Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-56

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DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE LEADER FEDERAL BANK FOR SAVINGS, MEMPHIS, TENNESSEE, WITH AND INTO UNION PLANTERS NATIONAL BANK, MEMPHIS, TENNESSEE AND OPERATE BRANCHES OF LEADER FEDERAL BANK FOR SAVINGS AS BRANCHES OF UNION PLANTERS NATIONAL BANK

September 30, 1996

I. Introduction

On July 9, 1996, an application was filed with the Office of the Comptroller of the Currency for approval to merge Leader Federal Bank for Savings (the Federal Savings Bank) into Union Planters National Bank (the National Bank), retaining the charter and title of the latter, under 12 U.S.C. 215c, 1467a(s) and 1828(c)(2) and consistent with section 1815(d)(3) (the Oakar Amendment). The Federal Savings Bank has its home office in Memphis, Tennessee, and branches in Tennessee and Mississippi. The National Bank has its main office in Memphis, Tennessee, and branches in Tennessee and Arkansas.<**NOTE:** *See* Decision of the Office of the Comptroller of the Currency on the Applications of Union Planters Bank, N.A., West Memphis, Arkansas, and Union Planters National Bank, Memphis Tennessee (August 28, 1996) (approving a series of transactions leading to the acquisition of the Arkansas branches).> The Application also requests OCC approval for the National Bank to operate, following the merger, branches of the Federal Savings Bank in Tennessee and Mississippi. <**NOTE:** In separate applications, an affiliate of the National Bank in Tennessee has requested approval from the OCC to acquire four of the Federal Savings Bank's branches in Tennessee following the merger of the Federal Savings Bank into the National Bank and the National Bank has requested OCC approval, following the merger, to acquire five branches and two ATMs from two affiliated banks in Mississippi. This Decision Statement does not address those transactions. This Decision Statement also does not address a request by the National Bank to acquire several subsidiaries of the Federal Savings Bank as operating subsidiaries.

Decisions on these applications and requests will be rendered in separate communications.>

As of June 30, 1996, the National Bank had about $2.14 billion in assets, $1.36 billion in deposits and 36 branches in Tennessee.<**NOTE:** In addition, by consummation of this transaction, the National Bank expects to have aboout 110 ATMs in operation in Tennessee. Three of the ATMs also include automated loan machines (ALMs). In addition the National Bank also operates one stand-alone ALM machine in Tennessee. In addition, since June 30, as a result of the consummation of the merger with the Arkansas affiliate, the National Bank added in Arkansas approximately $213 million in assets, $181 million in deposits as well as 15 branches and one ATM. > As of the same date, the Federal Savings Bank had approximately $3.19 billion in assets, $1.56 billion in deposits, and operated its main office and 22 branches in Tennessee, <**NOTE:** In addition, the Federal Savings Bank operates five ATMs in Tennessee.> and one branch in Mississippi. Following consummation of the transaction, the National Bank has sought permission to operate as branches 16 of the offices acquired from the Federal Savings Bank in Tennessee as well as the one branch acquired in Mississippi. <**NOTE:** The National Bank also

proposes to acquire all five of the Federal Savings Bank's ATMs in Tennessee. Of the remaining Tennessee offices acquired from the Federal Savings Bank, it is proposed that four will be immediately sold to an affiliated bank in Tennessee and three would be consolidated into nearby branches of the National Bank. An ATM would remain at the site of one of these consolidated branches. In addition, immediately following the merger, eight branches of the National Bank will be consolidated into nearby branches of the Federal Savings Bank. Further, it is contemplated that two additional branches of the National Bank will be consolidated into Federal Savings Bank branches within a year after consummation of the merger.>

The National Bank is a BIF member and is a wholly-owned subsidiary of Union Planters Corporation (the Bank Holding Company), Memphis, Tennessee. The Federal Savings Bank is SAIF-insured and is a wholly owned subsidiary of Leader Financial Corporation (the Thrift Holding Company), Memphis, Tennessee. At the time of the proposed merger, it is expected that the Thrift Holding Company will be a wholly-owned subsidiary of the Bank Holding Company and that the National Bank will be a wholly-owned subsidiary of the Thrift Holding Company and an indirect subsidiary of the Bank Holding Company. <**NOTE:** The Federal Reserve Board (the Board) approved the acquisition of the Thrift Holding Company and its subsidiaries by the Bank Holding Company on August 5, 1996. *See* Union Planters Corporation, Order Approving Notice to Acquire a Savings Association and Engage in Certain Nonbanking Activities (August 5, 1996) (the Board order). > As a result of the proposed merger between the two depository institutions, the existing operations of the Federal Savings Bank and the National Bank will be combined into the National Bank which, as a result, will acquire additional branches in Tennessee and Mississippi.

II. Summary

A. Under the authority of 12 U.S.C. 215c, on the basis of the facts presented, the National Bank, may acquire through a merger the Federal Savings Bank where the two institutions have their main offices and branches in the same state and the Federal Savings Bank also has a branch in another state;

B. The merger is consistent with the provision of the Oakar Amendment, 12 U.S.C. 1815(d)(3)(F), that applies 12 U.S.C. 1842(d), a provision of the Bank Holding Company Act, to mergers in which a BIF-insured institution owned by a bank holding company acquires a SAIF-insured institution;

C. Following the transaction, the National Bank may retain and operate the offices of the Federal Savings Bank in the National Bank's main office state and in the other state consistent with 12 U.S.C. 36(c), relevant case law and OCC precedents; and

D. The proposed transaction may be approved by the OCC consistent with the Bank Merger Act and the OCC's responsibilities under the Community Reinvestment Act. In addition, as required by 12 U.S.C. 215c, the transaction is consistent with all applicable laws pertaining to merger transactions involving national banks.

III. Analysis

A. Merger authority under section 215c

Title 12 U.S.C. 215c provides:

(a) Subject to section 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.

* * * * *

> (d) For purposes of this section, the term 'acquire' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

These provisions were added as Section 502(b) of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2393 (enacted December 19, 1991) (FDICIA). At the same time, in section 501(a) of the FDICIA, parallel provisions addressing the authority of Federal savings associations to combine with any insured depository institution were added to the Home Owners' Loan Act (HOLA) and codified at 12 U.S.C. 1467a(s)(1), (3).

Consequently, under the plain language of section 215c and the HOLA, if a transaction comports with the Oakar Amendment, the Bank Merger Act and other applicable laws, then the section authorizes a merger between a national bank and a Federal savings association. <**NOTE:** The courts have long counseled that the meaning of a statute must, in the first instance, be determined based on the language that is used. *See, e.g., Caminetti v. United States*, 242 U.S. 470, 485 (1917). Parties who argue against the plain meaning of a statute face the "daunting standard" of showing "clear evidence that reading the statute literally would thwart the obvious purposes of the statute." *Mansell v. Mansell*, 490 U.S. 581, 592 (1989). In authorizing mergers between national banks and Federal savings associations, the language of section 215c could not be plainer -- if the merger is consistent with the Bank Merger Act, the Oakar Amendment, and other applicable law, then a national bank and a Federal savings association may merge.>

Moreover, the legislative history of this provision is, likewise, unambiguous. Rep. Oakar, the sponsor of the amendment, on several occasions characterized its impact in the broadest possible way. For instance, she stated:

> Finally, title V of H.R. 3768 contains the provisions of an amendment I offered at full committee. Simply stated, this title will permit any bank insurance fund [BIF] institution to combine its operations with any savings association insurance fund [SAIF] institution, and vice versa. I offered this legislation in order to encourage the injection of private sector funds into the banking and thrift systems. Title V of the bill will permit a bank to combine with a thrift -- or vice versa -- which permits them to combine their strengths and avoid the potential problem of being placed in conservatorship where the taxpayer's money must be used.

137 Cong. Rec. H 10,762-763 (daily ed. November 21, 1991) (Statement of Rep. Oakar). *See also* 137 Cong. Rec. H 8936 (November 1, 1991) (Statement of Rep. Oakar); House Banking Committee Mark-up (July 23, 1991) (Statement of Reps. Oakar and LaFalce). <**NOTE:** As the sponsor of the amendment, courts have long recognized that Rep. Oakar's views may provide a "weighty gloss" on the meaning of legislation. *See, e.g., Galvin v. U.L. Press*, 347 U.S. 522, 527 (1954).>

The House report on the legislation contains similar sweeping language. It states:

> [T]he Committee voted to allow any BIF or SAIF-insured depository institutions to combine with each other. This amendment was adopted because the Committee is concerned about the growing cost of thrift and bank resolutions and the increased cost to the taxpayers of these resolutions.

H.R. Rep. No. 330, 102d Cong, 1st Sess., 113 (1991); H.R. Rep. 157, 102d Cong. 1st Sess. 139 (July 23, 1991). *See also* 137 Cong. Rec. H 9105-9106 (Nov. 4, 1991) (House section-by-section analysis). <**NOTE:** Likewise, courts have recognized that "Committee Reports represent the most persuasive indicia of congressional intent" and are "powerful evidence of legislative purpose." *See* 2A Sutherland, Statutes and Statutory Construction, 48.06 (5th ed. 1992 & Supp. 1995).> We emphasize, however, that despite the broad language of sections 215c and 1467a(s)(1), combinations authorized by those sections are not without limits imposed

by other statutes. Thus, for instance, transactions such as the one proposed between a BIF-insured national bank and a SAIF-insured Federal savings association (known as "Oakar transactions") are subject to the interstate limits imposed under 12 U.S.C. 1815(d)(3)(F). As will be more fully discussed subsequently, these transactions may not occur if they involve the acquisition by a BIF-member holding company subsidiary of a SAIF member that, pursuant to 12 U.S.C. 1842(d) and applicable state law, could not be acquired by the holding company if the SAIF member were a state bank.

Consequently, we conclude that if the transaction comports with the Oakar Amendment, including its interstate limitations, as codified at 12 U.S.C. 1815(d)(3), the Bank Merger Act, as codified at 12 U.S.C. 1828(c), and other applicable law, <**NOTE:** The permissibility of the proposed transaction under these statutes is addressed in III. C. of this Decision Statement.> the National Bank and the Federal Savings Bank may merge under the authority of sections 215c and 1467a(s) of the HOLA and in accordance with the procedural requirements set forth in 12 C.F.R. 5.33(c)(2). <**NOTE:** This analysis of the merger authority provided by section 215c is consistent with that set forth by the OCC in Decision of the Office of the Comptroller of the Currency on the Application to Merge Washington Federal Savings Bank, Herndon, Virginia, With and Into The First National Bank of Maryland, Baltimore, Maryland, and Operate Branches of Washington Federal Savings Bank in Virginia, The District of Columbia and Maryland as Branches of The First National Bank of Maryland (OCC Corporate Decision No. 96-39, July 25, 1996) (the FNB-Md. Decision).>

B. The interstate merger and branch retention are consistent with the McFadden Act and the Oakar Amendment

The next question is whether the transaction can be undertaken as proposed with retention of the Federal Savings Bank's branches and ATMs in Mississippi and Tennessee. This raises two issues: (1) is the transaction consistent with the McFadden Act as codified at 12 U.S.C. 36; and (2) is the transaction consistent with the interstate provision of the Oakar Amendment as codified at 12 U.S.C. 1815(d)(3)(F).

1. Branch retention under the McFadden Act

While the merger authority language of sections 215c and 1467a(s) is broad, these statutes do not specifically address branching even though interstate Federal savings associations had long existed by the time of enactment of the statutes <**NOTE:** *See, e.g.*, 32 Fed. Reg. 20,630 (Dec. 21, 1967) (Federal Home Loan Bank Board regulation permitting interstate branching by Federal savings associations under limited circumstances). Currently, Federal savings associations enjoy broad interstate branching powers. 12 C.F.R. 556.5 (1995).> and the statutes specifically reference the Oakar Amendment which, at section 1815(d)(3)(F), contemplates the possibility of interstate transactions. In fact, section 215c(c) provides:

> No provision of this section shall be construed as authorizing a national bank or a subsidiary of a national bank to engage in any activity not otherwise authorized under this chapter or any other law governing the powers of national banks. <**NOTE:** 376 (A similar provision addressing the activities of national banks following acquisitions under this provision was contained in the HOLA. *See* 12 U.S.C. 1467a(s)(5). *See* also FDICIA Joint Conference Committee Transcript, pp. 374, statements of Rep. Oakar that "no new powers are granted to any of these entities"). >

Consequently, assuming this provision applies to branching, if authority to retain the branches exists, it must be found in the McFadden Act governing national bank branching.

While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. 36(b)(2), that provision applies where the target in a merger is a national bank or a state bank -- not a Federal savings association. *See, e.g.*, Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A., Bloomington, Illiinois and Related Purchase and Assumption Transactions, p. 3 at n. 3 (Conditional

Approval 69, November 12, 1992). Retention of branches acquired from a Federal savings bank is governed by 12 U.S.C. 36(c). *Id*. In this regard, we also note that while section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. *See State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

Title 12 U.S.C. 36(c) provides:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to restrictions as to location imposed by the law of the State on State banks.

No issue is raised under this provision with respect to retention of the Federal Savings Bank's branches in Tennessee which imposes no geographical limits on establishment of intrastate branches, including ATMs, by state banks. *See* Tenn. Code Ann. 45-2-614;45-2-703. (1993 & Supp. 1995). Consequently, there are no geographical limits to be incorporated by the McFadden Act and applied to national bank branching in Tennessee and the Tennessee home office, branches and ATMs to be acquired through the merger may be retained. <**NOTE:** That Tennessee provides for full intrastate branching by state banks was confirmed by Mr. Gregory Gonzalez, Chief Legal Counsel, in a telephone conversation with OCC staff on August 14, 1996.>

With respect to the Mississippi branch, the question is whether the National Bank is "situated" in Mississippi for purposes of section 36(c)(2) permitting it to retain the branches of the Federal Savings Bank following the merger transaction. For the following reasons, we conclude that the National Bank, following the merger, is situated in Mississippi for purposes of section 36(c)(2).

The courts have since 1977 recognized that a national bank, for purposes of 12 U.S.C. 36(c), is situated in any state where it has branches. *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir.), *cert. denied*, 419 U.S. 844 (1974) (*Bank of California*) (California bank with grandfathered branch in Washington State is situated in Washington for section 36(c) purposes and may establish new branches there in the same way as other Washington-situated banks). Moreover, the OCC, since long before the passage of section 502 of FDICIA, has recognized that an interstate national bank is located, for purposes of section 215a, governing mergers between banks located in the same state, in the state where it has branches as well as the state in which it has its main office. The OCC recognized that such a bank could merge with a bank located solely in the branch state and retain, under the McFadden Act, the branches of the target bank. *See* Decision of the Comptroller of the Currency on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, National Association, Jamesburg, New Jersey, Under the Charter of the Latter and with the Title of Mellon Bank (East) National Association *reprinted at* [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) 99,925 (March 28, 1984). Likewise, before the passage of FDICIA, the OCC recognized that when a bank with branches in one state and its main office in a second state merged into a national bank with its main office and branch offices in the second state, the acquiring national bank, under the McFadden Act, following the merger was "situated," for purposes of section 36(c), in each state where the acquiring bank or the target bank had main offices or branches. Thus, the OCC concluded that the acquiring bank could retain branches of the target bank in each state in which the target bank had branches. *See* Decision of the

Comptroller of the Currency on the Application of State Savings Bank, Southington, Connecticut, To Convert Into a National Banking Association, State Savings Bank, N.A., and on the Application to Merge State Savings Bank, N.A., Into Connecticut National Bank, Hartford, Connecticut (Merger Decision 91-7, April 8, 1991), *available in* 1991 OCC Ltr. LEXIS 73 (the "OCC Shawmut Decision").