



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

Washington, D.C. 20219

**Corporate Decision #97-51
July 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
MERCANTILE BANK OF ILLINOIS NATIONAL ASSOCIATION, HARTFORD, ILLINOIS,
AND MARK TWAIN BANK, LADUE, MISSOURI,
WITH AND INTO
MERCANTILE BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI**

June 20, 1997

I. INTRODUCTION

On April 15, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Mark Twain Bank, Ladue, Missouri ("Mark Twain") with and into Mercantile Bank National Association, St. Louis, Missouri ("Mercantile") under Mercantile's charter and title, under 12 U.S.C. §§ 215a & 1828(c) ("the In-state Merger") and then simultaneously to merge Mercantile Bank of Illinois National Association, Hartford, Illinois (MB-Illinois), with and into Mercantile under Mercantile's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Interstate Merger") (together "the Merger Application"). Mercantile has its main office in St. Louis, Missouri, and operates branches in Missouri. Mark Twain has its main office in Ladue, Missouri, and operates branches in Missouri. MB-Illinois has its main office in Hartford, Illinois, and operates one branch in Illinois. It has a full-service bank charter, but before this merger it functioned primarily as a credit card bank. In the Merger Application, OCC approval is also requested for Mercantile to retain the main office and branches of Mark Twain, as well as its own branches, as branches after the In-state Merger under 12 U.S.C. § 36(b)(2), and approval is requested for the resulting bank after the Interstate Merger to retain MB-Illinois' main office in Hartford as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain MB-Illinois' branch and Mercantile's main office and branches (including those of Mark Twain obtained in the In-state Merger), as branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Mercantile, Mark Twain, and MB-Illinois are subsidiaries of Ameribanc, Inc., a wholly owned subsidiary of Mercantile Bancorporation, Inc., a multistate bank holding company headquartered in St. Louis, Missouri. In the proposed merger, three of Mercantile

Bancorporation, Inc.'s existing bank subsidiaries will be combined into one bank with branches in two states.

II. LEGAL AUTHORITY

A. **The In-state Merger of Mark Twain into Mercantile is Authorized under 12 U.S.C. § 215a, and the Resulting Bank may Retain the Branches of Both Banks under 12 U.S.C. § 36(b)(2).**

Mark Twain is chartered by the State of Missouri. Federal banking law permits a state bank to merge into a national bank located within the same state under the charter of the receiving national bank, subject to certain procedural requirements. See 12 U.S.C. § 215a. Mark Twain and Mercantile are both located in Missouri, and the proposed merger complies with all of the provisions of section 215a. With respect to the merger of a Missouri state bank with a national bank, Missouri law permits such mergers upon compliance with federal banking law and without approval by the state. Subsequent to the merger, the resulting bank shall notify the state and file a copy of the OCC's approval of the transaction. Mo. Ann. Stat. § 362.240 (Vernon Supp. 1997). These requirements will be satisfied. Consequently, the proposed merger of Mark Twain into Mercantile is legally permissible under section 215a.¹

In the In-state Merger between Mark Twain and Mercantile, branch retention is governed by the McFadden Act. See 12 U.S.C. § 36(b)(2). The provisions of section 36(b)(2) apply different rules for branch retention by the resulting bank with respect to the target bank and the lead bank. Under section 36(b)(2)(A), the resulting bank may retain the main office and the branches of the target bank (here, Mark Twain) if the resulting bank could establish them as new branches after the merger under section 36(c). Under section 36(b)(2)(C), the resulting bank after the merger may retain and operate as a branch any branch of the lead bank (here, Mercantile) that existed prior to the merger, unless a state bank resulting from a merger would be prohibited by state law from retaining as a branch an identically situated office of a state bank. In the In-state Merger, both banks are located in Missouri, and all the branches are in Missouri. Missouri law permits Missouri state-chartered banks to establish branches at any location within the state, and without any limitation as to the number of branches. See Mo. Ann. Stat. § 362.107 (Vernon Supp. 1997). A Missouri state-chartered bank could establish branches at all the locations in Missouri where Mark Twain has its main office and branches. Thus, a national bank situated in Missouri could establish branches at all those locations under section 36(c), and so Mercantile (as the resulting bank in this merger) may retain the main office and branches of Mark Twain under section 36(b)(2)(A). Similarly, a Missouri state bank in Mercantile's position would not

¹ Mark Twain, a state nonmember bank, currently sells, as principal, foreign sovereign debt securities to customers. The OCC has not, to date, determined whether a national bank may engage in this activity as principal. OCC policy allows acquiring banks in mergers a reasonable time to divest or conform nonconforming assets or activities. See 61 Fed. Reg. 60342, 60373 (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.33(e)(5)). Consequently, this activity must be terminated within two years of the consummation of the merger, restructured to be conducted in a manner permissible for national banks, or transferred to an affiliate, subject to the laws governing the affiliate. Within that time period the resulting bank also may request the OCC to determine if this service is permissible for national banks.

be prohibited from retaining its branches in a similar merger with another state bank, and so Mercantile (as the resulting bank in this merger) may retain the existing branches of Mercantile under section 36(b)(2)(C).

B. The Interstate Merger of Mercantile and MB-Illinois is Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

1. The Interstate Merger is authorized.

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). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).² The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In this merger, the home states of the banks are Missouri and Illinois; neither state has opted out. Accordingly, the Interstate Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

² For purposes of section 1831u, the following definitions apply: The term "home State" means, "with respect to a national bank, the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

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, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

Mercantile's and MB-Illinois' Interstate Merger 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). But the maximum age requirement permitted is five years. See 12 U.S.C. § 1831u(a)(5)(B). In this Interstate Merger, while Mercantile and MB-Illinois are combining under Mercantile's charter, the resulting bank will have Hartford, Illinois, as its main office under 12 U.S.C. § 1831u(d)(1), see Part II-B-2 below. Thus, in the context of this transaction, it is not clear which state is the host state for purposes of section 1831u(a)(5), and so which bank is subject to the age limit. On the one hand, Mercantile is acquiring by merger a bank (MB-Illinois) in the state of Illinois, and so Illinois could be viewed as the host state for age limit purposes. On the other hand, after the merger, the resulting bank's main office will be in Illinois, and so Illinois is the resulting bank's home state, and Missouri is the host state for the resulting bank going forward; and so Missouri could be viewed as the host state for age limit purposes as well. The OCC believes the first view is the better interpretation for applying section 1831u(a)(5) in this context. However, we need not resolve this question here, since the merger would satisfy the host-state imposed age limit under either view. First, neither Missouri nor Illinois currently imposes an age requirement for a bank in that state in an interstate bank merger.³ Second, even if an age limit were imposed, Mercantile and MB-Illinois (as well as Mark Twain) have been in existence for more than five years, and so the age requirement would be met. Thus, the Interstate Merger satisfies the Riegle-Neal requirement of compliance with state age laws.

³ The Illinois legislature passed a bill amending the state's interstate bank merger statute to introduce a five-year age requirement, but that legislation has not yet been enacted and therefore is inapplicable to the present transaction. See Senate Bill 690, Illinois 90th General Assembly. Moreover, MB-Illinois is more than five years old, and so the five-year age limit, if it were applicable, would be met. Missouri requires that a bank must have been in existence for at least five years before an out-of-state holding company seeking to enter Missouri for the first time may acquire it. See Mo. Rev. Stat. § 362.077. However, this provision applies to acquisitions by holding companies, not to interstate bank mergers. It also does not apply to Mercantile Bancorporation, Inc., since that holding company already has banking operations in Missouri. Missouri is also in the process of enacting legislation with respect to interstate mergers under the Riegle-Neal Act. However, that proposed legislation contains only provisions relating to the five-year age requirement in bank acquisitions by an out-of-state bank holding company and provision s permitting Missouri state-chartered banks to enter interstate bank mergers; it does not impose age or filing requirements on interstate bank mergers. See House Bill No. 257, Missouri 89th General Assembly (amending Mo. Rev. Stat. §§ 362.077 and 362.610).

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).⁴ Neither Missouri nor Illinois has a filing requirement with respect to interstate mergers resulting in a national bank.⁵ Counsel for Mercantile Bancorporation, Inc. advises a copy of the merger application has been provided to the Missouri and Illinois banking authorities. Thus, the Interstate Merger satisfies the filing requirements of the Riegle-Neal Act.

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). Mercantile and MB-Illinois are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

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

⁴ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

⁵ The Illinois statute does contain provisions addressing application requirements for a merger with a n Illinois state bank, but these provisions apply only when an out-of-state state bank is involved and not when the out-of-state resulting bank is a national bank. See 205 Ill. Comp. Stat. Ann. § 5/21.1 (application for certificate of authority in interstate mergers with a state bank and other requirements for an "out-of-state bank") & 205 Ill. Comp. Stat. Ann. § 5/20 (mergers with resulting national bank). See also 205 Ill. Comp. Stat. Ann. § 5/2 (definition of "out-of-state bank" includes only state-chartered institutions; definition of national bank after May 31, 1997, includes out-of-state national banks).

laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it 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, Mercantile (the bank submitting the application as the acquiring bank) has a bank affiliate in Illinois before the transaction (i.e., MB-Illinois), 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 Interstate Merger. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

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, Mercantile and MB-Illinois satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, Mercantile 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.

Accordingly, the proposed interstate merger transaction between Mercantile and MB-Illinois is legally permissible under section 1831u.

2. Following the merger, the resulting bank may retain all the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the merger, Mercantile (as the resulting bank in the merger) be permitted to retain and continue to operate MB-Illinois' existing main office in Hartford, Illinois, as the main office of the resulting bank and to retain and continue to operate as branches (1) the existing branch of MB-Illinois and (2) the main office and branches of Mercantile in Missouri (including those of Mark Twain obtained in the In-state Merger). In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act

to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, Mercantile, the resulting bank in this interstate merger transaction, may retain and operate MB-Illinois' main office in Hartford, Illinois, as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate as branches all the other existing banking offices of MB-Illinois and Mercantile (including the former Mark Twain offices) under 12 U.S.C. §§ 36(d) & 1831u(d)(1).⁶

Moreover, at its branches in both Missouri and Illinois, Mercantile is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

⁶ By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refers to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

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 Mercantile, MB-Illinois, and Mark Twain are already owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of Mercantile are presently satisfactory. Mercantile expects to achieve efficiencies by operating the offices of the three merging banks as a unified organization rather than as three corporate entities. The geographic diversification of its operations will also strengthen the combined bank. Mercantile's future prospects are favorable. 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. Mercantile will continue to serve the same areas in Missouri where it has branches, and it will add MB-Illinois' offices in Illinois, as well as Mark Twain's offices in Missouri. While both Mercantile and Mark Twain currently offer a full line of banking services, MB-Illinois limits its services primarily to credit card services. Consequently, there will be an increase in the products and services offered in Illinois as a result of the merger, and no reduction in the products or services offered to Mercantile and Mark Twain customers. The combined bank will continue to offer a full line of banking products and services. The branches in Missouri will continue to engage in the same business, serving the same communities, that Mercantile and Mark Twain are currently engaged in.

Upon completion of the merger, customers of each bank will have available to them a 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. Especially benefitting will be those customers who live in one state and work in another, particularly in the St. Louis metropolitan area. The merger will permit the resulting bank to serve its customers better 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.

While certain branches will be closed as a result of the merger, Mercantile's objective in identifying branches for closing was to eliminate overlapping locations without hurting any market currently served by any institution. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches being closed, and will consider the needs of the community affected. Notices have already been sent to customers informing them of thirteen branch closings. In these situations, another banking facility is within three miles of each branch being closed. Two branches being closed are in low-to moderate-income census tracts. However, these census tracts are primarily business areas, not residential neighborhoods, and these branches traditionally have served commercial customers. The closest branches to these two branches are located 1,000 feet and 1 mile away, respectively.

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.

B. 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. Mercantile and Mark Twain received "Outstanding" CRA ratings at their most recent CRA examinations, and MB-Illinois received a "Satisfactory" CRA rating at its most recent CRA examination.

The OCC's Midwestern District Office (MWDO) is currently conducting a CRA examination of Mercantile. Consistent with OCC's practice, OCC had announced late in 1996 that it expected to commence the examination in March 1997 and invited the public to comment. See News Release 96-131, November 27, 1996. In response thereto, the OCC received information relating to the bank's CRA performance from the Missouri Association of Community Organizations for Reform Now and its affiliates ("ACORN"). OCC staff also met with ACORN on April 9, attended a public hearing sponsored by ACORN on April 10, and met with ACORN again on May 8. In addition, ACORN submitted additional letters to the OCC on several occasions. ACORN also requested that OCC's Headquarters staff review the preliminary conclusions of the OCC's current examination of the bank and meet with ACORN to discuss general issues regarding community input into the CRA rating process. Senior Headquarters staff has agreed to do so.

We have taken the concerns raised by ACORN and the results of OCC examiners' investigation of those concerns into account in connection with our consideration of this application. ACORN's principal concerns and our findings are summarized below:

- ACORN indicated its concern that Mercantile's lending performance in black and low- and moderate-income census tracts had declined since 1993. The OCC's analysis of home purchase loan originations indicated that the bank's lending to blacks increased from 1994 to 1995 (the most recent data available). The total number of HMDA-reportable loan originations in low- and moderate-income census tracts declined from

1994 to 1996, although they remained constant as a percentage of the bank's total HMDA-reportable loan originations.

- ACORN contended that Mercantile may be steering black applicants to more expensive government guaranteed home purchase loans. OCC found no violations of the substantive provisions of the anti-discrimination laws and regulations. Mercantile's government loans did represent a higher percentage of total home loans for black borrowers than for white borrowers, however, the percentages to blacks and whites were comparable within low- and moderate-income census tracts.
- ACORN was concerned that Mercantile's branches are not located in predominantly black census tracts. OCC found that only 2 of the bank's 44 branches are in census tracts that have greater than 50% minority population. OCC reviewed lending data which is available by income level, but not by race, and found that approximately 6% of the bank's HMDA-reportable loans originated in 1994 and 1995 were in low- and moderate-income census tracts, compared with an average of 12% for all lenders in the market. OCC also found that, by income level of the borrower, Mercantile has made 21%, 25%, and 26% of its HMDA-reportable loans to low- and moderate-income borrowers in 1994, 1995, and 1996, respectively. Approximately 28% of families in the MSA are in those income levels.
- ACORN asserted that the location of branches and the bank's policies effectively discourage mortgage applications from the black community. OCC found that the bank processes applications at a single branch site that is not located near a predominantly minority census tract. However, the OCC also found that mortgage loan applications are available at all branches and that applicants can complete applications at any branch with the telephone assistance of a mortgage department representative, mail an application, or arrange for a representative to meet with the applicant at a location, including any of Mercantile's branches, convenient for the applicant.
- ACORN expressed concern that Mercantile has not provided public access to data as required by the CRA regulation. OCC found that the bank has not withheld information in violation of the regulation. Data sought by ACORN are not yet required to be disclosed.
- ACORN reported that, at Mercantile's direction, the newly-affiliated Roosevelt Bank, FSB, unilaterally terminated an agreement with ACORN that does not expire until October 31, 1997. Mercantile represented to the OCC that the agreement has not been terminated and the Roosevelt will continue to perform under the terms of the agreement.

Going forward, the merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. Moreover, as already noted, there will be an increase in the products and services offered in Illinois as a result of the merger. The resulting bank will be subject to the same obligations to meet the credit needs of all the communities it serves as

