



Comptroller of the Currency
Administrator of National Banks

Central District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, Illinois 60605

**Corporate Decision #2004-9
June 2004**

May 18, 2004

Robert L. Freedman, P.C.
Silver, Freedman & Taff
1700 Wisconsin Ave., N.W.
Washington, D.C. 20007

Subject: Application to convert First Security Federal Savings Bank into FSFSB, N.A.;
Application to merge FSFSB, N.A. with and into MB Financial Bank, N.A. under
the title and charter of the latter. Charter Number 13684. Application Control
Number: 2004-CE-02-003

Dear Mr. Freedman:

This is to inform you that as of the date of this letter the Office of the Comptroller of the Currency (“OCC”) approved the application to convert First Security Federal Savings Bank, Chicago, Illinois (“FSB”), into FSFSB, N.A., and retain its branches after the conversion, and the application to merge FSFSB, N.A., with and into MB Financial Bank, N.A., Chicago, Illinois (“MBFB”), under the charter and title of the latter, pursuant to the OCC’s authority under 12 U.S.C. § 215a. The main office of MBFB will continue to be the main office of the merged institution. The OCC also approved MBFB’s request for the resulting bank to retain FSFSB, N.A.’s main office and branches, as well as MBFB’s branches, as branches after the merger under 12 U.S.C. § 36(b)(2).

MBFB is a wholly owned subsidiary of MB Financial, Inc. (“MB”), a Maryland corporation and a financial holding company, headquartered in Chicago, Illinois.¹ FSB is a wholly owned subsidiary of First SecurityFed Financial, Inc. (“FSFI”), a Delaware corporation and a savings and loan holding company, also headquartered in Chicago, Illinois. FSB has branch offices in Illinois and Pennsylvania. MBFB has branch offices in Illinois. MB will acquire FSFI in a merger, with MB the surviving corporation. After the expiration of a period of several months following the holding company merger, FSB will first convert to a national bank, FSFSB, N.A., and then on the same day merge into MBFB, with MBFB the resulting bank (“Resulting Bank”).

¹ In addition to MBFB, MB holds one other bank subsidiary, Union Bank, National Association, Oklahoma City, Oklahoma. Union Bank is not involved in the holding company or bank mergers.

This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and merger agreement and those of your representatives.

FSB, a federal savings bank, will convert into a national bank, with the title of FSFSB, N.A., and retain its branches after the conversion. FSB operates branches in Illinois, as well as a Pennsylvania branch, in addition to its main office in Chicago. FSB is a member of the Savings Association Insurance Fund.

FSB may convert into a national bank under the authority of both OCC and the Office of Thrift Supervision regulations.² OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws. The regulation also provides for denial of the application if certain circumstances are present. Our review shows that all requirements for approval have been met, and there is no basis upon which a denial must be issued.

FSFSB, N.A., also may retain the Illinois branches, as well as the interstate branch in Pennsylvania, under the authority of the Gramm-Leach-Bliley Act. 12 U.S.C. § 1465(i)(5).³ This provision permits a national bank resulting from the conversion of a federal savings association to retain its branches without regard to the geographic branching limits generally governing national bank branching,⁴ provided the federal savings association is covered by the provision and the national bank resulting from the conversion meets the listed requirements.⁵ FSB is covered by section 1465(i)(5) since it was chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, and it had branches in operation in one or more states before such date. The OCC has determined that FSFSB, N.A., the national bank resulting from this conversion, will meet all applicable financial, management, and capital requirements, and that it will meet the capital requirements for branches contained in 12 U.S.C. § 36(c). Thus,

² 12 C.F.R. § 5.24; 12 C.F.R. § 552.2-7.

³ Section 1465 provides that “Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State Bank supervisor, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.”

⁴ See 12 U.S.C. § 36.

⁵ See Decision of the Office of the Comptroller of the Currency on Applications Involving Family Bank, FSB, Haverhill, Massachusetts; First Massachusetts Bank, N.A., Worcester, Massachusetts; Bank of New Hampshire, Manchester, New Hampshire; Farmington National Bank, Farmington, New Hampshire; Granite Savings Bank and Trust Company, Barre, Vermont; The Howard Bank, N.A., Burlington, Vermont; Franklin Lamoille Bank, St. Albans, Vermont; and First Vermont Bank and Trust Company, Brattleboro, Vermont (OCC Corporate Decision No. 2000-03 (March 8, 2000)) (“Family Bank Decision”).

FSB may convert into FSFSB, N.A., which may then retain all branches of FSB, including the branch in Pennsylvania.⁶

The merger of FSFSB, N.A., into MBFB also is permissible under federal law. In this case, both banks have the same home state although FSFSB, N.A., is an interstate bank because of its Pennsylvania branch. Thus, while this merger includes an interstate bank, and an interstate resulting bank, it does not come under the interstate merger provisions of 12 U.S.C. 1831u because it is not a merger between banks with different home states.⁷ Rather, a merger between an already existing national bank and another national bank in one of the states in which the interstate bank has offices is authorized under 12 U.S.C § 215a.⁸ Because FSFSB, N.A., and MBFB are located in Illinois, the merger is authorized under section 215a.⁹

The Resulting Bank may retain and operate the main office and branches of FSFSB, N.A., as well as the branches of MBFB held prior to the merger, pursuant to 12 U.S.C. § 36(b)(2). Section 36(b)(2) applies different standards for a resulting bank's retention of the main office and branches of the bank being acquired in the merger (the target bank) and for its retention of the branches of the bank under whose charter the merger is effected (the acquiring bank).¹⁰ Under that section, a resulting bank may retain the branches or the main office of the target bank in a merger transaction if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank is situated in any state in which it has a branch or main office. The OCC previously has concluded that, for section 36(b) purposes, the resulting bank is situated in all the states in which the participating banks were situated in order to then apply the section 36(b)(2)(A) and 36(c) standard for the retention of the target bank's branch, using applicable state law for the retention of branches for the branches in that state. In essence, when an interstate national bank merges with another national bank in the same home state, the resulting bank is authorized to continue to operate its predecessor banks' branches, including interstate branches, provided the retention was permitted under section 36(c) and no other federal law requires otherwise.¹¹

The Resulting Bank here is situated in both Illinois and Pennsylvania and may retain as branches, FSFSB, N.A.'s main office and branches in the same way that other national banks situated in each state could retain branches in that state in a merger there under section 36(b)(2)(A) and

⁶ To the extent permitted by law, the Pennsylvania branch of FSB will be operated under the trade name "First Security Bank – a branch of MB Financial Bank, N.A." for a transition period of not less than one year after the merger is effective.

⁷ Section 1831u was added by section 102(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act).

⁸ The Family Bank Decision, *supra* note 5, contains citations to other OCC decisions involving interstate banks that are not subject to section 1831u.

⁹ FSB's subsidiary, Western Security Service Corporation (WSSC), engages solely in sales of credit, life, mortgage and disability insurance (but not underwriting insurance). A financial subsidiary notice will be filed with the OCC in order for WSSC to become a financial subsidiary of FSFSB, N.A., and then of MBFB.

¹⁰ See the Family Bank Decision for a detailed discussion of section 36(b)(2).

¹¹ See Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Harford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991). While decided prior to the Riegle-Neal Act, this decision has been applied in many subsequent decisions involving interstate banks after the Riegle-Neal Act. See Family Bank Decision, note 14.

36(c). Both Illinois and Pennsylvania permit their state-chartered banks to acquire branches in a merger, or to establish branches *de novo*, without geographic limit within the state.¹² Thus, a national bank situated in Illinois could acquire in a merger, and retain as branches under sections 36(b)(2)(A) and 36(c), the locations of FSFSB, N.A.'s main office and branches in Illinois; and a national bank situated in Pennsylvania could acquire in a merger, and retain as branches under section 36(b)(2)(A) and 36(c), the locations of FSFSB, N.A.'s branch in Pennsylvania. Therefore, the Resulting Bank may retain FSFSB, N.A.'s main office and its branches as branches under section 36(b)(2)(A) and 36(c).

Similarly, the Resulting Bank may retain and operate as a branch, any branch MBFB, the acquiring bank, had before the merger unless state law would prohibit a state bank from retaining such branches, under section 36(b)(2)(C). Here, MBFB's branches are all in Illinois. There is no provision in Illinois law prohibiting an Illinois state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Therefore, the Resulting Bank may retain the branches of MBFB under section 36(b)(2)(C). Accordingly, the Resulting Bank may retain and operate as branches the main office and branches of FSFSB, N.A., and the branches of MBFB.

This merger also must be reviewed under the Oakar amendment to the Federal Deposit Insurance Act because the institutions involved are members of different deposit insurance funds.¹³ MBFB, a BIF member, may acquire FSFSB, N.A., which will continue to be a SAIF member depository institution after the conversion, if permissible under the Oakar amendment. An Oakar transaction must result in an institution that meets all applicable capital requirements upon consummation. All capital requirements have been met in this transaction, and no other Oakar requirements are applicable.¹⁴

The OCC also reviewed the proposed merger under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), the Community Reinvestment Act (12 U.S.C. § 2901, *et seq.*), and applicable OCC regulations and policies. Among other matters, the OCC found that the proposed transaction would not have any anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider "the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including overseas branches." 12 U.S.C. § 1828(c)(11).

¹² See 205 ILCS § 5/15(15); Pa. Stat. Ann. Tit. 7, §§ 103, 904.

¹³ 12 U.S.C. § 1815(d)(3). Transactions subject to this provision are known as Oakar transactions.

¹⁴ An Oakar transaction also must be reviewed by considering the home state of the bank holding company making the acquisition and that of the target SAIF member in order to determine whether the transaction is consistent with the interstate restrictions of Oakar. Here, MB Financial, Inc. is located in Chicago, Illinois. FSFSB, N.A. also is located in Chicago, Illinois. Thus, this transaction does not raise the interstate requirements of Oakar. After the merger, the Resulting Bank's deposits will be proportionately insured by each respective insurance fund. See, e.g. Decision of the Comptroller of the Currency to Approve Applications by First Bank National Association, Minneapolis, Minnesota to Acquire First Bank, F.S.B., Fargo, North Dakota and to Engage in Certain Related Transactions (Corporate Decision No. 97-32 (May 31, 1997)). The existence of FSFSB's interstate branch in Pennsylvania does not change the result that the home state here is Illinois. See, e.g. Federal Reserve System Order regarding Bank of America Corporation, Charlotte, North Carolina, FleetBoston Financial Corporation, Boston, Massachusetts (March 8, 2004).

The OCC considered this factor and believes the approval of this transaction is consistent with that statutory provision.

With respect to the Community Reinvestment Act (“CRA”), the OCC takes into account the applicant’s record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications, including transactions subject to the Bank Merger Act.¹⁵ The OCC’s review revealed no evidence that the applicants’ records of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, are less than satisfactory.

For the reasons set forth above, the OCC found that the transaction met the relevant statutory criteria for approval. Inasmuch as the transaction also did not raise supervisory or policy concerns, the application was approved.

This letter also constitutes official OCC authorization to operate the main office and branches of First Security Federal Savings Bank as branches of FSFSB, N.A. Please retain this letter as the official branch authorization.

As a reminder, the Western District Office must be advised in writing 10 days in advance of the desired effective date for the merger so that the OCC may issue the necessary certification. You should also certify that all the steps required to convert FSB into a national banking association have been met.

The OCC will issue a letter certifying consummation of the merger transaction when we receive:

1. A Secretary’s Certificate for each institution, certifying that a majority of the board of directors approved the merger.
2. An executed merger agreement with Articles of Association for the resulting bank attached.
3. A Secretary’s Certificate from each institution, certifying that the shareholder approvals have been obtained.
4. Evidence that all required regulatory approvals have been received.

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 of America, any agency or entity of the U.S., or any officer or employee of the U.S., 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 U.S.

¹⁵ See 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

All correspondence and documents concerning this transaction should be directed to Senior Licensing Analyst Geryl Race in our Western District Office at 720-475-7656. I have enclosed a separate letter requesting your feedback on how the OCC handled your application. We would appreciate your response so we may improve our service.

Sincerely,

-signed-

David Rogers
Licensing Manager
Central District Office