



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

CRA Decision #94
June 1999

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
SAN FRANCISCO, CALIFORNIA, AND
NATIONS BANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA**

May 20, 1999

I. INTRODUCTION

On December 28, 1998, Bank of America National Trust and Savings Association ("BANTSA"), San Francisco, California, and NationsBank, National Association, Charlotte, North Carolina ("NationsBank"), applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge NationsBank with and into BANTSA under BANTSA's charter under 12 U.S.C. §§ 215a-1, 1828(c) and 1831u (the "Merger"). The resulting bank will be named "Bank of America, National Association" ("BofA-Resulting") and will have its main office in Charlotte, North Carolina.¹ Both banks are insured banks. BANTSA has its main office in California and, at the proposed consummation date for the Merger, will operate branches in California, Washington, Oregon, Idaho, Nevada, Arizona, Illinois, New York, and Florida.² NationsBank has its main office in North Carolina and operates branches in North Carolina, South Carolina, Virginia, Maryland, the District of Columbia, Georgia, Florida, Tennessee, Illinois,

¹ This application is part of the process of combining the banking operations of the subsidiary banks of the recently formed Bank of America Corporation ("New BAC"). NationsBank Corporation, Charlotte, North Carolina, merged with the former BankAmerica Corporation ("BankAmerica"), San Francisco, California. The resulting holding company is named Bank of America Corporation and is headquartered in Charlotte, North Carolina. See Order approving the Merger of NationsBank Corporation and BankAmerica Corporation, 84 Fed. Res. Bull. 858 (August 17, 1998).

² BANTSA currently also has branches in Alaska. Prior to the Merger, some of the Alaska branches will have been closed, and the remainder sold to an unrelated state bank in Alaska.

Iowa, Missouri, Kansas, Oklahoma, Arkansas, Texas, and New Mexico. In this application, OCC approval is also requested for BofA-Resulting to retain NationsBank's main office in Charlotte, North Carolina, as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain NationsBank's branches and BANTSA's main office and branches, as branches after the Merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

II. LEGAL AUTHORITY FOR THE MERGER

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

In this Merger, national banks with different home states will merge. Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

(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).³ 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 Merger, the home states of the banks are North Carolina and California; neither state opted out. Accordingly, this application may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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). These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-

³ Section 44 was added by section 102(a) of the 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"). The Riegle-Neal Act also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). Some interstate mergers may also be authorized under 12 U.S.C. § 215a. 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). The present application was made under the Riegle-Neal Act.

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).

Neal 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. This application satisfies all these conditions to the extent applicable.

First, the application 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. § 1831u(a)(5)(A). But the maximum age requirement a state is permitted to impose is five years. 12 U.S.C. § 1831u(a)(5)(B). In this Merger, while BANTSA and NationsBank are combining under BANTSA's charter, the resulting bank will have its main office in North Carolina under 12 U.S.C. § 1831u(d)(1). Thus, in the context of this transaction, it is not clear which state is the "host state" for purposes of section 1831u(a)(5)(A). However, we need not resolve this question here because the Merger would satisfy the host state age limit under either view, since both banks are more than five years old. The Riegle-Neal Act's requirement of compliance with state age requirements is met.⁴

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. 12 U.S.C. § 1831u(b)(1).⁵ The resulting bank in the Merger will have its main office in North Carolina; and so the current host states of NationsBank, as well as California, will become host states of the resulting bank as a result of the Merger.⁶ Of the fifteen current host states of

⁴ While BANTSA and NationsBank each have branches in other states, the home states of the banks -- North Carolina and California -- are the only relevant states for age limit purposes under section 1831u(a)(5), since the home state is the only state in which an out-of-state bank "acquire[s] a bank" for purposes of section 1831u(a)(5)(A). Moreover, even if the age requirement were to be applied with respect to the other states, this merger would meet it. Each bank is more than five years old, and so it meets the maximum age requirement that a state may impose under the Riegle-Neal Act. See 12 U.S.C. § 1831u(a)(5)(B).

⁵ 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).

⁶ Since the Merger is being effected under BANTSA's charter, the current host states of BANTSA will continue to be host states of the resulting bank, but they will not become host states as a result of this Merger, and so the filing requirements of section 1831u(b)(1) do not apply with respect to those states. See Decision on the Application

NationsBank,⁷ only Georgia and Virginia appear to have a state filing requirement to notify the state bank commissioner in connection with the merger of an out-of-state national bank with branches in that state into another affiliated out-of-state national bank.⁸ The applicants provided the notice to Georgia and Virginia. In addition, Maryland, Arkansas, and Iowa have provisions, applicable in this transaction, that require out-of-state banks that operate branches in the state to register with the state under procedures comparable to those imposed on out-of-state nonbanking corporations doing business in the state.⁹ California has a similar provision.¹⁰ The applicants represent that BofA-Resulting will make the required filings at the time of the Merger. Finally, the applicants provided a copy of the OCC merger application to the state bank supervisors of all the host states of the resulting bank, as well as to the state bank supervisor of North Carolina. Thus, this application satisfies the Riegle-Neal Act's filing requirements.

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. 12 U.S.C. § 1831u(b)(2)(E). BANTSA and NationsBank 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 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 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

to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9). Moreover, we note that none of these current BANTSA host states (Washington, Oregon, Idaho, Nevada, Arizona, Florida, Illinois, and New York) appears to have state filing requirements in connection with the merger of an interstate national bank into an affiliated national bank with branches in that state (for the reasons listed in note 8) and that the applicants provided copies of the OCC merger application to the state bank supervisors of these states.

⁷ South Carolina, Virginia, Maryland, the District of Columbia, Georgia, Florida, Tennessee, Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Texas, and New Mexico.

⁸ See Ga. Code Ann. § 7-1-628.5; Va. Code Ann. § 6.1-44.25. With respect to the other states, there are no applicable notification requirements because (1) state law does not have a filing requirement, (2) the state's filing requirement provisions do not apply in mergers involving only national banks, or (3) the state's filing requirement provisions for a resulting out-of-state bank apply only when there is a merger with a bank chartered by that state or a national bank whose home state is that state, and so a merger between an out-of-state bank with branches in that state and another out-of-state bank is not covered by the state statute.

⁹ See Md. Code Ann. [Fin. Inst.] § 5.1014(a); Ark. Code Ann. § 23-48-1001; Iowa Code Ann. § 524.1805(5).

¹⁰ See Cal. Fin. Code § 3822.

banks.¹¹ In this application, BANTSA and NationsBank 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 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. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, both banks 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, BofA-Resulting will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

B. Following the Merger, BofA-Resulting 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 Merger, BofA-Resulting (as the resulting bank in the Merger) be permitted to retain and continue to operate NationsBank's main office in Charlotte 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 (1) NationsBank's branches and (2) the main office and branches of BANTSA, 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):

(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

¹¹ 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). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

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)).¹²

Therefore, BofA-Resulting, the resulting bank in this interstate merger transaction, may retain NationsBank's main office in Charlotte, North Carolina, as BofA-Resulting's main office after the Merger under section 1831u(d)(1) (emphasized language quoted above). Similarly, BofA-Resulting may retain and continue to operate as branches both NationsBank's branches and BANTSA's main office and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Moreover, BofA-Resulting will succeed to the fiduciary appointments of NationsBank and BANTSA as a result of the Merger, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act) & 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks).¹³ See also Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states); OCC Interpretive Letter No. 695 (December 8, 1995) (same). Cf.

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 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).

¹³ Under section 4 of the National Bank Consolidation and Merger Act, 12 U.S.C. § 215a-1, "[A] national bank may engage in a consolidation or merger *under this Act* [*i.e.*, the National Bank Consolidation and Merger Act] with an out-of-State bank if the consolidation or merger is approved pursuant to section 44 of the Federal Deposit Insurance Act." 12 U.S.C. § 215a-1 (emphasis added). Sections 2 and 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. §§ 215 & 215a, authorize consolidations (section 215(a)) and mergers (section 215a(a)) between a national bank and another bank located in the same state. Sections 2 and 3 also contain the procedures, requirements, conditions, and rules for the status of the resulting institution that govern all consolidations and mergers that occur under the Act. In particular, section 2(e) of the Act, 12 U.S.C. § 215a(e) provides that, in a merger under the Act, the resulting national bank succeeds to all of the rights, franchises, and interests, including fiduciary appointments, of the merging banks, upon the merger and without the need for any further action. Since a merger under section 215a-1 is a merger under the National Bank Consolidation and Merger Act, these provisions, including section 215a(e), apply to it. The phrase "under this Act" in section 215a-1 clearly makes mergers under section 215a-1 subject to these provisions of section 215a. If they were not intended to be applicable, section 215a-1 would simply have authorized mergers that met the requirements of section 44, without any reference to the rest of the National Bank Consolidation and Merger Act. See also 12 C.F.R. § 5.33(h). Thus, this Merger is governed, *inter alia*, by section 215a(e). Accordingly, BofA-Resulting automatically succeeds to all such rights, franchises, and interests, including fiduciary appointments, of both BANTSA and NationsBank by operation of federal law, any state law to the contrary notwithstanding.

12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

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 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 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 this Merger may be approved under section 1828(c).

1. Competitive Analysis.

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

2. Financial and Managerial Resources.

The financial and managerial resources of NationsBank and BANTSA are presently satisfactory. The applicants expect to achieve administrative efficiencies by operating all the offices as branches of one bank. The future prospects of the institutions, individually and combined, are 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. BofA-Resulting will continue to serve the same areas that NationsBank and BANTSA serve today. There will be no significant reductions in products or services as a result of the Merger. The combined bank will continue to offer a full line of banking products and services. The Merger will give customers of each bank access to an extensive nationwide network of bank branches and automated teller machines. This will particularly benefit business customers with operations in different states and retail customers who travel between states.

Although the OCC did not directly receive any letters commenting on the application at issue during the comment period, the OCC investigated the concerns that were raised in letters and testimony received by the Board of Governors of the Federal Reserve System ("Board"), the Federal Reserve Bank of San Francisco, and the Federal Reserve Bank of Richmond in connection with the holding company application to merge NationsBank Corporation and BankAmerica. The OCC also received several letters expressing concerns about the holding company merger which were forwarded to the Board and two letters regarding New BAC's publicly announced 10-year

commitment to community development lending and investment received after the Board's approval of the holding company merger. The concerns expressed in the letters and at the public meeting held by the Board on July 9th and 10th, 1998 in San Francisco and the results of the OCC's investigation into those concerns are discussed below.¹⁴ In light of the concerns raised, the OCC directed examiners with extensive consumer compliance experience, and who were not involved in the last CRA or fair lending examinations of NationsBank or BANTSA, to conduct on-site and off-site investigations of the most serious of these concerns. The scope of this review included an investigation of the specific convenience and needs and CRA-related allegations raised by the commenters. In order to investigate those concerns, on February 1, 1999, the OCC removed the application from expedited review processing. In summary, our investigation and analysis of the issues raised indicated no basis for denying or conditioning the approval of this application.¹⁵

Prior to the receipt of this application, the OCC received a letter from three members of Congress concerned about New BAC's future services to California consumers. They also requested that the OCC conduct a public meeting to discuss these concerns and conditions needed to protect California's economy. The OCC concluded that another public meeting would not produce significantly new or different information relevant to this Merger application than the concerns gathered at the meeting held at the Federal Reserve Bank of San Francisco in response to the holding company merger application last year, which the OCC already was investigating. In addition, the OCC did not receive any comments from the public on this application. Accordingly, the OCC decided not to hold a public hearing on this Merger application.

a. Branch Closings.

Commenters expressed concerns about branch closings that might occur after the merger of BankAmerica and NationsBank Corporation. The OCC found that BofA-Resulting plans no branch closings in connection with this Merger. However, as part of ongoing business plans, BofA-Resulting will continually evaluate its branch system, including branches acquired in transactions and, as part of the normal course of business, may close redundant or unprofitable branches. New BAC has stated that any such later closures will be made in accordance with

¹⁴ The OCC previously addressed and investigated concerns relating to the banks' activities in Texas, New Mexico, and Florida; these concerns therefore will not be discussed in this decision. See Decision on the Applications of Bank of America National Trust and Savings Association, Bank of America Texas, N.A., and NationsBank, N.A. (OCC CRA Decision No. 89, February 19, 1999) ("*OCC CRA Decision No. 89*") (Texas and New Mexico); Decision on the Application to Merge Barnett Bank, N.A., and Community Bank of the Islands with and into NationsBank, N.A. (OCC Corporate Decision No. 98-44, September 18, 1998) (Florida).

¹⁵ A number of commenters expressed concerns to the Board regarding the number of job losses resulting from the holding company merger. The OCC asked New BAC to provide more detailed information regarding job losses. New BAC projects 5,000 to 8,000 positions (after attrition) will be eliminated during the transition period as a result of the holding company and bank mergers. To minimize job losses, New BAC is implementing hiring cutbacks and job freezes in many business lines. New BAC has represented that it will provide assistance for displaced employees. The OCC has concluded that this issue does not reflect adversely on statutory factors that the OCC considers when evaluating a merger.

applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.¹⁶

BankAmerica and NationsBank Corporation have branch closing policies that are substantially alike. Each requires the bank to take into consideration the impact of a branch closing on the affected community and to minimize the negative impact, if any, of any branch closing, especially those in LMI areas. Accordingly, New BAC does not expect that the policy that will be adopted will be materially different from the current policies used by NationsBank and BANTSA or will result in a disproportionate amount of branch closings in LMI areas.

During the public comment period for the holding company merger of BankAmerica and NationsBank Corporation, the Board received several comments by individuals and community organizations expressing concerns regarding branch closures by NationsBank in Kansas. OCC examiners reviewed NationsBank's branch closures in Kansas for 1996 and 1997 and determined that NationsBank closed only six branches during that time period, three of which were located in the Kansas City Metropolitan Statistical Area ("MSA"). All six branches were located in upper- or middle-income areas. OCC examiners concluded that the bank followed its policy for closing these branches.

Other commenters expressed concerns that as NationsBank has grown, it has closed branches in rural and central city areas. OCC examiners determined that of the 54 NationsBank branches that were closed in non-metropolitan areas during 1996 and 1997 in the fifteen states in which the bank operated, none were in low-income areas, and only three were in moderate-income areas. NationsBank's record of closing branches during 1996 and 1997 in low- and moderate-income ("LMI") metropolitan areas does not reflect a negative trend. During this period, 32 branch closures located in LMI areas were offset by 53 branch openings in LMI areas. In many instances the openings were within the same markets as the closures.

b. System Conversion.

Two commenters raised issues regarding instances in which they believed their transactions were not processed correctly shortly after NationsBank had acquired the banks where they were customers. The OCC requested that New BAC provide its plans to prevent problems associated with the conversion of systems following the proposed Merger. New BAC responded that it considers both of the commenters' problems to be isolated situations, unrelated to the transition process and not representative of their customers' experiences. New BAC also noted that both NationsBank Corporation and BankAmerica have had extensive successful experience in managing operational mergers. With regard to this Merger, New BAC represented that precautions will be taken to minimize the chance of disruption to New BAC and its customers.

¹⁶ Federal law requires banks to give notice of proposed branch closings. The Federal Deposit Insurance Act requires insured depository institutions to provide notice to the appropriate federal regulatory agency at least 90 days prior to the date of a proposed closing and to the public at least 30 days prior to such closing. 12 U.S.C. § 1831r-1. Additionally, the OCC considers a bank's record of branch closings in conducting examinations under the CRA.

c. New BAC's Commitment to Community Development Lending and Investment.

In connection with the holding company merger, New BAC announced a 10-year, \$350 billion commitment to community development lending and investment ("Commitment"). Many commenters were concerned about the extent, if any, to which the Commitment would benefit particular states or metropolitan and rural areas. Other commenters were concerned that the Commitment lacked product specificity. Without specifying where the investments are to be made, the commenters believed it would be difficult for local communities to assess performance under the Commitment.

New BAC previously represented to the OCC that it would provide public reports on its progress in meeting the goals of the Commitment.¹⁷ The reports will be detailed by product, geographic, and demographic distribution on a national, state, and local basis. State and local reports will be provided to affected communities by bank management. National results will be made available locally upon request. New BAC has committed to provide the OCC with copies of every national, state, and local report produced during the life of the Commitment.

d. New BAC Programs and Initiatives.

Many commenters expressed concerns that certain programs or initiatives developed by BankAmerica would be scaled back or discontinued, including BankAmerica Foundation, charitable contributions, economic development initiatives, affordable housing programs, and lending programs for minority-owned small businesses. The OCC inquired as to New BAC's current plans with regard to these programs and initiatives.

New BAC informed the OCC that the Merger will not have an adverse impact on the foundation or charitable activities. NationsBank Corporation and BankAmerica each had foundations responsible for directing charitable giving. Those activities were combined in September 1998 into a newly created foundation, Bank of America Foundation. New BAC represented that Bank of America Foundation will make charitable contributions throughout the areas served by BofA-Resulting with an emphasis on education, health and human services, community development, and arts and culture. OCC examiners found that NationsBank's community development-related contributions for the period January 1, 1996 through December 31, 1997 totaled \$21,475,000.

New BAC has also indicated to the OCC its intention to remain committed to economic development initiatives and to maintain the economic development activities of BankAmerica. In December 1998, New BAC represented to the OCC that it was committed to meeting the credit needs of the rural communities throughout its franchise, would take a lead role in promoting lending opportunities that stimulate affordable housing, job creation, and economic opportunity in

¹⁷ See OCC CRA Decision No. 89. The OCC does not enforce bank community development or CRA-related commitments.

rural areas, and that the Rural 2000 Program would continue to be a key focus of BofA-Resulting's Community Development Banking Group. In connection with this application, New BAC also informed the OCC that BofA-Resulting will maintain BANTSA's Rural 2000 program and will expand the program to markets throughout its franchise. With respect to BANTSA's Community Development Bank ("BACDB"), New BAC indicated that it will continue to be focused on government-guaranteed small business lending and affordable housing. While New BAC continues to review the legal structure of its activities, BACDB will remain as a separate entity as long as it is an effective delivery channel in the marketplace.¹⁸

New BAC intends to maintain the affordable housing programs of BankAmerica. New BAC has represented that it intends to acquire, build or rehabilitate at least 50,000 affordable housing units for LMI residents over the next 10 years. New BAC also indicated that lending to minority-owned small businesses would remain a central element of the bank's community development efforts.

The commenters also raised concerns that New BAC would not honor the previous community development commitments of NationsBank and BANTSA to community organizations. The application indicates that all outstanding commitments made by both institutions will be honored by the resulting bank.

e. Local Decision Making.

Commenters, mostly from California, expressed concerns that the merger would result in the loss of local decision making and lending authority. New BAC indicated that the proposed Merger should not affect the decision making process with respect to local decision making. BankAmerica and NationsBank Corporation engaged in credit decision making through their subsidiaries in similar fashions. For example, both organizations' subsidiaries underwrote mortgage and consumer loan applications using regional underwriting centers relying, in part, on credit scoring models.

Commenters also raised concerns regarding NationsBank's record of responding to local community development needs. In 1996 and 1997, NationsBank made community development loans and qualified investments totaling over \$524 million, including loans to and investments in local community organizations. The OCC found no evidence that NationsBank's past performance in this regard would not carry forward into the future.

New BAC indicated it recognized the importance of local markets and the needs of small- and medium-sized businesses regarding local decision making. It plans to continue the practice of seeking community input in establishing internal local goals for community development lending and investment. New BAC informed the OCC that its Community Development Banking Group has associates in 70 markets with primary responsibility for community outreach to key

¹⁸ During 1999, New BAC intends to consolidate Community Development Lending (the former NationsBank Corporation's division that conducts similar services) into BACDB.

organizations and individuals. The unit, referred to as "Market Management," works with community leaders to identify local needs and with bank management and other banking units to meet those needs.

f. Checking Accounts and Check Cashing Services.

Commenters expressed concerns that following the merger, low-income individuals will not be able to maintain bank accounts at the resulting bank due to associated fees; fees would be raised; services would be reduced; and non-account holders would be unable to cash government checks. Both NationsBank and BANTSA currently offer low-cost checking accounts, and BofA-Resulting intends to do so following the Merger. New BAC represented that it intends to continue to cash government checks for customers and non-customers at its branches, although non-customers may be charged a fee for this service. While New BAC's review of specific products and pricing schedules is not yet complete, it anticipates that there will be changes in products and pricing. New BAC may "grandfather" certain existing product and pricing features for up to one year.

g. Conclusion Regarding Convenience and Needs.

Based on the foregoing information, the OCC found that the impact of the transaction on the convenience and needs of the communities to be served is consistent with approval of this Merger.

B. The Community Reinvestment Act.

The CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, 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.

Commenters raised issues concerning lending to LMI borrowers and areas, mortgage lending to minorities, NationsBank's small business lending, and NationsBank's referral programs to affiliated subsidiaries. Most of the concerns expressed by the commenters related to specific aspects of one or both of the banks' lending activity in a particular state or market. The OCC investigated the specific concerns expressed and has presented its findings below. In evaluating CRA performance, however, OCC looks at a broad range of banks' activities. OCC considers a bank's lending, investments, and services in each area where the bank has its main office, branches, and deposit-taking ATMs. When evaluating a bank's lending record of performance, the OCC considers the bank's home mortgage, small business, small farm, and community development lending and, if the bank requests, its consumer lending. The OCC looks at the volume of loans, their geographic distribution, and the income of the borrowers. The OCC also considers whether the bank has used innovative and flexible lending practices to address the credit needs of LMI individuals or geographic areas. Thus, the OCC's findings concerning individual,

specific concerns are not necessarily indicative of the bank's lending, investment, and service performance in that market or of its overall record of CRA performance.

NationsBank received an Outstanding CRA rating in the OCC's examination of its North and South Carolina operations as of July 21, 1995. Subsequent to that rating, the bank has acquired several other banks, which each received a Satisfactory or better CRA rating following each of their most recent CRA examinations prior to the mergers. The OCC is currently conducting a CRA examination of NationsBank and, therefore, has not yet issued a Public Evaluation or assigned a new performance rating for the bank. BANTSA received an Outstanding rating as of September 30, 1997.¹⁹

In evaluating the application at issue, the OCC considered NationsBank's and BANTSA's overall records of meeting the credit needs of the communities in which they are located. In 1997, NationsBank and NationsBank Mortgage Corporation ("NMC"), a subsidiary of NationsBank, originated approximately 12,920 home mortgage, home improvement, and refinance loans, totaling approximately \$834 million, in LMI areas. In that same year, BANTSA originated approximately 10,777 home mortgage, home improvement, and refinance loans, totaling approximately \$920 million, in LMI areas.

In assessing NationsBank's record with respect to small business lending, the OCC has taken into consideration that NationsBank made approximately \$3.2 billion in small business loans in 1997. Of this amount, approximately \$650 million in loans were made to small businesses located in LMI areas.

OCC examiners found that from January 1, 1996, to December 31, 1997, NationsBank made community development loans to, and qualified investments in, local community development organizations throughout the markets in which it was located. For this period, community development loans totaled approximately \$276 million and qualified investments totaled approximately \$248 million. In BANTSA's most recent CRA examination covering transactions that occurred from January 1, 1996 to June 30, 1997, as well as investments carried on BANTSA's books during that period, BANTSA made community development loans totaling more than \$467 million and qualified investments totaling more than \$407 million.

1. Home Mortgage Lending to LMI Borrowers and Areas.

Commenters expressed concerns with respect to NationsBank's and/or BANTSA's lending to LMI borrowers and areas. The OCC reviewed Home Mortgage Disclosure Act ("HMDA")

¹⁹ During BANTSA's last CRA Examination, the states and multistate MSAs reviewed were assigned the following CRA ratings: Alaska (Satisfactory), Arizona (Satisfactory), California (Outstanding), Idaho (Satisfactory), Illinois (Satisfactory), New Mexico (Satisfactory), Nevada (Satisfactory), New York (Satisfactory), Oregon (Outstanding), Washington (Outstanding), Las Vegas-Mohave (Satisfactory), and Portland-Vancouver (Outstanding).

information and other bank records to investigate the concerns raised.²⁰ The commenters' concerns included the following geographies: Arizona, California, North Carolina, South Carolina, Virginia, Chicago (IL), Des Moines (IA), Kansas City (MO), New York (NY), and Wichita (KS).²¹ Some of these concerns were based on loan volume and others were based on denial rates. The results of the OCC's investigation of the concerns in the foregoing areas are addressed below. The OCC found that the record of lending for both banks to LMI borrowers and LMI areas is not inconsistent with approval of this application.

In evaluating an institution for CRA purposes, the OCC considers a bank's number and amount of loans, the geographic and borrower distribution of loans, community development lending, and innovative or flexible lending practices. All of these factors are considered within the context of available data about both the bank and its assessment areas. HMDA data do not take into consideration other factors relevant in each of the individual markets such as lending other than mortgage lending and, as such, do not present a complete picture of the bank's overall lending activities or efforts.

Arizona

Commenters expressed concerns with respect to BANTSA's level of home purchase lending to Arizona LMI borrowers in comparison to the level originated by the industry. Since the bulk of New BAC's home purchase loans are made through Bank of America, FSB ("FSB")²² in Arizona, BANTSA's level of home purchase loans was small in this state. However, the OCC found that in 1997, BANTSA originated 23.9% of all its HMDA-reportable loans (including home purchase, home improvement, and refinance loans) to LMI borrowers, which was comparable to the average level of 25.1% originated by all HMDA-reporting lenders in the state.

California

²⁰ Commenters relied on 1996 HMDA data. With respect to BANTSA, the OCC used 1997 HMDA data and with respect to NationsBank, the OCC used 1996 and/or 1997 HMDA data to analyze concerns regarding HMDA-reportable loans to LMI borrowers and areas. HMDA data is reported by commercial banks, savings associations, credit unions, and certain other mortgage lending institutions.

Unless otherwise noted, the OCC considered 1996 HMDA data for NationsBank, NationsBank N.A., South, NMC, and Home Equity Services Corp. ("HESC"). For 1997, the OCC considered HMDA data for NationsBank, NMC, and HESC.

²¹ The commenters also raised concerns with respect to other areas throughout the United States. However, the OCC did not review HMDA performance for lending to LMI borrowers and areas that were outside of NationsBank's and BANTSA's respective assessment areas.

The commenters' concerns relating to Texas, New Mexico, and Florida were previously addressed in prior OCC decisions referred to in footnote 14.

²² Many of the statistics presented by the commenters were based upon lending by FSB. Inasmuch as FSB is not a part of this transaction and the OCC does not regulate that entity, the OCC did not investigate the denial rates of FSB.

Commenters expressed concerns with respect to BANTSA's level of purchase mortgage lending to California LMI borrowers in comparison to the level originated by all other lenders. The OCC found that in 1997, BANTSA's percentage of home purchase loans originated to LMI borrowers of 14.5% was less than the 19.1% originated by all HMDA-reporting lenders. However, the OCC also noted that in 1997, BANTSA originated 20.1% of all its HMDA-reportable loans to LMI borrowers, which was more than the 17.7% originated by all HMDA-reporting lenders in California.

New York

Commenters expressed concerns with the high denial rates for BANTSA's loans to low- and very low-income individuals in comparison to other income categories. Because only 13 applications were received in 1997 by BANTSA, the OCC was unable to reach any meaningful conclusions concerning the denial rates. Further, most of the lending by New BAC in New York was originated through FSB.

North Carolina

Commenters expressed concerns with the level of home purchase loans to LMI borrowers in North Carolina by NationsBank compared to the industry.²³ HMDA data for four MSAs²⁴ in North Carolina showed that NationsBank's market share of home purchase and refinance loans to LMI borrowers was generally less than its market share of home purchase and refinance loans to middle- and upper-income borrowers. However, for home improvement loans, NationsBank market share to LMI borrowers was greater than its market share to middle- and upper-income borrowers.

In 1997, NationsBank (not including HESC) originated 21.5% of its home purchase loans in the entire State of North Carolina to LMI borrowers. In 1997, all HMDA-reporting lenders originated 29.1% of their home purchase loans to such borrowers. For the same period, NationsBank (not including HESC) originated 22.3% of all its HMDA-reportable loans in North Carolina to LMI borrowers, as compared to 28.3% for all HMDA-reporting lenders.

South Carolina

Commenters expressed concerns with the level of home purchase loans to LMI borrowers in South Carolina by NationsBank compared to all other lenders. The OCC reviewed

²³ The commenters also alleged that NationsBank had a poor lending record to low-income households, ranking last out of 15 mortgage lenders in North Carolina. NationsBank ranks 7th in total volume of HMDA-reportable loans out of 210 reporting lenders in lending to low-income applicants.

²⁴ The four MSAs are the Fayetteville MSA; Greensboro, Winston-Salem, High Point MSA; Jacksonville MSA; and Raleigh, Durham, Chapel Hill MSA.

NationsBank's lending performance in three MSAs²⁵ in South Carolina. HMDA data showed that NationsBank's market share of home purchase and refinance loans was generally less than its market share of home purchase and refinance loans to middle- and upper-income borrowers. However, for home improvement loans, NationsBank's market share was generally greater than its market share to middle- and upper-income borrowers.

NationsBank (not including HESC) originated 21.0% of its home purchase loans in the entire State of South Carolina to LMI borrowers in 1997, as compared to the 31.4% origination rate for all HMDA-reporting lenders. NationsBank (not including HESC) originated 21.6% of all its HMDA-reportable loans in South Carolina to LMI borrowers in 1997; all HMDA-reporting lenders originated 30.3% of their loans to such borrowers for the same period.

Virginia

Commenters expressed concerns with the level of home purchase loans to LMI borrowers and in LMI census tracts in Virginia by NationsBank compared to the industry. HMDA data for the Richmond-Petersburg and Norfolk-Virginia Beach-Newport News MSAs showed that for home purchase, refinance, and home improvement loans, NationsBank's market share to LMI borrowers was generally greater than its market share to middle- and upper-income borrowers.

With regard to NationsBank's lending in LMI geographies in these MSAs, NationsBank's market share of home purchase and refinance loans was generally less than its market share of home purchase and refinance loans in middle- and upper-income geographies. However, NationsBank's market share of home improvement loans in LMI geographies was generally greater than its market share in middle- and upper-income geographies.

In 1997, NationsBank (not including HESC) originated 25.3% of its home purchase loans in the entire Commonwealth of Virginia to LMI borrowers. All HMDA-reporting lenders originated 30.5% of such loans to LMI borrowers in 1997. For all HMDA-reportable loans, NationsBank's (not including HESC's) origination rate for LMI borrowers in Virginia was 26.9% in 1997, which was comparable to the 28.5% rate for all HMDA-reporting lenders.

NationsBank (not including HESC) originated 8.2% of its home purchase loans in the entire Commonwealth of Virginia in LMI census tracts in 1997, compared to the 9.8% rate for all HMDA-reporting lenders. For the same period, NationsBank (not including HESC) originated 10.0% of all its HMDA-reportable loans in LMI census tracts in Virginia, which was comparable to the 10.7% rate for all HMDA-reporting lenders.

Albany (GA)

Commenters expressed concerns with the level of lending by NationsBank in low-income tracts in Albany, Georgia. NationsBank's assessment area covered only one of the two counties

²⁵ The three MSAs are the Charleston MSA; Columbia MSA; and Greenville, Spartanburg, Anderson MSA.

in this MSA, and NationsBank had \$128 million in deposits representing 16% of the market (as of June 30, 1997). During 1996 and 1997, NationsBank originated 471 HMDA-reportable loans totaling approximately \$25 million in the MSA. NationsBank's largest numbers of loans were for home purchase (48%) and home refinance (39%). 1997 HMDA data indicated that NationsBank outperforms the aggregate market in making home purchase and refinance loans in low-income geographies. The HMDA data also showed that NationsBank's market share of home purchase and refinance loans in low-income geographies exceeds its overall market share.

Atlanta (GA)

Commenters also expressed concern that NationsBank financed only one single-family acquisition in the area of Reynoldstown, a section of Atlanta, Georgia. OCC examiners determined that this area consists of two census tracts, one moderate-income and one low-income. Lending in this area is limited because there are very few owner-occupied homes and because age and income demographics likely reduce demand for loans. Although NationsBank did not extend any home purchase loans in this area in 1997, twenty of the top twenty-five HMDA-reporting lenders extended two or fewer home purchase loans in that time period. In 1997, NationsBank was the leading home improvement HMDA-reporting lender in the area, extending five of the 13 loans made by all HMDA-reporting lenders.

Commenters also alleged that NationsBank has focused its CRA efforts in the LMI areas in Atlanta on high profile projects. While this may be the case, OCC examiners believe that these large rehabilitation projects do meet a need in the community for high quality, affordable rental property.

Baltimore (MD)

Commenters expressed concerns that NationsBank's volume of lending in LMI geographies in Baltimore, Maryland is decreasing. The OCC found an overall decline in the volume of HMDA-reportable loans in LMI geographies between 1996 and 1997. However, the OCC found that NationsBank's level of residential lending in LMI geographies (17% of all its HMDA-reportable loans) compared favorably to the percentage of owner-occupied houses in the LMI geographies (18%).

Chicago (IL)

Commenters expressed concerns with BANTSA's denial rates for LMI borrowers as compared to the denial rates for middle- and upper-income borrowers. The OCC found that in 1997, BANTSA's denial rates for all income level borrowers exceeded all HMDA-reporting lenders' denial rates in the Chicago MSA. In 1997, BANTSA denied 51.4%, 31.1%, 26.8% and 24.3% of low-, moderate-, middle- and upper-income borrowers, respectively. In 1997, all HMDA-reporting lenders in the Chicago MSA denied 28.3%, 21.1%, 16.9% and 11.1% of low-, moderate-, middle- and upper-income borrowers, respectively.

Des Moines (IA)

Commenters expressed concerns that NationsBank had a poor lending record in LMI census tracts in Des Moines, Iowa. During 1996 and 1997, NationsBank originated 458 HMDA-reportable loans totaling \$42 million in the MSA. Approximately 97% of those loans were originated in 1997. HMDA data showed that NationsBank's market share of refinance loans in LMI geographies was less than its market share of refinance loans in middle- and upper-income geographies. For home improvement loans, NationsBank's market share in LMI geographies was greater than its market share to middle- and upper-income geographies. For home purchase loans, NationsBank's market share in LMI geographies was slightly less than its market share to middle- and upper-income geographies. The OCC also notes that NationsBank did not enter the Des Moines market until late 1996.

Kansas City (MO)

Commenters expressed concerns that the loan origination rates of home purchase and refinance loans by NationsBank in the Eastside area of Kansas City, Missouri had declined. The OCC confirmed that the home purchase and refinance lending to low-income geographies and borrowers in the Kansas City Multistate MSA had declined. Additionally, HMDA data showed that NationsBank's market share of home purchase, refinance, and home improvement loans in LMI geographies was generally less than its market share of home purchase, refinance, and home improvement loans in middle- and upper-income geographies. NationsBank's market share of refinance loans to LMI borrowers was less than its market share of refinance loans to middle- and upper-income borrowers. However, NationsBank's market share of home purchase and home improvement loans to LMI borrowers was greater than its market share of home purchase and home improvement loans to middle- and upper-income borrowers.

Wichita (KS)

Commenters expressed concerns that the 1996 HMDA data regarding NationsBank's operations in Wichita showed a poor record of meeting the credit needs of Wichita's low-income communities. HMDA data showed that NationsBank's market share of home purchase and refinance loans in LMI geographies was less than its market share of home purchase and refinance loans in middle- and upper-income geographies. For home improvement loans, NationsBank's market share in LMI geographies was greater than its market share to middle- and upper-income geographies. The OCC also looked at NationsBank's lending to LMI borrowers. HMDA data showed that NationsBank's market share of home purchase and refinance loans to LMI borrowers was slightly less than its market share to middle- and upper- income borrowers. However, HMDA data showed that NationsBank's market share of home improvement loans to LMI borrowers was greater than its market share to middle- and upper-income borrowers. The OCC also notes that NationsBank did not enter the Wichita market until late 1996.

2. Home Mortgage Lending to Minorities.

Several commenters asserted that NationsBank's and/or BANTSA's denial rates for home loans to minorities in various locations were disproportionate to that for whites and that lending to

minorities was below industry averages.²⁶ The commenters' concerns included the following geographies: Arizona, California, Georgia, Kentucky, North Carolina, South Carolina, Virginia, Atlanta (GA), Charleston (SC), Memphis (TN), Roanoke (VA), Washington (DC), and Wichita (KS).²⁷

As reflected below, the OCC did identify, for certain groups in certain locations, higher than average denial rates or lower than average origination rates for NationsBank and BANTSA.²⁸ Overall, while the OCC's review of HMDA data for 1997 revealed some instances in which the banks' performance was less favorable than peer institutions, the OCC found no information that would be inconsistent with approval of this application.²⁹

HMDA data provide information about a bank's mortgage lending activity that is useful, as preliminary information, to highlight potential lending discrimination problems. However, it is important to note that HMDA data alone are inadequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts.

Denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations. In the latest fair lending examinations for NationsBank and BANTSA, the OCC used statistically significant disparities in residential lending to assist in identifying products and regions to evaluate further through file sample review. The OCC then analyzed the loan samples selected, but did not identify any concerns regarding disparate treatment in lending to minorities

²⁶ Unless otherwise noted, the OCC's review included HMDA data for NationsBank and NMC.

While the commenters relied on 1996 HMDA data, the OCC used 1997 HMDA data to analyze concerns regarding home mortgage lending to minorities, because it was the most recently available data.

²⁷ The commenters also raised concerns with respect to other areas throughout the United States. The most recent fair lending examinations for the banks did not reveal any concerns regarding disparate treatment in lending to minorities or any other fair lending concerns in such other areas.

²⁸ The commenters also expressed concerns regarding NationsBank's and BANTSA's nationwide denial rates for minorities and to low-income census tracts. The OCC does not find analyzing denial rates on a nationwide basis to be meaningful, especially since it is difficult to find peer banks that serve all of the same markets.

²⁹ A few commenters indicated difficulty in obtaining HMDA information in a timely manner from several branch offices of NationsBank. 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 disclosure requirements of HMDA and its implementing regulation, the OCC determined that nothing in the comments indicated that the bank's practices were not in compliance with law.

or any fair lending concerns.³⁰ The OCC also reviewed the banks' underwriting standards for certain products and did not find any fair lending issues. OCC examiners did not identify any weaknesses during the course of their examination process in BANTSA's or NationsBank's fair lending compliance policies or procedures. As customary, the OCC will review BofA-Resulting's denial rates in connection with its next fair lending examination.³¹

New BAC represented to the OCC that no significant changes in NationsBank's or BANTSA's fair lending procedures have occurred since the OCC's last fair lending examinations of these banks. New BAC also indicated that the fair lending policies and procedures of both banks are currently under review and that new policies and procedures for BofA-Resulting will be adopted shortly. New BAC expects that NationsBank's current methods for testing and monitoring fair lending compliance will continue after the Merger.

The OCC also reviewed its complaint files relating to NationsBank and BANTSA for the period from April 1998 through February 1999 and did not find any substantial concerns relating to fair lending practices.

Finally, in evaluating an institution for CRA purposes, the OCC does not directly consider lending based on race in assessing a bank's overall performance. However, evidence of discrimination -- based on race or other prohibited bases -- or other illegal credit practices is taken into account before assigning the overall CRA rating to an institution.

Arizona

Commenters expressed concerns that BANTSA was below industry averages in purchase mortgage lending to black and Hispanic borrowers in Arizona. Since the bulk of New BAC's home purchase loans are made through FSB in this state, BANTSA's level of purchase mortgage loans there was small. However, the OCC found that BANTSA made 1.0% of all its HMDA-reportable loans in Arizona to blacks and 9.4% of all its HMDA-reportable loans to Hispanics. All HMDA-reporting lenders in Arizona originated 1.8% and 10.4% of their HMDA-reportable loans to blacks and Hispanics, respectively.

California

Commenters expressed concerns that BANTSA was below industry averages in purchase mortgage lending to black and Hispanic borrowers in California. The OCC found that BANTSA originated 1.6% and 12.1% of its home purchase loans to blacks and Hispanics, respectively. All

³⁰ NationsBank's last fair lending examination was dated December 31, 1997. BANTSA's last fair lending examination was dated September 30, 1997.

³¹ One commenter raised a concern about a fair lending complaint that originated in Kansas City, Missouri. On June 2, 1998, NationsBank provided information to the Kansas City office of the U.S. Department of Housing and Urban Development ("HUD") in response to a request dated May 16, 1998. To date, HUD has not provided NationsBank with any additional information.

HMDA-reporting lenders in California loaned 3.8% and 16.9% to blacks and Hispanics, respectively. The OCC's review of the HMDA data also showed that BANTSA originated 268 home purchase loans to blacks in 1997 totaling nearly \$48 million. The bank ranks 15th (among 380 HMDA-reporting lenders) in lending to blacks with a 1.64% market share. The HMDA data also showed that BANTSA originated 2,051 home purchase loans to Hispanics totaling \$301 million. The bank ranks 9th (out of 486 HMDA-reporting lenders) in lending to Hispanics with a 2.81% market share. However, the OCC also found that BANTSA's level of lending for all its HMDA-reportable loans reflects a higher percentage of lending for blacks. BANTSA originated 2.6% and 11.4% of all its HMDA-reportable loans to blacks and Hispanics, respectively. All HMDA-reporting lenders in the market originated 4.0% and 14.0% of all HMDA-reportable loans to blacks and Hispanics, respectively.

Commenters also expressed concerns with BANTSA's level of home improvement lending to blacks. The OCC found that as of 1997, BANTSA was the second largest home improvement HMDA-reporting lender to blacks in California with 571 loans totaling \$12.7 million, representing a 17.28% share of the home improvement loans originated in 1997.

Kentucky

Commenters expressed concerns with NationsBank's higher application denial rates for blacks than for whites in Kentucky. The 1997 HMDA information for all types of applications indicated that NationsBank, including NationsBank of Kentucky, N.A., denied 28% (or 19 out of 67 applications) to blacks and denied 20% (or 206 out of 1,025) to whites. This is comparable to the 30% denial rate for blacks and a 23% denial rate for whites for all HMDA-reporting lenders in the market. NationsBank, including NationsBank of Kentucky, N.A., originated 5.0% of all its HMDA-reportable loans to blacks, which was the same rate as all HMDA-reporting lenders in the market originated to blacks in 1997. Effective August 21, 1998, NationsBank no longer operates a bank or branch in Kentucky.

North Carolina

Commenters expressed concerns that NationsBank was below industry averages in purchase mortgage lending to black and Hispanic borrowers in North Carolina. The OCC found that NationsBank originated 7.6% and 1.1% of purchase mortgage loans to blacks and Hispanics, respectively, in 1997. All HMDA-reporting lenders in North Carolina originated 11.9% and 1.7% of purchase mortgage loans to blacks and Hispanics, respectively. NationsBank ranked 6th (out of 322 HMDA-reporting lenders) in lending to blacks with a 3.52% market share of home purchase loans originated. NationsBank ranked 8th (out of 199 HMDA-reporting lenders) in lending to Hispanics with a 3.69% market share of home purchase loans originated. The OCC also found that NationsBank originated 10.3% and 0.9% of all HMDA-reportable loans to blacks and Hispanics, respectively, in 1997. All HMDA-reporting lenders in North Carolina originated 12.2% and 1.2% of all HMDA-reportable loans to blacks and Hispanics, respectively.

South Carolina

Commenters expressed concerns that NationsBank was below industry averages in purchase mortgage lending to black and Hispanic borrowers in South Carolina. The OCC found that NationsBank originated 7.4% and 0.7% of purchase mortgage loans to blacks and Hispanics, respectively, in 1997. All HMDA-reporting lenders in South Carolina originated 15.2% and 0.8% of purchase mortgage loans to blacks and Hispanics, respectively. NationsBank ranked 4th (out of 238 HMDA-reporting lenders) in lending to blacks with a 4.33% market share of home purchase loans originated. NationsBank ranked 2nd (out of 123 HMDA-reporting lenders) in lending to Hispanics with a 6.21% market share of home purchase loans originated. The OCC also found that NationsBank originated 10.1% and 0.5% of all its HMDA-reportable loans to blacks and Hispanics, respectively. All HMDA-reporting lenders originated 14.8% and 0.6% of all HMDA-reportable loans to blacks and Hispanics, respectively.

Virginia

Commenters expressed concerns that NationsBank was below industry averages in purchase mortgage lending to black and Hispanic borrowers in Virginia. The OCC found that NationsBank originated 7.4% and 1.3% of purchase mortgage loans to blacks and Hispanics, respectively, in 1997. All HMDA-reporting lenders in Virginia originated 11.0% and 2.4% of purchase mortgage loans to blacks and Hispanics, respectively. NationsBank ranked 5th (out of 301 HMDA-reporting lenders) in lending to blacks with a 3.40% market share of home purchase loans originated. NationsBank ranked 11th (out of 198 HMDA-reporting lenders) in lending to Hispanics with a 2.42% market share of home purchase loans originated. The OCC also found that NationsBank originated 10.8% and 1.1% of all its HMDA-reportable loans to blacks and Hispanics, respectively. This is comparable to the overall rates by all HMDA-reporting lenders in Virginia, which originated 11.3% and 1.9% of all HMDA-reportable loans to blacks and Hispanics, respectively.

Atlanta (GA)

Commenters expressed concerns with NationsBank's level of denial rates of minorities in comparison to whites. The OCC confirmed that the denial rates for minorities (blacks, Hispanics and Asians) were indeed significantly higher than for whites. The OCC also found that NationsBank's level of denials for minorities was greater than the level experienced by all HMDA-reporting lenders in Atlanta. However, despite the high denial rates, the level of originations to minorities compared favorably to all HMDA-reporting lenders in the market. NationsBank originated 19.0%, 1.6%, and 2.2% of all its HMDA-reportable loans to blacks, Hispanics, and Asians, respectively; and all HMDA-reporting lenders originated 17.0, 2.0%, and 2.3% of all HMDA-reportable loans to blacks, Hispanics and Asians, respectively.

Charleston (SC)

Commenters expressed concerns with NationsBank's denial rates for blacks in Charleston when compared to the denial rate for whites. While the OCC found that NationsBank's denial rate in 1997 for all of its HMDA loans was 23% for whites compared to 52% for blacks, both of these

rates were lower than the denial rates for all HMDA-reporting lenders in Charleston, which were 28% for whites and 59% for blacks.

Memphis (TN)

Commenters expressed concerns with NationsBank's higher denial rates for non-whites in Memphis in comparison to denial rates for whites. Due to the low volume of applications received by NationsBank, including NationsBank of Tennessee, N.A., from Hispanics, denial rates for this group were not analyzed. The OCC found that NationsBank's, including NationsBank of Tennessee, N.A.'s, denial rates were higher for Asians and blacks than whites. For all HMDA-reportable loan types, NationsBank, including NationsBank of Tennessee, N.A., denied 36% and 45% of applications from Asians and blacks, respectively. By contrast, all HMDA-reporting lenders in Memphis denied 14% and 24% of applications from Asians and blacks, respectively. NationsBank, including NationsBank of Tennessee, N.A., originated 32% of its HMDA-reportable loans to non-whites, which was slightly higher than the 30% origination rate by all HMDA-reporting lenders in the market.

Roanoke (VA)

Commenters expressed concerns with NationsBank's higher denial rates for blacks than for whites in Roanoke and with an alleged overall low level of lending to blacks. The OCC found that NationsBank's denial rates were higher for blacks than for whites. For all HMDA-reportable loan types, NationsBank denied 14% and 33% of applications from whites and blacks, respectively. This is comparable to the denial rates for all HMDA-reporting lenders in Roanoke, which were 16% and 31% for whites and blacks, respectively. However, NationsBank originated 8.3% of all its HMDA-reportable loans to blacks, which was slightly higher than the 6.2% origination rate by all HMDA-reporting lenders in the market. The OCC found that NationsBank ranked 4th out of 263 lenders in HMDA-reportable lending with a 4.20% market share.

Washington (DC)

Commenters expressed concerns with NationsBank's higher denial rates for blacks in Washington, DC, than to whites. The OCC found NationsBank's denial rate for all applications for HMDA-reportable loans from blacks in the Washington, DC, MSA to be 43% and from whites, 10%. By contrast, the denial rate for all HMDA-reporting lenders was 19% for blacks and 10% for whites. Also, NationsBank originated 11.8% of all its HMDA-reportable loans to blacks and 73.1% to whites. All HMDA-reporting lenders in the market originated 17.5% to blacks and 62.4% to whites. NationsBank's mortgage applications represent approximately 4% of the total applications received by all HMDA-reporting lenders in the Washington, DC, MSA.

Wichita (KS)

Commenters expressed concerns that NationsBank's 1996 HMDA data reflected a poor record of meeting the credit needs of Wichita's minority communities. The OCC found that 8.3% of NationsBank's HMDA-reportable loans were originated to minorities in 1997. All HMDA-

reporting lenders in the market originated a slightly higher percentage, 9.2%. As previously noted, the OCC found that NationsBank has been in this market only since late 1996.

3. NationsBank's Small Business Lending.

NationsBank's overall volume of small business lending for 1997 was approximately \$3.2 billion and lending to small businesses located in LMI areas for 1997 was approximately \$650 million.

Some commenters, however, expressed concerns that NationsBank had a poor record of small business lending to minorities. One commenter indicated that during 1995-1997, NationsBank granted no more than 2% of its small business loans to black-owned businesses and no more than 1% to Hispanic- or Asian American-owned businesses. The OCC's ability to investigate allegations regarding overall small business lending to minorities is limited by the requirements of Regulation B that prohibit financial institutions from collecting or tracking racial information on small business loans. See 12 C.F.R. Part 202.

Notwithstanding the limitations on the OCC's ability to assess lending to minority small businesses, the OCC obtained information from the Small Business Administration ("SBA") to investigate the commenters' concerns, since the SBA is permitted to maintain certain information regarding the level of SBA lending to minorities. According to the information supplied by the SBA, during 1997 and 1998, NationsBank made 1,939 SBA loans totaling \$176 million. Of that total, 103 or 5% were to blacks, 132 or 7% were to Asians or Pacific Islanders, and 96 or 5% were to Hispanics.³²

Additionally, OCC examiners noted that NationsBank offers a full complement of small business products. NationsBank offers various SBA programs (*e.g.*, standard, Low-Doc, Fa\$Track, and 504). The Low-Doc and Fa\$Track programs are designed to reduce paperwork. The 504 program is designed to finance the acquisition of long-term assets in conjunction with certified development corporation loans. In addition, NationsBank offers Business VISA lines of credit that function like a traditional business line of credit for working capital. The line of credit is unsecured up to \$50,000. The application is decided with a scoring model, and the cut-off score required is less stringent than the score for traditional small business financing. NationsBank developed the Loan Access Program ("LAP"), which the bank considers an alternative to SBA-guaranteed loan programs. LAP loans are available for a variety of purposes in amounts up to \$500,000. The program is being conducted on a pilot basis in Tennessee and Florida.

4. NationsBank Referral Program to Affiliated Subsidiaries of the Holding Company.

Commenters expressed concerns with respect to NationsBank's practice of referring applicants to two subsidiaries of the former NationsBank Corporation, namely NationsCredit Financial Services Corporation and EquiCredit Corporation. In response to OCC's inquiry in

³² Race information was not provided for a small percentage of SBA loans.

connection with this application, New BAC's management recently confirmed that all such referral programs have been suspended since December 1997.

Commenters also expressed concerns that NationsBank closed branches in Atlanta in LMI areas and replaced them with offices that engage principally in subprime lending. OCC examiners reviewed the bank's branch opening and closing record for 1996 and 1997. During this time, NationsBank closed six branches in LMI areas in Atlanta but opened 17 new, full-service branches in LMI areas. All of the closures resulted from acquisition activity. New BAC management represented to OCC examiners that neither NationsCredit nor EquiCredit opened any offices in the bank's Atlanta assessment area during 1996-1997.

5. Conclusion Regarding CRA.

In summary, our investigation and analysis of the issues raised relating to CRA performance indicated no basis for denying or conditioning the approval of this application.

IV. CONCLUSION AND APPROVAL

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

_____/s/
Julie L. Williams
Chief Counsel

05-20-99
Date

Application Control Number: 98-ML-02-0045