



**Corporate Decision #2013-05
July 2013**

June 20, 2013

Jeffrey L. Knight, Esq.
EVP, Corporate Secretary
& Chief Legal Counsel
Old National Bancorp
One Main Street
Evansville, Indiana 47708

Re: Application by Old National Bank, Evansville, Indiana, to Purchase Certain Assets and Assume Certain Liabilities of twenty-four branches of Bank of America, National Association, Charlotte, North Carolina
OCC Control Number: 2013-CE-Combination-133540

Dear Mr. Knight:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application submitted by Old National Bank, Evansville, Indiana (“Old National”) to acquire, through the purchase of certain assets and assumption of certain liabilities, and operation as branches twenty-four branches of Bank of America, National Association, Charlotte, North Carolina (“Bank of America”), for the reasons and subject to the requirements set forth below.

This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and the purchase and assumption agreement and those of your representatives during the application process and a determination that the proposal meets certain regulatory and policy requirements.

Background

Old National is wholly-owned by Old National Bancorp (“ONB”), a bank holding company whose principal office is in Evansville, Indiana. Old National is an interstate national bank with its main office in Indiana, and branches in Indiana, Illinois, Kentucky, and Ohio. Bank of America is an interstate national bank with branches in many states, including Michigan and Indiana.

The Proposed Purchase and Assumption Transaction

On April 30, 2013, Old National filed an application with the OCC to purchase twenty-four branches from Bank of America. Four of the branches are located in Indiana and twenty are located in Michigan. Old National is headquartered and has branches in Indiana as well as additional branches in Illinois and Kentucky. Old National currently has no branches in Michigan. Old National applied to the OCC for approval to purchase certain assets of and assume certain liabilities of Bank of America under 12 U.S.C. §§ 24 (Seventh) and 1828(c) (the “Bank Merger Act”). Further, Old National has requested to retain and operate the branches upon consummation of the transaction.

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). Therefore, the purchase and assumption transaction is legally authorized.

Intrastate and Interstate Branch Acquisition

Following the purchase and assumption transaction, Old National has requested to retain and operate the twenty-four branches as branches. Four of the branches are located in Indiana and are therefore located in the same state where Old National’s main office and some of its existing branches are located. The Michigan branches are located in a different state from where Old National has its main office or existing branches.

The acquisition of branches in a purchase and assumption transaction, as well as the de novo establishment of branches, within the state in which the bank is situated is governed by 12 U.S.C. § 36(c).¹ For branching purposes under 36(c), a national bank is “situated” in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks.² Old National and the Indiana branches are situated in Indiana. Under Indiana law, state chartered banks may establish branches without any geographic restriction within the state.³ A national bank situated in Indiana could establish the branches without limits under section 36(c). Therefore, Old National may retain and operate the Indiana branches acquired from Bank of America.

Old National’s acquisition and operation of the Michigan branches of Bank of America 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:

(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.⁴

¹ See, e.g., *State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

² 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). See also, *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997).

³ Ind. Code § 28-2-13-19.

⁴ 12 U.S.C. § 1831u(a)(1).

Under the Riegle-Neal Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions.⁵ 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 a single branch, 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.⁶

In this application, Old National is purchasing bank branches located in Michigan, including insured deposits. Michigan law permits an out-of-state bank to establish and maintain a branch in Michigan through the acquisition of a branch, provided that the laws of the home state of the out-of-state bank permits reciprocal acquisitions.⁷ Indiana law permits out-of-state banks to acquire a branch in Indiana.⁸ Accordingly, the Michigan reciprocity requirement is satisfied.

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 proposed purchase and assumption 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. When the interstate merger transaction involves the acquisition of a branch only, the age requirement applies to the age of the branch to be acquired.⁹ Michigan law imposes no age limits. Therefore, the proposed interstate branch acquisition satisfies the Riegle-Neal Act age requirement.

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.¹⁰ Michigan's statute permitting the acquisition of a branch in Michigan by an out-of-state bank requires the out-of-state bank to provide written notice of the proposed transaction to the Commissioner Michigan Department of Insurance and Financial

⁵ 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(g)(6)-(7) and 1828(c)(3).

⁶ 12 U.S.C. § 1831u(a)(4)(A).

⁷ Mich. Comp. Laws § 487.13711(7).

⁸ Ind. Code §§ 28-2-18-21-22.

⁹ *See* 12 U.S.C. § 1831u(a)(4)(B).

¹⁰ *See* 12 U.S.C. § 1831u(b)(1).

Services at least 30 days before the effective date of the acquisition.¹¹ Old National has filed a copy of the application with the Commissioner. Thus, the Riegle-Neal Act's filing requirements are satisfied.

Third, the proposed interstate branch acquisition transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places a nationwide deposit concentration limit of 10% on section 1831u(a) interstate merger transactions.¹² Based on the size of the transaction, Old National's acquisition of the Bank of America branches will not cause Old National to exceed the deposit concentration limitations of the Riegle-Neal Act.

Fourth, the proposed interstate transaction does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction (including an interstate branch acquisition) in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any state in which the applicant bank had no branch or bank affiliate immediately before the transaction, section 1831u(b)(3) requires the OCC to (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 banks' record of compliance with applicable state community reinvestment laws.¹³ Immediately after the proposed transaction the Bank will have branches in Michigan, a state in which it had no branches or bank affiliate immediately before the transaction. Thus, the special community reinvestment compliance provisions of the Riegle-Neal Act apply. Since Michigan does not have separate community reinvestment laws, and Old National has no bank affiliates, only performance under the federal CRA must be taken into consideration. As discussed below, Old National's performance under the federal CRA is consistent with approval of this application. Accordingly, the requirements of 12 U.S.C. § 1831u(b)(3) are satisfied.

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 well capitalized and well managed upon consummation of the transaction.¹⁴ These requirements are met in this transaction.

Bank Merger Act Factors

The proposed purchase and assumption transaction between Old National and Bank of America is also subject to OCC review under the Bank Merger Act. The OCC reviewed the proposed merger under the criteria of the Bank Merger Act and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a merger that would result in

¹¹ Mich. Comp. Laws § 487.13711.

¹² See 12 U.S.C. § 1831u(b)(2)(B).

¹³ See 12 U.S.C. § 1831u(b)(3).

¹⁴ 12 U.S.C. § 1831u(b)(4).

a monopoly or substantially lessen competition. The Bank Merger 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, and the risk of the transaction to the stability of the United States banking or financial system... 12 U.S.C. § 1828(c)(5).¹⁵ As will be further discussed below, the OCC must also consider the effectiveness of the banks in combating money laundering activities and the constituent institutions' record of performance under the CRA. 12 U.S.C. § 1828(c) (11) and 12 USC §2903. The OCC considered each of these factors and found them consistent with approval of this application.

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 transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considered the CRA performance evaluation of each institution involved in the transaction. A review of the records of the 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.

Effectiveness in Combating Money Laundering Activities

The Bank Merger Act requires that the OCC take into consideration, among other things, the applicants effectiveness in combating money laundering activities. In evaluating this factor, the OCC evaluates whether the applicants have established effective Bank Secrecy Act/anti-money laundering ("BSA/AML") programs for identifying, monitoring and reporting high risk transactions and accounts; whether there is evidence of money laundering or other illicit activities; if any deficiencies exist in the BSA/AML programs of the institutions, the nature, scope and severity of those deficiencies whether management and the board have taken appropriate corrective action for any deficiencies in its BSA/AML program, the extent of completion of corrective measures, and the OCC's assessment of those corrective measures through OCC supervisory activity¹⁶. In the present case, the OCC has considered this factor in

¹⁵ The Dodd-Frank Act also added another new provision to the Bank Merger Act under which the responsible agency may not approve any interstate merger transaction that results in the resulting insured depository institution controlling more than 10 percent of the total amount of deposits of the insured depository institutions in the United States. See the Dodd-Frank Act § 623. However, it does not apply to mergers between affiliates. In addition, Old National and its affiliates will not control more than 10 percent of the deposits in the United States.

¹⁶ In considering approval of the application the OCC also takes into consideration the impact of the acquisition on the bank implementing timely corrective action of deficiencies with regard to its BSA/AML program.

the context of the considerations set out above and has found that the circumstances in this case, as discussed below, are consistent with approval of the transaction.¹⁷

On June 4, 2012, Old National entered into a Stipulation and Consent to the Issuance of a Consent Order (the “Consent Order”) with the OCC relating to deficiencies in Old National’s overall program for BSA/AML compliance. The Consent Order required Old National to, among other things: develop and implement a comprehensive BSA action plan, including an effective institution-wide BSA risk assessment program that accurately identifies BSA/AML risks; ensure that Old National management reviews, updates, and implements its risk-based processes to obtain and analyze appropriate customer due diligence information to monitor for and investigate suspicious activity; ensure adherence to a written program of internal controls for appropriate identification, analyzing, and monitoring of transactions with greater than normal risk; maintain an effective BSA independent testing function; ensure and maintain sufficient personnel with requisite expertise and skills; and ensure adherence to a comprehensive BSA/AML training program.

Old National’s BSA/AML program deficiencies were identified by the OCC in early 2011. In its review, the OCC found no evidence of money laundering or other illicit activities at Old National. Since that time, Old National has devoted significant time and resources toward the improvement of its BSA/AML program and has addressed program weaknesses. The OCC has verified Old National’s compliance with the Consent Order and finds that Old National has implemented a satisfactory BSA/AML program that effectively identifies, measures, monitors and controls BSA risk. Having reviewed the facts and circumstances surrounding Old National’s BSA/AML program and the proposed acquisition, the OCC has concluded that the relevant factors are consistent with approval under the statutory provisions.

Consummation Guidance

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed purchase and assumption transaction will have been received prior to the consummation of the transaction. The District Office must be advised in writing in advance of the desired effective date for the purchase and assumption transaction, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice’s injunction period and any other required regulatory approval.

Within seven days of consummation of the transaction, please provide the District Licensing Division with a copy of an executed purchase and assumption agreement. If the transaction is not consummated within twelve months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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

¹⁷ The OCC has reviewed the supervisory history of Bank of America and it has a satisfactory BSA/AML compliance record and a satisfactory BSA program. Bank of America’s BSA record is consistent with approval of the transaction.

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. Our approval is based on Old National's representations, submissions, and information available to the OCC as of this date. 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 transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions regarding this letter or the OCC's decision, please contact Senior Licensing Analyst Carolina M. Ledesma at 312-360-8867 or at Carolina.Ledesma@occ.treas.gov. Please reference the OCC control number in any correspondence.

Sincerely,

John A. O'Brien

John A. O'Brien
Acting Director for District Licensing