan and Society National

Bank, Indiana, South Bend, Indiana (OCC Corporate Decision No. 96-01, January 5, 1996). The Commissioner of the Financial Institutions Bureau of the Michigan Department of Commerce ("Michigan Bank Commissioner") filed a lawsuit challenging that transaction. The suit is pending, the OCC has moved to dismiss the suit, and a briefing schedule on the motion is underway. *McQueen v. Ludwig*, No. 5:96-CV-36 (W.D. Mich. filed Feb. 27, 1996).>

KeyBank, Society, and KeyCorp hope to improve customer service and to operate more efficiently in the three neighboring states of Ohio, Indiana, and Michigan by having all of KeyCorp's banking offices in the area operate as branches of one bank. Among the benefits which are expected to be realized are the following: (1) customers who work in one state but live in another, and other customers who cross state lines, will be able to deal with branches of the same bank; (2) businesses with operations in more than one of the states also will be able to deal with branches of the same bank; (3) all of KeyCorp's banking offices in this area would operate under the same corporate entity, with the same corporate name; (4) the potential for customer confusion arising from transactions with affiliated banks (but separate corporate entities) would be eliminated; (5) the efficiencies of local advertising and other public relations programs would be significantly improved by having to promote one bank rather than several in the same market areas; (6) data processing systems and operating procedures could be standardized and greatly simplified and improved; and (7) the expense of maintaining separate corporate entities would be eliminated.

Notice of the Applications was published in general circulation newspapers in Angola, Indiana, Bryan, Ohio, and Cleveland, Ohio, beginning February 24, 1996. On May 8, 1996, the Commissioner of the Financial Institutions Bureau of the Michigan Department of Commerce ("Michigan Bank Commissioner" or "the Commissioner") wrote the OCC to formally object to the proposed transactions and urge the Applications be denied. The bank commissioners of Indiana and Ohio were also notified of the Applications, and, upon request, a copy of the Applications was provided to the Ohio banking commissioner. The Indiana and Ohio bank commissioners have not filed comments on the Applications, nor have any other comments, other than the Michigan Bank Commissioner's, been received.

The Michigan Bank Commissioner's May 8th letter is a short letter, stating that the Commissioner objected to these Applications because "the resulting bank will maintain and operate branches in Michigan, contrary to applicable federal and state law" and referring to his objections to the earlier transaction between Michigan and Indiana and his arguments in the pending suit, *McQueen v. Ludwig*. The Commissioner's filings in the suit include a number of exhibits, in particular a copy of the amicus brief submitted by the Conference of State Bank Supervisors and several individual state banking departments ("CSBS brief") in a lawsuit brought by the Texas Bank Commissioner challenging an earlier interstate main office relocation from Arkansas into Texas and a copy of the district court's recently issued Findings of Fact and Conclusions of Law in that case. *See Ghiglieri v. Ludwig*, No.

3-95-CV-2001-H (N.D. Tex. May 22, 1996). The district court, adopting the views of the Commissioner and the CSBS brief, found the OCC's statutory interpretation that 12 U.S.C. § 30 & 36 permit a national bank to keep its existing branches when it relocates its main office across state lines to be erroneous.

<NOTE: The OCC believes the district court opinion in *Ghiglieri* is incorrect as a matter of law for several reasons. Most significantly, the court did not follow the language of the statutes in effect at the time of the agency's decision in the case. The court ignored Congress's action in amending sections 30 and 36 after the OCC's earlier adoption of the construction of the statutes at issue. In addition, the court also failed to properly consider even the OCC's earlier statutory interpretation under the appropriate standards. *See Smiley v. Citibank (South Dakota), N.A.*, No. 95-860, ___ U.S. ___ (June 3, 1996); *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. ___ (1995); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The district court opinion is discussed at pages 20-21, 22-29, 31-32, and 44.> Since the Commissioner referred to and incorporated these materials as part of his objections, we include the issues raised in all these sources as we address the Commissioner's objections.

With respect to the Relocation Application, the Commissioner objects to KeyBank's retention of its existing branches in Michigan and Indiana when it relocates its main office to Ohio. The Commissioner believes such branch retention violates both federal law and Michigan law. The Commissioner argues: (1) the new main office in Bryan is not a main office within section 30, because it will not independently open as a main office since the main office relocation is followed by the merger into Society; (2) even if it is a main office for a moment, there is no authority to retain existing branches under section 30, instead branches are governed exclusively by section 36 (the McFadden Act), and the proposed retention of the Indiana and Michigan branches violates section 36 because a bank from Ohio cannot open branches in Indiana or Michigan; and (3) the creation of an interstate bank by such branch retention under section 30 violates the Riegle-Neal Act. These objections are addressed in the relevant portions of the discussion below (especially at pages 9-10, 21-24, and 25-29 respectively).

With respect to the Branch Application, the Commissioner argues the establishment of the new branch in Angola, Indiana, violates section 36(c) because the Commissioner asserts Ohio law does not permit Ohio banks to establish branches in Indiana and Indiana law does not permit a bank from Ohio to establish a branch in Indiana. This objection is addressed at pages 31-32. The Commissioner's state law objection is discussed at pages 42-46. The Commissioner does not raise any objection specifically directed at the Merger Application. <NOTE: The Commissioner's protest of the earlier transaction included the conversion involved there. That objection is addressed in the earlier OCC approval and in *McQueen v. Ludwig*. Since the current Applications do not involve a conversion, we do not repeat those matters here. The Commissioner's May 8th letter also requested the OCC to delay action on these Applications until the resolution of *McQueen v. Ludwig*. After consideration of all the circumstances here, we do not believe such delay is warranted. The Commissioner objects to KeyBank's operation of branches in Michigan. Those branches are there now as branches of an out-of-state bank and would continue as the same branches if KeyBank relocates from Indiana into Ohio and merges with Society. If the Commissioner ultimately prevails in the suit, it appears that whatever relief may be ordered regarding the branches in Michigan would not be substantially different whether the current Applications are approved or not. On the other hand, KeyBank, Society, and KeyCorp have expended resources and time planning for the combination of the banks in June. The banks' plans and midyear 1996 target were outlined in press releases since at least October 1995. If OCC action on the pending Applications is delayed and the OCC ultimately prevails in the suit, those funds and business opportunities would be irretrievably lost. The banks recognize that, notwithstanding OCC action on these Applications, the court's decision in *McQueen v. Ludwig* may affect the status of the branches in Michigan.>

II. LEGAL AUTHORITY

These Applications involve a series of three transactions:

- (1) The relocation of a national bank's main office from Indiana into Ohio, and the bank's retention of its existing branches in Indiana and Michigan, under 12 U.S.C. § 30.
- (2) The relocated bank's establishment of a new branch at the former site of its main office in Indiana, under 12 U.S.C. § 36(c).
- (3) The merger of the relocated bank with another national bank in Ohio, and the resulting bank's retention of the branches of both banks, under 12 U.S.C. 215a (merger) & 36(b)(2) (branches).

This business combination presents but one central legal issue: the power of a national bank to retain its existing branches when it moves its main office. The interstate relocation of the main office in itself is well-established, as set out at pages 7-13. If the branch retention in the relocation is authorized, then KeyBank can become an interstate national bank (*i.e.*, a bank with branches in another state). Then, in the second and third transactions, the statutes governing the establishment of new branches by national banks and mergers of national banks are simply applied to the interstate bank. But, without the branch

retention in the relocation transaction, there is no basis to proceed to the second and third transactions.

Thus, the central legal issue is a national bank's power to retain its existing branches in an interstate relocation of its main office. In 1994, Congress addressed this very issue and confirmed the OCC's prior interpretation of the statutes. In two decisions in early 1994, the OCC determined that the bank could continue to operate its existing branches in its original state when it relocated its main office to another state under section 30, without regard to section 36 or state law. <NOTE: See Decision on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,695 ("*OCC NationsBank/Maryland National Decision*"); Decision on the Applications of First Fidelity Bank, N.A., Pennsylvania, Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,644 ("*OCC First Fidelity/New Jersey Decision*"). There were also other decisions before the Riegle-Neal Act that involved only the interstate relocation of a bank's main office (*i.e.*, the bank did not have branches to retain). See 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) ("*OCC Bank of New Jersey Decision*"); Decision on the Application of Mark Twain Bank, N.A. (1985) (relocation from Missouri into Kansas) ("*OCC Mark Twain Decision*").> We based this statutory conclusion on consideration of many factors, including an extensive review of the statutes, legislative history, caselaw, the development of the statutes, and the impact of branch retention *vel non* on the exercise of the primary statutory right to move the main office. We found nothing that required existing branches to be divested in a main office relocation, and concluded a congressional intent to require such divestiture could not be inferred from silence. The OCC's statutory construction of section 30 before the Riegle-Neal Act is summarized at pages 14-16.

In the Riegle-Neal Act, Congress visited section 30 after the earlier OCC decisions and added new language to 12 U.S.C. § 30 & 36 to clarify and govern the power of national banks to have interstate branches through retaining existing branches in an interstate main office relocation. 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"). This action recognized that, under section 30, national banks had such power before, and then limited it, beginning on June 1, 1997, to co-ordinate the section 30 power with the new Riegle-Neal framework for interstate branches. Section 30, as so amended, is the statute that applies to transactions today. Before the Riegle-Neal Act, nothing in sections 30 or 36 required the constructive divestiture of existing lawful branches in a main office relocation. In the Riegle-Neal Act, Congress added such a requirement, but only for certain interstate relocations and only to begin on June 1, 1997. Congressional action on section 30 in the context of the prior OCC interpretation is especially compelling. Thus, in the relocation of its main office from one state to another, the power of a national bank to retain its existing branches under section 30 is now clearly established. Section 30 and the Riegle-Neal Act are discussed at pages 17-29.

Once KeyBank is an interstate national bank, the branch transaction and the merger transaction then are evaluated under the statutes, cases, and prior OCC decisions for such transactions by an interstate bank. Before the Riegle-Neal Act, there had been a number of decisions applying the applicable federal branching and merger statutes to transactions by interstate national banks. <NOTE: The *OCC First Fidelity/New Jersey Decision* and the *OCC NationsBank/Maryland National Decision* had involved such transactions after the relocation, and there were also several other applications that did not involve a relocation but did involve interstate merger and branching transactions. See Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey, with the Title of Mellon Bank (East) N.A. (March 27, 1984), reprinted

in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) 99,925 ("*OCC Mellon Decision*") (in 1984 Heritage had a grandfathered branch in Philadelphia; the 1984 transaction was not consummated and Heritage later became part of Midlantic National Bank); Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association, State Savings Bank, N.A., and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991), *available in* 1991 OCC Ltr. LEXIS 73 ("*OCC Shawmut Decision*") (both banks owned by Shawmut National Corporation; at the time of conversion State Savings Bank had branches in Rhode Island); Decision on the Application for the Merger of First Peoples National Bank, Kingston, Pennsylvania, with and into First Fidelity Bank, N.A., Salem, New Jersey (OCC Corporate Decision No. 94-07, February 23, 1994) ("*OCC First Peoples Decision*"); Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) ("*OCC NationsBank/D.C.-Maryland Decision*"); Decision on the Application for the Merger of Continental Bank, Norristown, Pennsylvania, into Midlantic National Bank, Newark, New Jersey (OCC Corporate Decision No. 94-37, August 12, 1994) ("*OCC Midlantic Decision*").> In the pre-Riegle-Neal decisions, the OCC determined that, when the federal statutes refer to state law, they were intended to apply state laws on a state-by-state basis for transactions in each state by an interstate national bank. That is, an interstate bank could establish new branches within each state under section 36(c), or could merge with another bank in each state and retain branches under sections 215a and 36(b), depending upon that state's law for in-state branching for its own state-chartered banks. In the Riegle-Neal Act, Congress left these statutes unchanged, after this OCC interpretation, and, in the new Riegle-Neal interstate provisions, adopted a similar state-by-state framework for subsequent transactions by a Riegle-Neal interstate bank. The branch and merger transactions are discussed at pages 29-32 and 33-42.

Since passage of the Riegle-Neal Act, the OCC has applied these statutes in the foregoing manner in many applications, including decisions in October 1994 shortly after the enactment of the Riegle-Neal Act. In particular, in one decision, a state bank commissioner objected to the transaction, arguing that the maintenance of interstate branches in the state would violate a state law and also raising interpretive questions under the Riegle-Neal Act. <NOTE: See Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), *reprinted in* Fed. Banking L. Rep. (CCH) 90,474 ("*OCC Bank Midwest Decision*"). Other decisions after the Riegle-Neal Act include: Decision on the Applications of National Westminster Bank USA and National Westminster Bank NJ (OCC Corporate Decision No. 94-43, October 20, 1994) ("*OCC NatWest Decision*"); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994) ("*OCC First Fidelity/Baltimore Decision*"); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995) ("*OCC Chase Decision*"); Decision on the Applications of American National Bank and Trust Company of Wisconsin and American National Bank and Trust Company of Chicago (OCC Corporate Decision No. 95-12, March 8, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995) ("*OCC PNC/Kentucky Decision*"); Decision on the Applications of Firststar Bank Quad Cities, N.A., and Firststar Bank Davenport, N.A. (OCC Corporate Decision No. 95-16, April 27, 1995); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("*OCC Midlantic/Old York Decision*"); Decision on the Applications of Star Bank, N.A., Eastern Indiana and Star Bank, N.A. (OCC Corporate Decision No. 95-33, July 25, 1995) ("*OCC Star Bank Decision*"); Decision on the Applications of BayBank Connecticut, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995) ("*OCC BayBanks/Connecticut Decision*"); Decision on the Applications of PNC Bank, New Jersey, N.A. and PNC Bank, N.A. (OCC Corporate Decision No. 95-36, August 7, 1995); Decision on the Applications of Fleet National Bank, Providence, Rhode Island, et al. (OCC Corporate Decision No. 96-17, March 27, 1996) ("*OCC Fleet Decision*").> In that decision, because of the issues raised by the objection, we revisited our analysis of pre-Riegle-Neal law and thoroughly considered the impact of the Riegle-Neal Act on existing authority and the applicability of state law.

Therefore, these Applications by KeyBank and Society are similar to a number of prior interstate relocation, merger, and branching applications approved by the OCC, including a previous transaction

involving a relocation from Indiana into Ohio. *See OCC Star Bank Decision*. Indeed, the objections raised to these Applications by the Michigan Bank Commissioner are similar to those raised by the Kansas Bank Commissioner in the *OCC Bank Midwest Decision*. The legal analysis and authorities set forth in the prior decisions, especially the *OCC Bank Midwest Decision*, the *OCC NationsBank/Maryland National Decision*, and the *OCC First Fidelity/New Jersey Decision*, also apply here.