



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

**Conditional Approval #658
November 2004**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS TO CONVERT
JPMORGAN CHASE BANK, NEW YORK, NEW YORK,
INTO A NATIONAL BANKING ASSOCIATION, AND
TO MERGE BANK ONE, N.A., CHICAGO, ILLINOIS,
AND BANK ONE, N.A., COLUMBUS, OHIO,
WITH AND INTO THE CONVERTED BANK**

October 13, 2004

I. INTRODUCTION

On July 9, 2004, JPMorgan Chase Bank, New York, New York, (“JPMCB”) a New York state chartered bank, applied to the Office of the Comptroller of the Currency (“OCC”) for approval to convert into a national banking association with the title “JPMorgan Chase Bank, National Association, (“JPMCB-National”), under 12 U.S.C. § 35 (the “Conversion”). Approval was also requested, under 12 U.S.C. § 92a, for JPMCB-National to exercise fiduciary powers similar to those currently exercised by JPMCB.

JPMCB currently operates branches in New York, New Jersey, Connecticut, and Texas, and in the application, approval is requested for JPMCB-National to retain those branches under 12 U.S.C. § 36(b)(1). JPMCB also currently has a number of domestic subsidiaries and other investments (described in Part II-A-3), and approval is requested for JPMCB-National to retain these subsidiaries and investments. Upon the Conversion, the board of directors of the bank will change, and a waiver of the residency requirement for the board of directors of the converted bank is requested under 12 U.S.C. § 72.

On July 9, 2004, application was also made for approval to merge Bank One, National Association, Chicago, Illinois, (“Bank One Chicago”) and Bank One, National Association, Columbus, Ohio, (“Bank One Columbus”) with and into JPMCB-National under the charter and title of JPMCB-National under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the “Merger”). It is contemplated that the Merger will occur immediately after the Conversion. All three banks are insured by the Federal Deposit Insurance Corporation. The three banks are

affiliates, owned by J.P. Morgan Chase & Co., (“JP Morgan”) a financial holding company within the meaning of the Bank Holding Company Act. At the time of the Merger, JPMCB-National will operate branches in New York, New Jersey, Connecticut, and Texas. Bank One Chicago and Bank One Columbus operate branches in Arizona, Colorado, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin.

In the Merger application, OCC approval is also requested for JPMCB-National, as the bank resulting from the Merger, to retain Bank One Columbus’ main office¹ in Columbus, Ohio, as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1), and to retain the main offices of Bank One Chicago and JPMCB-National and the branches of all three banks as branches after the Merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1). In the Merger application, a waiver of the residency requirement for the board of directors of the resulting bank is requested under 12 U.S.C. § 72.

The banks published notice of the applications in *The Chicago Tribune*, *The Columbus Dispatch*, and the *New York Post* on July 9, July 24, and August 8, 2004. The OCC received no comments on the applications.

II. LEGAL AUTHORITY FOR THE TRANSACTIONS

A. The Conversion

1. Authority for the Conversion, Fiduciary Powers, and Directors’ Residency Waiver

State banks may convert to a national charter under 12 U.S.C. § 35. Section 35 provides in relevant part:

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word “national”: *Provided, however,* That said conversion shall not be in contravention of the State law.

¹ At the time the applications were filed, Bank One Columbus’ main office was located at 100 East Broad Street, Columbus, Ohio. However, Bank One Columbus applied to relocate its main office to 1111 Polaris Parkway in Columbus, under 12 U.S.C. § 30, and to establish a branch at the former main office location under 12 U.S.C. § 36(c). These applications were approved on August 11, 2004, and the transactions will be completed before the Merger. Thus, in the discussion in this decision, 1111 Polaris Parkway is Bank One Columbus’ main office.

Revised Statutes § 5154, 12 U.S.C. § 35.

JPMCB is a bank organized under the general laws of the State of New York, and so it is a “state bank” within the meaning of section 35. The conversion would not be in contravention of state law. New York permits New York state banks and trust companies to convert to a national charter.² Only New York law, and not also the laws of New Jersey, Connecticut, and Texas where JPMCB operates branches, is relevant to this requirement. The requirement that the conversion “not be in contravention of state law” refers only to the law of the state of organization of the state bank that is converting, since the requirement pertains to the authority to convert, an aspect of the corporate organization and existence of the state bank, not to banking powers or branching operations.³ JPMCB also meets the other criteria in section 35. It has capital sufficient to meet the statutory requirement for a national bank. JP Morgan, the sole shareholder, has approved the conversion. Thus, the Conversion is authorized under section 35.

JPMCB currently has fiduciary powers and exercises those powers in the four states in which it operates. It will continue that business and its fiduciary appointments⁴ and so requested OCC approval to exercise fiduciary powers under 12 U.S.C. § 92a. Under section 92a(a), the OCC may grant a national bank the right to act in the fiduciary capacities listed in the statute and in any other fiduciary capacities permitted to state banks and trust companies in the states in which the national bank is located, when not in contravention of state law.⁵

² New York Banking Law § 137(1).

³ For a further discussion of the “not in contravention of state law” requirement in the context of a converting interstate state bank, see *Decision on the Application of Republic Bank for Savings, New York, New York, to Convert into a National Banking Association* (OCC Corporate Decision No. 95-32, July 25, 1995) (“*OCC Republic Decision*”) (at the time of its conversion, the bank had its principal office in New York and branches in New York and Florida).

⁴ The national bank resulting from the conversion of a state bank continues the state bank’s fiduciary appointments without the need for formal re-appointment. See, e.g., *Poisson v. Williams*, 15 F.2d 582, 583 (E.D.N.C. 1926); *In re Barreiro’s Estate*, 13 P.2d 1017, 1024 (Cal. Dist. Ct. App. 1932); *Interdiction of Le Boeuf*, 47 So.2d 687, 689 (La. 1950); *New England Merchants National Bank of Boston v. Centenary Methodist Church*, 173 N.E.2d 294, 298-99 (Mass. 1961); *Citizens & Southern National Bank of South Carolina v. Conner*, 11 S.E.2d 271, 272 (S.C. 1940). This is a particular instance of the fundamental principle that the resulting national bank is a continuation of the corporate existence and corporate identity of the state bank. See cases cited in note 14 below. See also *In re Barreiro’s Estate*, *supra*.

⁵ See 12 U.S.C. § 92a(a). A national bank’s exercise of fiduciary powers in a state is deemed not in contravention of state law if the state permits its own state banks, trust companies, or other corporations that compete with national banks to exercise such powers. 12 U.S.C. § 92a(b). The OCC’s regulations provide for the application of section 92a in a multi-state context. A national bank may act in a fiduciary capacity in any state. 12 C.F.R. § 9.7(a). From the states in which it acts in a fiduciary capacity, it may also serve customers in other states. 12 C.F.R. § 9.7(b). When a bank acts in more than one state, then for purposes of determining the

JPMCB-National proposes to act in the same range of fiduciary capacities that JPMCB exercises now, and it will act in a fiduciary capacity in each of the four states in which it presently operates. Each of those states permits its own state banks or trust companies to act in a full range of fiduciary capacities,⁶ and so national banks in those states may do likewise. In addition, under section 92a(i), the OCC may not grant fiduciary powers to a national bank unless the bank has at least the minimum capital required by state law for state banks and trust companies. JPMCB's capital exceeds the minimum required under the laws of the four states, and JPMCB-National's capital will continue to do so after the conversion. Accordingly, the OCC may grant fiduciary powers to JPMCB-National.

Upon the Conversion, the board of directors of JPMCB will change, and some of the members of the board of JPMCB-National may not meet the residency requirement of 12 U.S.C. § 72. Under 12 U.S.C. § 72, a majority of the board of directors of a national bank must reside in the state in which the bank is located or within 100 miles of the location of the office of the association, except that the OCC may waive the requirement of residency.⁷ JPMCB has requested a waiver of the residency requirement for JPMCB-National, both after the Conversion and after the Merger, based on the necessity of selecting directors with experience in various areas of the bank's operations who might not meet the residency requirement and based on the wide geographic scope of JPMCB-National's operations. The OCC has authority to grant waivers of the residency requirement, and we deem it appropriate to do so in this instance.

relevant state for section 92a purposes, a national bank is located in the state, with respect to each fiduciary relationship, in which the bank acts in a fiduciary capacity with respect to that relationship. 12 C.F.R. § 9.7(d). A bank "acts in a fiduciary capacity" in the state in which it accepts the fiduciary appointment, executes the documents that create the fiduciary relationship, and makes discretionary decisions regarding the investment or distribution of fiduciary assets, and if these activities take place in more than one state, then in the state the bank designates from among those states. *Id.*

⁶ New York Banking Law §§ 100 & 100-a; N.J. Stat. Ann. § 17:9A-28; Conn. Gen. Stat. Ann. § 36a-250(a)(2), (3), (7), (8), (9), (11)-(14) & (40); Tex. [Fin.] Code Ann. §§ 32.001(b)(3) (fiduciary powers of state banks) & 182.001 (powers of state trust companies).

⁷ For purposes of section 72, a national bank is located in every state in which it maintains a branch. *See* OCC Interpretive Letter No. 654 (December 19, 1994). Thus, JPMCB-National directors who reside anywhere in New York State, New Jersey, Connecticut, and Texas, or within 100 miles of JPMCB-National's main office would meet the residency requirement. The applicants in the Merger similarly have requested a waiver of the directors' residency requirement for the board of directors of JPMCB-National, as the resulting bank after the Merger.

2. Retention of Branches in the Conversion

The authority of JPMCB-National, as the national bank resulting from the Conversion, to retain the existing branches of JPMCB is governed by 12 U.S.C. § 36(b)(1). Section 36(b)(1) provides:

A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office --

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank under February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

12 U.S.C. § 36(b)(1).

JPMCB-National has the authority to retain JPMCB's branches under both Clause (A) and Clause (C).⁸ Under Clause (A), the resulting national bank may retain any branch of the converting state bank if that branch might be established as a new branch of the resulting national bank under 12 U.S.C. § 36(c). Under section 36(c), a national bank may establish branches at any point within the state in which the national bank "is situated," if such establishment is authorized for state banks by the statute law of the state in question. Thus, to apply Clause (A), it is necessary to determine in which state the resulting national bank "is situated."

JPMCB has its main office in New York and branches in New York, New Jersey, Connecticut, and Texas. Thus, this matter involves the application of section 36(b)(1) in the context of a conversion of a state bank that already operates branches on an interstate basis. The OCC has previously addressed section 36(b)(1) in that context. We determined that the

⁸ Because of the long history of JPMCB and its predecessors, it is possible that some of its branches were branches of a bank on February 25, 1927, and so could also be retained under the authority of Clause (B). Because Clauses (A) and (C) apply, there is no need to review the history of individual branches to determine if Clause (B) might apply.

proper interpretation of section 36(b)(1) is that a national bank that results from the conversion of an interstate state bank is situated in each state in which the state bank had its main office or branches and then the provisions of sections 36(b) and (c) are applied on that basis.⁹

Essentially, we give effect to the existing extent of the state bank when it first becomes subject to the national bank branching framework of section 36. In this regard, our treatment of a converting interstate state bank is similar to the statutory treatment of existing interstate national banks on February 25, 1927, and the caselaw treatment of subsequent branching by those banks. When existing interstate national banks first became subject to the framework of section 36 in 1927, they were permitted to retain their existing branches. *See* 12 U.S.C. § 36(a). Then, when one of those banks later applied to establish an additional branch in a state in which it had one of its pre-1927 branches, the courts held it was situated in that state for section 36(c) purposes, and could establish branches to the same extent as state banks of that state. It was not viewed as situated only in the state of its main office.¹⁰

Thus, for purposes of applying section 36(b)(1), JPMCB-National is situated in each of the four states in which JPMCB had its main office or branches. JPMCB-National may retain the branches in each state under section 36(b)(1)(A) because a national bank situated in each of those states could establish new branches at all the locations in that state. New York authorizes its state banks to establish branches at any location within the state, except that a bank is restricted from opening a branch in a city or village (except for the city or village in which its principal office is located) with a population of fifty thousand or less in which is already located the principal office of another bank.¹¹ JPMCB represents that it is in compliance with section 105(a). Each of the other three states (New Jersey, Connecticut, and Texas) authorizes its own state banks to establish branches within the state without geographic

⁹ *See, e.g., OCC Republic Decision; Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association, State Savings Bank, N.A., and on the Application to Merge State Savings Bank, N.A., into Connecticut National Bank, Hartford, Connecticut* (OCC Merger Decision No. 91-07, April 8, 1991) (at the time of its conversion, State Savings Bank's main office was in Connecticut, and it had branches in Rhode Island). The OCC has interpreted the similar provisions of section 36(b)(2) in a similar manner when the target bank in a merger had branches in other states, but the merger was not effected under the interstate merger provisions of the Riegle-Neal Act because, *e.g.*, both banks had the same home state. *See, e.g., Decision on the Application to Merge First Bank, N.A., Minneapolis, Minnesota, and First National Bank of East Grand Forks, East Grand Forks, Minnesota* (OCC Corporate Decision No. 97-68, July 10, 1997). (First Bank, the target bank in the merger, had branches in nine states in addition to Minnesota)

¹⁰ *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974).

¹¹ N.Y. Banking Law § 105(a). Moreover, this "home office protection" limitation does not apply to the retention of branches in a conversion or a merger. *See id.* (last clause). Thus, that authority would be incorporated into section 36(c), and a national bank resulting from a conversion or merger could retain such branches. *See State ex rel. Edwards v. Heimann*, 633 F.2d 886, 890 (9th Cir. 1980).

limitation.¹² Thus, a national bank situated in each state could establish JPMCB's branch locations as branches under section 36(c). Therefore, JPMCB-National may retain them under section 36(b)(1)(A).

Similarly, JPMCB-National also may retain the branches in each state under section 36(b)(1)(C) because an identically situated state bank resulting from the conversion of an interstate national bank would not be prohibited by the law of each state from retaining identically situated offices that were branches of the national bank before the conversion. We have found no laws of any of the states that by their terms expressly prohibit a state bank resulting from the conversion of an interstate national bank from retaining its branches.

Moreover, JPMCB-National's retention of the branches in the four states is also consistent with additional provisions added to section 36 by the Riegle-Neal Act in 1994.¹³ The Riegle-Neal Act authorized banks to engage in interstate mergers and operate the acquired branches in other states, to acquire single branches in other states, and to establish *de novo* branches in other states, subject to provisions set out in the Act. The Act also added a provision to section 36 to limit the ability to acquire branches in new states to specified ways:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B) of this section) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 1823(f), 1823(k), or 1831u of this title.

12 U.S.C. § 36(e)(1).

JPMCB-National's retention of the branches complies with the terms of section 36(e) in two ways. First, JPMCB already operates branches in the four states, and so the national bank resulting from the conversion is not acquiring, establishing, or operating a branch in a state other than one in which the bank already has a branch. The national bank that results from the conversion of a state bank continues the corporate identity and existence, property, assets, and banking business of the state bank.¹⁴ Thus, as the continuation of JPMCB, JPMCB-National is not acquiring, establishing, or operating branches in a new state in which it did not have a

¹² N.J. Stat. Ann. § 17:9A-23.11(a) (branching by New Jersey state banks in New Jersey); Conn. Gen. Stat. § 36a-145(b)(1) (branching by Connecticut banks in Connecticut); Tex. [Fin.] Code Ann. § 32.203(a).

¹³ Riegle-Neal Interstate Banking and Branching Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (1994).

¹⁴ See, e.g., *Michigan Insurance Bank v. Eldred*, 143 U.S. 293, 300 (1892); *Metropolitan National Bank v. Claggett*, 141 U.S. 520, 527 (1891). See also cases cited in note 4 above. See generally 10 Am. Jur. 2d §§ 202 & 203.

branch before. Second, as discussed above, JPMCB-National is authorized to retain the branches under sections 36(b)(1)(A)&(C), a part of “this section” included in section 36(e)(1).

JPMCB-National’s retention of the branches complies with the intent of the Riegle-Neal Act as well. Nowhere did Congress evidence an intent that a state bank with existing interstate branches obtained through earlier transactions under the Riegle-Neal Act that later proposes to convert into a national bank, or a national bank with existing interstate branches that later proposes to convert into a state bank, would have to divest its existing branches in states other than its main office state and re-establish them anew only if permissible as a new bank from that main office state.

Accordingly, JPMCB-National may retain the offices of JPMCB that were branches of JPMCB immediately prior to the conversion under section 36(b)(1).¹⁵

3. Retention of Subsidiaries and Investments

JPMCB has a number of subsidiaries and other equity investments that will become subsidiaries and investments of JPMCB-National after the Conversion and will continue as such after the Merger. JPMCB requests OCC approval for the resulting national bank to retain them.¹⁶ Except for one group of related subsidiaries (discussed in section 3-a-(vii) below), all of the subsidiaries and investments involve activities that are clearly permissible for national banks by statute, regulations, and prior OCC precedent.

a. Operating subsidiaries

Most of JPMCB’s domestic subsidiaries qualify as operating subsidiaries. Operating subsidiaries are those that conduct activities that are permissible for a national bank to engage

¹⁵ In addition, JPMCB had several approved but not yet opened branches at the time the Conversion application was filed. If those branches are opened prior to the Conversion, authority to retain them will be included under section 36(b)(1). If they are not opened prior to Conversion, JPMCB-National subsequently would have authority to establish them under section 36(c), since they are additional branches in states in which the bank already maintains a branch. The OCC’s approval of the Conversion and the Merger includes approval under section 36(c) to establish any such pending branches.

JPMCB also operates a number of foreign branches under the authority of Regulation K, 12 C.F.R. § 211.3, and JPMCB-National will continue to operate these branches after the Conversion and the Merger. JPMCB will consult with the Federal Reserve System to determine if any filings are required under Regulation K with regard to JPMCB-National’s continued operation of the branches after the Conversion and Merger. Under 12 C.F.R. § 28.3(a), national banks are required to notify the OCC regarding foreign branches. JPMCB included a list of its foreign branches in the applications in fulfillment of this requirement.

¹⁶ JPMCB plans to transfer one subsidiary, CMB Title Holdings, Inc., to an affiliate prior to the Conversion, and so it will not be owned by JPMCB-National. CMB Title Holdings, Inc., engages in title insurance activities in New York. Title insurance agency activities can be permissible for a national bank.

in directly and conduct those activities pursuant to the same authorization, terms, and conditions that apply to the conduct of those activities by their parent bank. 12 C.F.R. § 5.34(e)(1), (3). JPMCB proposes to retain the operating subsidiaries set out below. All of the subsidiaries are wholly-owned by JPMCB, unless otherwise noted.

(i) Real estate lending and related activities

JPMCB has several subsidiaries that engage in residential real estate lending, commercial real estate lending, and related activities. These subsidiaries are legally permissible because national banks and their operating subsidiaries may make, purchase, sell, service or warehouse loans or other extensions of credit for their own or another's account. 12 U.S.C. §§ 24(Seventh) & 371; 12 C.F.R. § 5.34(e)(v)(C) & (D). Moreover a national bank may securitize and sell assets that it holds. 12 C.F.R. § 1.3(g).

Chase Manhattan Mortgage Corporation ("CMMC"). CMMC is engaged in the mortgage banking business, including the origination and servicing of home mortgage loans and other related services directly and through subsidiaries, Chase Ventures Holdings, Inc. ("CVHI") and Blue Box Holdings Inc. ("Blue Box").¹⁷ CMMC, and its subsidiaries, were previously subsidiaries of JPMCB's affiliated national bank, Chase Manhattan USA, National Association ("Chase USA"). In 2002, CMMC was transferred to JPMCB as part of an internal restructuring.

CVHI participates, through one or more existing subsidiaries or through ones that may be established in the future, in joint ventures to conduct residential mortgage brokerage and lending activities. These joint ventures are conducted in accordance with the OCC's original approval dated May 9, 1997. *See* OCC Conditional Approval No. 243 (May 9, 1997)

Blue Box is engaged in two joint ventures with The First American Corporation ("First American"), CVMS and Quantrix LLC ("Quantrix"). CMMC and First American are the only managing members of the companies, and each has appointed managers to manage the companies. CVMS provides technology and related services to JPMCB and affiliates, including placing orders with vendors, providing electronic confirmation back to the customer, providing metrics on vendor performance, and providing consolidated billing and reconciliation capabilities. Quantrix provides settlement and other real estate related services.

JPMCB represents that both the CVHI joint ventures and the Blue Box joint ventures meet the four criteria used to assess the permissibility of non-controlling equity investments by national banks.¹⁸

¹⁷ CMMC also has inactive subsidiaries.

¹⁸ The criteria, as set out in many previous OCC opinions, are: (1) The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking. (2) The bank must be able to prevent the entity or enterprise from engaging in activities that

Chase Mortgage Holdings, Inc. This subsidiary serves as a holding company for mortgages originated by CMMC outside of the state of New York.

Chase Preferred Capital Corporation (“CPCC”). This subsidiary is a recognized real estate investment trust under the Internal Revenue Code. CPCC currently holds for investment closed-end home equity loans that were originated by CMMC and Chase USA. It also lends money to CMMC and Chase USA secured by open-end home equity loans made by CMMC and Chase USA.

JPMorgan Healthcare and Housing Funding Corporation. This subsidiary engages in the following activities: (i) origination and servicing of multifamily housing and healthcare mortgage loans, insured under Federal Housing Administration (“FHA”) mortgage insurance programs, and other mortgage programs offered by conventional non-FHA lenders, (including instances where such loans will serve as collateral for mortgage revenue bond issuances), (ii) mortgage loan placement in instances where there is no contemplated mortgage revenue bond issuance, and (iii) the provision of advisory and consulting services in connection with real estate mortgages.

J.P. Morgan Chase Commercial Mortgage Securities Corp. (“CMSC”). This subsidiary is a special purpose corporation used by JPMCB for its commercial mortgage backed securities (“CMBS”) conduit program.

J.P. Morgan Mortgage Capital Inc. (“JPMMC”). This subsidiary assists JPMCB in its CMBS conduit program under which JPMCB originates CMLS for later securitization as CMBS. JPMMC acts as agent for JPMCB in the origination of the loans.

J.P. Morgan Mortgage Acquisition Corp. (“JPMMAC”). This subsidiary is a part of JP Morgan’s principal finance mortgage backed securities (“MBS”) platform. JPMMAC purchases whole residential mortgage loans that are typically sold in pools by mortgage originators, including JPMCB and third-party originators. The pools that are purchased by JPMMAC typically are held for approximately 8 - 12 weeks and then aggregated with other pools for sale to J.P. Morgan Acceptance Corporation, which sells MBS backed by such pools.

(ii) Other types of lending and related activities

JPMCB has several subsidiaries that engage in other types of lending and related activities. These subsidiaries are legally permissible because national banks and their operating

do not meet the foregoing standard or be able to withdraw its investment. (3) The bank’s loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise. (4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank’s banking business.

subsidiaries may make, purchase, sell, service or warehouse loans or other extensions of credit for their own or another's account. 12 U.S.C. §§ 24(Seventh); 12 C.F.R. § 5.34(e)(v)(C) & (D). Moreover a national bank may securitize and sell assets that it holds. 12 C.F.R. § 1.3(g).

Chase Education Holdings, Inc. ("CEH"). This subsidiary holds JPMCB's 50% ownership interest in a limited liability company, Education First Finance, LLC ("Education First"), that is part of a joint venture with the Student Loan Marketing Association ("Sallie Mae") relating to the student loan business. Sallie Mae owns the other 50% of Education First. Education First purchases federally guaranteed student loans from JPMCB and immediately sells them to Sallie Mae. Another subsidiary of JPMCB, TCB Education First Marketing Corporation, holds JPMCB's 50% interest in a second limited liability company, Chase Education First L.L.C ("Chase Education"), with the other 50% owned by Sallie Mae. Chase Education is the exclusive marketing representative for federally guaranteed student loans made by JPMCB. It also markets certain private student loans made by Chase USA.

Chase Manhattan Automotive Finance Corporation ("CMAFC"). This subsidiary provides services with respect to loans to be made or purchased by its affiliates, JPMCB and Chase USA.

Systems & Services Technologies, Inc. ("SST"). This subsidiary is a consumer receivable servicing company. SST's principal servicing business pertains to consumer automobile receivables.

Cedar Hill International Corp. ("Cedar Hill"). This subsidiary was originally established to be used to invest in performing and nonperforming loan portfolios, including portfolios of mortgage loans secured by properties in foreign jurisdictions. It is no longer being used to book new business of this sort, and its remaining holdings are small.

Chase SPV Corporation ("Chase SPV"). This subsidiary was established as a special purpose entity to facilitate the making of a loan financed by the issuance of commercial paper supported by a liquidity facility provided by a group of banks. Chase SPV entered into a series of transactions in which Chase SPV essentially made a five-year self-amortizing loan. Chase SPV is not engaging in any new transactions at the present time.

Flagstaff Capital Corporation ("Flagstaff"). This subsidiary was established as a special purpose entity to facilitate the making of a loan by a group of banks. Flagstaff entered into a series of transactions in which Flagstaff essentially made a five-year self-amortizing loan. At the present time, Flagstaff is not engaging in any new transactions.

Cedar Hill, Chase SPV, and Flagstaff have engaged in structured loan transactions. Chase SPV and Flagstaff were each formed to engage in a specific transaction. Any future complex structured finance transactions by JPMCB-National or its operating subsidiaries will

be subject, as appropriate, to notification or approval requirements, OCC supervisory oversight and application of policy guidance on complex structured finance transactions. *See* 69 Fed. Reg. 28980 (May 19, 2004).

In this regard, we also note that J.P. Morgan Chase & Co., JPMCB's holding company, entered into a Written Agreement, dated July 28, 2003, with the Federal Reserve Bank of New York and the New York State Banking Department under which J.P. Morgan Chase & Co. undertook to adopt and implement strengthened credit risk management and legal and reputational risk management programs applicable to J.P. Morgan Chase & Co. and its subsidiaries, especially regarding complex structured finance transactions. J.P. Morgan Chase & Co. and its subsidiaries, including JPMCB, have been implementing measures responsive to the Written Agreement. After the Conversion and the Merger, the OCC will monitor the implementation of the measures that pertain to the bank as part of the OCC's ongoing supervision, and approval of the application is made subject to JPMCB-National's continued implementation of appropriate measures to facilitate compliance with the Written Agreement.

(iii) Personal property leasing and lease financing

JPMCB has three subsidiaries (Chase Funding Corporation, J.P. Morgan Leasing Inc., and Manufacturers Hanover Leasing International Corp.) that are engaged in the business of personal property and equipment leasing (including rail cars and commercial aircraft) and lease financing. Manufacturers Hanover Leasing International Corp. also engages in leasing activities through two subsidiaries, Chase Leasing of Texas, Inc., and JPMC Leasing Services, Inc. These activities are permissible for national banks. 12 U.S.C. §§ 24(Seventh) & 24(Tenth); 12 C.F.R. § 5.34(e)(v)(M); 12 C.F.R. Part 23.

(iv) Financial advice, investment advice, and related activities

JPMCB has several subsidiaries that engage in various forms of financial advice, investment advice, and related activities. These subsidiaries are legally permissible because national banks and their operating subsidiaries may offer investment advice, investment management services, and financial and transaction advice. 12 U.S.C. §§ 24(Seventh); 12 C.F.R. § 5.34(e)(v)(I) & (K).

J.P. Morgan Realty Advisors, Inc. This subsidiary provides financial and transactional advice to clients and assists clients in structuring, arranging, and executing various real estate-related financial transactions, including debt placements, assets sales, and sale-leasebacks.

J.P. Morgan Alternative Asset Management, Inc. This subsidiary is an investment fund manager that specializes in offering alternative investment portfolios that utilize hedge funds. As part of its services, it develops and manages alternative investment products and evaluates, selects, and monitors third-party alternative investment managers for its clients.

Plexus Group, Inc. (“Plexus”). This subsidiary is a registered investment advisor and is engaged in the business of providing transaction cost analysis, trade research, and consulting services that are used by investment managers, pension fund sponsors, and brokerage firms.

Chase Manhattan of Wyoming. This subsidiary organizes and provides administrative services to limited liability companies (LLCs), established pursuant to Wyoming law to operate as private investment companies for institutional investors and high-net-worth individuals.

J.P. Morgan Partners (23A SBIC Manager), Inc. (“SBIC Manager”). This subsidiary serves as the managing partner of J.P. Morgan Partners (23A SBIC), L.P. (“JPMP SBIC”). It also holds an 80% ownership interest in JPMP SBIC, with the remaining 20% owned by JPMP Master Fund Manager, LP, an indirect subsidiary of JP Morgan. JPMP SBIC is a Delaware limited partnership organized to operate as a small business investment company (“SBIC”), under a license from the U.S. Small Business Administration. It makes qualifying investments as authorized by the SBIC Act. SBIC Manager’s management of the investments made by JPMP SBIC is permissible as a lending activity or investment securities activity with respect to qualifying investments that are loans or investment securities and as investment management generally for those assets and others. Its ownership interest in JPMP SBIC is permissible under 15 U.S.C. § 682(b) under which national banks are expressly authorized to invest in small business investment companies.

J.P. Morgan Realty Asset Management, Inc., (“JPMRAMI”). This subsidiary acted as the asset manager for the Harvest Opportunity Fund, L.L.C. (“Harvest”). JPMRAMI managed, collected and disposed of Harvest's portfolio which consisted of loans transferred from JPMCB. The portfolio has been disposed of, and Harvest is winding down. JPRAMI is inactive, and once all final accountings have been completed, it will be dissolved.

(v) Data processing and financial processing services

JPMCB has several subsidiaries that engage in data processing, financial processing, transaction services, and other services for the bank, its affiliates, and other financial institutions. These subsidiaries are legally permissible because national banks and their operating subsidiaries may offer services to the bank and its affiliates and to other financial institutions, 12 C.F.R. §§ 5.34(e)(v)(B) & (F) and 7.5007, and may offer data processing services involving banking, financial, or economic data, 12 C.F.R. § 7.5006(a).

Chase Image Archive Services Inc. (“Chase Image”). This subsidiary holds JPMCB’s noncontrolling ownership interest in Viewpointe Archive Services, LLC (“Viewpointe”). Viewpointe was formed in 2000 as a joint venture among Chase Image and several unrelated parties. Viewpointe provides check image archive services, including the loading, electronic storage, and on-line retrieval of digital images of checks and check statements to its member financial institutions and other financial institutions. It also offers related services, such as advice, check image systems design, implementation, and equipment leasing. JPMCB

represents that its ownership interest in Viewpointe meets the criteria used to assess the permissibility of non-controlling equity investments by national banks, see note 18 above.

Chase Merchant Ventures, Inc. This subsidiary holds JPMCB's interest in Chase Merchant Services, L.L.C. ("CMS"). CMS is a joint venture between JPMCB and First Data Merchant Services Corporation. CMS is a merchant acquirer that contracts with merchants to process Visa and MasterCard credit and debit transactions conducted by the merchants' customers. JPMCB represents that its ownership interest in CMS meets the criteria used to assess the permissibility of non-controlling equity investments by national banks, see note 18 above.

J.P. Morgan FCS Corporation ("FCS"). This subsidiary markets and provides software applications to JPMCB and its affiliates, unaffiliated financial institutions, investment managers, and other financial services companies. FCS's products are designed to provide users with the ability to efficiently manage portfolios of syndicated bank loans and other types of high-yield and alternative debt issues.

J.P. Morgan Custody Services, Inc. ("Custody"). This subsidiary provides business services and data processing and warehousing products, services and related activities for JPMCB and its affiliates. Custody also serves as trustee on certain deeds of trust on mortgages serviced by JPMCB's affiliates.

J.P. Morgan Treasury Technology Services ("JPMTTS"). This subsidiary provides technological services to JPMCB and its affiliates in support of their Cash Management and Trade and Treasury Management Services businesses through its back office operations center in Florida. JPMTTS also provides similar services to The Clearing House Service Company L.L.C.

(vi) Stored value and electronic benefit transfer

JPMCB has three subsidiaries that offer stored value and electronic benefit transfer services. J.P. Morgan Electronic Financial Services, Inc., a provider of services related to the electronic delivery of (i) government issued payments through electronic benefits transfer ("EBT") and pre-paid/stored value cards for state and federal government agencies, and (ii) stored value services for private institutions. TCB Mondex Originator Member USA, Inc., holds JPMCB's interest in Mondex USA Originator LLC, which owns an ownership interest in a stored value system known as "Mondex." TCB Mondex Member USA, Inc., holds JPMCB's interest in Mondex USA Services LLC, which acts as the servicing entity for the Mondex UAS services.¹⁹ These electronic benefit transfer and stored value activities are permissible for national banks. 12 C.F.R. § 5.34(e)(v)(Y) & 7.5002(a)(3).

¹⁹ The acquisition of non-controlling interests in the Mondex entities by operating subsidiaries of national banks, including a predecessor of JPMCB, was approved in OCC Conditional Approval No. 220 (December 2,

(vii) Other operating subsidiaries

J.P. Morgan Property Exchange Inc., J.P. Morgan Property Holdings LLC, and J.P. Morgan Aircraft Holdings Inc. (collectively, the “JPEX entities”). These subsidiaries engage in the business of arranging and facilitating, for customers, exchanges of like kind property under Section 1031 of the Internal Revenue Code. The JPEX Entities advise and consult with customers on the structure of the transaction and its suitability for a like kind exchange. They assist in reviewing property information, in reviewing technical tax requirements, and in preparing documentation. They also act as Qualified Intermediary and Exchange Accommodation Titleholder to fulfill Internal Revenue Code requirements for the customer to qualify for deferral of an otherwise taxable gain under Section 1031.

The OCC previously has approved national banks and their operating subsidiaries offering like kind exchange services in certain contexts,²⁰ and many of the activities of the JPEX Entities are similar to what the OCC has approved before. The OCC is continuing to review the other subject activities and will address their permissibility separately. Until the review is complete, the JPEX Entities may continue to engage in this activity for up to two years, consistent with OCC policy to permit national banks resulting from a conversion or merger to have a reasonable period of time to demonstrate that an activity conforms to activities permissible for a national bank or to divest any nonconforming activities.²¹ Accordingly, if the activity is determined not to be permissible, then JPMCB National must divest the activity within two years from the date of the conversion.

Colson Services Corp. (“Colson”). This subsidiary is principally engaged in the financial record-keeping business for a variety of government-guaranteed and non-guaranteed loan programs. It also acts as the Fiscal and Transfer Agent for the Small Business Administration’s 7(a) Secondary Market Program and Central Servicing Agent for the Small Business Administration’s 504 Loan Program. Colson also provides recordkeeping and paying agent services for a number of other programs including the Federal Agriculture Mortgage Corporation’s Farmer Mac II programs and the Finance Authority of Maine (“FAME”) secondary market program for FAME insured business loans. Colson’s activities are legally permissible because national banks and their operating subsidiaries may make, purchase, sell, service or warehouse loans or other extensions of credit for its own or another’s account.

1996). JPMCB represents that its ownership interests in the Mondex entities continue to meet the criteria used to assess the permissibility of non-controlling equity investments by national banks, see note 18 above.

²⁰ See, e.g., OCC Corporate Decision No. 2001-30 (October 10, 2001); Letter from Richard Erb, Licensing Manager, to American National Investor Services Corporation (June 21, 1996) (unpublished).

²¹ See, e.g., 12 C.F.R. §§ 5.24(d)(2)(ii)(H) & 5.33(e)(5); Comptroller’s Licensing Manual, Conversions, page 9 (April 2004).

12 C.F.R. § 5.34(e)(v)(C) & (D). And they may serve as a transfer or fiscal agent. 12 C.F.R. § 5.34(e)(v)(W).

DPC subsidiaries. JPMCB has a large number of subsidiaries that hold property acquired through foreclosure or otherwise in satisfaction of debts previously contracted or that are otherwise used by the bank in loan workouts. This is a permissible activity for national banks and their operating subsidiaries. 12 C.F.R. § 5.34(e)(v)(A).

Nominee custody subsidiaries. JPMCB has a large number of nominee custody subsidiaries that are organized solely for the purpose of registering securities that JPMCB or its affiliates hold as trustee or custodian. This is permissible for a national bank and its operating subsidiaries under 12 C.F.R. § 5.34(e)(v)(A) (holding assets acquired by the parent bank) & (B) (providing services to or for the bank or its affiliates). It is also permissible as part of or incidental to a national bank's authority to provide trust, custody and safekeeping services.

Inactive or dormant subsidiaries. JPMCB has several inactive or dormant subsidiaries. These subsidiaries result, among other reasons, when a subsidiary's business is sold, but the resulting shell company has not been dissolved, or when a company is formed, but not immediately used to conduct any business. A national bank's ownership of such inactive companies is permissible. If JPMCB-National in the future proposes to activate such a subsidiary and commence new activity in it, it must comply with the applicable filing requirements.

b. Bank premises subsidiaries

JPMCB has a number of subsidiaries that own or manage premises used by the bank. This is permissible for national banks. 12 U.S.C. §§ 29(First) & 371d; 12 C.F.R. § 5.37.

c. Bank service companies

JPMCB has three bank service companies. JPMCB owns 100% of Chase Access Services Corporation ("CAS"). JPMCB owns 90% of Chase Automated Clearing House, Inc., ("CACH") with the remaining 10% owned by its national bank affiliate, Chase USA. Both CAS and CACH provide only services to depository institutions for which no prior approval is necessary under 12 U.S.C. § 1862. *See also* 12 C.F.R. § 5.35(f)(3).

JPMCB's third bank service company is CSL Leasing Inc. ("CSL"). CSL is wholly-owned by JPMCB. CSL is engaged in the leasing of real estate and related personal property on a full pay-out basis to the extent permitted under Regulation Y of the Board of Governors of the Federal Reserve System (the "Board"), 12 C.F.R. § 225.28(b)(3). National banks are authorized to own such bank service companies. 12 U.S.C. § 1864(f); 12 C.F.R. § 5.35(f)(4). Thus, JPMCB-National may continue to own CSL. No additional OCC approval is required

for JPMCB to retain its ownership in CSL because the acquisition was approved by the Board under section 1865(b) & (c). *See* 12 C.F.R. § 5.35(f)(1) & (4).

d. Community development investments

JPMCB currently has approximately \$937,763,000 in previously made community development investments and outstanding commitments. JPMCB-National will retain these investments under the investment authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24 concerning national bank investments in community and economic development entities, community development projects, and other public welfare investments.

The previously made investments include \$446,019,000 in investments made directly by JPMCB that involve affordable housing primarily benefiting low- and moderate-income persons using federal low-income housing tax credits, or that are in community and economic development entities that were permitted by the OCC for other national banks under Part 24. That amount also includes an investment in the New York Business Development Corporation, a nonprofit corporation formed under New York State Banking Law § 215, which provides financing for small- and medium-size businesses. The investment would be considered a qualified investment under 12 C.F.R. § 25.23, the OCC's Community Reinvestment Act regulation.

The previously made investments also include \$491,744,000 in investments and unfunded commitments made by the Chase Community Development Corporation ("Chase CDC"), a wholly-owned subsidiary of JPMCB that will be a subsidiary of JPMCB-National after the Conversion and after the Merger. The purpose of the Chase CDC is to make equity and debt investments in projects designed primarily to promote community welfare, such as by providing loans and investments for affordable housing or small businesses in low- and moderate-income communities.

The foregoing investments promote the public welfare consistent with 12 U.S.C. § 24(Eleventh) and 12 C.F.R. § 24.3 by primarily benefiting low- and moderate-income persons, low- and moderate-income areas, or other areas targeted by a government entity for redevelopment, or the investments would receive consideration under 12 C.F.R. § 25.23 as a qualified investment. Thus, JPMCB-National may retain them.

e. Other equity investments

JPMCB has two non-controlling investments in Depository Trust & Clearing Corporation ("DTC") and Small Value Payments Company ("SPVC"). DTC provides clearance, settlement, and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, over-the-counter credit derivatives and emerging market debt trades. DTC has a wholly-owned subsidiary, Emerging Markets Clearing Corporation, that provides trade matching, clearance, settlement and risk management services

to global interdealer brokers and correspondent clearing firms involved in emerging market and debt instruments. SPVC provides electronic payment and check electronification services to financial institutions through Automated Clearing House, electronic check presentment and check verification and conversion services. These investments are permissible, as national banks may make investments in entities providing securities clearing and settlement activities, check clearing, presentment, and payment services, and related services.²²

f. Nonconforming assets

JPMCB has also requested permission for JPMCB-National to retain certain assets of JPMCB that do not conform to the requirements for assets acquired and held by national banks. These nonconforming assets are real estate, equity securities and other assets that JPMCB acquired in satisfaction of debts previously contracted (“DPC”) in loan workouts or similarly. The OCC will permit JPMCB-National to retain these DPC assets subject to the requirements applicable to national banks.

Accordingly, after the Conversion and Merger, JPMCB-National may retain the foregoing subsidiaries and other investments that JPMCB held at the time of the Conversion.²³

In conclusion, the Conversion is authorized, JPMCB-National may be granted fiduciary powers, and it may retain the branches, subsidiaries, and other investments of JPMCB.

²² 12 C.F.R. §§ 7.5002, 7.5006 & 7.5007. *See also* OCC Interpretive Letter No. 993 (May 16, 1997) and other authorities cited therein. JPMCB represents that its ownership interests in these entities meet the criteria used to assess the permissibility of non-controlling equity investments by national banks, see note 18 above.

²³ JPMCB also has foreign subsidiaries and investments that will continue to be held by JPMCB-National after the Conversion and Merger. J.P. Morgan International Inc. and J.P. Morgan International Finance Limited are the two investment Edge Corporations, organized under 12 U.S.C. §§ 611-614, used to hold many of the overseas operating entities owned by JPMCB. No additional OCC approval is required with regard to these entities since their organization and activities have been approved by the Board and are in accord with its Regulation K, 12 C.F.R. Part 211. JPMCB will consult with the Board to determine if any filings are required in connection with the Conversion and Merger. JPMCB also has two inactive Edge Corporations, Chase Bank International and Morgan Guaranty International Bank.

B. The Merger

1. Authority for the Merger

In the proposed Merger, Bank One Columbus and Bank One Chicago will merge with JPMCB-National. This is a merger between insured national banks with different home states (Ohio, Illinois, and New York). Mergers of insured banks with different home states 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).²⁴ 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, none of the home states of the banks here opted out. Accordingly, this application is covered by 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-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

²⁴ 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 (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).

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, the banks are combining under the charter of JPMCB-National, but the resulting bank will have Columbus, Ohio, as its main office. The OCC previously has determined that, in such circumstances, the relevant banks subject to the age requirement are the banks *being acquired* (i.e., here, Bank One Columbus and Bank One Chicago), not the acquiring bank located in what will become a host state for the resulting bank (here, JPMCB-National).²⁵ However, we need not consider this further in the present application, because each bank meets its state's age limit²⁶ and, in any event, all three banks have been in existence for more than five years. The Riegle-Neal Act's requirement of compliance with state age requirements is met.²⁷

Second, the proposed Merger 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).²⁸ The resulting bank in the Merger will have its main office in Ohio; and so New York, as well as other states listed below, will

²⁵ See *Decision on the Application to Merge First National Bank and Trust Company and TeamBank, N.A.* (OCC Corporate Decision No. 2000-09, June 20, 2000). This decision was subject to court review, see *TeamBank, N.A. v. McClure*, 279 F.3d 614 (8th Cir. 2002).

²⁶ New York Banking Law § 223-a (five year age requirement if banks are related); Ohio Rev. Code § 1115.05 (no age requirement); Ill. Rev. Stat. ch. 205, § 5/21.2(a) (five year age requirement).

²⁷ While the banks have branches in other states, the home states of the banks – New York, Ohio, and Illinois -- 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). See, e.g., *Decision on the Application to Merge United States National Bank of Oregon, Portland, Oregon with First Bank, N.A., East Grand Forks, Minnesota* (OCC Corporate Decision No. 1997-74, July 31, 1997). 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.

²⁸ 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).

become host states of the resulting bank for filing requirement purposes as a result of the Merger.²⁹

The states that will become host states as a result of this Merger are Arizona, Colorado, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, New York, Oklahoma, Utah, West Virginia, and Wisconsin.³⁰ The applicant banks sent a copy of the application to the state bank supervisors of all the states involved, including Ohio, New York, Connecticut, New Jersey, and Texas, as well as the other states. The applicants represent that JPMCB-National has complied, or will comply, with the state filing requirements applicable under the Riegle-Neal Act for the states that will become host states of JPMCB-National as a result of the Merger.³¹ Thus, this application satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed Merger 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). The three banks are affiliates; and so section 1831u(b)(2) is not applicable to this Merger.

Fourth, the proposed Merger also does not raise issues with respect to the special community reinvestment compliance provision of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC

²⁹ Thus, in the fact setting of this Merger, the "host state" for age limit purposes under section 1831u(a)(5) is different than the "host state" for filing requirement purposes under section 1831u(b)(1). The age requirement of section 1831u(a)(5) applies within the merger itself, and so we concluded it should apply to the banks being acquired in the merger. But the filing requirements of section 1831u(b)(1) are related to the bank that results from the merger, and the host states for filing purposes are clearly determined with respect to that bank. The filing requirement provision is directed toward permitting a state to impose a filing requirement on an out-of-state bank doing business in the state. After this Merger is concluded, JPMCB-National will have its main office in Ohio and will be an out-of-state bank with branches in the other states.

³⁰ Ohio is the home state of the resulting bank, and so it will not become a host state. Connecticut, New Jersey, and Texas are currently host states for JPMCB and will continue to be host states for JPMCB-National after the Conversion and the Merger, and so they do not become host states as a result of the Merger, and so the filing requirements of section 1831u(b)(1) do not apply with respect to them. *See Decision on the Application 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). In any event, the applicants sent a copy of the applications to these states, as well as the others.

³¹ In many of the states, submission of a copy of the federal application, along with a cover letter notifying the state of the application satisfied the state filing requirement, and no further action is required. JPMCB represents it has confirmed with these states that nothing further is required. In a few of the states, the state requires the out-of-state bank to comply with foreign corporation registration requirements comparable to those imposed on nonbanking corporations. The applicants represent that JPMCB-National will comply with those requirements.

must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.³² The three banks 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.

Finally, 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, the three 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, JPMCB-National will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

2. Retention of Offices in the Merger

The applicants also requested that, upon the completion of the Merger, JPMCB-National (as the resulting bank in the Merger) be permitted (1) to retain and operate, as its main office, the current main office of Bank One Columbus in Columbus, Ohio, under 12 U.S.C. § 1831u(d)(1), and (2) to retain and operate, as branches, JPMCB-National's current main office and branches, Bank One Columbus's branches and Bank One Chicago's main office and branches, 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.

³² 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). JPMCB-National has bank affiliates or branches in all of the states involved.

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).³³

Thus, in the present application, JPMCB-National (as the resulting bank after the Merger) may retain and operate as its main office "any office that [Bank One Columbus, Bank One Chicago, or JPMCB-National] was operating as a main office or branch immediately before the merger transaction." The office in Columbus is currently operating as the main office of Bank One Columbus, and so the resulting bank, JPMCB-National, may retain and operate it as its main office, provided the Merger is approved under section 1831u.³⁴

Similarly, JPMCB-National (as the resulting bank after the Merger) may retain and operate as branches "any office that [Bank One Columbus, Bank One Chicago, or JPMCB-National] was operating as a main office or branch immediately before the merger transaction." JPMCB-National's current main office and branches, Bank One Columbus' branches, and Bank One Chicago's main office and branches are all operating as main offices or branches, and so the resulting bank, JPMCB-National, may retain and operate them as branches, provided the Merger is approved under section 1831u.

³³ 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 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)). By its action in adding section 36(d), Congress made it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 U.S.C. § 36(b)(2) that apply to mergers under 12 U.S.C. § 215a. 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, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u.

³⁴ The OCC previously has approved other applications under the Riegle-Neal Act in which the resulting bank retained, as its main office, an office other than the main office of the acquiring bank. *See, e.g., Decision on the Application to Merge First National Bank and Trust Company and TeamBank, N.A.* (OCC Corporate Decision No. 2000-09, June 20, 2000); *Decision on the Application to Merge Bank of America N.T. & S.A. with NationsBank, N.A.* (OCC CRA Decision No. 94 (May 20, 1999)); *Decision on the Application to Merge PNC Bank, N.A. with Midlantic Bank, N.A.* (OCC Corporate Decision No. 96-47, August 20, 1996). One of these transactions was subject to court review, *see TeamBank, N.A. v. McClure*, 279 F.3d 614 (8th Cir. 2002).

3. The Resulting Bank's Activities, Subsidiaries, and Community Development Investments

JPMCB-National, as the resulting bank, will succeed to the fiduciary appointments of JPMCB-National, Bank One Columbus, and Bank One Chicago 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).³⁵

Similarly, all of the existing subsidiaries and other investments of Bank One Columbus and Bank One Chicago will become subsidiaries and investments of JPMCB-National as a result of the Merger. These subsidiaries and investments are already subsidiaries and investments of national banks, and so are permissible for JPMCB-National.

As part of this application, the applicants provided information about the community development investments of Bank One Chicago. The aggregate amount of those investments and outstanding commitments totals \$509,211,000. The applicants indicate that all of the Bank One Chicago investments involve affordable housing that primarily benefits low- and moderate-income persons using federal low-income housing tax credits. Those investments either are made directly into projects or indirectly through national and regional community development funds.

³⁵ 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, JPMCB-National automatically succeeds to all such rights, franchises, and interests, including fiduciary appointments, of the merging banks by operation of federal law, any state law to the contrary notwithstanding.

Based on the information provided by the applicants, the community development investments of both JPMCB and Bank One Chicago primarily promote the public welfare consistent with requirements of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. § 24.3. After the Merger, the aggregate amount of JPMCB-National's investments and unfunded commitments will be approximately \$1,446,974,000, which is less than two percent of its capital and surplus. The applicants indicate that the investments have been structured so that they do not expose JPMCB-National to unlimited liability. The investments, therefore, are consistent with 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24.

In conclusion, the Merger is authorized, JPMCB-National may retain the proposed main office and branches, and JPMCB-National may retain the subsidiaries and investments of the merging 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 the three banks involved in this transaction are already owned by the same holding company, the Merger will have no anticompetitive effects.

2. Financial and Managerial Resources

We find that the financial and managerial resources of the three banks in the Merger, and of JPMCB-National as the resulting bank, do not raise concerns that would cause the application to be disapproved. The proposed Merger is a corporate reorganization to achieve efficiencies and economies of scale. Further, the participant banks are well-capitalized and well-managed. The future prospects of the proponents, individually and combined, are thus considered favorable and consistent with an approval.

The Bank Merger Act also requires the OCC to "take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches." 12 U.S.C.

§ 1828(c)(11). We have considered this factor, and determined that no material weaknesses to preclude approval are present.

3. Convenience and Needs

The Merger will have no adverse impact on the convenience and needs of the communities to be served. The Merger is an internal reorganization. No reductions in products or services available to the public are contemplated. JPMCB-National will continue to serve the same areas that the three merging banks serve today. The only state in which retail branches of the merging banks will overlap is Texas, primarily in the Houston and Dallas markets. Although eventually some branches in immediate proximity to each other in these markets may be closed, no branches have yet been identified for closing. As business plans for the configuration of the Texas branches are developed, if any branches are identified for closure, such closures will be made in accordance with applicable statutes and regulations. Accordingly, we believe the impact of the Merger on community convenience and needs is consistent with approval.

B. The Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low- and moderate income (“LMI”) neighborhoods, when evaluating certain applications, including conversions and 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.

A review of the record of these applications and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. JPMCB currently has an Outstanding rating for CRA performance, and both Bank One Chicago and Bank One Columbus have satisfactory ratings.

The Conversion and the Merger are not expected to have an adverse effect on the resulting bank’s CRA performance. JPMCB-National will continue to serve the same communities that the merging banks currently serve. JPMCB-National will carry forward the CRA program and policies of JPMCB, and add to them features from Bank One Chicago and Bank One Columbus. The combined bank’s community development group will include substantial staff and resources from the merging banks. The assessment areas of Bank One Chicago and Bank One Columbus will become part of JPMCB-National’s assessment area. As a general matter, the resulting bank will have the same obligation to helping meet the credit

needs of all the communities it serves as the merging banks have today as separate banks. Moreover, JPMCB also has represented that JPMCB-National will honor all the CRA-related commitments of the target banks. We find that approval of the Conversion and the Merger is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, the OCC finds that JPMCB may convert into a national banking association under 12 U.S.C. § 35, may be granted fiduciary powers under 12 U.S.C. § 92a, may retain its branches under 12 U.S.C. § 36(b)(1), and may retain its subsidiaries and investments. The OCC also finds that Bank One Columbus and Bank One Chicago may merge with and into JPMCB-National under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u, and that JPMCB-National may retain the offices of the three banks under 12 U.S.C. § 36(d) and 1831u(d)(1). The OCC also determined the grant of directors' residency waivers for the converted bank and for the bank resulting from the merger are appropriate. Accordingly, the applications are hereby approved and the request for directors' residency waivers granted.

This approval is subject to the following condition:

After consummation of the Conversion and the Merger, JPMCB-National shall continue to implement appropriate measures to facilitate J.P. Morgan Chase & Co.'s compliance with the Written Agreement among J.P. Morgan Chase & Co., the Federal Reserve Bank of New York, and the New York State Banking Department, dated July 28, 2003, with respect to activities at JPMCB-National and its subsidiaries.

This condition of approval is a "condition imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any 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.

Julie L. Williams

10-13-04

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

Date

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