



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

Washington, D.C. 20219

**Corporate Decision #97-28
June 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
FIRST SECURITY BANK OF OREGON, SALEM, OREGON, WITH AND INTO
FIRST SECURITY BANK, NATIONAL ASSOCIATION, OGDEN, UTAH**

May 14, 1997

A. The Application

On March 25, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge First Security Bank of Oregon, Salem, Oregon ("FSBO") with and into First Security Bank, National Association, Ogden, Utah ("First Security") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). FSBO is an Oregon-chartered state savings bank, and First Security is a national bank. Both banks are insured banks. First Security has its main office in Ogden and operates branches in Utah and Idaho. FSBO has its main office in Salem and operates branches in Oregon. In the Merger Application, OCC approval is also requested for the resulting bank to retain First Security's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain First Security's branches and FSBO's main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Both banks are subsidiaries of First Security Corporation, a multistate bank holding company headquartered in Salt Lake City, Utah. In the proposed merger, two of the holding companies existing bank subsidiaries will be combined into one bank with branches. As of December 31, 1996, First Security had approximately \$11.8 billion in assets and \$7.3 billion in deposits; and FSBO had approximately \$468 million in assets and \$377 million in deposits.

B. The Riegle-Neal Act

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). The Riegle- Neal Act also provides that interstate merger transactions may be approved before June 1, 1997 (the “early opt-in period”) if the home states of the merging banks have the requisite legislation. See 12 U.S.C. § 1831u(a)(3). In this Merger Application, the home states of both banks -- Utah and Oregon -- have opted in. The OCC reviewed the interstate merger provisions of these states in earlier decisions under the Riegle-Neal Act. See Decision on the Application to Merge Six Affiliated Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (Oregon and Utah); Decision on the Application to Merge First Security Bank of Idaho, N.A., into First Security Bank of Utah, N.A. (OCC Corporate Decision No. 96-31, June 12, 1996) (Utah).

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; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. In addition, during the early opt-in period, the application may also be subject to state-imposed conditions permitted under section 1831u(a)(3)(B), if any, that pertain to the initial merger itself (as distinct from conditions relating to the later ongoing operations of the branches of the resulting out-of-state bank until May 31, 1997).

First Security'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 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, First Security is acquiring by merger a bank (FSBO) in the host state of Oregon. Oregon requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Oregon bank must have been engaged in the business of banking in Oregon for at least three years. See Or. Rev. Stat. § 711.017(1)(a)(A). FSBO has operated continuously since 1910. Thus, the First Security/FSBO merger 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). The Oregon interstate bank merger and branching statute requires that, in an interstate merger, the out-of-state bank comply “with the applicable requirements of ORS 713.016, 713.020, 713.050, and 713.120 to 713.170.” Or. Rev. Stat. § 711.017(3)(b). Another provision of the Oregon Bank Act states that an out-of-state bank that merges with an Oregon bank shall be subject to ORS 713.010, 713.016, 713.020, and 713.090 to 713.260 and shall not be subject to ORS 713.012 or 713.050 to 713.080. See Or. Rev. Stat.

§ 713.011. Several of these provisions impose various filing requirements: to obtain and maintain a certificate of authority to transact business in Oregon (ORS 713.020, 713.120 to 713.160, and 713.230 to 713.250); to maintain a registered office and registered agent for service of process in Oregon (ORS 713.170 to 713.190), and to notify the state of any change of name or of withdrawal from the state (ORS 713.200 to 713.220 and 713.260). These provisions appear similar to provisions for out-of-state nonbanking corporations to qualify to do business in Oregon. As implemented to date, these filing requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. First Security provided a copy of its Merger Application to the Oregon state bank supervisor. First Security obtained a certificate of authority and is naming a registered office and registered agent in Oregon.¹ Thus, the First Security/FSBO merger 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). First Security and FSBO are affiliates.

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 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, First Security (the bank submitting the application as the acquiring bank) has a bank affiliate in Oregon before the transaction (i.e., FSBO), 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 CRA itself is applicable, as discussed below, see Part III-B.

¹ The Oregon interstate branching statute also provides that the authority for interstate mergers with in-state banking institutions is subject to a requirement that the banks' merger agreement must be submitted to and approved by the Oregon state bank supervisor. See, Or. Rev. Stat. § 711.017(1) (subjecting mergers to requirements of ORS 711.020 to 711.060). Oregon statutes further provide that a state bank may merge with a national bank under applicable Federal law. See, Or. Rev. Stat. § 711.010. The Oregon Department of Consumer and Business Services interprets this latter provision to exempt transactions where the resulting bank is a national bank from the approval requirements of ORS 711.020.

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 First Security and FSBO satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. Following the merger, First Security 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.

Finally, Congress permitted host states to impose conditions on a branch in the host state resulting from an interstate merger during the early opt-in period (i.e., until June 1, 1997), provided the condition does not discriminate against out-of-state banks, is not preempted by federal law, and does not apply or require performance after May 31, 1997. See 12 U.S.C. § 1831u(a)(3)(B). In the present Merger Application, the host state of Oregon has not imposed any such conditions.

Moreover, under the Riegle-Neal Act, a national bank resulting from an interstate merger transaction is authorized to retain and operate, as a main office or a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or a branch before the merger. See 12 U.S.C. §§ 36(d) & 1831u(d)(1). Thus, in this Merger Application, after the merger, First Security is authorized to retain and operate the main offices and branches of both banks in Utah, Idaho, and Oregon.

Accordingly, the proposed interstate merger transaction between First Security and FSBO is legally permissible under section 1831u.

C. 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 First Security and FSBO are already owned by the same bank holding company, their merger would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. First Security expects to achieve efficiencies by operating the offices in Oregon as branches 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.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. First Security will continue to serve the same areas in Utah and Idaho where it has branches, and it will add FSBO's offices in Oregon. Both banks currently offer a full line of banking services, and there will be no reductions in the products or services as a result of the merger. The combined bank will continue to offer a full line of banking products and services. The branches in Oregon will continue to engage in the same business, serving the same communities, that FSBO is currently engaged in. The merger will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

Upon completion of the merger, customers of each bank will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the merger, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. No branch closings are contemplated as a result of this merger since the banks serve different areas. However, as part of its ongoing business plans, First Security and First Security Corporation continually evaluate 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.

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.

D. 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. Both First Security and FSBO have outstanding ratings with respect to CRA performance. No public comments were received by the OCC relating to this Application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

