



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**Corporate Decision #2001-25
September 2001**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
VNB DEL, INC., INTO
VALLEY NATIONAL BANK, PASSAIC, NEW JERSEY**

August 31, 2001

I. INTRODUCTION

Valley National Bank, Passaic, New Jersey, ("Valley") applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge VNB Del, Inc. ("VNB Del") into Valley, under 12 U.S.C. § 215a-3 (the "VNB Del Merger"). VNB Del, a Delaware corporation, is a direct wholly-owned subsidiary of Valley formed to facilitate the merger of Valley CMC, Inc. ("CMC") into Valley. CMC, a New Jersey corporation, is also a direct wholly-owned subsidiary of Valley. CMC in turn has its own direct wholly-owned subsidiary, VN Investments, Inc. ("VN Investments"). VN Investments holds bank permissible investment securities and its 100% investment in VNB Capital Corp., a New York corporation that qualifies as a real estate investment trust. VNB Capital Corp. holds commercial mortgage loans, mortgage-backed securities and collateralized mortgage obligations. In a two-step transaction, CMC will merge into VNB Del (the "CMC Merger"),¹ and then VNB Del will merge into Valley. The effect of the transaction will be to eliminate VNB Del and CMC and make VN Investments a direct wholly-owned subsidiary of Valley.

II. DISCUSSION

In December 2000, Congress amended the National Bank Consolidation and Merger Act, 12 U.S.C. § 215 *et seq.*, to add a new section 6 expressly authorizing the merger of a

¹ The CMC Merger will be effected under applicable New Jersey and Delaware law. *See* N.J. Stat. Ann. § 14A:10-7 (merger of New Jersey and foreign corporations); Del. Code Ann. tit. 8, § 252 (merger of Delaware and foreign corporations). The CMC Merger will have to be approved by the appropriate regulatory authorities and consummated before the VNB Del Merger can consummate.

national bank with its nonbank subsidiaries or affiliates: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.” 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See* S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).

VNB Del is not a bank and is wholly-owned by Valley, and so it is a nonbank subsidiary of Valley for purposes of section 215a-3.² VNB Del and the other companies involved are already operating subsidiaries of Valley engaged only in activities permissible for national banks; the merger of VNB Del into Valley will not add any impermissible powers for the bank. VNB Del is located in a different state than Valley. However, section 215a-3 authorizes mergers with any nonbank subsidiary or affiliate, without regard to geographic location. VNB Del is a Delaware corporation. Delaware law authorizes Delaware corporations to merge with foreign corporations, including national banks, with the foreign corporation as the surviving corporation.³ Valley and VNB Del represent that they will comply with the requirements of Delaware law for the merger of a Delaware corporation with a foreign corporation. The VNB Del Merger is authorized under section 215a-3.

Valley also applied to the Federal Deposit Insurance Corporation for approval of the VNB Del Merger under the Bank Merger Act. *See* 12 U.S.C. § 1828(c)(1)(A) (no insured bank “shall merge or consolidate with any noninsured bank or institution” without the approval of the FDIC). Valley is an insured bank; VNB Del is not an insured depository institution. Valley published notice of the application as required by the Bank Merger Act. The notice period expired without the FDIC receiving any public comments regarding the transaction. The VNB Del Merger may not be consummated until both the OCC and the FDIC approve the transaction.

² Because VNB Del is a wholly-owned subsidiary of Valley, we need not decide in this application what minimum level of ownership is required to make an entity a “subsidiary” or “affiliate” of the bank for purposes of section 215a-3. We note, however, that consideration of related statutes, namely, 12 U.S.C. § 371c (affiliate transactions) and the Bank Holding Company Act, suggests that Congress intended a similar 25% ownership threshold for section 215a-3.

³ *See* Del. Code Ann. tit. 8, § 252 (merger of Delaware and foreign corporations generally). *See also* Del. Code Ann. tit. 8, § 253 (merger of parent corporation and subsidiary).

III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the merger of VNB Del into Valley is legally authorized under 12 U.S.C. § 215a-3. The transaction also raises no supervisory and policy concerns. Accordingly, the application is hereby approved.

Signed

8/31/01

Steven J. Weiss
Deputy Comptroller for Licensing

Date

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