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Comptroller of the Currency  
Administrator of National Banks

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Washington, D. C.

## Corporate Decision #2001-33 December 2001

### DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE STOCKMENS FINANCIAL CORPORATION INTO STOCKMENS NATIONAL BANK IN COTULLA, COTULLA, TEXAS

November 29, 2001

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#### I. INTRODUCTION

Stockmens National Bank in Cotulla, Cotulla, Texas, (“Stockmens Bank”) applied to the Office of the Comptroller of the Currency (“OCC”) for approval to merge Stockmens Financial Corporation (“SFC”) into Stockmens Bank, under 12 U.S.C. § 215a-3 (the “Merger”). Stockmens Bank is a direct wholly-owned national bank subsidiary of SFC, a registered bank holding company. SFC is a Texas corporation with its principal place of business in Cotulla, Texas. It owns 100% of the outstanding shares of Stockmens Bank. Its only other asset is a small amount of cash, and it has no debt. The purpose of the Merger is simply to eliminate Stockmens Bank’s holding company. There will be no change in the operations of Stockmens Bank. In the Merger, shareholders of SFC will receive equivalent shares in Stockmens Bank with the result that SFC will go out of existence and the former holding company shareholders will own the bank directly.

#### 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 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, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 8 (1999).

SFC is not a bank and owns all of the outstanding shares of Stockmens Bank, and so it is a nonbank affiliate of Stockmens Bank for purposes of section 215a-3.<sup>1</sup> SFC's only activity is to own the shares of Stockmens Bank. Its only other asset is a small amount of cash, and it has no debt. After the Merger, there will be no change in the operations of Stockmens Bank. The Merger will not grant Stockmens Bank any power or authority not permissible for a national bank under other applicable provisions of law. SFC is a Texas corporation. Texas law authorizes Texas corporations to merge with foreign corporations or other entities, including national banks, with the foreign corporation as the surviving corporation.<sup>2</sup> Stockmens Bank represents that it and SFC will comply with the requirements of Texas law for the merger of a Texas corporation with a foreign corporation. Accordingly, the Merger is authorized under section 215a-3.<sup>3</sup>

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<sup>1</sup> Since Stockmens Bank is wholly-owned by SFC we need not decide in this application what minimum level of ownership is required to make an entity an "affiliate" of a 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.

<sup>2</sup> *See* Texas Bus. Corp. Act Ann. art. 5.01 (West 2001). *See also* Texas Bus. Corp. Act Ann. art. 5.19 (West 2001) (merger between parent and 90%-owned subsidiary). *Cf.* Texas Fin. Code § 32.301 (merger of Texas state bank and other entities, with approval of bank commissioner, following procedures in Texas Business Corporation Act).

<sup>3</sup> The Merger is also subject to approval under the Bank Merger Act, and Stockmens Bank applied to the Federal Deposit Insurance Corporation for approval and published notice of the 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). Stockmens Bank is an insured bank; SFC is not an insured depository institution. The FDIC received no comments from the public and approved its application on November 2, 2001.

### III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the merger of SFC into Stockmens Bank is legally authorized under 12 U.S.C. § 215a-3. The transaction raises no supervisory or policy concerns. Accordingly, the application is hereby approved.<sup>4</sup>

Signed

11/29/01

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Julie L. Williams  
First Senior Deputy Comptroller  
and Chief Counsel

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Date

Application Control Number: 2001-SW-02-0034

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<sup>4</sup> This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a bilateral contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or an officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.