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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

**Corporate Decision #97-88  
October 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATION TO MERGE  
HUNTINGTON NATIONAL BANK, COLUMBUS, OHIO  
WITH  
FMB-FIRST MICHIGAN BANK, ZEELAND, MICHIGAN;  
FMB-FIRST MICHIGAN BANK-GRAND RAPIDS, GRAND RAPIDS, MICHIGAN;  
FMB-LUMBERMAN'S BANK, MUSKEGON, MICHIGAN;  
FMB-NORTHWESTERN BANK, BOYNE CITY, MICHIGAN;  
FMB-STATE SAVINGS BANK, LOWELL, MICHIGAN;  
FMB-COMMERCIAL BANK, GREENVILLE, MICHIGAN;  
FMB-SAULT BANK, SAULT ST. MARIE, MICHIGAN;  
FMB-SECURITY BANK, MANISTEE, MICHIGAN;  
FMB-COMMUNITY BANK, DOWAGIAC, MICHIGAN;  
FMB-OCEANA BANK, HART, MICHIGAN;  
FMB-REED CITY BANK, REED CITY, MICHIGAN;  
FMB-MAYNARD ALLEN BANK, PORTLAND, MICHIGAN;  
FMB-OLD STATE BANK, FREMONT, MICHIGAN;  
FMB-ARCADIA BANK, KALAMAZOO, MICHIGAN;  
AND FMB-TRUST, HOLLAND, MICHIGAN**

**September 15, 1997**

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**I. INTRODUCTION**

The Huntington National Bank, Columbus, Ohio ("HNB") is an interstate national bank with branches in Ohio, Florida, Indiana, Kentucky, Michigan and West Virginia.<sup>1</sup> The present merger

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<sup>1</sup> HNB became an interstate national bank as a result of a recent Riegle-Neal merger transaction with affiliate national banks in Ohio, Florida, Indiana, Kentucky, Michigan, and West Virginia. See Decision on the Applications of Huntington National Bank, OCC Corporate Decision 97-46 (June 4, 1997).

application proposes the merger of fifteen state banks in Michigan, none of which are currently affiliates of HNB.

On July 1, 1997, HNB filed an application with the OCC for approval to merge fifteen Michigan state banks with and into HNB under the title and charter of HNB, under 12 U.S.C. § 215a. The fifteen state banks are each wholly owned by FMB Corp.,<sup>2</sup> a Michigan bank holding company. They are: FMB-First Michigan Bank, Zeeland, Michigan; FMB-First Michigan Bank-Grand Rapids, Grand Rapids, Michigan; FMB-Lumberman's Bank, Muskegon, Michigan; FMB-Northwestern Bank, Boyne City, Michigan; FMB-State Savings Bank, Lowell, Michigan; FMB-Commercial Bank, Greenville, Michigan; FMB-Sault Bank, Sault St. Marie, Michigan;<sup>3</sup> FMB-Security Bank, Manistee, Michigan; FMB-Community Bank, Dowagiac, Michigan; FMB-Oceana Bank, Hart, Michigan; FMB-Reed City Bank, Reed City, Michigan; FMB-Maynard Allen Bank, Portland, Michigan; FMB-Old State Bank, Fremont, Michigan; FMB-Arcadia Bank, Kalamazoo, Michigan; and FMB-Trust, Holland, Michigan<sup>4</sup> (the "target banks"). HNB has its main office in Columbus, Ohio, and operates branches in Ohio, Florida, Indiana, Kentucky, Michigan and West Virginia. The target banks have main offices and branches only in Michigan. Approval is requested under 12 U.S.C. § 36(b) to retain the branches of HNB and the main offices and branches of the target banks as branches of HNB.

## **II. LEGAL AUTHORITY**

These transactions are mergers between an interstate national bank and other banks in one of the states in which the interstate bank already has branches. The OCC previously considered such applications under §§ 215a and 36(b). As discussed in II-C below, the Riegle-Neal Act did not change existing authority under §§ 215a and 36(b). These mergers do not raise new issues, but require only the application of established precedent for applying §§ 215a and 36(b) to interstate national banks.

### **A. The Mergers are Authorized under § 215a.**

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a, which provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge

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<sup>2</sup> In a separate transaction and immediately prior to the merger of HNB and the fifteen target banks, FMB Corp. will be merged into Huntington Bancshares, Inc., Columbus, Ohio, which owns HNB. As a result, the target banks will be affiliates of HNB at the time of their merger into HNB.

<sup>3</sup> FMB-Sault Bank is owned directly by Superior Financial Corp., which in turn is owned by FMB Corp.

<sup>4</sup> FMB-Trust operates as a trust company and does not have deposit insurance. HNB has filed an application with the Federal Deposit Insurance Corporation for approval of this aspect of the merger, pursuant to the Bank Merger Act. See 12 U.S.C. § 1828(c)(1)(A).

into a national banking association *located within the same State*, under the charter of the receiving association.

12 U.S.C. § 215a(a) (emphasis added). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied this section with respect to mergers with an existing interstate national bank.<sup>5</sup> We concluded that, just as for branching purposes under § 36, a national bank with its main office and branch offices in more than one state was “located” in each state, for the purpose of mergers with other banks in that state under § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This position is also supported by judicial construction of “situated” in § 36(c) and similar locational phrases in other sections of the National Bank Act. Any other reading could render § 215a largely unworkable in the case of interstate banks. Finally, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate bank may occur under relevant law for in-state mergers. See 12 U.S.C. § 1831u(d)(2) (quoted in note 6 below). The reasoning and support for this position are extensively set out in the earlier OCC decisions, such as those listed in note 5.

By virtue of its branches in Michigan, HNB is located in Michigan and so it may merge, under § 215a, with the fifteen target banks whose main offices and branches are in Michigan.

**B. The Resulting Bank may Retain the Offices of all the Banks under § 36(b)(2).**

The application also requests OCC approval for HNB to retain the main offices and branches of the target banks and the existing branches of HNB as branches of the resulting bank after the mergers. Branch retention following these mergers is covered by the McFadden Act. See 12 U.S.C. § 36(b)(2). Section 36(b)(2) differentiates between branches of target banks and branches of the lead bank. Applying the various provisions of § 36(b)(2) to the different groups of branches involved in these mergers, we find that HNB is legally authorized to retain all the offices as branches.

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<sup>5</sup> See, e.g., Decision on the Applications of Boatman’s Bank of Vandalia with NationsBank, N.A., OCC Corporate Decision 97-47 (June 6, 1997); Decision on the Application to Merge Fleet Bank of New York, N.A., with NatWest Bank, N.A., OCC Corporate Decision 96-20 (Apr. 12, 1996) (“OCC Fleet/NatWest Decision”); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A., OCC Corporate Decision 95-18 (May 25, 1995) (“OCC Midlantic/Old York Decision”); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A., OCC Corporate Decision 95-05 (Feb. 16, 1995), *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 90,474 (“OCC Bank Midwest Decision”); Decision on the Applications of First Fidelity Bank, N.A. (Pennsylvania) and First Fidelity Bank, N.A. (New Jersey), OCC Corporate Decision 94-04 (Jan. 10, 1994), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644; Decision on the Applications of State Savings Bank, Southington, Connecticut, OCC Merger Decision 91-07 (Apr. 8, 1991) (“OCC Shawmut Decision”).

**1. Retention of the main offices and branches of the Michigan target banks as branches of the resulting bank.**

In the proposed mergers, HNB is authorized to retain the main offices and branches of each of the fifteen target banks under § 36(b)(2)(A). Under § 36(b)(2)(A), the resulting bank may retain the branches or the main office of the target bank if the resulting bank could establish them as new branches of the resulting bank under § 36(c). For branching purposes under § 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks. See Ghiglieri v. Sun World, N.A., 117 F.3d 309 (5th Cir. 1987); Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir.), *cert. denied*, 419 U.S. 844 (1974).<sup>6</sup> In applying the branch retention provisions of § 36(b)(2)(A) in the context of mergers involving interstate banks, it is therefore necessary to determine in which state(s) the resulting bank is situated. The OCC previously concluded that the resulting bank is properly treated as situated in all of the states in which the participating banks were situated in order to then apply the § 36(c) standard, using each state's law for the branches in that state.<sup>7</sup> We first reached this analysis in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank, see OCC Shawmut Decision, *supra* note 5, and have applied it in subsequent decisions involving mergers with interstate banks both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision, *supra* note 5, Part II-C-2-a; other OCC decisions cited in note 5 above.

Accordingly, the resulting bank, HNB, is situated in Michigan for purposes of §§ 36(b)(2)(A) & 36(c). In these mergers, with respect to the target banks, Michigan's laws allow state banks in the state to establish or acquire branches without limitation within the state, and so a national bank

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<sup>6</sup> Indeed, provisions in the Riegle-Neal Act have, in effect, codified the Seattle Trust interpretation of § 36 for Riegle-Neal interstate national banks. Section 1831u(d)(2) provides:

(2) Additional Branches. -- Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

12 U.S.C. § 1831u(d)(2). See also 12 U.S.C. § 36(g)(2)(B) (applying § 1831u(d)(2) to subsequent branches when a national bank has entered a state initially with a *de novo* branch under the Riegle-Neal Act). Under this provision, for any host state, a national bank resulting from a Riegle-Neal interstate merger transaction among national banks in different states may establish or acquire additional branches in the host state under the federal law applicable to branching in the host state by the predecessor national bank in the host state (e.g., § 36(b)(2) with respect to branches acquired through merger, and § 36(c) with respect to branches acquired by purchase or established *de novo*). The legislative history confirms the statutory language. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 50, 56 (Aug. 2, 1994). See also Decision on the Applications of Community National Bank, OCC Corporate Decision No. 96-22 (Apr. 19, 1996) (further discussion of these provisions).

<sup>7</sup> For purposes of § 36(b) and § 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state's banks within the state. State laws pertaining to the activities of the state's banks outside the state or to the activities of out-of-state banks within the state are not within the scope of what these sections of the McFadden Act refer to. See, e.g., OCC Bank Midwest Decision, *supra* note 5, Parts II-B, II-C-2, II-D, III-B-1-b.

situated in that state could establish branches at the locations of the target banks under § 36(c). See Mich. Comp. Laws Ann. §§ 487.430(2)(c) (1996) (acquisition) and 487.471(1) (establishment). Therefore, HNB may retain and operate the main offices and branches of the target banks under § 36(b)(2)(A).

## **2. Retention of HNB's existing branches.**

In these mergers, HNB is the acquiring or lead bank, *i.e.*, the bank under whose charter the merger is effected. Section 36(b)(2)(C) of the McFadden Act authorizes the national bank resulting from a merger to retain and operate as a branch any branch of the lead bank 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. Although state law on the establishment of new branches applies to the resulting bank's retention of the branches of the target bank under paragraph (A), it does not apply to the resulting bank's retention of the branches of the lead bank under paragraph (C). Instead, a different rule applies: The branches may be retained unless the state has expressly prohibited it.

In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of § 36(b)(2)(C) with respect to lead banks that have offices in more than one state. We determined that § 36(b)(2)(C) should be applied in the same manner as §§ 36(c) and 36(b)(2)(A), so that the resulting national bank is treated as situated in each state in which it operates in applying § 36(b)(2)(C). Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers within the state. We reached this conclusion in decisions both before and after the Riegle-Neal Act. See, *e.g.*, OCC Bank Midwest Decision, *supra* note 5, Part II-C-2-b; other OCC decisions cited in note 5.

Thus, under § 36(b)(2)(C), for each state, the resulting bank may retain the branches of the lead bank unless the state has expressly prohibited branch retention for identically situated offices in a merger between its state banks. With respect to HNB's branches in Ohio, Florida, Indiana, Kentucky, Michigan and West Virginia, there are no provisions in the laws of these jurisdictions that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state if such offices were branches of the state-chartered bank. See, *e.g.*, Ky. Rev. Stat. Ann. § 287.915(1)(a) (authorizing branch retention for in-state mergers of state banks).<sup>8</sup> Therefore, the resulting bank may retain all of the branches of HNB under § 36(b)(2)(C).

## **C. This Existing Authority for National Banks under 12 U.S.C. §§ 215a & 36(b)**

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<sup>8</sup> Moreover, although express authority for the acquiring bank to retain branches is not required to meet the requirements of § 36(b)(2)(C), each of these states authorizes state-wide branching for its banks. See Ohio Rev. Code Ann. § 1117.01(B)(1) (Page 1996); Fla. Stat. Ann. § 658.26(2)(a) (West Supp. 1997); Ind. Code Ann. § 28-2-17-20(a) (Burns Supp. 1996); Mich. Comp. Laws Ann. § 425.471(1) (1996); W. Va. Code § 31A-8E-3(a) (1997); *cf.* Ky. Rev. Stat. Ann. § 287.180(2) (authorizing branching within any county with a main office or existing branch).

**continues after the Riegle-Neal Act.**

Our analysis of the legal authority for the merger is based on pre-existing law for national banks, in particular 12 U.S.C. §§ 36(b), 36(c), & 215a. The Riegle-Neal Act did not alter these provisions, did not change the legal analysis and result under them, and indeed confirmed it. The statutory language and legislative history in the Riegle-Neal Act clearly contemplate that existing authority under these provisions remains in effect. The language of these sections is not changed, and the legislative history contains no indication of any intent to modify the operation of these sections. Moreover, nothing in the new sections added in the Riegle-Neal Act (in particular the provision on exclusive authority for additional branches, 12 U.S.C. § 36(e), discussed below) conflicts with any authority in these sections.

The statutory changes and legislative history of the Riegle-Neal Act shows that Congress was completely aware of the OCC's prior interstate decisions. OCC decisions prior to the Riegle-Neal Act addressed interstate mergers and involved issues and analysis of §§ 36 and 215a. In the Riegle-Neal Act, Congress did not change §§ 36(b), 36(c), or 215a or express any disagreement with OCC's interpretation and application of them. Nor does the new section 44 authority for interstate merger transactions in the Riegle-Neal Act and the corresponding new provision authorizing national banks to engage in section 44 mergers, 12 U.S.C. § 215a-1, supplant existing merger authority possessed by national banks. Review of the statutory framework and legislative history shows that the intended operation of section 44 and § 215a-1 is that they are a separate and parallel source of authority for interstate merger transactions. They will allow interstate mergers after June 1, 1997, overriding any conflicting state laws. Section 44 permits states to opt-out or to opt in early. But it does not supplant existing federal laws for national banks that allow some forms of interstate transactions *with a bank that is already interstate*. Indeed, the Riegle-Neal Act itself suggests that subsequent mergers in a state by a Riegle-Neal interstate national bank are to occur under § 215a. See 12 U.S.C. § 1831u(d)(2) (quoted in note 6 above).

We therefore find no basis to conclude that the Riegle-Neal Act supersedes existing law for national banks in ways other than those explicitly set out in § 36(e), which is not relevant here.<sup>9</sup> Thus, a transaction that can come under other existing authority continues to be authorized under that authority, provided it is consistent with the provision on exclusive authority for additional branches in § 36(e). Such is the case here. Section 36(e)(1) is complied with because HNB already has branches in Michigan and/or the target banks' branches are retained and operated

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<sup>9</sup> That provision provides in relevant part:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a *State in which the bank already has a branch* unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under *this section* or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(e)(1) (emphasis added). This aspect of the relationship of the Riegle-Neal Act and existing law is discussed further in the OCC Midlantic/Old York Decision (Part II-C) and the OCC Fleet/NatWest Decision (Part II-C).

under the authority of § 36(b), a part of “this section” referred to in § 36(e)(1). Accordingly, these mergers can occur under § 215a.<sup>10</sup>

Moreover, at its branches in Ohio, Florida, Indiana, Kentucky, Michigan and West Virginia, HNB 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 (Dec. 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 & 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 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 § 1828(c).

##### **1. Competitive Analysis**

Each of the target banks' branches is outside HNB's current competitive market area. Accordingly, the merger will have no anticompetitive effects.

##### **2. Financial & Managerial Resources**

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<sup>10</sup> Two of the target banks own operating subsidiaries that engage in activities permissible for state banks. FMB-Trust owns FMB Insurance Agency, Inc. (“FMB Insurance”), which sells only fixed and variable rate annuities. HNB proposes to retain FMB Insurance as a direct subsidiary. Under 12 U.S.C. § 215a(e), an acquiring national bank may retain the assets and property of the target banks, including operating subsidiaries. Sales of annuities is an authorized activity of national banks. *See NationsBank v. Variable Annuity Life Insurance Co.*, 115 S. Ct. 810 (1995). Accordingly, HNB is authorized to retain FMB Insurance as an operating subsidiary. *See* 12 C.F.R. § 5.33(e)(3)(ii).

In addition, FMB-First Michigan Bank currently owns FMB Title Services, Inc. (“FMB Title”), which sells title insurance in connection with mortgage loans made by FMB-First Michigan Bank, affiliate banks, and other banks. In the application, HNB has committed to transferring ownership of FMB Title to a subsidiary of The Huntington State Bank, Alexandria, Ohio, an Ohio state-chartered bank and an affiliate of HNB, pending state regulatory approval.

The financial and managerial resources of both banks are presently satisfactory. HNB expects to achieve administrative efficiencies by combining the target banks into a single corporate entity. The geographic diversification of its operations will strengthen the resulting 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. HNB will continue to serve the same areas in Ohio, Florida, Indiana, Kentucky, Michigan and West Virginia and it will add the target banks' offices in Michigan. Both HNB and the target 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 consolidation. No branch closings are contemplated as a result of this consolidation since the banks serve different areas. Upon completion of the consolidation, customers of each bank will have available to them more branches at which to bank. Customers will be dealing with one bank in the several states and will be able to access their accounts with greater convenience. The consolidation 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.

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 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. HNB received a "satisfactory" rating in its most recent CRA performance examination by the OCC. This examination was completed prior to the June 30, 1997, multi-bank, multi-state merger of six former affiliate banks into HNB. At that time, all of the affiliate banks had either an "outstanding" or "satisfactory" CRA rating. All of the merging FMB banks received either "outstanding" or "satisfactory" ratings for CRA performance in their most recent evaluations by their primary federal supervisor. As a trust bank, FMB-Trust is a special purpose bank and not subject to the CRA. See 12 C.F.R. § 25.11(c)(3).

The merger is not expected to have any adverse effect on the resulting bank's CRA performance or on the CRA-related loans, investments, or services offered in the assessment areas of the merging banks. The resulting bank will continue to serve the same communities that the merging banks currently serve. HNB will continue its current CRA programs and policies in Ohio and the other states where it has branches as well as its agreement with the City of Cleveland. After the merger transactions, the offices of the merging banks will remain open as branches of HNB.

HNB will carry forward the same CRA programs and policies that the merging banks have today and add other programs developed by HNB. 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 HNB and the merging banks have today as separate banks.

Two community organizations from Detroit, Michigan, the Detroit Alliance for Fair Banking (“DAFB”) and the Detroit Committee for Responsible Banking (“DCRB”), and Cleveland City Councilman Roosevelt Coats commented on the application. DAFB and DCRB cited allegations that HNB and Huntington Banks of Michigan, a predecessor bank prior to HNB’s June 30, 1997, multi-bank, multi-state merger, failed to meet community needs and did not comply with the spirit of the CRA. Councilman Coats alleged discrimination in lending against black Americans concerning the hours of operation, accessibility, and location of several HNB branches in Cleveland and by HNB not appropriately recognizing Dr. Martin Luther King, Jr. Day.

After receipt of the initial comments from DAFB and Councilman Coats, the OCC removed this Merger Application from its expedited review procedures. The OCC reviewed written communications provided by HNB to the commentors and OCC senior examiners performed an onsite investigation of the indicated issues.

In their comments, DAFB and DCRB expressed concern that HNB has drawn its assessment area in such a way as to exclude most of the City of Detroit arbitrarily. The groups also expressed concern that HNB does not have any branches in the City of Detroit. We carefully evaluated this concern and found that HNB’s assessment area was not drawn as to arbitrarily exclude most of Detroit and includes areas surrounding banking offices, by use of census tracts, that HNB is able to reasonably serve. While it is true that HNB maintains no branches within that portion of the City of Detroit included in its assessment area, HNB has built its operations in the Detroit area from the acquisition of suburban-based banks that never had Detroit branches. The census tracts located in the City of Detroit which are part of HNB’s assessment area are reasonably serviced by existing branches that are within one-half mile, or 10 minutes, walking distance.

DAFB and DCRB expressed concern over HNB’s lack of involvement in community development projects in the City of Detroit. We carefully evaluated this concern and note that HNB has been involved in community development activities throughout its assessment area in Michigan. Some of these activities, principally the Community Centered Banking (“CCB”) Program, are directly aimed at the City of Detroit. Through CCB, HNB has facilitated home ownership in low- and moderate- income areas within the city through community outreach programs that have led to HNB establishing hundreds of new banking relationships, including dozens of home mortgage loans. In addition, we found other community development activities in which HNB is involved which impact both the City of Detroit, as well as nearby suburbs, such as the Small Business Service Center, which serves both the city of Detroit as well as close-in suburbs, Housing Opportunities for Macomb (HOM) and the Hamtramck Community Development Corporation (HCDC).

The Small Business Service Center was established by HNB in conjunction with Wayne State University in one of HNB's branches. The goal of the center is to provide expert counseling services and resources to small business owners throughout the greater Detroit metro area. HOM is a non-profit community based housing development organization which purchases and rehabilitates housing for low- and moderate-income residents. HNB has extended grants to the organization and also provides staff support and low-rate loans. The HCDC works to revitalize residential housing and small businesses within the city of Hamtramck. HNB was instrumental in forming a partnership with two other financial institutions and the City of Hamtramck to form the HCDC. In addition to HOM and the HCDC, HNB also provides technical assistance on financial matters to the City of Warren Community Development Corporation and the Michigan Housing Trust Fund.

DAFB and DCRB also expressed concern over HNB's failure to provide a variety of requested information. We found that HNB has met all information disclosure requirements under the CRA regulations and other laws, such as the Home Mortgage Disclosure Act ("HMDA"). In some cases, HNB has voluntarily provided information in excess of what was legally required of them when requested.

Councilman Coats expressed concerns over the hours of operation, accessibility, and location of several HNB branches in Cleveland. We have carefully evaluated these concerns and found that they do not negatively impact HNB's ability to serve the credit and financial service needs of its assessment areas. We further found no evidence that the hours of operation, accessibility or location of the branches in question have resulted in discrimination in lending against minorities.

Regarding a concern by Councilman Coats with the closure on Wednesdays of HNB's Church Square branch, which is in an area with 95% minority population, we found that although the branch is closed on Wednesdays it is open on Saturdays. These hours have been in existence since the opening of the branch in 1993. Being closed on Wednesday may inconvenience some customers, but this is mitigated by the offering of Saturday banking hours which provide a valuable alternative to those individuals unable to complete banking business during weekday hours. In addition, a full service ATM is available at this location 24 hours per day.

Councilman Coats also expressed concern with the "merchant only" business restriction at HNB's Randall Park Mall branch, which is located in a mall with a predominately minority clientele. The branch was opened in 1996 at the request of the mall's management after the departure of another bank that had reduced its original full service presence to a merchant only office. HNB's establishment of two cash dispensing machines, one each on the upper and lower levels of the mall, helps to serve both merchants and consumers with critical banking functions.

We found the claim by Councilman Coats that HNB's Judson Manor and Judson Park branches were incorrectly listed as full service branches in HNB's CRA public file to be true. These restricted access facilities are located in nursing and retirement homes in an area with a 95% plus minority population and are usually open one day per week to provide banking services to the residents and staff. HNB has amended its public file to reflect the limited nature of these two

branches. HNB has a full service branch 6-7 blocks from the Judson Manor branch and 8-9 blocks from the Judson Park branch for use by the remainder of the population living in the immediate vicinity of these facilities.

With respect to Councilman Coats' concern that HNB does not appropriately recognize Dr. Martin Luther King, Jr. Day, we found that for HNB, as with President's Day and Veterans' Day, the King holiday is an active business day (notwithstanding the closure of federal government agencies). We found that HNB's policy on remaining open on a given holiday is based on perceptions of customer demand, local custom on the holiday observance, competitive considerations, and input from community groups. This has resulted in HNB closing branches in some cities on Martin Luther King, Jr. Day while having branches remain open in others.

A more detailed description of the issues raised by the commentors and our findings are contained in the OCC's letters to DAFB, DCRB and Councilman Coats (attached as Appendices A, B, & C), which is incorporated herein by reference.

In summary, our investigation and analysis of the issues raised by the commentors did not find grounds that would serve as a basis for denial or conditioning the approval of the Merger Application, and with respect to one issue raised where a particular correction was needed, that correction has been made. Accordingly, we find that approval of the proposed merger 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 the mergers are authorized under 12 U.S.C. § 215a, and the resulting bank may retain and operate as branches both the main offices and branches of the Michigan target banks and HNB's existing branches under 12 U.S.C. § 36(b)(2). Accordingly, this Merger Application is hereby approved.

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

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09-15-97  
Date

Application Control Number: 97-CE-02-0053

Attachments - not available in electronic format