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

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Washington, D.C. 20219

**Corporate Decision #97-56  
July 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATION BY  
1ST NATIONAL COMMUNITY BANK, EAST LIVERPOOL, OHIO,  
TO ACQUIRE A BRANCH IN NEW CUMBERLAND, WEST VIRGINIA**

**June 26, 1997**

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**I. INTRODUCTION**

On May 16, 1997, 1st National Community Bank, East Liverpool, Ohio ("1st National"), applied to the Office of the Comptroller of the Currency ("OCC") for approval to acquire and operate a branch (including the purchase of the assets, and assumption of the liabilities, of the branch) in New Cumberland, West Virginia ("the New Cumberland Branch"), from United National Bank, Parkersburg, West Virginia, under 12 U.S.C. §§ 24(7), 36(d), 1828(c) & 1831u ("the Branch Acquisition"). Both banks are members of the Bank Insurance Fund. The banks are not affiliated. As of December 31, 1996, 1st National had approximately \$42 million in assets and \$38 million in deposits and operated two branches in Ohio. The New Cumberland Branch had, and 1st National is acquiring, \$2 million in assets and \$2 million in deposits. The New Cumberland Branch will be 1st National's first branch in West Virginia.

**II. LEGAL AUTHORITY**

**A. The Purchase and Assumption Transaction is Authorized under 12 U.S.C. § 24(7).**

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(7). *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). *See also* 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act). Such purchase and assumption transactions are commonplace in the banking industry.

Accordingly, 1st National may purchase the assets, and assume the liabilities, of the New Cumberland Branch from United National Bank. If 1st National did not also plan to acquire and operate the New Cumberland Branch as a branch of 1st National, no further authority would be needed. Additional authority is required to operate it as a branch.

**B. The Interstate Branch Acquisition and Operation of the Branch are Authorized under 12 U.S.C. §§ 36(d) & 1831u.**

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:

(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) (added by the Riegle-Neal Act § 102(a)).<sup>1</sup> Under the Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions. See 12 U.S.C. §§ 1831u(f)(6)-(7) & 1828(c)(3). The Act permits a state to elect to prohibit 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 application, the home states of the banks are Ohio and West Virginia; neither state opted out.

An "interstate merger transaction" under section 1831u(a) includes a purchase and assumption transaction. A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and

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<sup>1</sup> The Riegle-Neal Act 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)).

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).

assumption of only a part of bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

12 U.S.C. § 1831u(a)(4)(A). In this application, the branch to be acquired is located in West Virginia. West Virginia law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in West Virginia through the acquisition of a branch. See W. Va. Code § 31A-8E-4.<sup>2</sup> Finally, Congress also provided that a national bank may maintain and operate a branch in a state other than its home state as a result of an interstate merger transaction under section 1831u(a). See 12 U.S.C. §§ 36(d) & 1831u(d)(1).<sup>3</sup> Accordingly, this application may be approved under 12 U.S.C. §§ 36(d) and 1831u.

In addition, an application to engage in an interstate merger transaction, including an interstate branch acquisition, 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

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<sup>2</sup> Section 31A-8E-4 provides:

Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, an out-of-state bank that does not operate a branch in this state and that meets the requirements of this article may establish and maintain a de novo branch in this state, and may also establish and maintain a branch in this state through the acquisition of a branch; Provided, That branches may be so established in West Virginia by out-of-state banks only if the laws of the home state of the out-of-state bank permit West Virginia state banks to establish and maintain de novo branches or to acquire and maintain branches, as applicable, under substantially the same terms and conditions as set forth in this article. If the law of the other state restricts such entry by a West Virginia state bank to that other state, then the board may similarly limit the authority granted by this article for banks having their main offices located in that state.

W. Va. Code § 31A-8E-4. The authority of the states to impose a reciprocal treatment condition after May 31, 1997, is questionable. See, e.g., 12 U.S.C. § 1831u(a)(3)(B). Since Ohio also permits interstate *de novo* branches and interstate branch acquisitions, see Ohio Rev. Code § 1117.01 (as amended by Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40), we need not consider this question further in the context of this application.

<sup>3</sup> Section 36(d) provides:

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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Section 36(d), rather than other subsections of section 36, is the authority for the New Cumberland Branch in this application because the acquisition of a branch in a purchase and assumption transaction under section 1831u(a)(4) is an “interstate merger transaction” under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u.

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.

1st National's 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 Branch Acquisition, 1st National is acquiring a branch in West Virginia. West Virginia does not have an age requirement for either an interstate merger or an interstate branch acquisition. The Branch Acquisition satisfies the Riegle-Neal Act's age requirement.

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).<sup>4</sup> West Virginia's statute permitting the acquisition of a branch in West Virginia by an out-of-state bank requires the out-of-state bank to notify the West Virginia commissioner of banking and to comply with the requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia. See W. Va. Code §§ 31A-8E-5 & 31A-8E-6(b).<sup>5</sup> 1st National notified the West Virginia Commissioner, sent a copy of its OCC Application (as required by section 1831u(b)(1)(ii)), and applied for a West Virginia Business Registration Certificate. Thus, this application satisfies the Riegle-Neal Act's filing requirements.

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<sup>4</sup> 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).

<sup>5</sup> The West Virginia statute also has other "conditions for approval" in section 31A-8E-6 that appear to go beyond the state filing requirements permitted in section 1831u(b)(1) for national banks, and so they would not be applicable to national banks for the reasons discussed in note 4.

Third, the proposed Branch Acquisition 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. Under section 1831u(b)(2)(A), the OCC may not approve an interstate merger transaction if the resulting bank (including all affiliated insured depository institutions) would control more than 10 percent of the total amount of deposits in the United States. Under section 1831u(b)(2)(B), the OCC may not approve an interstate merger transaction (1) if any bank involved in the transaction (including all affiliated insured depository institutions) has a branch in any state in which any other bank involved in the transaction has a branch and (2) if the resulting bank (including all affiliated insured depository institutions) would control 30 percent or more of the total deposits in any such state. After the Branch Acquisition, 1st National will control less than one percent of total deposits in the United States. This transaction is 1st National's initial entry into West Virginia. Moreover, after the Branch Acquisition, 1st National will control less than one percent of the deposits in Ohio and West Virginia. This application meets the Riegle-Neal Act's deposit concentration limits.

Fourth, the proposed Branch Acquisition meets 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 bank's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). 1st National has a satisfactory rating with respect to CRA performance. CRA considerations are discussed further in Part III-B below. 1st National has no bank affiliates. Neither Ohio nor West Virginia has community reinvestment laws applicable to 1st National.

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, 1st National and United National Bank 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 Branch Acquisition, 1st National 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, 1st National's proposed acquisition and operation of the New Cumberland Branch in West Virginia is legally permissible under 12 U.S.C. §§ 36(d) & 1831u.

### **III. ADDITIONAL STATUTORY AND POLICY REVIEWS**

**A. The Bank Merger Act.**

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger transaction, including purchase and assumption transactions, between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger transaction 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 application may be approved under section 1828(c).

**1. Competitive Analysis.**

The New Cumberland Branch is outside 1st National's current competitive market area. Accordingly, 1st National's acquisition of the branch will have no anticompetitive effects.

**2. Financial and Managerial Resources.**

The financial and managerial resources of both banks are presently satisfactory. The proposed interstate branch acquisition should place little additional burden on 1st National. Its future prospects are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the application.

**3. Convenience and Needs.**

The resulting bank will help to meet the convenience and needs of the communities to be served. 1st National will continue to serve the same areas in Ohio, and it will add the New Cumberland Branch in West Virginia. 1st National will continue to offer its current range of banking products and services. Upon completion of the Branch Acquisition, current customers of 1st National in East Liverpool, and new customers at the New Cumberland Branch, will have the added convenience of being able to bank with the same bank across state lines. No branch closings are contemplated as a result of this transaction. Accordingly, we believe the impact of the interstate branch acquisition on the convenience and needs of the communities to be served is consistent with approval of the application.

**B. 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. 1st National has a satisfactory rating 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 bank's performance in complying with the CRA.

The Branch Acquisition is not expected to have any adverse effect on the resulting bank's CRA performance. 1st National will continue to serve the same communities that it currently serves and will continue its current CRA programs and policies. After the Branch Acquisition, it will add the community around New Cumberland to its assessment areas. The area currently served by 1st National is principally low- to-moderate income, as is the area around the New Cumberland Branch. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as 1st National and the New Cumberland Branch have today separately. The Branch Acquisition and operation of an interstate branch does not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed Branch Acquisition is consistent with the Community Reinvestment Act.

#### **IV. CONCLUSION AND APPROVAL**

For the reasons set forth above, including the representations and commitments made by the applicants, we find that 1st National's acquisition and operation of the branch in New Cumberland, West Virginia, is legally authorized under 12 U.S.C. §§ 24(Seventh), 36(d) & 1831u, and that the Branch Acquisition meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

\_\_\_\_\_/s/  
Julie L. Williams  
Chief Counsel

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06-26-97  
Date

Application Control Number: 97-CE-02-0041