



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #98-41
September 1998**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
EAGLE VALLEY BANK, DENNISON, MINNESOTA,
WITH AND INTO
EAGLE VALLEY BANK, NATIONAL ASSOCIATION
ST. CROIX FALLS, WISCONSIN**

August 20, 1998

I. INTRODUCTION

On July 10, 1998, Eagle Valley Bank, National Association, St. Croix Falls, Wisconsin ("EVB"), filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to merge Eagle Valley Bank, Dennison, Minnesota ("EVB-MN"), with and into EVB under EVB's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Interstate Merger"). EVB has its main office in St. Croix Falls, Wisconsin, and does not operate any branches. EVB-MN has its main office in Dennison, Minnesota, and operates a branch in Stillwater, Minnesota. OCC approval is also requested for the resulting bank to retain EVB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain EVB-MN's main office and branch, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Both banks are wholly-owned subsidiaries of Financial Services of St. Croix Falls, Inc. ("Financial"), a multi-state bank holding company headquartered in St. Croix Falls, Wisconsin. In the proposed merger, two of Financial's existing bank subsidiaries will combine into one bank with branches in two states.

No protests or comments have been filed with the OCC in connection with this transaction.

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

In the Interstate Merger, EVB-MN will be merged into EVB. In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks.¹ 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, 1997.² 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.³ It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44.⁴

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). 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.⁵ In the Interstate Merger, the home states of the banks are Wisconsin and Minnesota; neither of these states opted out. Accordingly, the proposed Interstate Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

¹ 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").

² See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u).

³ See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1).

⁴ See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

⁵ See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). 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.

The proposed Interstate Merger satisfies all these conditions to the extent applicable. First, it meets 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 the Interstate Merger, EVB is acquiring by merger a bank in the host state of Minnesota. Minnesota has a five-year age requirement.⁶ EVB-MN was incorporated in 1903, and so it is more than five years old. Thus, the Riegle-Neal Act's age requirement is met.

Second, the proposed merger 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). Minnesota requires an out-of-state bank that results from an interstate merger with a Minnesota bank to notify the state banking commissioner and to submit a copy of the application to the commissioner.⁷ EVB provided a copy of its OCC merger application to the Minnesota state banking commissioner, as required by section 1831u(b)(1). The Riegle-Neal Act's filing requirement is met.

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.⁸ EVB and EVB-MN 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

⁶ See Minnesota Stat. Ann. § 49.411, subd. 4(b) (West Supp. 1997).

⁷ See Minnesota Stat. Ann. § 49.411, subd. 5 (West Supp. 1997).

⁸ See 12 U.S.C. § 1831u(b)(2)(E).

whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws.⁹ 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).¹⁰ EVB and EVB-MN are affiliates, and so this Riegle-Neal Act provision is not applicable to this merger application. However, the Community Reinvestment Act itself is applicable, as discussed in Part III-B below.

Fifth, the proposed merger 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.¹¹ As of the date the application was filed, EVB and EVB-MN 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, EVB 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 Interstate Merger is a permissible interstate merger transaction under section 1831u.

B. Following the Merger, the Resulting Bank may Retain the Offices of Both Participating Banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

EVB also has requested that, upon the completion of the merger, EVB (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in St. Croix Falls as the main office of the resulting bank and to retain and operate as branches the main office and branch of EVB-MN in Minnesota. In interstate merger transactions 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

⁹ See 12 U.S.C. § 1831u(b)(3).

¹⁰ See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

¹¹ See 12 U.S.C. § 1831u(b)(4).

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). 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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, EVB, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the banking offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).¹²

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 where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger that would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons below, we find that the proposed merger may be approved under section 1828(c).

1. Competitive analysis.

Because EVB and EVB-MN are owned by the same bank holding company, the merger will have no anticompetitive effects.

¹² 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 general 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). 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).

2. Financial and managerial resources.

The financial and managerial resources of the merging institutions are presently satisfactory. EVB expects to achieve administrative efficiencies by operating the two institutions as part of the same bank rather than as separate corporate entities. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find that the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and needs.

Following consummation of the transaction, the resulting institution will help to meet the convenience and needs of the communities to be served. EVB will continue to operate its office in Wisconsin as well as the offices of EVB-MN in Minnesota. There will be no reduction in the banking products or services offered as a result of the merger. The resulting bank will continue to offer a full line of banking products and services. 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 transactions.

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 including mergers.¹³ Both EVB and EVB-MN have satisfactory ratings with respect to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

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. EVB will continue its current CRA programs and policies in Wisconsin. After EVB-MN is merged into EVB, its Minnesota offices will remain open as branches of EVB. EVB will carry forward the same CRA programs and policies that the bank has today and add other programs it develops. 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 EVB-MN and EVB have today as separate banks. The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in both states it serves. Accordingly, we find that approval of the proposed merger is consistent with the Community Reinvestment Act.

¹³ See 12 U.S.C. § 2903. See also 12 C.F.R. § 25.29(a)(3).

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicant, we find that the Interstate Merger is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), that the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the application meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

_____/s/_____
Steven J. Weiss
Deputy Comptroller
Bank Organization and Structure

08-20-98
Date

Application Control Number: 98-MW-02-0041