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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C.

**Conditional Approval #687**  
**May 2005**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATIONS TO COMBINE  
RIGGS BANK NATIONAL ASSOCIATION, MCLEAN, VIRGINIA, WITH  
PNC BANK, NATIONAL ASSOCIATION, PITTSBURGH, PENNSYLVANIA**

**April 25, 2005**

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**I. INTRODUCTION**

Applications were filed with the Office of the Comptroller of the Currency (“OCC”) for approval of several transactions under which PNC Bank, National Association, Pittsburgh, Pennsylvania, (“PNC Bank”) will acquire substantially all of the assets and liabilities of Riggs Bank National Association, McLean, Virginia, (“Riggs Bank”) including the main office and branches of Riggs Bank, and thereafter operate the main office and branches of Riggs Bank in the District of Columbia, Virginia, and Maryland, as branches of PNC Bank. Both banks are insured by the Federal Deposit Insurance Corporation (“FDIC”).

PNC Bank is a wholly-owned subsidiary of PNC Bancorp, Inc., which is in turn wholly-owned by The PNC Financial Services Group, Inc. (“PNC Group”). Riggs Bank is wholly-owned by Riggs National Corporation (“Riggs Corp”). PNC Group applied to the Board of Governors of the Federal Reserve System for approval to acquire Riggs Corp. In the holding company level transaction, Riggs Corp will be merged into PNC Group, with PNC Group as the surviving entity. Immediately after the holding company merger, PNC Group will contribute the stock of Riggs Bank down to PNC Bancorp, Inc., so that at the time of the bank-level transactions, the two banks will be owned by the same immediate holding company.

The combination of the two banks will be effected in a series of transactions for business reasons. The bank-level transactions will occur after the holding company merger. The bank-level transactions include the following:

First, PNC Bank applied to the OCC for approval of a purchase and assumption transaction (“the P&A Transaction”) where the bank will purchase substantially all the assets and assume substantially all the liabilities, including all of the deposit liabilities, of Riggs Bank under 12 U.S.C. §§ 24(Seventh) and 1828(c).<sup>1</sup> In the P&A Transaction, PNC Bank also requests OCC approval to acquire and operate the main office and branches of Riggs Bank in the District of Columbia, Virginia, and Maryland as branches of PNC Bank under 12 U.S.C. §§ 1831u and 36(d). PNC Bank currently does not operate branches in these jurisdictions. In the P&A Transaction, PNC Bank also will acquire Riggs National Trust Company (“Riggs NTC”), a national bank limited to trust powers that is an operating subsidiary of Riggs Bank. PNC Bank requests OCC approval to acquire Riggs NTC as an operating subsidiary under 12 C.F.R. § 5.34.

Second, in connection with the P&A Transaction, Riggs Bank applied to the OCC for approval of the sale of substantially all of its assets under 12 C.F.R. § 5.53.

Third, in the P&A Transaction, Riggs Bank will receive consideration from PNC Bank for the difference between assets purchased and liabilities assumed. Riggs Bank proposes to distribute such consideration to PNC Bancorp, Inc., and so applied to the OCC for approval for a capital reduction under 12 U.S.C. § 59 and 12 C.F.R. § 5.46.

Fourth, PNC Bank applied to the OCC for approval to merge Riggs NTC into PNC Bank under 12 U.S.C. § 215a after the P&A Transaction.<sup>2</sup>

Fifth, after the P&A Transaction, the insured status of Riggs Bank will be terminated under 12 U.S.C. § 1818(q).<sup>3</sup> Riggs Bank applied to the OCC for approval, once it is no longer insured, to merge into a nonbank affiliate, PNC DC Assets, LLC, (a wholly-owned subsidiary of PNC Bancorp, Inc.) under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

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<sup>1</sup> It is anticipated that there will be very few assets, if any, remaining at Riggs Bank after the P&A Transaction, possibly only certain leases for some Riggs Bank branches and those assets for which timely consents to transfer to PNC Bank are not received by the date of consummation of the P&A Transaction. It is expected that the amount of assets and liabilities remaining at Riggs Bank will be *de minimis*.

<sup>2</sup> The merger of Riggs NTC into PNC Bank also requires the approval of the FDIC under 12 U.S.C. § 1828(c)(1), since it involves the merger of a noninsured institution into an insured bank. PNC Bank has filed an application with the FDIC.

<sup>3</sup> Under section 1818(q), whenever the liabilities of an insured depository institution are assumed by another insured depository institution, the insured status of the institution whose liabilities are assumed “shall terminate on the receipt by the Corporation of satisfactory evidence of such assumption . . . .” 12 U.S.C. § 1818(q). The FDIC requires the assuming institution to certify to the FDIC that it has assumed the deposit liabilities and considers such certification satisfactory evidence. 12 C.F.R. § 307.1. The FDIC then issues an order formalizing the termination of insured status. PNC Bank is working with the FDIC to expedite processing of the insurance termination and hopes to have the FDIC order issued shortly after the consummation of the P&A Transaction.

## **II. LEGAL AUTHORITY FOR THE TRANSACTIONS**

### **A. The P&A Transaction by PNC Bank**

#### **1. Authority for the Purchase and Assumption**

PNC Bank applied to the OCC for approval to acquire substantially all of the assets and to assume substantially all of the liabilities, including all of the deposit liabilities, of Riggs Bank. PNC Bank may purchase and assume these assets and liabilities. National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposit liabilities from other institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh).<sup>4</sup> Such purchase and assumption transactions are commonplace in the banking industry. No nonconforming or impermissible assets or activities will be acquired by PNC Bank.

Accordingly, PNC Bank may purchase the assets, and assume the liabilities, of Riggs Bank.<sup>5</sup> If PNC Bank did not also plan thereafter to operate the branches of Riggs Bank as branches of PNC Bank, no further authority would be needed. Additional authority is required to acquire and operate the branches.

#### **2. The Interstate Branch Acquisition**

PNC Bank's acquisition and operation of the branches of Riggs Bank in the District of Columbia, Virginia, and Maryland is authorized under 12 U.S.C. §§ 1831u and 36(d). The Riegle-Neal Act added section 44 to the Federal Deposit Insurance Act, authorizing certain interstate merger transactions:

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<sup>4</sup> See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d, 870, 872-73 (8<sup>th</sup> Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

<sup>5</sup> Among the assets that PNC Bank will acquire in the P&A Transaction are Riggs Bank's shares in Riggs NTC. As a result, Riggs NTC will become a subsidiary of PNC Bank. PNC Bank applied to the OCC for approval to acquire Riggs NTC as an operating subsidiary. National banks are permitted to own limited purpose trust companies as operating subsidiaries, provided the trust company engages only in activities permissible for national banks. See, e.g., *Application of First Union National Bank to Acquire Certain Subsidiaries of Wheat First Butcher Singer, Inc.* (OCC Conditional Approval No. 270) (pages 5-6); *Decision on the Application to Merge Delaware Trust Company into CoreStates Bank, N.A.* (OCC Corporate Decision No. 96-44) (page 10, note 10). OCC regulations also require a filing for a change in control of a limited purpose national trust bank. 12 C.F.R. § 5.50(b). However, the regulation exempts a transaction that is subject to review under the Bank Merger Act. 12 C.F.R. § 5.50(c)(2)(iii). The P&A Transaction here is subject to OCC approval under the Bank Merger Act, and so a change in control filing is not required.

(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).<sup>6</sup>

Under the Riegle-Neal Act, the term “interstate merger transaction” may include interstate purchase and assumption transactions.<sup>7</sup> A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and assumption of only a part of a bank located in a different home state, including the acquisition of branches, if the law of the state in which the branch is located permits it:

An interstate merger transaction may involve the acquisition of a branch of an insured bank *without the acquisition of the bank* only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

12 U.S.C. § 1831u(a)(4)(A) (emphasis added).

In this application, PNC Bank is acquiring substantially all of the assets and liabilities of Riggs Bank, including its main office and all of its branches. After the transaction, what remains of Riggs Bank will no longer operate as a bank, will not be a competitor of PNC Bank in these states, and will be merged into a nonbank affiliate. We believe this constitutes the “acquisition of the bank” for purposes of section 1831u(a), and so the P&A Transaction comes under section 1831u(a)(1), rather than section 1831u(a)(4).<sup>8</sup>

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<sup>6</sup> 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”).

<sup>7</sup> An “interstate merger transaction” is defined as a “merger transaction” approved under section 1831u(a), a “merger transaction” is defined by reference to 12 U.S.C. § 1828(c), and section 1828(c) includes purchase and assumption transactions in which deposit liabilities are assumed. *See* 12 U.S.C. §§ 1831u(f)(6)-(7) and 1828(c)(3).

<sup>8</sup> Moreover, the District of Columbia, Virginia, and Maryland all permit interstate branch acquisitions. *See* D.C. Code Ann. § 26-734(a); Va. Code Ann. § 6.1-44.5; Md. Code Ann. [Fin. Inst.] § 5-1003(2). None of the jurisdictions imposes an age requirement on interstate merger transactions. Thus, even if the P&A Transaction were reviewed under section 1831u(a)(4), it would be authorized. The three jurisdictions also permit *de novo* interstate branches. *See* D.C. Code Ann. § 26-734(a); Va. Code Ann. § 6.1-44.4; Md. Code Ann. [Fin. Inst.] § 5-1003(1). And so PNC Bank could have opened *de novo* branches in the three jurisdictions. Pennsylvania also permits interstate branch acquisitions and interstate *de novo* branches. *See* 7 Pa. Stat. § 904(a)(iii).

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). The P&A Transaction satisfies all these conditions to the extent applicable.

First, the application satisfies the state-imposed age requirements permitted by section 1831u(a)(5). The Riegle-Neal Act permits the host state to require that the bank to be acquired has been in existence for a minimum period of time, but the maximum age requirement a state is permitted to impose is five years. Riggs Bank has been in existence for more than five years, and so the age requirement is met.

Second, the proposed interstate transaction meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) comply with applicable state filing requirements of states that will become host states, provided they do not discriminate against out-of-state banks and are similar in effect to filing requirements imposed on out-of-state nonbanking corporations and (2) submit a copy of the application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1). Virginia and Maryland require an out-of-state bank that will obtain branches in the state to submit a copy of its federal application to the state bank supervisor and to apply for a certificate of authority to transact business under the state's foreign corporations law. *See* Va. Code Ann. §§ 6.1-44.19 & 6.1-44.6; Md. Code Ann. [Fin. Inst.] § 5-1014(a). The District of Columbia requires that a copy of the federal application be submitted to the District's bank supervisor. D.C. Code Ann. § 26-734(a)(1). PNC Bank submitted copies of the application to the three banking supervisors and represents that it will comply with the foreign corporation filing requirements of Virginia and Maryland. This application satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed interstate transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. 12 U.S.C. § 1831u(b)(2)(E). At the time of the P&A Transaction, the two banks will be affiliates; and so section 1831u(b)(2) is not applicable to this transaction.

Fourth, the proposed interstate transaction is not subject to the special community reinvestment compliance provision of the Riegle-Neal Act. The Riegle-Neal Act imposes additional community reinvestment compliance reviews on certain interstate transactions. *See* 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to interstate merger transactions between affiliated banks. At the time of the P&A Transaction, the two banks will be affiliates, and so this Riegle-Neal Act provision is not applicable. However, the Community Reinvestment Act itself is applicable, as discussed below in Part III-B.

Finally, the proposed interstate transaction 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). These requirements are met in this transaction.

The Riegle-Neal Act also specifically provides that a national bank may maintain and operate branches in a state other than its home state as a result of an interstate merger transaction under section 1831u(a). Section 1831u(d)(1) provides:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1).<sup>9</sup>

Accordingly, this application may be approved under 12 U.S.C. §§ 36(d) and 1831u, and PNC Bank may acquire and operate, as branches of PNC Bank, the main office and branches of Riggs Bank in the District of Columbia, Virginia, and Maryland.<sup>10</sup>

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<sup>9</sup> 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)). Section 36(d), rather than other subsections of section 36, is the authority for the branches in this application because the acquisition of interstate branches in a purchase and assumption transaction under section 1831u(a) is an "interstate merger transaction" under 12 U.S.C. § 1831u.

<sup>10</sup> Riggs Bank currently has several approved but unopened branches. PNC Bank has applied to maintain these branches as well. If the branches are opened before the P&A Transaction, they will be included among the branches acquired in the interstate merger transaction under section 1831u(d). If they are not opened by that date, PNC Bank would be authorized to establish them under 12 U.S.C. § 36(c), since they will be additional branches in states in which PNC Bank then already operates branches, and the OCC hereby grants approval for them as such.

**B. The 12 C.F.R. § 5.53 Application by Riggs Bank**

In connection with the P&A Transaction, Riggs Bank applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53.<sup>11</sup> Under section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the P&A Transaction, Riggs Bank will sell substantially all of its assets and liabilities, including all of its deposits, to PNC Bank. Thus, for Riggs Bank, the transaction is clearly within the scope of section 5.53(c)(1)(i). The principal purpose of adopting 12 C.F.R. § 5.53 was to provide the OCC with a means to monitor and address supervisory concerns raised by so called “dormant” bank charters.

In the case of Riggs Bank, Riggs Bank plans to merge into a nonbank affiliate shortly after the P&A Transaction that would make Riggs Bank a “dormant” charter. Thus, OCC concerns over the continuation of “dormant” charters are addressed. OCC approval of Riggs Bank’s application is consistent with the language and purpose of section 5.53, provided the merger into the nonbank affiliate occurs as proposed. Our approval of the section 5.53 application is based on and relies upon representations made by Riggs Bank in this regard.

**C. Capital Reduction by Riggs Bank**

In the P&A Transaction, PNC Bank will issue shares to Riggs Bank as consideration for the difference in the value of the assets purchased by PNC Bank over the liabilities assumed. Immediately upon receipt, Riggs Bank will upstream the PNC Bank shares to its immediate parent, PNC Bancorp, Inc.<sup>12</sup> This distribution of bank assets to its shareholder constitutes a reduction in capital under 12 U.S.C. § 59 and 12 C.F.R. § 5.46(h), and Riggs Bank has sought OCC approval. The reduction in capital will occur in connection with the transfer of substantially all of Riggs Bank’s banking business to PNC Bank in the P&A Transaction and the termination of Riggs Bank’s insured status and in preparation for Riggs Bank’s merger into a nonbank affiliate. In view of the circumstances of the capital reduction, approval is consistent with legal and safety and soundness requirements.

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<sup>11</sup> Section 5.53 became effective on October 1, 2004. *See* 69 Fed. Reg. 50293 (August 16, 2004).

<sup>12</sup> The OCC has long recognized the authority of national banks to hold bank shares or bank holding company shares for a moment in time to facilitate a corporate reorganization. *See, e.g., Decision on the Applications by TCF Financial Corp.* (OCC Corporate Decision No. 97-13, February 24, 1997) (page 22); OCC Letter from Charles F. Byrd, Assistant Director (October 1, 1987) (unpublished); OCC Letter from Peter Liebesman, Assistant Director (July 24, 1981) (unpublished).

#### **D. Merger of Riggs NTC into PNC Bank**

PNC Bank also applied to the OCC for approval, under 12 U.S.C. § 215a, to merge Riggs NTC into PNC Bank after the P&A Transaction. Under section 215a, a national bank may merge into another national bank “located within the same State.” 12 U.S.C. § 215a(a). Riggs NTC has its main office in McLean, Virginia. After the P&A Transaction, PNC Bank will have branches in Virginia, and so is “located” in Virginia for purposes of a merger under section 215a.<sup>13</sup> Both banks are located in Virginia for section 215a purposes. The other requirements of section 215a are also met. The Merger of Riggs NTC into PNC Bank is authorized.

#### **E. Merger of Riggs Bank into PNC DC Assets, LLC**

Riggs Bank also applied to the OCC for approval, under 12 U.S.C. § 215a-3, to merge into PNC DC Assets, LLC (“PNC-DC”), a nonbank affiliate, after the P&A Transaction and after Riggs Bank’s status as an insured bank has been terminated (the “Nonbank Affiliate Merger”). PNC-DC is a Delaware limited liability company. After the Nonbank Affiliate Merger, PNC-DC will be the surviving entity, and the bank will cease to exist. The Nonbank Affiliate Merger is authorized under 12 U.S.C. § 215a-3.

Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”<sup>14</sup> The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank affiliate is within its scope. The OCC’s implementing regulations expressly include mergers into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank.

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<sup>13</sup> For many years, the OCC has considered a national bank located in a state for purposes of mergers under section 215a or consolidations under section 215 if it has its main office or a branch there. *See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A. Charlotte, North Carolina* (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1, citing earlier OCC decisions). *See also Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas, May 6, 1998) (reviewing OCC Corporate Decision No. 98-19; agreeing with OCC position that out-of-state bank was located in Texas for section 215a merger purposes because it had branches there).

<sup>14</sup> 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000)). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See S. Rep. No. 106-11, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 8 (1999).*

The OCC's regulations implementing 12 U.S.C. § 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which the nonbank affiliate is the resulting entity. In particular, the regulation provides:

With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

12 C.F.R. § 5.33(g)(5)(i). The regulation imposes additional requirements that: (1) the bank comply with the procedures of 12 U.S.C. § 214a as if it were merging into a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, and (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 U.S.C. § 214a. *See* 12 C.F.R. § 5.33(g)(5)(ii)-(v).

The proposed Nonbank Affiliate Merger is covered by, and meets the requirements of, 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). First, Riggs Bank's status as an insured bank will be terminated after the P&A Transaction, so that at the time of the merger, Riggs Bank will not be an insured bank. PNC-DC is a nonbank affiliate since it is not a bank and is wholly-owned by PNC Bancorp, Inc., which also will own Riggs Bank at the time of the merger. *See* 12 C.F.R. § 5.33(d)(5) and 5.33(d)(8) (definitions of control and nonbank affiliate). Riggs Bank and PNC-DC are located in different states. However, there are no geographic limits on the authority to merge with a nonbank affiliate under section 215a-3.

Second, the law under which PNC-DC is organized allows it to merge with Riggs Bank. PNC-DC is a Delaware limited liability company. Section 215a-3 does not limit the mergers within its scope only to mergers with corporations. Delaware law authorizes Delaware limited liability companies to merge with other Delaware limited liability companies and with "other business entities," with either the Delaware LLC or the other entity as the surviving entity. Del. Code Ann. tit. 6, § 18-209(b). "Other business entities" include non-Delaware limited liability companies, as well as corporations, business trusts, business associations, and partnerships formed under the laws of Delaware or other states or of the United States or of foreign countries or other foreign jurisdictions. *Id.* § 18-209(a) & (b). Since "other business entities" includes entities formed under the laws of the United States, the statute authorizes a Delaware LLC to merge with a national bank

Third, Riggs Bank is complying with the procedures of 12 U.S.C. § 214a to the extent applicable. Section 214a requires approval of the plan of merger by a majority of the board,

notice to shareholders of the shareholders' meeting to vote on the merger by newspaper publication (unless waived by all shareholders) and by actual notice by mail (unless waived specifically by any shareholder), and approval by a vote of at least two-thirds of each class of stock. The application contains copies of the board of directors' resolution approving the merger and the shareholder resolution approving the merger and waiving the shareholder meeting.

Fourth, PNC-DC is complying with the procedures for mergers by Delaware limited liability companies. Delaware requires procedural steps similar to section 214a's outlined above. The application contains a copy of PNC Bancorp, Inc.'s resolution as sole member of PNC-DC to approve the merger. The applicants represent that Riggs Bank and PNC-DC will make the necessary filings with the State of Delaware to merge Riggs Bank into PNC-DC.

Fifth, because Riggs Bank will be wholly-owned by PNC Bancorp, Inc., at the time of the Nonbank Affiliate Merger, there will be no dissenting shareholders, and so no issues relating to dissenters' rights are present.

Sixth, under the OCC's regulations, in reviewing mergers under section 215a-3, the OCC considers the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect. At the time of the Nonbank Affiliate Merger, Riggs Bank will no longer be engaged in banking; its only activity will be holding the few assets that were not transferred to PNC Bank. PNC-DC will continue to hold the same assets. The merger is simply a means to terminate the national bank charter. This element in 12 C.F.R. § 5.33(g)(5) is satisfied.

### **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 purchase and assumption transactions between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a transaction 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 the P&A Transaction may be approved under section 1828(c).

#### **1. Competitive Analysis**

The P&A Transaction will occur after the holding company merger. The two banks will be affiliated at the time of the bank-level transaction. Thus, the bank-level transaction will not have anticompetitive effects.

## **2. Financial and Managerial Resources**

We have reviewed the financial and managerial resources and the future prospects of the institutions in the P&A Transaction, and of PNC Bank as the resulting bank, and find that they are consistent with approval.

The OCC received comments from one community organization. The commenter raised concerns with past supervisory actions against PNC Bank and PNC Group and a deferred prosecution agreement (“Deferred Prosecution Agreement”) entered into between the United States Department of Justice and PNC ICLC Corp., a non-bank, indirect subsidiary of PNC Group.

The supervisory actions and the Deferred Prosecution Agreement concerned activities in 2001, and have since been resolved. The OCC entered into a Formal Agreement with PNC Bank in 2002. The Formal Agreement addressed management systems, risk management, credit administration, and internal controls. In addition, the Federal Reserve Bank of Cleveland entered into a Written Agreement with PNC Group in 2002 regarding bank supervisory and securities law-related matters. As a result of PNC Bank's and PNC Group's respective compliance, the OCC's Formal Agreement and the Federal Reserve Bank's Written Agreement were terminated in September 2003. PNC Group entered into a Deferred Prosecution Agreement in June 2003, which was dismissed in 2004.

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 have determined that there are no material weaknesses that would preclude approval.

The community organization that commented on this application argued that it would be inappropriate for PNC Group to acquire Riggs Bank in light of the money laundering investigations of Riggs Bank.

However, PNC Bank has developed a comprehensive action plan to address any existing and emerging risks within Riggs Bank's customer base and market and to completely integrate Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) monitoring systems. PNC Bank's strategy to enhance BSA/AML compliance at Riggs Bank includes: upgrading technology for opening new accounts and detecting suspicious transactions; adding experienced staff to the BSA/AML risk management department; strengthening the BSA/AML risk management oversight and frequency of reporting to the Audit Committee and Board of Directors; enhancing on-going training for all appropriate employees; and linking BSA/AML compliance to the incentive system/code of ethics as appropriate.

The commenter raised concerns with Riggs Bank's service as a correspondent bank with, among others, Bank of Sierra Leone; Sierra Leone Commercial Bank Ltd; Energobank of Bishkek, Kyrgyzstan; Banco de Cabo Verde; and Banco International SA, and Riggs Bank's failure to comply with the BSA/AML laws and regulations of the United States, primarily relating to Riggs Bank's international and embassy banking operations. Riggs Bank maintained correspondent relationships with each of these banks, except Banco de Cabo Verde; however, two of these four correspondent relationships closed two years ago, and the remaining two closed recently. In addition, Riggs Bank maintained current certification or current information with regard to all of the banks, in accordance with 31 C.F.R. § 103.177(a)(2). Riggs Bank closed all other foreign correspondent bank accounts and sold the international and embassy banking operations.

Based upon the forgoing, we find that approval of the P&A Transaction is consistent with the Bank Merger Act.

### **3. Convenience and Needs**

The P&A Transaction will have no adverse impact on the convenience and needs of the communities to be served. No reductions in products or services available to the public are contemplated. PNC Bank will continue to serve the same areas that Riggs Bank serves today. Accordingly, we believe the impact of the P&A Transaction 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 purchase and assumption transactions that are subject to the Bank Merger Act. 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 the CRA performance of most large banks using the lending, investment, and service tests. 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 applicants 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 LMI neighborhoods, is less than satisfactory.

PNC Bank's latest CRA Performance Evaluation ("PE"), dated April 15, 2002 and issued by the OCC, assigned an "Outstanding" rating. In support of this rating, the OCC found that PNC Bank demonstrated excellent lending activity. PNC Bank's geographic and

borrower loan distributions were both good. Additionally, the OCC found that community development lending for affordable housing, community services, and economic revitalization was strong. Further, community development investments demonstrated an excellent level of responsiveness to community needs. Moreover, the OCC found PNC Bank to be a leader in providing community development services to LMI individuals and areas. The PE noted no fair lending concerns.

The OCC also assigned Riggs Bank an “Outstanding” rating in its latest CRA PE, dated April 7, 2003. The OCC noted that Riggs Bank’s level of lending reflected excellent responsiveness to community needs. The distribution of loans by geography and borrower was excellent. Community development lending, investments, and services were also strong. The PE noted no fair lending concerns.

The commenter on these applications expressed concerns with PNC Bank’s 2003 Home Mortgage Disclosure Act (“HMDA”) data regarding the denial rate for mortgage loans to African Americans and Hispanics when compared to the denial rate to whites in several Metropolitan Statistical Areas (“MSAs”).<sup>15</sup> The commenter also stated that the 2004 HMDA data for PNC Bank and Riggs Bank indicated high overall denial disparity ratios for African American and Hispanics versus whites.<sup>16</sup>

PNC Bank responded that since it sold its mortgage subsidiary in February 2001, the bulk of its HMDA lending has consisted of refinancings. PNC Bank provided an analysis of 2003 HMDA data that indicated the denial disparity ratios for African Americans and Hispanics versus whites for refinancings compared favorably to the industry averages in the MSAs cited by the commenter.<sup>17</sup> The OCC found PNC Bank’s analysis to be reliable.

With respect to home improvement loans, the OCC found PNC Bank’s denial disparity ratio for African Americans and Hispanics versus whites to be comparable to the average

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<sup>15</sup> It is important to note that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, and other factors relevant in each of the individual markets, nor do they fully reflect the range of a bank’s lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are evaluated in fair lending examinations.

<sup>16</sup> The OCC is unable to fully analyze 2004 HMDA data at this time because the OCC has not yet received final, corrected data from the Board of Governors of the Federal Reserve System. Once the final, corrected data are received, the OCC will carefully analyze and incorporate the data into the OCC’s fair lending supervision process. The OCC notes that PNC Bank monitors and analyzes its HMDA data on an ongoing basis and takes action to address potential disparities. In addition, past OCC reviews of PNC Bank’s fair lending practices have concluded that the bank has implemented a satisfactory fair lending program that employs effective risk management policies, processes, controls, and training.

<sup>17</sup> In several instances, the volume of lending in the MSA was too low to draw any conclusion.

denial disparity ratios for all lenders in each of the MSAs cited by the commenter.<sup>18</sup> The OCC also performed an analysis for all PNC Bank's HMDA reportable loans in each of the MSAs the commenter cited and found that the denial disparity ratios for African Americans and Hispanics versus whites was comparable to the average denial disparity ratios of all lenders.<sup>19</sup>

PNC Bank also noted its efforts to support an integrated fair lending program. PNC Bank pointed out that it has developed financial literacy workshops and newsletters to help educate consumers about banking and credit. Additionally, PNC Bank noted that it uses a special team of underwriters to review HMDA-reportable loan applications from LMI individuals to maximize approvals. Further, despite the sale of its mortgage subsidiary, PNC Bank remains active in providing funding for affordable mortgages to LMI individuals.

The commenter expressed concerns with the potential closing of Riggs Bank branches upon its acquisition. PNC Bank represented that it does not intend to close any of the Riggs Bank branches, but plans to expand the branching network in the Washington, DC area. The commenter also expressed concerns with PNC Bank's lending to or funding of payday lenders. In response to that concern, PNC Bank represented that it does not lend to or fund any payday lenders.<sup>20</sup>

Based upon the foregoing, we find that approval of the P&A Transaction is consistent with the Community Reinvestment Act.

### **C. Request for Public Hearing**

The commenter also requested that the OCC conduct a public hearing and extend the public comment period.<sup>21</sup> After careful consideration, the OCC has determined not to conduct a hearing on this merger application or to extend the comment period.

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11, which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise

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<sup>18</sup> The OCC included PNC Bank Delaware's lending in its analysis of the HMDA data for PNC Bank. In several instances, the volume of lending in the MSA was too low to draw any conclusion.

<sup>19</sup> In one MSA, the volume of lending was too low to draw any conclusion.

<sup>20</sup> In response to the commenter's concern with one particular payday lender, PNC Bank represented that it ceased making loans to that company and its affiliates in 2002.

<sup>21</sup> The OCC determined not to grant an extension of the comment period, because the commenter did not demonstrate that additional time was necessary to develop factual information, and no extenuating circumstances were present. *See* 12 C.F.R. § 5.10(b)(2)(ii), (iii). While the OCC did not extend the public comment period, the OCC considered comments received after the close of the public comment period.

benefit the decision making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The commenter requested a public hearing in order to obtain, among other items, additional comment on 2004 HMDA data and to further discuss any potential reduction in services. However, the commenter did not indicate why written submissions would be insufficient to make an adequate presentation of the issues or facts to the OCC. In addition, the OCC had no reason to believe that the proposed testimony would provide the OCC with relevant information on the pending application.

#### **IV. CONCLUSION AND APPROVALS**

For the reasons set forth above, including the representations and commitments of the applicants, the OCC finds that PNC Bank's purchase of substantially all of the assets and assumption of substantially all of the liabilities, including all of the deposits, of Riggs Bank is authorized under 12 U.S.C. §§ 24(Seventh) and 1828(c) and its acquisition and operation, as branches of PNC Bank, of the main office and branches of Riggs Bank in the District Columbia, Virginia, and Maryland is authorized under 12 U.S.C. §§ 36(d) and 1831u. The OCC also finds that PNC Bank's acquisition of Riggs NTC as an operating subsidiary is authorized under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 and that the merger of Riggs NTC into PNC Bank is authorized under 12 U.S.C. § 215a. Accordingly, these applications by PNC Bank are hereby approved.

This approval is subject to the following conditions:

1. PNC Bank and Riggs Bank (and its subsidiaries) shall retain and preserve all books and records of Riggs Bank and its subsidiaries until such time as the Record Retention Program described in paragraph 2 is reviewed and no supervisory objection is expressed by the OCC. Until the Program is implemented, PNC Bank shall take all steps necessary to ensure the preservation, maintenance, and availability to supervisory authorities of all records of Riggs Bank and its subsidiaries and shall ensure that all employees of PNC Bank are properly notified that under no circumstances, may they purge, alter, or destroy any books and records that were previously the property of Riggs Bank or any of its subsidiaries.
2. Within 30 days after consummation of the P&A Transaction, PNC Bank shall submit a written comprehensive Record Retention Program to the Examiner-in-Charge of PNC Bank for prior written determination of no supervisory objection. The Program shall specifically address the retention and preservation of all books and records related to Riggs Bank, its subsidiaries (including Riggs International Banking Corporation, Riggs Bank Europe Limited, Riggs & Company International Limited, and Riggs Bank & Trust Company (Channel

Islands) Limited), and affiliates that were previously in the possession, custody, or control of Riggs Bank, its subsidiaries, or any third party on behalf of Riggs Bank or its subsidiaries, regardless of form. Upon receipt of written determination of no supervisory objection, PNC Bank shall immediately adopt and implement the Program.

Each of the foregoing conditions 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.

In addition, for the reasons set forth above, including the representations and commitments of the applicants, the OCC finds that Riggs Bank’s sale of substantially all of its assets may be approved under 12 C.F.R. § 5.53, its reduction in capital may be approved under 12 U.S.C. § 59 and 12 C.F.R. § 5.46, and its merger into PNC-DC may be approved under 12 U.S.C. § 215a-3. Accordingly, these applications by Riggs Bank are hereby approved.

This approval is subject to the following conditions:

1. In the P&A Transaction, Riggs Bank shall transfer to PNC Bank all records of Riggs Bank, its subsidiaries (including Riggs International Banking Corporation, Riggs Bank Europe Limited, Riggs & Company International Limited, and Riggs Bank & Trust Company (Channel Islands) Limited), and affiliates in the possession, custody, or control of Riggs Bank, its subsidiaries, or any third party on behalf of Riggs Bank or its subsidiaries. If any records are required to be retained at Riggs Bank after the P&A Transaction, such as records pertaining to assets retained at Riggs Bank, Riggs Bank shall provide a copy of all such retained records to PNC Bank.
2. The Nonbank Affiliate Merger may not occur until after the P&A Transaction and after Riggs Bank’s status as an insured bank has been terminated.
3. If the Nonbank Affiliate Merger does not occur within seven (7) days after the P&A Transaction, Riggs Bank shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

Each of the foregoing conditions 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.

*/s/ Lawrence E. Beard*

*4/25/05*

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Lawrence E. Beard  
Deputy Comptroller  
Licensing

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Date

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