



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**CRA Decision #102
December 1999**

**DECISION OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
PENINSULA BANK OF SAN DIEGO, SAN DIEGO, CALIFORNIA, INTO
U.S. BANK NATIONAL ASSOCIATION, MINNEAPOLIS, MINNESOTA,
UNDER THE CHARTER AND TITLE OF
U.S. BANK NATIONAL ASSOCIATION**

November 29, 1999

A. Introduction

On October 4, 1999, U. S. Bank National Association, Minneapolis, Minnesota, (hereinafter "U.S. Bank") filed an application with the Comptroller of the Currency ("OCC") for prior approval to merge Peninsula Bank of San Diego, San Diego, California, (hereinafter "Peninsula Bank") into U.S. Bank, under the charter and the title of U. S. Bank, under 12 U.S.C. §§ 215a & 1828(c). As part of the merger application, U.S. Bank also requests approval to retain Peninsula Bank's main office and branches, as branches of U.S. Bank, under 12 U.S.C. § 36(b)(2). This application was based on an agreement entered into between the proponents on September 1, 1999.

As of June 30, 1999, Peninsula Bank, a state member bank, had total deposits of \$420 million and operated 10 offices in California. On the same date, U. S. Bank had total deposits of \$49 billion and operated an extensive branching network in fifteen states, including California. U.S. Bank is 100 percent owned and controlled by U.S. Bancorp, a multi-bank holding company.

The proposed merger is legally permissible under 12 U.S.C. § 215a because U.S. Bank has branches in California, and so it may acquire Peninsula Bank, another bank located in California, by merger under section 215a.¹ U.S. Bank may retain the main office and branches of Peninsula Bank as branches after the merger under 12 U.S.C. § 36(b)(2)(A), since

¹ See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1) (pages 6-8). See also *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction).

California permits statewide branching. Accordingly, the proposed merger and retention of branches are legally authorized.

B. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for a merger between insured banks 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 and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served. For the reasons stated below, we find this merger may be approved under section 1828(c).

1. Competitive Analysis

The OCC has reviewed the competitive effects of this proposal by using its standard procedures for determining whether a business combination clearly has minimal or no adverse competitive effects. The OCC finds that the proposal satisfies its criteria for a merger that clearly has no or minimal adverse competitive effects.

Peninsula Bank currently has 1.9% of the deposits in the San Diego banking market and ranks eleventh. U.S. Bank currently has 2.8% of the deposits in the San Diego banking market and ranks seventh. After merging, U.S. Bank will be ranked sixth in the San Diego banking market.

2. Financial and Managerial Resources

We find that the financial and managerial resources of Peninsula Bank and U.S. Bank do not raise concerns that would warrant disapproval of the application. The future prospects of the proponents, individually and combined, are considered favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and Needs

The merger will not have an adverse impact on the convenience and needs of the communities to be served. No products and services will be discontinued, and all facilities will remain open after consummation of the merger. In addition, U.S. Bank is a full service retail banking institution and will offer a wider variety of consumer banking products and services to the community than are currently offered by Peninsula Bank. Therefore, the resulting bank is expected to have a positive effect on the convenience and needs of the communities to be served.

The OCC received a comment during the public comment period that raised concerns with U.S. Bank's ability serve the needs of the low-income communities in California with its branching network. The OCC previously addressed this concern in recent applications filed by

U.S. Bank.² The OCC's investigation into this concern disclosed no information that would be inconsistent with approval. In addition, in connection with the current application, U.S. Bank represented that it will be opening a new branch facility in a low- or moderate-income ("LMI") section of San Diego following the acquisition of Peninsula Bank.

C. 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 communities, including LMI neighborhoods, when evaluating certain applications, including mergers. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution 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.

U.S. Bank received a "Satisfactory" CRA rating dated April 8, 1998.³ Peninsula Bank received a "Satisfactory" CRA rating from the Federal Deposit Insurance Corporation dated April 7, 1997.

During the comment period, the OCC received a comment from a California-based community organization. The comment requested the OCC to conduct a public hearing to discuss the concerns raised by the commenter and to extend the comment period. In light of the written comment received and the nature of the hearing request, the OCC concluded that a public hearing would not provide any additional facts orally that could not be provided in writing. Accordingly, the OCC decided not to hold a public hearing on this merger application. However, the OCC removed the filing from its expedited review procedures and provided the

² See Decision on the Application to Merge Bank of Commerce, San Diego, California, into U.S. Bank National Association, Minneapolis, Minnesota (OCC CRA Decision No. 96, June 30, 1999) ("OCC CRA Decision No. 96") and Decision on the Application to Merge Southern California Bank, Newport Beach, California and Santa Monica Bank, Santa Monica, California, into U.S. Bank National Association dated October 29, 1999 (Application Control Number: 1999-MW-02-0025, which had not yet been published at the time of this decision) ("OCC CRA Decision, October 29, 1999").

³ The Performance Evaluation of U.S. Bank covered only those assessment areas that were merged into the bank on June 1, 1997. Accordingly, the California assessment area was not included in that evaluation. Subsequent to June 1, 1997, United States National Bank of Oregon, Portland, Oregon and First Bank, National Association, Minneapolis, Minnesota, both lead banks of their respective holding companies, merged to form the current U.S. Bank. United States National Bank of Oregon had an "Outstanding" CRA rating when it merged with First Bank National Association to form the current U.S. Bank. The OCC issued a Public Evaluation of U.S. Bank National Association on April 8, 1998 which only included the former First Bank, National Association entities and rated that institution, based on 1995 and 1996 data, a "Satisfactory." However, the OCC also conducted a limited review of U.S. Bank's 1998 CRA performance in California in connection with U.S. Bank's application to merge with Bank of Commerce, San Diego, California. Based on that limited review, the OCC concluded that approval of the bank's application was consistent with the Community Reinvestment Act. See, OCC CRA Decision No. 96. The OCC expects to conduct a CRA examination of U.S. Bank in the year 2000 which will include the resulting bank's California assessment areas for the evaluation period to be reviewed.

commenter with 10 additional days to review recently released lending data. The commenter did not submit any additional information.

The commenter expressed a concern that both banks had gone from “Outstanding” CRA ratings to “Satisfactory” ratings and that both banks had not been examined for CRA performance in more than two years despite changes to their operations.⁴ The OCC previously investigated U.S. Bank’s CRA performance in California in connection with two prior acquisitions.⁵ In connection with U.S. Bank’s two prior applications, the OCC conducted a limited scope review of U.S. Bank’s CRA performance in California and reviewed specific concerns raised by commenters. The OCC found no basis for denying or conditioning the approval of those applications and no additional concerns have been raised in connection with the current application that have not been investigated previously.

Accordingly, based upon the banks’ records of CRA performance, we find that approval of the proposed transaction is consistent with the Community Reinvestment Act.

D. Conclusion and Approval

For the reasons set forth above, including the representations and commitments of the applicants, we find that the proposed merger between U.S. Bank and Peninsula Bank is authorized, that it will not significantly lessen competition in any relevant market, and that other factors considered in evaluating this proposal are satisfactory. Accordingly, this merger application is approved.

/s/
Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

11-29-99
Date

Application Control Number: 99-MW-02-0039

⁴ The OCC does not have examination authority over Peninsula Bank and relied primarily upon the April 7, 1997 CRA Performance Evaluation which was conducted by the Federal Deposit Insurance Corporation.

⁵ See OCC CRA Decision No. 96 and OCC CRA Decision, October 29, 1999.