



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #98-44
October 1998**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS TO MERGE
BARNETT BANK, NATIONAL ASSOCIATION, JACKSONVILLE, FLORIDA, AND
COMMUNITY BANK OF THE ISLANDS, SANIBEL, FLORIDA, WITH AND INTO
NATIONSBANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA**

September 18, 1998

I. INTRODUCTION

On June 8, 1998, NationsBank, National Association, Charlotte, North Carolina ("NationsBank"), applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge its affiliates, Barnett Bank, National Association, Jacksonville, Florida ("Barnett"), and Community Bank of the Islands, Sanibel, Florida ("CBI"), with and into NationsBank under NationsBank's charter and title, under 12 U.S.C. § 215a (the "Merger"). NationsBank is a full-service national bank. It has its main office in Charlotte, North Carolina, and currently operates branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, the District of Columbia, Missouri, Kansas, Oklahoma, Illinois, Arkansas, Iowa, Texas, and New Mexico. Barnett is a full-service national bank, with its main office in Jacksonville, Florida, and operates branch offices in Florida and Georgia. CBI is a Florida state-chartered bank with its main office and its one branch office in Sanibel, Florida.

NationsBank, Barnett, and CBI all are subsidiaries of NB Holdings Corporation, an intermediate holding company, which in turn is owned by NationsBank Corporation, a multistate bank holding company headquartered in Charlotte, North Carolina. In late 1997, NationsBank Corporation acquired Barnett Banks, Inc., and its banking and nonbanking subsidiaries, which included Barnett and CBI.¹ This merger application is part of the process of combining the acquired affiliated banks into the holding company's lead bank. In the application, OCC approval was also requested for the resulting bank to retain the main

¹ See *NationsBank Corporation: Order Approving the Merger of Bank Holding Companies*, 84 Fed. Res. Bull. 129 (December 10, 1997). The acquisition was effective January 8, 1998.

offices and branches of Barnett and CBI as branches after the merger under 12 U.S.C. § 36(b).

II. LEGAL AUTHORITY

NationsBank currently operates branches in Florida and Georgia.² Thus, this Merger is a merger between NationsBank, an existing interstate national bank, Barnett, a national bank in two of the states in which NationsBank already has branches, and CBI, a state bank in one of the states in which NationsBank already has branches. Such mergers may be authorized under 12 U.S.C. § 215a, and the resulting bank may retain the main offices and branches of the banks as branches under 12 U.S.C. § 36(b)(2). The OCC previously has considered such applications under section 215a on numerous occasions. The Riegle-Neal Act did not change existing authority under section 215a. This Merger does not raise new issues, but only the application of established precedent for applying section 215a to interstate national banks.

A. **The merger of Barnett and CBI with and into NationsBank is authorized by 12 U.S.C. § 215a.**

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a 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 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.³ We concluded that, just as for branching purposes under section 36, a national bank with its main office and branch offices in more than one

² NationsBank initially entered Florida and Georgia in an interstate merger transaction under the Riegle-Neal Act. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 ("the Riegle-Neal Act"). See Decision on the Application to Merge NationsBank, N.A. (South) with NationsBank, N.A. (OCC Corporate Decision No. 97-40, June 1, 1997) ("*OCC NationsBank/NationsBank (South) Decision*").

³ See, e.g., Decision on the Application to Merge NationsBank, N.A. with NationsBank of Texas, N.A. (OCC Corporate Decision No. 98-19, April 2, 1998) ("*OCC NationsBank/NationsBank of Texas Decision*"); Decision on the Application to Merge NationsBank, N.A. with Boatmen's Trust Company (OCC Corporate Decision No. 98-16, March 4, 1998) ("*OCC NationsBank/Boatmen's Trust Decision*"); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("*OCC Bank Midwest Decision*").

state was "located" in each such state, for the purpose of mergers with other banks in those states under 12 U.S.C. § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This reading is consistent with the plain meaning of the statute and its legislative history. It is also supported by judicial construction of "situated" in section 36(c) and similar locational phrases in other sections of the National Bank Act.⁴ Therefore, the requirements of section 36(e)(1) are met because NationsBank already has branches in Florida and Georgia. Accordingly, this Merger can occur under section 215a.

B. NationsBank-Resulting may retain and operate the main offices and branches of the three merging banks pursuant to 12 U.S.C. § 36(b).

NationsBank has also requested OCC approval for the bank resulting from the Merger (referred to in this subsection as "NationsBank-Resulting" to distinguish it from NationsBank prior to the merger) to retain the main offices and branches of Barnett and CBI and the branches of NationsBank as branches of the NationsBank-Resulting after the merger. Branch retention following a merger under section 215a is addressed in 12 U.S.C. § 36(b)(2). Applying the various provisions of section 36(b)(2) to the groups of branches involved in this Merger, we find that NationsBank-Resulting is legally authorized to retain all the offices as branches.

1. NationsBank-Resulting may retain and operate the main offices and branches of Barnett and CBI pursuant to 36(b)(2)(A).

In this Merger, the banks are combining under the charter of NationsBank, and so Barnett and CBI are the target banks and NationsBank is the lead bank.⁵ Under section 36(b)(2)(A), a resulting bank may retain the branches and the main office of the target bank as branches if the resulting bank could establish them as new branches under section 36(c). For branching purposes under section 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 Seattle Trust* and *Sun World*. Applying the branch retention provisions of section 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

⁴ See, e.g., *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974) ("*Seattle Trust*") (an interstate national bank is "situated" in each state in which it has its main office or a branch for purposes of establishing additional branches in that state under section 36(c)). See also *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) ("*Sun World*") (same, agreeing with *Seattle Trust*). Any other reading could render section 215a largely unworkable in the case of interstate banks.

⁵ Different paragraphs in section 36(b)(2) apply different rules for branch retention to the target bank and the lead bank in the merger. Paragraph (C) addresses a resulting bank's authority to retain the branches of the bank under whose charter the merger is effected, i.e., the lead bank. Paragraph (A) addresses a resulting bank's authority to retain the branches and main offices of the other banks in the merger or consolidation, i.e., target banks. NationsBank-Resulting is authorized to retain the branches of Barnett and CBI under section 36(b)(2)(A).

situated. The OCC previously concluded that a 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 section 36(c) standard, using each state's law for the branches in that state. This necessarily follows from the courts' holdings regarding section 36(c) and the fact that section 36(b)(2)(A) refers to section 36(c).⁶

Accordingly, in this Merger, NationsBank (and also NationsBank-Resulting) is situated in Florida and Georgia (as well as in all the other states in which NationsBank has branches) for purposes of section 36(b)(2). Florida permits its state banks to branch statewide within Florida. See Fla. Stat. Ann. § 658.26 (West 1998). In addition, Georgia specifically authorizes a resulting bank in an affiliated bank merger to retain the target bank's main office and branches as branch offices of the resulting bank. See Ga. Code Ann. § 7-1-606(e) (1998). Thus, a national bank situated in Florida and Georgia, such as NationsBank, could establish branches at all the locations of Barnett's and CBI's main offices and branches under section 36(c). Therefore, NationsBank-Resulting may retain and operate the main offices and branches of Barnett and CBI in Florida and Georgia under section 36(b)(2)(A).

2. NationsBank-Resulting may retain and operate the branches of NationsBank under subsection 36(b)(2)(C).

In this Merger, NationsBank is the acquiring or lead bank. Section 36(b)(2)(C) authorizes the national bank resulting from a merger to retain and operate as a branch any branch the lead bank had prior to the merger, unless a state bank resulting from a merger would be prohibited by state law from retaining as a branch an identically situated office of a state bank.

In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to lead banks that have offices in more than one state.⁷ The OCC determined that the resulting national bank is situated in each state in which it operates for purposes of applying section 36(b)(2)(C). In this way, the three related subsections of section 36 -- subsections 36(c), 36(b)(2)(A), and 36(b)(2)(C) -- will be interpreted consistently. 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 in-state bank mergers.

⁶ See, e.g., *OCC NationsBank/NationsBank Texas Decision* (Part II-A-2-a) (pages 9-10); *OCC Bank Midwest Decision* (Part II-C-2-a); other OCC decisions cited in above.

⁷ See, e.g., *OCC NationsBank/NationsBank Texas Decision* (Part II-A-2-b); *OCC Bank Midwest Decision* (Part II-C-2-b); other OCC decisions cited above.

Therefore, under subsection 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 NationsBank's branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, the District of Columbia, Missouri, Kansas, Oklahoma, Illinois, Arkansas, Iowa, Texas, and New Mexico, 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. Indeed, all these jurisdictions permit banks to retain branches after an in-state merger. Therefore, NationsBank-Resulting may retain the branches of NationsBank under section 36(b)(2)(C).

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

Since NationsBank, Barnett, and CBI are already owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and Managerial Resources

The financial and managerial resources of each bank are presently satisfactory. 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. Convenience and Needs

NationsBank-Resulting will help to meet the convenience and needs of the communities to be served. It will continue to serve the same areas in Florida that Barnett and NationsBank now serve, and will continue to offer a wide range of banking products and services.

Upon approval and consummation of the merger, customers of each of the merging institutions will have available to them a greater number of branches at which to bank throughout Florida. In addition, those customers will have access to NationsBank's branches throughout the United States. NationsBank anticipates that the merger will permit the resulting bank to better serve its customers. The combined resources of NationsBank-Resulting, including capital and reserves, will provide a more substantial capital cushion for unexpected losses as well as provide business customers with higher legal lending limits.

On August 17, 1998, the Federal Reserve Board approved the merger of NationsBank Corporation and BankAmerica Corporation.⁸ One of the comments received by the Federal Reserve Board and the Federal Reserve Bank of Richmond in connection with that application indicated concerns with respect to the disproportionate number of branch closings in low- and moderate-income (LMI) areas in Florida that were planned to follow the merger being considered in this decision. Approximately 177 branches will be closed or consolidated in connection with the Barnett merger. The OCC notes that 25, or 14%, of the Florida branch closings and consolidations in connection with the transaction are located in LMI areas.

The OCC analyzed the proposed closings and consolidations and determined the level of LMI branch closings and consolidations is not disproportionate to the level of branch closings and consolidations planned in middle- or upper-income areas. In addition, the OCC determined that the percentage of total branches located in Florida LMI areas will remain unchanged at 15% after the proposed closings and consolidations. Therefore, the OCC does not believe that the proposed closings and consolidations are inconsistent with approval of the transaction.

Furthermore, OCC examiners recently reviewed NationsBank's branch opening and closing policy and adherence to that policy in several geographies. That review determined that NationsBank's branch opening and closing policy was comprehensive and that NationsBank's delivery system is reasonably accessible to substantially all portions of the bank's assessment areas reviewed. In addition, as part of its practice and in order to minimize the impact of a branch closing, NationsBank considers input from community members. The OCC notes that although the State of Florida was not one of the geographies examined, NationsBank's management affirmed that the same policy and procedures will be applied to the proposed branch closings in Florida.

With the continuance of a full range of banking products and services and reasonable accessibility by substantially all portions of NationsBank-Resulting's assessment area, the

⁸ See *NationsBank Corporation, Charlotte, North Carolina*, Federal Reserve Board Order Approving the Merger of Bank Holding Companies (August 17, 1998).

impact of the merger on the convenience and needs of the communities to be served is consistent with approval of this application.

B. The Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicant’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods, when evaluating certain applications.⁹ The types of applications that are subject to review under the CRA include merger applications.¹⁰ In undertaking this evaluation, the OCC considers the CRA performance evaluation of each insured depository institution involved in the transaction. Under CRA, the OCC evaluates performance using performance criteria relative to the bank’s lending, investment and services. In these evaluations, the OCC considers the institution’s capacity and constraints, including the size and financial condition of the bank and its subsidiaries. After the most recent CRA examinations,¹¹ NationsBank received a rating of “Outstanding” and Barnett and CBI received ratings of “Satisfactory” with respect to CRA performance. Additionally, the OCC considers any public comment letter received related to any national bank involved in an application subject to review under CRA.

The OCC received one letter directly regarding the merger of NationsBank and Barnett. The application was removed from expedited review procedures so the OCC could investigate the concerns expressed by the protestant. The protestant expressed concerns that African American businesses in Florida face difficulties in obtaining credit and capital from out-of-state banks. As discussed below, the OCC investigated this allegation. We also reviewed and investigated comments relating to NationsBank’s performance in Florida that were received by the Federal Reserve Board and the Federal Reserve Bank of Richmond in connection with an application to merge NationsBank Corporation and BankAmerica Corporation. Those concerns and the results of the OCC’s investigation of those concerns and the comments received directly by the OCC are discussed below. In summary, our investigation and analysis of the issues raised indicated no basis for denying or conditioning the approval of this merger application.

1. Small Business Lending

Similar to the concerns expressed in the letter to the OCC, several of the comments to the Federal Reserve expressed a belief that less than 1% of NationsBank’s Florida business

⁹ 12 U.S.C. § 2903.

¹⁰ 12 C.F.R. 25.29(a)(4).

¹¹ A CRA examination of NationsBank is currently underway. However, the OCC has not finalized that report of examination or assigned a performance rating.

loans are made to African American-owned businesses. Other commenters alleged that NationsBank is a marginal participant in Small Business Administration (SBA) loans to African American-owned businesses. The commenters noted that of NationsBank's 470 loans to small businesses over a six year period, only 36 of those loans were to African American-owned small businesses.

In investigating the concerns raised by commenters regarding NationsBank's lending record to African American-owned small businesses, the OCC contacted the Small Business Administration and obtained information on NationsBank and its peers for 1996 and 1997.¹² Based upon the information provided by the SBA, we determined that over this two-year period NationsBank was the leading SBA lender in Florida with Barnett second. Of the 307 SBA loans (totaling \$27.1 million) originated by NationsBank in 1996 and 1997, 26 (totaling \$2.2 million) or 8.5% of the total were to African Americans. NationsBank's volume and percentage of SBA loans to African Americans compares favorably with Barnett's 14 SBA loans to African Americans or 6% of its total SBA loans, and the total SBA loans to African Americans by all Florida banks of 201 or 5% of total SBA loans.

The OCC's ability to investigate the allegations regarding overall small business lending to African Americans in Florida is limited by the requirements of Regulation B that restrict financial institutions from collecting or tracking racial information on small business loans. See 12 C.F.R. Part 202. However, in addition to reviewing SBA lending records, which do contain racial information, the OCC looked at the level of small business loans originated by NationsBank in census tracts where the African American population exceeds 30%. Using 1997 small business information provided by NationsBank, the OCC found that NationsBank made small business loans in a significant portion (39%) of Florida census tracts with a greater than 30% African American population. That level is considered reasonable given NationsBank's third place deposit market share in Florida and the number of geographies served in the state.¹³ In addition, the OCC determined that NationsBank originated small business loans in all Metropolitan Statistical Areas (MSAs) which are a part of its Florida assessment area and did not exclude MSAs or geographies within its assessment area.

2. Investments

Commenters also raised concerns relating to NationsBank's not providing adequate funding to the seven Florida Black Business Investment Corporations (BBICs). In addition, concerns were expressed with the lack of certainty as to whether NationsBank would continue the level of investment by Barnett in the Florida BBICs. In determining whether

¹² We did not request data from earlier years since the SBA indicated that numbers for years prior to 1996 were not necessarily accurate. The SBA included Barnett, SunTrust, and First Union as peer banks of NationsBank.

¹³ Currently, NationsBank's assessment areas in Florida do not include the entire state or entire MSAs.

the bank is meeting the needs of its community, the OCC reviewed NationsBank's investments in the Florida BBICs. NationsBank originally invested \$1.2 million in the BBICs resulting in the bank's 15% aggregate interest compared to Barnett's 18% aggregate interest. We note further that NationsBank recently made a \$1.4 million contribution to the BBICs (\$200,000 to each of the seven). When combined with Barnett's participation, NationsBank-Resulting has a combined participation of \$4.1 million which represents approximately a 51% aggregate interest.

We also reviewed NationsBank's investments which focused on small businesses or economic development including those investments which focus on minority and LMI businesses and economic development throughout its assessment area in Florida. Based on this review, the OCC found that NationsBank has been and plans to continue to be active in small business and economic development activities in Florida. Since 1996, NationsBank has made substantial investments in such small business and economic development investments as the NAACP (a services related investment), 3G Corp Holdings, Inc. (a Small Business Investment Corporation), and a Local Initiative Support Corporation (a Community Development Financial Institution or "CDFI"). NationsBank informed the OCC of its plans to continue to provide small business and economic development investments to Florida by expanding its Community Development Corporation ("CDC") activities, increasing its LIHTC ("Low Income Housing Tax Credits") efforts and CDFI investments, and upgrading its community development lending activities through an expansion of its Community Development Lending Group in Florida. NationsBank established a Tampa community development office in September 1997, a Jacksonville community development office in June 1998, and has a Miami/Ft. Lauderdale community development office scheduled to open in October 1998. In addition, in early 1998, NationsBank expanded its business of directly purchasing LIHTCs in Florida and will also continue to offer its CDFI initiatives in Florida.

3. Home Lending and HMDA

In another comment, specific concerns were raised with respect to NationsBank's home mortgage denial rates for low income applicants in the St. Petersburg, Florida, MSA. The commenter stated that NationsBank had a 48% denial rate for low income applicants in 1996.

The OCC's review of the 1996 HMDA data for the St. Petersburg MSA disclosed a 43% denial rate in home loans to low income applicants. However, when the OCC compared NationsBank's origination rate¹⁴ for total home loans by income categories to the average origination rate for all lenders in that market, it had a slightly higher origination rate

¹⁴ An origination rate represents the percentage of total applications received by a bank that were actually funded. While originations and denials typically make up the bulk of the actions taken, applications can also be categorized as approved but not accepted by the applicant, withdrawn by the applicant, purchased by the bank, or file closed for incompleteness.

to low income applicants than its peers. NationsBank's origination rate for total home loans to low income applicants was 45.73% compared to 44.32% for all lenders in St. Petersburg MSA. Accordingly, despite a seemingly high denial rate, the OCC concluded that NationsBank's origination rate of home loans for low income applicants is not significantly different from the origination rate of all lenders in the St. Petersburg MSA.

It is important to note, however, denial disparity ratios are of concern to the OCC and are evaluated in fair lending examinations. Home Mortgage Disclosure Act (HMDA) data provide information about a bank's mortgage lending activity that is useful, as preliminary information, to highlight potential lending discrimination problems. However, HMDA data alone are inadequate to provide a basis for concluding that a bank has violated fair lending laws. NationsBank's compliance with Fair Housing and Equal Credit Opportunity Acts was evaluated in conjunction with the 1995 CRA examination and the OCC examiners found no evidence of discrimination during that examination. We will review NationsBank's denial rates again during our next fair lending examination.

Other commenters indicated difficulty in obtaining HMDA information in a timely manner from branch offices of NationsBank in Florida. Regulation C permits banks to post the address for sending written requests for the disclosure statement in the lobby of each branch office in an MSA where the institution has offices, and mail or deliver a copy of the disclosure statement, within 15 days of receiving a written request (the disclosure statement need only contain the data relating to the MSA for which the request is made). See 12 C.F.R. Part 203, Appendix A. Upon reviewing comments regarding NationsBank's compliance with the disclosure requirements of HMDA and its implementing regulation, the OCC determined that the bank's practices were in compliance with the law.

4. Referrals

Commenters expressed concerns with respect to NationsBank's practice of referring applicants to two subsidiaries of NationsBank Corporation, NationsCredit and EquiCredit. The OCC was informed by NationsBank's management that as a result of NationsBank Corporation's recent acquisitions, all referral programs were suspended in December 1997. NationsBank indicated that it will not reimplement the referral programs until after it determines the programs are in full compliance with all applicable fair lending and consumer protection laws.

5. Advertising

Finally, concerns were also raised with respect to NationsBank's level of advertising in newspapers that focus on predominately white audiences versus the level of advertising in newspapers that focus on predominately minority audiences in Florida. The OCC reviewed the bank's newspaper advertising strategy and the bank's expenditures for Florida newspapers. The OCC found no reason for concern with the bank's advertising strategy or

distribution of expenditure dollars between newspapers of general circulation and minority publications.

For the foregoing reasons, the OCC concludes the CRA considerations are consistent with approval of the proposal.

C. Other Considerations

Commenters also expressed their belief that NationsBank has a poor record of granting vendor contracts to minority businesses. While this is not a factor considered by the OCC when evaluating mergers, examiners reviewed the bank's listing of minority contractors and the bank's practices of granting vendor contracts to minorities. The OCC found that the bank invites, through its Internet Web site, minority contractors to register their intent to provide products and services to the bank and that the bank has extended numerous contracts to minority vendors.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, we find the mergers of Barnett and CBI into NationsBank legally authorized under 12 U.S.C. § 215a. NationsBank-Resulting is authorized to retain and operate the offices of all three banks under 12 U.S.C. § 36(b). The Merger also meets the criteria for approval under other statutory factors. Accordingly, the merger applications are hereby approved.

_____/s/_____

Raymond Natter
Acting Chief Counsel

_____09-18-98_____

Date

Application Control Number: 98-ML-02-0021