



**Comptroller of the Currency
Administrator of National Banks**

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

September 18, 2009

**Corporate Decision #2009-17
October 2009**

Gregory A. Gehlmann
Senior Vice President and General Counsel
First Financial Bank, N.A.
4000 Smith Road, Suite 400
Cincinnati, Ohio 45209

Re: Applications by First Financial Bank, National Association, Hamilton, Ohio, to Acquire Assets and Liabilities of Irwin Union Bank and Trust (in receivership), Columbus, Indiana, and Irwin Union Bank, FSB (in receivership), Columbus, Indiana, and to operate branches at the branch and main office sites of those institutions
Application Control Numbers: 2009-CE-02-036 and -037

Dear Mr. Gehlmann:

The Office of the Comptroller of the Currency (“OCC”), for the reasons discussed below, hereby approves the applications by First Financial Bank, National Association, Hamilton, Ohio (“First Financial”), to acquire assets and liabilities, including deposit liabilities, of Irwin Union Bank and Trust, Columbus, Indiana (in receivership) (“IU Bank”), and Irwin Union Bank, FSB, Columbus, Indiana (in receivership) (“IU FSB”), and to operate branches at the branch and main office sites of those institutions. This approval is granted following review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by representatives of First Financial during the application process. As noted below, the transactions may be consummated immediately upon approval.

BACKGROUND

IU Bank, an Indiana-chartered bank with deposits insured by the Federal Deposit Insurance Corporation (“FDIC”), and IU FSB, a federal savings bank, also with deposits insured by the FDIC, were closed respectively by the State of Indiana and the Office of Thrift Supervision on September 18, 2009, and the FDIC was appointed as receiver. The FDIC sought bids from potential acquirers to acquire both institutions. First Financial was the winning bidder for both. First Financial has branches in Indiana, Ohio and Kentucky. IU Bank has branches in Indiana,

Michigan, Nevada, and Utah. IU FSB has branches in Arizona, California, Missouri, Nevada, Kentucky, and New Mexico.

ANALYSIS

Acquisition of IU Bank and retention of branches

The acquisition of assets and liabilities of one insured bank by another with a different home state may be authorized as an interstate merger transaction under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal” or the “Act”).¹ Consequently, the acquisition by First Financial, with its main office in Ohio, of assets and liabilities of IU Bank, with its main office in Indiana, may be authorized as an interstate merger transaction under Riegle-Neal.

Generally, an application to engage in an interstate merger transaction undertaken pursuant to Riegle-Neal is subject to certain requirements and conditions set forth in sections 1831u(a)(4) and (5) and 1831u(b). These conditions are: (1) compliance with state imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permissible under the Act; (3) compliance with nationwide and state concentration limits; (4) expanded community reinvestment analysis and compliance; (5) adequacy of capital and management skills; and (6) limits on single branch acquisitions. These requirements, however, are not applicable in a transaction, such as this, where the FDIC has provided assistance under 12 U.S.C. § 1823(c), or where one of the banks involved is in default or in danger of default.² Moreover, in approving a transaction under Riegle-Neal, the OCC may authorize the acquiring bank to retain as branches the main office and any branches of the target bank.³ Thus, the acquisition by First Financial of certain assets and liabilities of IU Bank,⁴ and the retention by First Financial of the main office and branches of IU Bank as branches, are

¹ Pub. L. No. 103-328, 108 Stat. 2338 (1994). Under the Act, an “interstate merger transaction” is a merger approved under 12 U.S.C. § 1831u(a)(1) between banks with different “home states.” The “home state” of a national bank is the state in which its main office is located. 12 U.S.C. § 1831u(g)(4)(A)(i). The “home state” of a state bank is the state that chartered the bank. *Id.* at § 1831u(g)(4)(A)(ii). “Merger transaction” is defined in Riegle-Neal at 12 U.S.C. § 1831u(g)(7) as having the meaning set forth in 12 U.S.C. § 1828(c)(3), which defines “merger transaction” as a transaction approved under § 1828(c)(1) and (2). These provisions, in turn, include as a “merger transaction” the assumption of “liability to pay any deposits of another insured depository institution.” 12 U.S.C. § 1828(c)(2).

² 12 U.S.C. § 1831u(e).

³ *Id.* at §§ 1831u(d)(1) and 36(d).

⁴ With respect to the possibility that as a result of these transactions First Financial may acquire assets or subsidiaries or engage in activities not permitted for national banks, First Financial has represented in its applications that it will divest itself of any such nonconforming or impermissible assets, subsidiaries, or activities acquired through the transactions addressed in this approval within two years of the consummation date of these transactions or within any other period of time that the OCC deems appropriate.

legally permissible under Riegle-Neal,⁵ subject to review for compliance with the standards of the Bank Merger Act (“BMA”) and of the applicants’ record of compliance with the Community Reinvestment Act (“CRA”).

Acquisition of IU FSB and branch retention

Because a federal savings bank, such as IU FSB, is not a “bank” as defined for purposes of Riegle-Neal,⁶ the acquisition of its assets and liabilities by First Financial is not governed by Riegle-Neal. However, national banks have long been authorized to purchase assets and assume liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh).⁷ Consequently, First Financial may acquire deposits and assets of IU FSB as proposed, subject to review for compliance with the standards of the BMA and of the applicants’ record of compliance with the CRA.⁸

First Financial also may retain as branches the branches of IU FSB.⁹ As stated, First Financial has branches in Ohio, Indiana and Kentucky; IU FSB has branches in Arizona, California, Missouri, Nevada, Kentucky, and New Mexico.

First Financial is authorized to retain as a branch the branch of IU FSB in Kentucky under the authority of 12 U.S.C. § 36(c) because First Financial already has branches in Kentucky. Under § 36(c), national banks are permitted to establish or acquire branches in a state where the bank is situated if a state bank in such state could also establish or acquire such branches. First Financial is situated in Kentucky because it has branches there. As a result, it may establish additional branches in Kentucky pursuant to the intrastate statutory branching law of Kentucky applicable to state banks.¹⁰ Kentucky permits state banks to branch throughout the state without limitation.¹¹ Consequently, national banks situated in Kentucky also may branch throughout that state without limitation.

⁵ First Financial has advised that, at some point following consummation of the transaction, it may close some of the acquired branches or consolidate some with nearby branches, but that no decisions have yet been made.

⁶ 12 U.S.C. §§ 1813(a)(1) and (b)(1)(A).

⁷ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

⁸ With respect to the possibility that First Financial may acquire assets or subsidiaries or engage in any activities not permissible for a national bank, see n. 4, *supra*.

⁹ The main offices of IU Bank and IU FSB are at the same location in Columbus, Indiana. As previously discussed, First Financial is authorized to operate that site as a branch following acquisition of IU Bank. IU FSB has no branches in Indiana.

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

¹¹ Ky. Rev. Stat. Ann. § 286.3-180 (Michie 2000 & Supp. 2008).

Further, the FDIC Board, in approving the acquisition of assets and liabilities of IU FSB by First Financial invoked its authority under 12 U.S.C. § 1823(k) to override any state laws that, as applied to national banks, would prohibit, restrict, limit, or lack authorization for First Financial to retain offices in those states as branches.¹² Consequently, First Financial has authority to retain as branches the branches of IU FSB in each of the other states – Arizona, California, Missouri, Nevada, and New Mexico -- in which such offices are located.¹³

Bank Merger Act

The OCC reviewed the proposed transactions under the criteria of the BMA,¹⁴ and applicable OCC regulations and policies. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the BMA requires the OCC to consider “the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.”¹⁵ The OCC considered these factors and found them consistent with approval.

In addition, the OCC finds that it must act immediately under the standards set forth in the BMA to approve the proposed acquisitions.¹⁶

Community Reinvestment Act

The CRA requires the OCC to take into account the applicants’ records of helping to meet the credit needs of the community, including low-and-moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including transactions that are subject to the BMA.¹⁷ The OCC considers the CRA performance evaluation of each institution involved in the transaction. 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.

¹² Cf. *Colorado State Banking Board v. Resolution Trust Corporation*, 926 F.2d 931 (10th Cir. 1991); *Arkansas State Banking Commissioner v. Resolution Trust Corporation*, 911 F.2d 161 (8th Cir. 1990) (upholding authority of RTC to override state law branching limitations under 12 U.S.C. § 1823(k), including as applied to national banks).

¹³ Title 12 U.S.C. § 36(e)(1) specifically authorizes national banks to acquire, establish or operate branches authorized under 12 U.S.C. § 1823(k). First Financial has advised that, at some point following consummation of the transaction, it may close some of the acquired branches or consolidate some with nearby branches, but that no decisions have yet been made.

¹⁴ 12 U.S.C § 1828(c).

¹⁵ *Id.* at § 1828(c)(5) and (11).

¹⁶ *Id.* at § 1828(c)(3).

¹⁷ *Id.* at §§ 2902(3)(E) and 2903(a)(2); 12 C.F.R. §§ 5.33(e)(1)(ii) and 25.29(a)(3).

CONSUMMATION GUIDANCE

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the consummation of the transaction. Within seven days of consummation of the transactions, please provide the Director for District Licensing with copies of the executed purchase and assumption agreements.

These approvals and the activities and communications by OCC employees in connection with the filings 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 OCC may modify, suspend, or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transactions to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or of the United States.

If you have questions regarding this letter, please contact Marta Reyes, Licensing Analyst, at 312-360-8872 or at martareyes@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

signed

Carolina M. Ledesma
Acting Director for District Licensing