



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #97-112
December 1997**

**DECISION OF THE COMPTROLLER OF THE CURRENCY
TO APPROVE AN APPLICATION BY
FIRST BANK RICHMOND, S.B., RICHMOND, INDIANA**

December 30, 1997

I. Introduction

On October 23, 1997, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge an Indiana chartered mutual savings bank, First Bank Richmond, S.B., Richmond, Indiana ("Mutual Bank") with and into an interim national bank, First Bank Richmond, N.A., Richmond, Indiana ("National Bank"), under the charter and title of National Bank pursuant to 12 U.S.C. § 215c ("the Merger"). Mutual Bank is a mutual savings bank that is a member of the Savings Association Insurance Fund ("SAIF") and National Bank would be deemed to be a SAIF member institution following the Merger. Mutual Bank has its home office and all of its branches in the state of Indiana and National Bank has proposed to establish its main office at the site of Mutual Bank's main office and to retain the branch offices of Mutual Bank under 12 U.S.C. § 36(b). As of June 30, 1997, Mutual Bank had assets of approximately \$384 million and deposits of approximately \$251 million.¹

In addition to this application, Mutual Bank also has applied to the Board of Governors of the Federal Reserve System ("FRB") to establish two bank holding companies. Mutual Bank first will create as subsidiaries: (i) a first-tier Delaware chartered corporation ("Stock Corporation A"), (ii) a second-tier Delaware chartered corporation (the "Stock Holding Company") as a subsidiary of Stock Corporation A, and (iii) National Bank

¹ Mutual Bank has one subsidiary, First Federal Leasing, Inc., which is engaged in leasing activities such as commercial equipment leasing and servicing leases sold to third parties. National Bank would control this subsidiary upon consummation of the proposed reorganization. These leasing activities are permissible for a national bank under 12 U.S.C. § 24(Seventh) and 24(Tenth) and National Bank also is authorized to hold an operating subsidiary engaged in these permissible leasing activities following the proposed transaction. 12 C.F.R. § 5.34. See also, 12 C.F.R. Parts 5 and 23.

as another subsidiary of Stock Corporation A. Second, Mutual Bank will merge with the National Bank with the National Bank to survive and to be known as "First Bank Richmond, National Association." Simultaneous with the second step, Stock Corporation A will be converted to a non-stock form of ownership (becoming a "Mutual Holding Company") through an amendment to its certificate of incorporation and the mutual ownership interests in the Mutual Bank shall be transferred to the Mutual Holding Company. Finally, the Mutual Holding Company will contribute the stock of the National Bank to the Stock Holding Company, thereby making the National Bank a direct subsidiary of the Stock Holding Company and a second-tier subsidiary of the Mutual Holding Company.

II. LEGAL AUTHORITY

A. National Bank may be Chartered, and National Bank may Merge with Mutual Bank

The National Bank Act authorizes the chartering of national banks. *See, e.g.*, 12 U.S.C. § 21, 26 & 27. OCC regulations set out special requirements and procedures for chartering a national bank that is an "interim bank" -- *i.e.*, a national bank that does not operate independently but exists solely as a vehicle for a business combination.² The transaction for which National Bank is being established (the Merger) constitutes a business combination. The requirements of section 5.33 (12 C.F.R. § 5.33), with respect to interim banks, as well as those in 12 U.S.C. §§ 21, 26 and 27 for chartering a new bank, are satisfied. Accordingly, the formation of National Bank is authorized.³

National Bank may then merge with Mutual Bank under 12 U.S.C. § 215c. Under section 215c, a national bank may acquire another insured depository institution. 12 U.S.C. § 215c(a). Title 12 U.S.C. § 215c provides:

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

² *See* 12 C.F.R. § 5.33(e)(4). A "business combination" includes mergers between affiliated national banks. *Id.* at 12 C.F.R. § 5.33(d)(1) & (d)(2). In addition, interim federally-chartered depository institutions that are chartered by the appropriate federal banking agency and will not open for business, such as National Bank, are FDIC-insured upon issuance of the institution's charter by the agency. *See* 12 U.S.C. § 1815(a)(2). If the interim bank will be acquired by a bank holding company, the holding company also must meet applicable requirements. *See* 12 U.S.C. § 1842 *et seq.*

³ National Bank received preliminary approval to organize an interim national bank on October 23, 1997.

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(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.

Since National Bank may acquire any insured depository institution, National Bank may acquire Mutual Bank provided that the transaction meets the requirements of the Oakar Amendment and the Bank Merger Act, as applicable. The Oakar Amendment is not relevant to this transaction since National Bank will be a SAIF member and, therefore, the Merger will not involve the acquisition of a SAIF member by a Bank Insurance Fund member. See 12 U.S.C. § 1815(d)(3)(F). As discussed below in sections II-B and III-B, the transaction also meets the requirements of the Bank Merger Act, as well as all other applicable laws. In addition, National Bank will merge with Mutual Bank without National Bank owning the shares of Mutual Bank, meeting the statutory definition of an acquisition. See 12 U.S.C. § 215c(d). Accordingly, the merger of National Bank with Mutual Bank is authorized under 12 U.S.C. § 215c.

B. The Mutual Bank may Merge into the National Bank

Title 12 U.S.C. § 215c requires that a merger approved under this provision be subject to not only the Bank Merger Act, but also all other applicable laws, including laws concerning the permissibility of the proposed merger by Mutual Bank into National Bank.⁴ Section 28-1-7-1 of the Indiana Code, however, authorizes the merger or consolidation of any combination of banks and savings banks. See Ind. Code § 28-1-7-1 (Burns 1997). The definition of savings bank under the Indiana Code explicitly includes mutual savings banks such as Mutual Bank. See Ind. Code § 28-1-1-3(18)(B)(i) (Burns 1997). Counsel for Mutual Bank also has represented that the Indiana Department of Financial Institutions (IDFI) has informed Counsel that IDFI will not assert jurisdiction over any aspect of the reorganization since the Mutual Bank will merge into a national bank as part of the reorganization. See Ind. Code § 28-1-7-0.5 (Burns 1997).

Mutual Bank has represented that the holders of ownership rights in the Mutual Bank will have the same rights and benefits with respect to the Mutual Holding Company, including the same liquidation and voting rights previously possessed in the Mutual Bank, and that

⁴ See also section III-D.

they will receive no undue advantage through this transaction.⁵ The FRB currently is reviewing these and other representations by Mutual Bank with respect to the proposed formation of Mutual Holding Company and Stock Holding Company pursuant to section 3 of the Bank Holding Company Act. See 12 U.S.C. § 1842. The Federal Deposit Insurance Corporation currently is reviewing this transaction under 12 C.F.R. § 303.15. This section pertains to notices of mutual-to-stock conversions of mutually owned state-chartered savings banks, such as Mutual Bank, which are regulated by the FDIC. Subject to approval of the notices and applications pending before the FDIC and FRB, there do not appear to be any legal impediments to the merger of Mutual Bank into National Bank. Accordingly, the merger of Mutual Bank with and into National Bank is authorized under 12 U.S.C. § 215c.

C. The National Bank may Retain the Branch Offices of Mutual Bank under 12 U.S.C. § 36(b)(2)

National Bank has requested that, upon the completion of the merger, National Bank (as the resulting bank in the merger) be permitted to continue to operate Mutual Bank's existing branch offices, each of which is located in Indiana. An intrastate merger transaction where a national bank results from the consolidation or merger of a national bank with a state bank is expressly provided for under 12 U.S.C. § 36(b)(2). That section states that a resulting national bank may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as--

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency [OCC] approves of its continued operation after consolidation;

12 U.S.C. § 36(b)(2).⁶ Section 36(c) establishes that a national bank may establish and operated new branches--

(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 the restrictions as to location imposed by the law of the State on State banks.

⁵ Additionally, the Articles and Bylaws of Mutual Bank are not impediments to the institution merging into National Bank.

⁶ In addition, section 36(b)(3) defines the term "consolidation" as including a merger and section 36(l) defines "State bank" or "bank" as including trust companies, savings banks, or other such corporation or institutions carrying on the banking business under the authority of State laws. 12 U.S.C. § 36(b), (l). Accordingly, for the purpose of 36(b), Mutual Bank is a State bank.

Indiana law permits Indiana banks to branch throughout the state without geographic or numeric limitations. Ind. Code Ann. § 28-2-13-19(a) (Burns 1997). Consequently, we conclude that the National Bank is permitted to operate the branches of the Mutual Bank following the Merger.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. Compliance with other laws

Title 12 U.S.C. § 215c requires that a merger approved under this provision be subject to the Bank Merger Act, codified at 12 U.S.C. § 1828(c), and all other applicable laws. Thus, while we conclude that this proposed transaction may be approved under 12 U.S.C. § 215c, that Mutual Bank may merge into the National Bank under state and federal law, and that the branches of the target institution may be retained under 12 U.S.C. § 36(b)(2) and applicable state law, it is also necessary to analyze the permissibility of the transaction under standards set forth in the Bank Merger Act, 12 U.S.C. § 1828(c), and the Community Reinvestment Act, 12 U.S.C. §§ 2903(2), 2902(3)(E), and to consider the impact of other laws pertaining to the merger authority of national banks.

B. 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 may be approved under section 1828(c).

1. Competitive Analysis

Since this application results in a corporate reorganization and would not involve the reduction of any competition, the merger of Mutual Bank into National Bank would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of Mutual Bank are presently satisfactory. The future prospects of the National Bank are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. National Bank will continue to serve the same areas in Indiana as Mutual Bank. No branch closings are contemplated as a result of this merger. 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 applications.

C. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' records 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. Mutual Bank has a satisfactory rating with respect to CRA performance. No public comments were received by the OCC relating to these applications that would cause the OCC to question the bank's performance in complying with the CRA. The Merger is not expected to have any adverse effect on the resulting bank's CRA performance. National Bank will be subject to Mutual Bank's CRA statement, policies, commitments, agreements, and procedures. National Bank also will continue to serve the delineated communities of Mutual Bank.

D. Other laws

In addition, it is necessary under 12 U.S.C. § 215c(a) to ascertain that the transaction is in accordance with other laws governing national bank mergers and all other applicable laws, or to determine that those laws do not apply to this merger. A review of other statutes applying to mergers and intrastate branching involving national banks demonstrates that these statutes -- 12 U.S.C. §§ 215a, 215a-1, 36(d) and 36(g) -- are inapplicable to the transaction at issue which involves the merger of a state mutual savings bank into a national bank, and the continued operation of the intrastate branches of the state mutual savings bank.⁷

⁷ Title 12 U.S.C. § 215a provides that "[o]ne or more national banking associations or one or more State banks, with the approval of the Comptroller . . . may merge into a national banking association located within the same State[.]" A similar provision, 12 U.S.C. § 215 applies to intrastate consolidation. For purposes of both provisions, "State bank" is defined as "any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia . . ." See 12 U.S.C. § 215b(1). Thus, on its face, sections 215 and 215a would not apply to this transaction since the target -- a state-chartered mutual savings bank -- is not defined under the statute as a "State bank."

The determination that section 215c provides sufficient merger authority between a national bank and a depository institution that is outside the authority provided under sections 215 or 215a is consistent with the analysis set forth by the OCC in Decision of the Office of the Comptroller of the Currency on the Application to Merge Magna Bank, FSB, Des Moines, Iowa; Magna Bank, Indianola, Iowa; Magna Bank, Monticello, Iowa; Magna Bank, Oelwein, Iowa; with and into Magna Bank, National Association, Waterloo, Iowa, and subsequently to Merge Magna Bank, National Association, Waterloo, Iowa with and into Magna Bank, National Association, Brentwood, Missouri, and to engage in certain related transactions, pp. 21-22. (OCC Corporate Decision 97-70, July 14, 1997).

For the above reasons, we conclude that these other laws governing mergers involving national banks are inapplicable to the proposed transaction and, consequently, the proposed merger between National Bank and Mutual Bank is consistent, as required by 12 U.S.C. § 215c, with laws governing mergers involving national banks.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants and the receipt of all other necessary regulatory approvals, the establishment of National Bank and the Merger of Mutual Bank and National Bank is legally authorized under 12 U.S.C. §§ 215c & 1828(c). The resulting bank is authorized to retain and operate the offices of Mutual Bank under 12 U.S.C. § 36(b)(2). The Merger also meets the criteria for approval under other statutory factors. Accordingly, the Merger application is hereby approved.

/s/
Julie L. Williams
Chief Counsel

12-30-97
Date

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