



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #99-24 August 1999

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF KEYCORP AND KEYBANK, NATIONAL ASSOCIATION, CLEVELAND, OHIO

August 11, 1999

I. INTRODUCTION

On July 8, 1999, KeyCorp, a bank holding company headquartered in Cleveland, Ohio, (“KeyCorp”) applied to the Office of the Comptroller of the Currency (“OCC”) for approval to form an interim national bank, Key Interim National Bank of Michigan, Ann Arbor, Michigan, (“Interim Bank”). KeyCorp also applied, on behalf of the Interim Bank, for the Interim Bank to acquire certain branches, including the purchase of certain assets and the assumption of certain liabilities associated with the branches, from KeyBank, National Association, Cleveland, Ohio, (“KeyBank”), under 12 U.S.C. §§ 24(Seventh), 36(c), 36(d), 1828(c) & 1831u (the “Branch Acquisition”). The branches involved are the branches that KeyBank currently operates in Michigan (the “Michigan Branches”) and Indiana (the “Indiana Branches”).¹ KeyBank also

¹ These branches are the result of earlier transactions. See Decision on the Applications of Society Bank, Michigan, and Society National Bank, Indiana (OCC Corporate Decision No. 96-01, January 5, 1996) (“*Decision No. 96-01*”); Decision on the Applications of KeyBank, N.A. and Society National Bank (OCC Corporate Decision No. 96-32, June 14, 1996) (“*Decision No. 96-32*”). In *Decision No. 96-01*, the OCC approved the conversion of Society Bank, Ann Arbor, to a national bank, including its designation of Bronson, Michigan, as the main office of the converted bank; the relocation of the national bank’s main office from Bronson to Angola, Indiana, while retaining its branches in Michigan; and the merger of the bank with Society National Bank, Indiana. In *Decision No. 96-32*, the OCC approved the relocation of the resulting Indiana bank’s main office from Angola to Bryan, Ohio, while retaining its branches in Indiana and Michigan, and the merger of that bank with Society National Bank, Cleveland, Ohio. The resulting bank was named KeyBank, N.A. The Michigan Commissioner of Financial Institutions filed a lawsuit challenging *Decision No. 96-01*. The OCC decision was upheld at district court, *McQueen v. Ludwig*, No. 5:96-CV-36 (W.D. Mich. Sept. 2, 1997). But the Sixth Circuit held the OCC’s approval of the designation of Bronson as the main office in the conversion and the retention of branches in Michigan in the main office relocation to be invalid. *McQueen v. Williams*, 177 F.3d 523 (6th Cir. May 19, 1999). But see *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309 (5th Cir. 1997) (upholding authority of national banks to retain branches in original state when main office relocates into another state). The current applications were filed to ensure that the future operation of KeyBank’s branches in Michigan and Indiana would be consistent with the Sixth Circuit’s decision.

currently operates branches in Ohio, Alaska, Colorado, Idaho, Florida, Maine, New Hampshire, New York, Oregon, Utah, Vermont, and Washington.²

Also on July 8, 1999, KeyBank applied to the OCC for approval to merge Interim Bank with and into KeyBank under KeyBank's charter and title, under 12 U.S.C. §§ 215a-1, 36(d), 1828(c) & 1831u (the "Interstate Merger"). In the Interstate Merger application, OCC approval is also requested for KeyBank, as the resulting bank in the Interstate Merger, to retain its main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain as branches (1) KeyBank's branches in Ohio and the other states and (2) the Interim Bank's main office and branches in Michigan and Indiana under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

II. LEGAL AUTHORITY

A. The Formation of the Interim Bank is Authorized.

The National Bank Act authorizes the chartering of national banks. *See, e.g.*, 12 U.S.C. § 21, 26 & 27. OCC regulations set out special requirements and procedures for chartering a national bank that is an "interim bank" -- *i.e.*, a national bank that is formed to be used as a vehicle for a business combination.³ The transaction for which the Interim Bank is being established (the Branch Acquisition and the Interstate Merger) constitutes a business combination. The requirements of section 5.33, with respect to interim banks, as well as those in 12 U.S.C. §§ 21, 26 and 27 for chartering a new bank, are satisfied. Accordingly, the formation of the Interim Bank is authorized.

B. The Interim Bank may Acquire the Michigan and Indiana Branches.

1. The purchase and assumption is authorized under 12 U.S.C. § 24(Seventh).

The Interim Bank will acquire certain assets and assume certain liabilities from KeyBank. The purchase and assumption transaction is authorized under 12 U.S.C. § 24(Seventh). National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions,

² These branches are the result of earlier interstate merger transactions under sections 215a-1 and 1831u(a) (the Riegle-Neal Act). *See* Decision on the Merger Applications of KeyBank, N.A., and Twelve Affiliated Banks (OCC Corporate Decision No. 97-38, June 1, 1997) ("*OCC Decision No. 97-38*").

³ *See* 12 C.F.R. § 5.33(e)(4). A "business combination" includes the assumption of deposit liabilities by a national bank and mergers between national banks. 12 C.F.R. § 5.33(d)(1) & (d)(2). In addition, interim federally-chartered depository institutions that are chartered by the appropriate federal banking agency and will not open for business, such as the Interim Bank, are FDIC-insured upon issuance of the institution's charter by the agency. *See* 12 U.S.C. § 1815(a)(2). If the interim bank will be acquired by a bank holding company, the holding company also must meet applicable requirements. KeyCorp advised the OCC that it received a waiver of bank holding company application requirements from the Federal Reserve Bank of Cleveland under 12 C.F.R. § 225.12(d)(2). KeyCorp also has requested the OCC to waive the residency requirements for the directors of the Interim Bank. Under 12 U.S.C. § 72, directors of national banks must meet certain residency requirements, but the OCC, in its discretion, is authorized to waive the requirements.

as part of their general banking powers under 12 U.S.C. § 24(Seventh).⁴ Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, the Interim Bank may acquire the assets, and assume the liabilities, involved in this transaction from KeyBank. However, additional authority is required for the Interim Bank to acquire the Michigan and Indiana Branches to become branches of the Interim Bank.

2. The acquisition of the Michigan and Indiana Branches is authorized.

a. The Michigan Branches.

In the Branch Acquisition, the Interim Bank may acquire the Michigan Branches under 12 U.S.C. § 36(c). Under section 36(c), a national bank may establish new branches at any point within the state in which the bank is situated if state banks may establish such branches under state law. The acquisition of branches in a purchase and assumption transaction, as well as the *de novo* establishment of branches, within the state in which the bank is situated is governed by section 36(c).⁵ The Interim Bank is being formed in Ann Arbor, Michigan, and so it will be situated in Michigan for purposes of section 36(c). Michigan law permits Michigan state banks to establish branches throughout Michigan without geographic limitation. See Mich. Comp. Laws § 487.471(1). Since a Michigan-chartered bank could establish branches at the locations of KeyBank's Michigan branch sites, the Interim Bank may acquire the Michigan Branches under section 36(c).

b. The Indiana Branches.

In the Branch Acquisition, the Interim Bank will also acquire branches in Indiana, a state in which the Interim Bank does not already have a branch. The interstate part of the Branch Acquisition is authorized under legislation Congress enacted in 1994 to create a framework for interstate mergers and branching by banks.⁶ The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions:

(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.

⁴ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

⁵ See *State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980). The acquisition of branches in an in-state merger is governed by 12 U.S.C. § 36(b)(2).

⁶ 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").

12 U.S.C. § 1831u(a)(1) (added by the Riegle-Neal Act § 102(a)).⁷

Under the Riegle-Neal Act, the term “interstate merger transaction” may include interstate purchase and assumption transactions (as well as mergers), including the acquisition of branches.⁸ A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1).⁹ The Riegle-Neal Act also authorizes the purchase and assumption of only a part of a bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

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

12 U.S.C. § 1831u(a)(4)(A). In the interstate Branch Acquisition here, the Interim Bank would acquire branches in Indiana. Indiana law permits an out-of-state bank to establish and maintain a

⁷ The Riegle-Neal Act also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with the Riegle-Neal Act. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). The Riegle-Neal Act permitted a state to elect to prohibit such interstate merger transactions under section 44 involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state “opt-out” laws). In the proposed interstate Branch Acquisition and the subsequent Interstate Merger, the home states of the banks are Michigan, Indiana, and Ohio. None of these states opted-out.

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, when branches are acquired in another state under section 1831u(a)(4), as in this interstate Branch Acquisition, the branch is treated as an insured bank the home state of which is the state in which the branch is located. See 12 U.S.C. § 1831u(a)(4)(B).

⁸ An “interstate merger transaction” is defined as a “merger transaction” approved under section 1831u(a); a “merger transaction” is defined by reference to 12 U.S.C. § 1828(c); and section 1828(c) includes purchase and assumption transactions in which deposit liabilities are assumed. See 12 U.S.C. §§ 1831u(f)(6)-(7) & 1828(c)(3).

⁹ Since the Interim Bank will be acquiring *all* of KeyBank’s branches in Indiana, arguably the transaction could be approved under section 1831u(a)(1), without the need to rely on the special authority of section 1831u(a)(4), since it is the equivalent of acquiring an Indiana bank. Because the transaction may be approved under section 1831u(a)(4), we need not consider this issue further in this application.

branch in Indiana through the acquisition of a branch.¹⁰ Finally, the Riegle-Neal Act also provides that a national bank may maintain and operate a branch in a state other than its home state as a result of an interstate merger transaction under section 1831u(a).¹¹ Accordingly, the Interim Bank's acquisition of the Indiana Branches may be approved under 12 U.S.C. §§ 36(d) and 1831u.

In addition, an application to engage in an interstate merger transaction, including an interstate branch acquisition, under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These 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 Interim Bank's acquisition of the Indiana Branches satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C.

¹⁰ Ind. Code Ann. § 28-2-18-21 provides:

An out-of-state bank that meets the requirements of [Chapter 18. Interstate Bank Branches] may establish and maintain a branch in Indiana through the acquisition of a branch.

Ind. Code Ann. § 28-2-18-21. Indiana law further provides that an out-of-state bank may not establish a branch in Indiana through acquisition unless the laws of the home state of the out-of-state bank permit Indiana state banks to establish and maintain branches through the acquisition of branches under substantially the same terms and conditions as are applied by Indiana law (a "reciprocity condition"). See Ind. Code Ann. § 28-2-18-29(b). Michigan law also permits out-of-state banks to acquire branches in Michigan, see Mich. Comp. Laws § 487.429, and so Indiana's reciprocity condition is met. The authority of the states to impose a reciprocal treatment condition on interstate branch acquisitions (which are a type of interstate merger transaction) after May 31, 1997 is questionable in light of 12 U.S.C. § 1831u(a)(3)(B). See also Decision on the Application of Patrick Henry National Bank (OCC Corporate Decision No. 96-04, January 19, 1996 (page 2 & note 2, pages 4-5 & notes 4 & 5) (noting issue whether a reciprocity condition in a state's *de novo* interstate branching law is applicable to national banks under 12 U.S.C. § 36(g)). However, because the reciprocity condition is satisfied here, we need not consider this question further in the context of this application.

¹¹ See 12 U.S.C. §§ 36(d) & 1831u(d)(1). Section 36(d) provides:

Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

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

§ 1831u(a)(5)(A). Indiana does not have an age requirement for an interstate branch acquisition. Therefore, the Interstate Branch Acquisition satisfies the Riegle-Neal Act's age requirement.¹²

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state.¹³ Indiana requires the out-of-state bank to provide written notice of the proposed transaction to the Indiana Department of Financial Institutions ("IDFI"). Ind. Code Ann. § 28-2-18-22. Indiana also requires the out-of-state bank that is acquiring a branch in Indiana to (1) confirm in writing to the IDFI that it will comply with all applicable laws of Indiana as long as it maintains a branch in Indiana, and (2) provide evidence to the IDFI of its compliance with Ind. Code Ann. § 28-1-22-1 (requiring out-of-state banks to obtain a certificate of admission to the state before doing business in the Indiana). Ind. Code Ann. § 28-2-18-23. The applicants notified the IDFI and sent a copy of the OCC Application (as required by section 1831u(b)(1)(ii)) and represent that the Interim Bank will send to the IDFI a letter indicating the Interim Bank intends to comply with all applicable laws of Indiana and an application for a certificate of admission pursuant to Ind. Code Ann. § 28-1-22-1.¹⁴ Thus, this application satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed 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. See 12 U.S.C. § 1831u(b)(2)(E). The Interim Bank and KeyBank are affiliates; thus section 1831u(b)(2) is not applicable to this Branch Acquisition.

Fourth, the proposed transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether

¹² Moreover, the maximum age limit permitted under the Riegle-Neal Act is five years. 12 U.S.C. § 1831u(a)(5)(A). Most of the Indiana branches are more than five years old.

¹³ See 12 U.S.C. § 1831u(b)(1). Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

¹⁴ It is unclear whether the Indiana requirement that the out-of-state bank confirm it will comply with all applicable laws is consistent with the limitations of section 1831u(b)(1), particularly since the Indiana law does not specify which laws are considered applicable. However, because the Interim Bank has voluntarily agreed to comply, we need not consider this question further in the context of this application.

to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.¹⁵ In this application, the Interim Bank and KeyBank are affiliates, and so this Riegle-Neal Act provision is not applicable. However, the CRA itself is applicable, as discussed below in Part III-B.

Fifth, the proposed transaction 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. 12 U.S.C. § 1831u(b)(4). KeyBank and the Interim Bank, according to the pro forma financial statements in the applications showing Interim Bank's capital levels upon its formation, satisfy all regulatory and supervisory requirements relating to adequate capitalization. The OCC has also determined that, following the Branch Acquisition, the Interim Bank will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Therefore, the Interim Bank's proposed acquisition of the Indiana Branches is legally permissible under 12 U.S.C. §§ 36(d) & 1831u. Accordingly, the purchase and assumption transaction and Branch Acquisition as a whole are legally authorized.

C. The Interim Bank may Merge into KeyBank.

1. The Interstate Merger is authorized under 12 U.S.C. §§ 215a-1 and 1831u.

After the Branch Acquisition, the applicants propose to merge the Interim Bank with and into KeyBank. The Interstate Merger will be a merger of banks with different home states, Michigan and Ohio, and may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a), provided the other requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) are met.

The Interstate Merger of the Interim Bank and KeyBank satisfies all these conditions to the extent applicable. First, the proposed merger satisfies the state-imposed age requirements permitted by section 1831u(a)(5). In the Interstate Merger, KeyBank is acquiring, by merger, a bank (the Interim Bank) in the host state of Michigan. In a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Michigan interstate bank merger statute contains no

¹⁵ It does not apply to mergers between affiliated banks because 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).

minimum time requirement for which the Michigan bank must have been in existence. Thus, the Interstate Merger satisfies the Riegle-Neal Act's age requirement.

Second, the proposed merger meets the applicable filing requirements. In this Interstate Merger, Ohio will be the home state of the resulting bank, and Michigan and Indiana are the host states for filing purposes. Michigan law requires that the out-of-state bank notify the state bank commissioner by filing a copy of its federal merger application. See Mich. Comp. Laws § 487.425a. Also, the Michigan law requires an out-of-state bank desiring to operate a branch in Michigan to provide written notice to the Michigan banking commissioner prior to commencing operations within the state which includes the name of the bank, the addresses of the bank's main office and branch office, and the name and address of the bank's agent for service of process in Michigan. Mich. Comp. Laws §§ 487.471(14) & (15). These requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. KeyBank provided a copy of the OCC application to the Michigan banking commissioner, as required by section 1831u(b)(1)(ii), and has filed the required Michigan state notices. Indiana law requires out-of-state banks to obtain a certificate of admission to the state from the IDFI and file such certificate with the secretary of state before transacting business in the state. Ind. Code Ann. § 28-1-22-1. KeyBank previously obtained and filed the required certificate on May 7, 1997, in connection with an earlier transaction.¹⁶ KeyBank also provided a copy of its OCC application for the Interstate Merger to the IDFI, as required by section 1831u(b)(1)(ii). Thus, this Interstate Merger application satisfies the Riegle-Neal Act's filing requirements.

Third, since KeyBank and the Interim Bank will be affiliated banks at the time of the proposed merger transaction, the deposit concentration limits of the Riegle-Neal Act do not apply. See 12 U.S.C. § 1831u(b)(2)(E).

Fourth, similarly, since the two banks will be affiliated banks, the special community reinvestment compliance provisions of the Riegle-Neal Act do not apply. See note 15 above. However, the Community Reinvestment Act itself is applicable, see Part III-B.

Fifth, the proposed Interstate Merger satisfies the adequacy of capital and management skills requirements of 12 U.S.C. § 1831u(b)(4). As discussed above, KeyBank and Interim Bank satisfy capital requirements, and KeyBank will continue to be at least adequately capitalized and adequately managed after the transactions.

¹⁶ See OCC Decision No. 97-38, *supra* note 2, at page 7, note 10.

2. Following the Interstate Merger, KeyBank may retain both participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the Interstate Merger, KeyBank (as the resulting bank in the Interstate Merger) be permitted to retain and continue to operate its main office in Cleveland as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain and continue to operate as branches of the resulting bank: (1) KeyBank's branches in Alaska, Colorado, Idaho, Florida, Maine, New Hampshire, New York, Ohio, Oregon, Utah, Vermont, and Washington, and (2) the Interim Bank's main office in Ann Arbor, Michigan, and its branches in Michigan and Indiana, under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

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 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) (emphasis added). 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).¹⁷

Therefore, KeyBank, the resulting bank in this interstate merger transaction, may retain and continue to operate, as its main office, the main office in Cleveland and may retain and continue to operate, as branches, both KeyBank's own branches and the main office and branches of the Interim Bank under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Moreover, KeyBank is authorized to engage in all activities permissible for national banks at its main office and branches in all the states in which it operates.

Accordingly, the Interstate Merger is legally permissible under 12 U.S.C. §§ 36(d), 215a-1 & 1831u.¹⁸

¹⁷ See 12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)) (quoted in note 11 above). 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 provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer 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).

¹⁸ KeyBank also applied for a reduction in capital under 12 C.F.R. § 5.46(h). When the Interim Bank is formed, KeyCorp will make a cash capital infusion into the Interim Bank of approximately \$56 million. This will result in the Interim Bank being adequately capitalized, as required for the Branch Acquisition and Interstate Merger. After the

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger transaction, including purchase and assumption transactions, between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger transaction which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find both the Branch Acquisition and the Interstate Merger may be approved under section 1828(c).

1. Competitive Analysis.

Since both banks involved in these transaction are owned by the same bank holding company, the transactions will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of KeyBank are presently satisfactory. The transactions will not materially change the business operations of the bank. Thus, we find the financial and managerial resources factor is consistent with approval of the transactions.

3. Convenience and Needs.

The transactions will not have an adverse impact on the convenience and needs of the communities to be served. After the transactions are completed, KeyBank will continue to operate the same branches and offer the same products or services. No branch closings are contemplated as a result of these transactions. Accordingly, we believe the impact of the transactions on the convenience and needs of the communities to be served is consistent with approval of the applications.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution

merger of the Interim Bank into KeyBank, the capital surplus account of the resulting bank will be \$56 million greater than KeyBank's capital surplus account immediately preceding the transactions. KeyBank wishes to restore its capital surplus account to that pre-transaction level. Thus, immediately after the Interstate Merger, KeyBank proposes to reduce its capital surplus account by approximately \$56 million and distribute that amount in cash back to KeyCorp. A reduction in capital surplus is authorized by 12 C.F.R. § 5.46(h), with prior OCC approval.

involved in the transaction. Under the CRA regulations effective July 1, 1997, the OCC evaluates performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

KeyBank received an Outstanding CRA rating as of February 5, 1997. No public comments were received by the OCC relating to these applications, and the OCC has no other basis to question the bank's performance in complying with the CRA. The Branch Acquisition and Interstate Merger are not expected to have any adverse effect on the resulting bank's CRA performance. KeyBank will continue to serve the same communities that it currently serves and will continue its current CRA programs and policies. We find that approval of the proposed transactions 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 formation of the Interim Bank, the request for waiver of the residency requirements for the Interim Bank's directors, the Branch Acquisition, the Interstate Merger, and the capital surplus reduction are legally authorized and meet the other statutory criteria for approval. Accordingly, the applications are hereby approved.

_____/s/_____

Julie L. Williams
Chief Counsel

08-11-99

Date

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