Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #98-23
May 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS TO MERGE PREMIERBANK & TRUST, ELYRIA, OHIO, AND JEFFERSON SAVINGS BANK, WEST JEFFERSON, OHIO, WITH AND INTO FIRSTMERIT BANK, NATIONAL ASSOCIATION, AKRON, OHIO

April 30, 1998

I. INTRODUCTION

On January 20, 1998, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge PremierBank & Trust, Elyria, Ohio ("PB&T"), an Ohio-chartered state bank, with and into FirstMerit Bank, National Association ("FMB") under the charter and title of the latter, under 12 U.S.C. § 215a. OCC approval was also requested for the merger of Jefferson Savings Bank, West Jefferson, Ohio ("JSB"), an Ohio-chartered savings bank, with and into FMB under the charter and title of the latter, under 12 U.S.C. §§ 215a and 1815(d)(3). FMB, PB&T and JSB have their main offices and all of their branches in Ohio. In the application, OCC approval was also requested for the resulting bank to retain the main offices and branches of PB&T and JSB as branches after the merger under 12 U.S.C. §§ 36(b).

At the time of the proposed mergers, FMB, PB&T, and JSB will be subsidiaries of FirstMerit Corporation ("FC"), a bank holding company with its headquarters in Akron, Ohio.[1] FMB and PB&T are members of the Bank Insurance Fund ("BIF"). JSB is a member of the Savings Insurance Fund ("SAIF"). In the proposed merger, three of FC's financial institution subsidiaries will be combined into one bank with branches. As of September 30, 1997, FMB had

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[1]On March 11, 1998, the Board of Governors of the Federal Reserve System ("Board") approved FC's merger with CoBancorp, Inc. and thereby the acquisition of its wholly-owned subsidiaries PB&T and JSB. See First Merit Corporate (Order dated March 11, 1998)("Federal Reserve Order")

approximately $2.9 billion in assets and $2.3 billion in deposits.[2] As of the same date, PB&T had $601.6 million in assets and $527.7 million in deposits, and JSB had $62.5 million in assets and $52.9 million in deposits.

II. LEGAL AUTHORITY

A. The Mergers of PB&T and JSB With and Into FMB are Authorized by 12 U.S.C. § 215a.

Under 12 U.S.C. § 215a, a national bank may merge with a state bank located within the same state. 12 U.S.C. § 215a(a). FMB and PB&T are both located in Ohio; thus their merger is authorized under section 215a.

As used in section 215a, the term "state bank" includes state-chartered savings banks. *See* 12 U.S.C. § 214(a).[3] JSB is an Ohio-chartered savings bank located in Ohio. Accordingly, the merger of JSB with and into FMB is authorized by section 215a. Since FMB is a member of BIF and JSB is a member of SAIF, the merger must be reviewed for compliance with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). That statutory review is included in section III.

B. The Resulting Bank may Retain and Operate the Main Offices and Branches of PB&T and JSB as Branches Pursuant to 12 U.S.C. § 36(b).

Branch retention following a merger or consolidation is covered by the McFadden Act. *See* 12 U.S.C. § 36(b)(2).[4] Under section 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 section 36(c). This section authorizes a national bank to establish new branches:

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[2]The asset and deposit figures do not reflect the mergers of five affiliated banks with and into FMB that were consummated between September 30, 1997 and March 31, 1998. The five affiliated banks were The Old Phoenix National Bank, Medina, Ohio; EST National Bank, Elyria, Ohio; Citizens National Bank, Canton, Ohio; Peoples National Bank, Wooster, Ohio; and Peoples Bank, N.A., Ashtabula, Ohio. Adjusting for the mergers, FMB's total assets and deposits were approximately $5.4 billion and $4.2 billion, respectively, on this date.

[3]A state-chartered savings bank is also considered a "state bank" for the purposes of the McFadden Act. *See* 12 U.S.C. § 36(l).

[4]The McFadden Act authorizes the national bank resulting from the consolidation or merger of a national bank with another bank or banks to retain branches in three ways. First, under section 36(b)(2)(A), the resulting bank may retain as branches any of the main offices or branches of any of the target banks in the merger or consolidation if it might be established as a branch by the resulting bank under section 36(c). Second, under section 36(b)(2)(B), the resulting bank may retain any branch of any bank participating in the merger or consolidation that was in operation by any bank on February 25, 1927. Finally, under section 36(b)(2)(C), the resulting national bank may retain the pre-merger branches of the lead national bank (*i.e.*, the national bank under whose charter the merger or consolidation is effected) unless a similarly situated state bank resulting from the merger of other banks into a state bank would be prohibited by state law from retaining as a branch an identically situated office. *See* 12 U.S.C. § 36(b)(2).

> at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question . . . .

12 U.S.C. § 36(c)(2).

Ohio law imposes no geographical limits on branching by state banks. *See* Ohio Rev. Code § 1117.01(B). Consequently, there are no geographical limits to be incorporated by 12 U.S.C. § 36 and applied to national bank branching in Ohio.[5] Thus, following the merger transactions, FMB may retain as branches the main offices and branches of PB&T and JSB.[6]

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 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 applications may be approved under section 1828(c).

1. Competitive Analysis

As discussed more fully below, the OCC received public comments on various aspects of the proposal including its competitive aspects. One commenter alleged that consummation of this transaction would be anticompetitive and provide FMB with market power in Ohio, particularly in Lorain County. In this regard, the commenter contends that since FMB and PB&T share a relatively small geographic service area, limited principally to Lorain County, the relevant geographic market for this proposal should be Lorain County, which is smaller than the larger Cleveland, Ohio banking market defined by the Federal Reserve System. The competitive aspects of the proposed merger have already been fully evaluated by the Board of Governors of the

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[5]In approving a branch, Ohio law requires the regulator to consider the adequacy of the bank's capital and management, the effect of the branch establishment on the interests of bank depositors and shareholders, and the bank's record in helping to meet the credit needs of its community, consistent with the Community Reinvestment Act, 12 U.S.C. § 2901 *et seq*. *See* Ohio Rev. Code § 1117.02(D). The OCC has determined that FMB has the financial and managerial resources to successfully operate the bank and its branch network. FMB is, and following the merger will continue to be, well capitalized and its future prospects are considered favorable. FMB's CRA performance and the impact of the proposed mergers on the convenience and needs of the communities to be served are discussed in Parts III.A. & III.B. *supra*.

[6]Furthermore, Ohio law does not prohibit a resulting state bank from retaining and operating the acquiring bank's branches offices after a merger transaction.

Federal Reserve System and the Department of Justice in connection with the related bank holding company merger. The Federal Reserve concluded that the proposal would not produce a significantly adverse effect on competition or on the concentration of banking resources in any relevant market. *See* the Federal Reserve Order at pp. 2-4. *See also* Letter by Willie L. Hudgins, Jr., Assistant Chief, Litigation II Section, Antitrust Division, Department of Justice, to the Comptroller of the Currency (February 20, 1998). Moreover, PB&T, JSB, and FMB will be affiliated and owned by the same bank holding company at the time of the merger of the banks. As a result, the merger of the banks constitutes a corporate reorganization and, therefore, will have no anticompetitive effects.[7] For these reasons, the OCC has concluded that competitive considerations are consistent with approval.

2. Financial and Managerial Resources

The financial and managerial resources of each bank are presently satisfactory. FMB expects the proposed transaction will result in substantial cost savings through the elimination of overlapping corporate structures and administrative functions. 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 applications.

3. Public Comments

Individual comments were filed in opposition to these merger applications by parties who subsequently combined efforts and collectively became known as the Coalition for Community Reinvestment in Lorain County (the "Coalition"). The Coalition was comprised of several government, civil rights, church, labor, and community organizations in Lorain County. In addition, the Mayors of Lorain and Elyria, Ohio, and U.S. Representative Sherrod Brown filed comments in opposition to the transaction, and supported and endorsed the Coalition's efforts. The Coalition also provided comments on the related bank holding company merger application filed with the Federal Reserve Bank of Cleveland.[8]

In their comments, the Coalition alleged that FMB had not made adequate efforts to help meet the credit needs of its entire community, particularly the low- and moderate-income (LMI) neighborhoods of Lorain and Elyria. They also alleged that FMB has a poor record of lending to LMI and minority individuals, and contended that 1996 HMDA data revealed a disparity in loan denial rates for African-American and white credit applicants. The Coalition also asserted that branch closings and consolidations planned in connection with the proposal result in additional blight, job loss, and inconvenience for LMI neighborhoods. Additionally, the Coalition sought

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[7] Prior to consummation of the mergers of PB&T and JSB into FMB, FirstMerit Corporation, a bank holding company with respect to FMB, will merge with CoBancorp, the bank holding company with respect to PB&T and JSB.

[8] As previously stated, the Board of Governors of the Federal Reserve System approved the bank holding company merger application on March 11, 1998.

mutual agreement on an acceptable reinvestment plan for Lorain County, prior to consummation of the mergers.

Upon receiving a comment from the Mayor of Lorain dated January 26, 1998, the OCC removed FMB's merger applications from its expedited review procedures. The OCC reviewed, investigated, and considered the January 26, 1998 comment and all subsequent comment letters and, as discussed in the section below, conducted a targeted review of FMB's performance under the Community Reinvestment Act (CRA) since its last CRA examination and of the noted convenience and needs concerns. While the OCC was conducting its review and investigation, the Coalition and FMB began to negotiate with respect to a community reinvestment plan for Lorain County. As a result, the bank requested and the OCC granted a seven-day extension of the public comment period until February 27, 1998.

On February 27, 1998, FMB and the Coalition announced that the parties had reached agreement on a community reinvestment initiative. FMB indicated that this private agreement was designed to address the principal concerns raised by members of the Coalition and included lending, investment, and service components. The Coalition, the Mayors of Lorain and Elyria, and U.S. Representative Sherrod subsequently withdrew their opposition to the merger proposal.

However, one member of the Coalition resigned from membership in the Coalition and affirmed her opposition to the merger.[9] In addition to raising the competitive concerns previously discussed, the commenter alleged that the merger proposal would be adverse to the convenience and needs of the LMI community in Lorain County. In particular, the commenter asserted that the elimination of PB&T from the market would result in less convenient and appropriate savings and checking account products for low-income individuals, an increase in the check cashing fees for non-customers, and discontinuation of PB&T's no-fee service for paying utility bills. The commenter contended that the merger will have an adverse impact on LMI communities due to branch closings planned in connection with the merger. In addition, the commenter questioned FMB's performance under the CRA, alleging primarily that the bank has low loan origination rates in LMI census tracts, applies check cashing fees to non-customers and holds on deposited checks in a discriminatory manner, has experienced difficulties in producing, in a timely manner, a complete CRA public file for public review, and removed Spanish-language brochures from its branches just after the conclusion of the OCC's last CRA examination of the bank.

[9]The OCC declined a request by this commenter for a public hearing after determining that written submissions made during the comment period and the results of the staff investigation and targeted review would enable the agency to make an informed decision without holding a hearing. The OCC did seek clarification on concerns raised in the written submissions, and held a private meeting with her and her attorney on March 20, 1998.

The OCC received two other comments about the proposed merger which expressed concern about the closing of the PB&T branch at which the commenters conducted banking business and regarding the process involved in transferring accounts affected by the merger.[10]

4. Convenience and Needs Considerations

The OCC has evaluated the probable effects of the mergers on the convenience and needs of the communities to be served, including comments received from the public, and determined that convenience and needs considerations are consistent with approval of the mergers. The resulting bank will continue to serve the same areas as the merging institutions. It will also continue to offer FMB's full line of products and services which, based upon the OCC's review, are considered comparable to those offered by the target institutions. FMB's loan and deposit products and services include a wide variety of products designed to help meet the needs of the community, such as an affordable mortgage program and basic deposit accounts. The OCC's review also indicated that, overall, the terms of FMB's products and services are as favorable as those currently offered by the target institutions. Fees paid by the target institutions' customers for personal and business deposit accounts will generally decrease. The resulting bank will continue to offer a basic, no fee, no minimum balance checking account and a low minimum balance ($200) savings account.[11] While the resulting bank's check cashing fee for non-customers is higher than PB&T's fee, all checking account holders, including those with the basic checking account, will continue to be eligible to cash government checks free of charge. With regard to the proposed elimination of PB&T's free utility payment service for non-customers, FMB stated that the local utilities have ceased subsidizing this service, and, therefore, FMB has decided to cease the service for cost reasons. However, FMB will allow its customers to make automatic utility payments free of charge from any checking account. Moreover, the Federal Reserve Board and Department of Justice found that the related bank holding company merger would not have a significant anticompetitive effect. Thus, the fees charged by the resulting bank should continue to reflect the effects of a competitive market.

FMB plans to close or consolidate 20 branches in connection with the transaction, two of which are currently PB&T branches located in LMI communities. FMB has explained that the branches will be closed because of their proximity to other branches and lack of profitability. One of the LMI branches will be consolidated into an existing FMB branch that is across the street. The other LMI branch is 1½ miles away from an existing FMB branch that will remain open. While this closing is likely to have some negative impact on access for LMI individuals, FMB intends to

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[10]It should be noted that in a merger transaction, the acquiring bank assumes all of the deposit liabilities of the target bank, including administration of the accounts. Therefore, the account holders need not take any action to close their accounts at the target bank and subsequently re-open accounts at the resulting bank, although the resulting bank may ask them to make an election among the available account types.

[11]FMB stated that it is currently reviewing its existing products and services and is considering developing a new product designed to serve customers receiving government benefits, who due to changes in Federal law, will be required to receive benefits electronically beginning in 1999.

mitigate the effects on the LMI area through the maintenance of local loan officers at all remaining branches in Lorain County and community service programs. FMB has also stated that it is willing to sell the LMI facilities to be closed to other financial institutions, which should help to maintain the overall level of banking services in the affected areas.

The OCC also considered the bank's record of opening and closing branches. An OCC review of FMB's branch closing history revealed that the bank has only closed one LMI branch since 1996 -- the Firehouse branch in Lorain. With respect to that closing, FMB complied with the Interagency Policy Statement on Branch Closures, including adequate public notice, and attempted to mitigate the impact of the closure by transferring all employees and customer accounts to the closest remaining branch and by upgrading a nearby drive-up facility into a full-service branch.

Based upon the review described above, the OCC has determined that the impact of the mergers on the convenience and needs of the communities to be served is consistent with approval of the merger applications.

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 LMI neighborhoods, when evaluating certain applications, including mergers. *See* 12 U.S.C. §§ 2902(3)(e) and 2903. FMB received an "Outstanding" rating at its most recent examination for CRA performance, dated July 17, 1996.[12] The Federal Reserve Bank of Cleveland assigned PB&T an "Outstanding" rating at its most recent CRA examination dated August 25, 1997, and the Office of Thrift Supervision assigned JSB a "Satisfactory" rating for CRA performance at its most recent examination dated September 30, 1996.[13]

In their letters, the commenters questioned the adequacy of FMB's efforts to meet the credit needs of its entire community, most notably in the LMI areas of Lorain and Elyria. In light of the noted concerns, the OCC directed an examiner with extensive consumer compliance experience, and who was not involved in the most recent CRA or fair lending examination of FMB, to conduct a targeted on-site review of FMB's CRA record in Lorain County for the time period

[12]EST National Bank ("EST"), which previously served the Lorain County market, received an "Outstanding" rating at its CRA examination dated April 18, 1996. In 1997, EST was merged into FMB as part of a business reorganization. In addition, four other affiliated banks -- The Old Phoenix National Bank, Medina, Ohio; Citizens National Bank, Canton, Ohio; Peoples National Bank, Wooster, Ohio; and Peoples Bank, N.A., Ashtabula, Ohio -- were merged into FMB in late 1997 or early 1998 as part of this business reorganization. At the time of the mergers, these four banks had current and "Satisfactory" ratings for CRA performance.

[13]Some of the CRA examinations of the merging financial institutions and, in the case of FMB, predecessor banks, were conducted prior to July 1, 1997. This is the date on which all banks became subject to evaluation under the revised CRA regulation. The OCC will conduct its next CRA examination of FMB under the standards of the revised regulation and related examination procedures.

since the OCC last conducted a CRA examination of the bank in 1996. The scope of this review included an investigation of the specific convenience and needs and CRA-related allegations raised by the commenters and a review of FMB's lending, investment, service, and branch opening and closing activity within the area affected by the merger.[14]

The OCC's on-site review did not find any evidence that FMB's efforts to meet the credit needs of Lorain County, particularly Lorain and Elyria, were inconsistent with approval of the merger. A review of FMB's 1996 and 1997 HMDA data for Lorain County revealed that the level of housing-related loan originations in LMI census tracts was comparable to the percentage of geographies in both Lorain and Elyria that are classified as LMI. Further, the percentage of loans made to LMI persons was comparable to the percentage of LMI persons in those cities. Within the City of Elyria, home mortgage denial rates for African-American and white credit applicants were comparable at 17% and 16%, respectively. Within the City of Lorain, the respective mortgage denial rates for African-American versus white credit applicants were 75% and 25%. The OCC's review also noted, however, that the African-American denial rate in Lorain was based on a small pool of only four applications.[15] While the OCC did not review individual loan files during this targeted review, at the prior CRA and fair lending examinations of FMB and the former EST National Bank, the OCC did not find any evidence of prohibited discriminatory or other illegal credit practices, including practices intended to discourage any individuals from applying for credit. In addition, the polices and practices reviewed by the OCC during the 1996 examinations remain in place at FMB.

The OCC also found that FMB offers products designed to meet the credit and financial service needs of LMI persons and small businesses. These include the BEST affordable mortgage program with low downpayment and closing cost assistance features and further enhancements for designated LMI census tracts. Over the last two years, the bank has originated over $1.7 million in loans in Lorain County under its BEST program with approximately the same dollar amounts lent each year. FMB also offers checking accounts with low-cost features. The "Free Checking" account imposes no minimum balance requirements, account fees, or check writing limits, and permits automatic utility payments and free check cashing. The "Incredible Checking" account adds an ATM/debit card feature for a $3.00 monthly service charge.[16] These flexible checking products currently comprise the majority (86%) of all of FMB's checking accounts in Lorain County. Additionally, the bank actively participates in Small Business Administration

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[14] This review was specialized and did not constitute a full scope CRA examination. The OCC plans to conduct such an examination of the resulting bank later this year.

[15] The small applicant pool could stem from FMB's current small market presence in Lorain as indicated by its having only one branch and less than two percent of all deposits. In addition, whites comprise 70% of the population of City of Lorain compared to 13% for African-Americans. The OCC will review comparative denial rates at FMB's next CRA and fair lending examination.

[16] Under a promotional offer, FMB is currently waiving the normal monthly service charge for the Incredible Checking account.

(SBA) and Ohio Linked Deposit loan programs. In 1997, FMB originated 38 SBA loans totaling $3.9 million and 11 Ohio Linked Deposit loans totaling $608,000.[17]

With respect to community development activities, FMB originated two community development loans in Lorain County during the past two years totaling $228,000. This included a construction loan for a group home for low-income persons with mental disabilities and an interest-free loan to the Community Housing Corporation (CHC). The bank also has committed $400,000 to fund CHC's project to construct six homes for LMI families in Elyria. In addition, the bank made a $1.0 million qualifying investment in the Ohio Equity Fund for Housing, a pool of funds used to construct and rehabilitate affordable housing, and donated $34,000 to a variety of Lorain- and Elyria-based organizations providing social services and economic development assistance to low-income persons and small businesses. Further, on an ongoing basis, the bank sponsors credit education and counseling programs and small business technical assistance workshops.

As previously stated, one commenter made certain other specific allegations regarding FMB's operations. The commenter alleged that FMB removed Spanish-language brochures from bank branches shortly after the conclusion of the OCC's last CRA examination. FMB told the OCC that it removed, but did not replace, the brochures when changes in the product line at that time caused the brochures to become outdated. The bank further indicated to the OCC that it will once again maintain certain brochures and explanatory information in bilingual or Spanish-only format in the Lorain branches and in at least one of the branches in Elyria. The commenter also alleged that FMB could not produce in a timely manner its entire CRA public file. FMB stated that its CRA public file is complete and available to the public upon request. This was confirmed by OCC. Finally, the commenter alleged that FMB applies check cashing fees to non-customers and holds on deposited checks in a discriminatory manner. FMB replied that it uniformly applies check cashing fees without regard to income status or type of check presented. The OCC has no information, based on its examination of the bank and a review of consumer complaint files, that is contrary to the bank's response. The bank further stated that it administers its hold policy in accordance with the requirements of the Federal Reserve Board's Regulation CC (12 C.F.R. Part 229) and its Funds Availability Policy, which it discloses in detail, pursuant to Regulation CC, at the time a customer opens an account. The OCC's last consumer compliance examination of FMB found satisfactory compliance with Regulation CC.

Based upon the OCC's review of issues raised by the public comments and targeted on-site review of FMB, the OCC finds the bank's record of performance under the CRA is consistent with approval of the mergers.

C. Compliance with the Oakar Amendment

[17]Under the Ohio Linked Deposit Program, the State of Ohio maintains a "below market rate" deposit account with the bank and, in return, the bank agrees to originate small business loans at a reduced interest rate.

The Oakar Amendment, section 1815(d)(3), permits merger transactions between BIF- and SAIF-member institutions provided that the deposits of the resulting institution are proportionally insured by both BIF and SAIF. *See* 12 U.S.C. § 1815(d)(3)(A) & (B). These transactions may be approved by the regulator of the acquiring institution if they are in accordance with certain capital requirements.[18] *See* 12 U.S.C. § 1815(d)(3)(E)(iii). Since FMB is a member of BIF and JSB is a member of SAIF, their merger must comply with the provisions of the Oakar Amendment. The OCC has determined that FMB, after the merger transaction with JSB, will meet all applicable capital requirements. Indeed, following this transaction, FMB will meet all of the tests to be considered a well-capitalized institution. *See* 12 C.F.R. § 6.4(b)(1). Accordingly, the FMB/JSB merger transaction complies with the provisions of the Oakar Amendment.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, we find the mergers of PB&T and JSB into FMB legally authorized under 12 U.S.C. §§ 215a and 1815(d)(3). The resulting bank is authorized to retain and operate the offices of all three banks under 12 U.S.C. § 36(b). The mergers also meet the criteria for approval under other statutory factors. Accordingly, the merger applications are hereby approved.

/s/	04-30-98
Raymond Natter Acting Chief Counsel	Date

Application Control Number: 98-CE-02-0004

[18] The Oakar Amendment also imposes certain limitations of interstate transactions. *See* 12 U.S.C. §§ 1815(d)(3)(F) & 1842(d). Those limitations, however, are not applicable here since the principal office and branches of JSB, the SAIF-insured target, are all located within the home state of FC, the acquiring bank's holding company.