Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE FLEET BANK OF NEW YORK, NATIONAL ASSOCIATION, SCHENECTADY, NEW YORK, WITH AND INTO NATWEST BANK NATIONAL ASSOCIATION, JERSEY CITY, NEW JERSEY, UNDER THE CHARTER OF THE LATTER AND WITH THE TITLE, FLEET BANK, NATIONAL ASSOCIATION

April 12, 1996

I. INTRODUCTION

On February 5, 1996, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Fleet Bank of New York, National Association, Schenectady, New York ("Fleet-NY") with and into NatWest Bank National Association, Jersey City, New Jersey ("NatWest") under the charter of the latter and with the title "Fleet Bank, National Association" ("Fleet-Resulting"), under 12 U.S.C. §§ 215a & 1828(c) ("the Merger Application"). Both banks are national banks. Fleet-NY has its main office and branches in New York. NatWest has its main office in Jersey City, New Jersey, and operates branches in New Jersey and New York. In the Merger Application, OCC approval is also requested for the resulting bank to retain the offices of both merging banks in New Jersey and New York as branches after the merger under 12 U.S.C. § 36(b).

Fleet-NY is a wholly-owned subsidiary of Shawmut New York Corporation, a bank holding company, which is in turn a wholly-owned subsidiary of Fleet Financial Group, Inc., a multi-state bank holding company with its headquarters in Boston, Massachusetts. NatWest is a wholly-owned subsidiary of National Westminster Bancorp NJ, a bank holding company, which is in turn a wholly-owned subsidiary (indirectly through two other intermediate domestic bank holding companies) of National Westminster Bank Plc, a foreign bank based in London, England. Fleet Financial Group has agreed to acquire NatWest and certain other United States operations of National Westminster Bank Plc. Prior to the bank merger, the other operations

will have been transferred to become subsidiaries of NatWest.[1] The acquisition will occur as a bank merger between Fleet-NY and NatWest; Fleet Financial Group will not acquire National Westminster Bancorp NJ or National Westminster Bank Plc's other United States companies (other than companies that are subsidiaries of NatWest). By the terms of the merger agreement, at the time of the merger the existing shares of NatWest held by National Westminster Bancorp NJ will be cancelled and the shares of Fleet-NY converted into shares of the resulting bank.

In addition to the bank merger that is the subject of this Merger Application, Fleet Financial Group plans related transactions to rationalize its resulting banking operations in New York State. Fleet Financial Group also owns Fleet Bank, Albany, New York, ("FBNY") a New York state-chartered bank. Immediately prior to the merger, 72 branches of FBNY located in Long Island and the metropolitan New York City area and other assets and liabilities of FBNY associated with the banking business in those areas will be transferred to Fleet-NY (the "Downstate Acquisition"). Application for the purchase of assets and assumption of liabilities involved in the Downstate Acquisition was made to the OCC on February 5, 1996, and it was approved on March 19, 1996. Immediately after the merger, 16 branches of the resulting bank located in the Albany, New York, area and other assets and liabilities of the resulting bank associated with the banking business in that area will be transferred to FBNY (the "Upstate Divestiture"). FBNY is obtaining appropriate state and federal regulatory approvals for the purchase of assets and assumption of liabilities involved in the Upstate Divestiture. After the merger and these related transactions are completed, one bank (FBNY) will conduct the banking business in the upstate New York market areas, and the other bank (Fleet-Resulting) will conduct the banking business in the downstate New York and New Jersey market areas.

As of December 31, 1995, Fleet-NY had approximately $1.6 billion in assets and $1.3 billion in deposits and operated 15 branch offices in New York. As of the same date, NatWest had approximately $28 billion in assets and $21 billion in deposits and operated approximately 300 branch offices in New York and New Jersey.

Notice of the Application was published in general circulation newspapers in Albany, New York (also serving Schenectady), New York, New York, and Newark, New Jersey, on February 2, 1996, February 16, 1996, and March 4, 1996. No objections were raised to this transaction by either the New York State Banking Department or the State of New Jersey Department of Banking. However, a number of comments were received on the Merger Application from others. Most commenters supported the merger. Two commenters objected. The two objecting comments are discussed in Part III (at pages 15-16).

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[1] NatWest's acquisition of these subsidiaries was approved by the OCC in an operating subsidiary approval today. See Letter to Robert E. Bostrum (April 12, 1996). After the merger, these subsidiaries, as well as the other subsidiaries of NatWest, will continue as subsidiaries of Fleet-Resulting.

II. LEGAL AUTHORITY

NatWest is an interstate national bank, with its main office in New Jersey and branches in New Jersey and New York. Fleet-NY's main office and branches are in New York. This Merger Application thus involves a merger between an interstate national bank and another bank in one of the states in which the bank already has offices. The OCC has previously considered the provisions of the national banking laws governing mergers and branch retention in the context of mergers involving interstate banks. Before the passage of the Riegle-Neal Act, there were a number of interstate merger and branching transactions.[2] There were also two decisions that involved an interstate main office relocation, as well as an interstate merger.[3]

Moreover, since passage of the Riegle-Neal Act, see Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994), the OCC has approved additional interstate merger applications. Some of those transactions involved only an interstate merger; others involved an interstate main office relocation followed by an interstate merger. In those applications we considered the impact of the new interstate branching legislation on national banks' authority under existing law. In

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[2] See Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey, with the Title of Mellon Bank (East) N.A. (March 27, 1984), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99,925 ("OCC Mellon Decision") (in 1984 Heritage had a grandfathered branch in Philadelphia; the 1984 transaction was not consummated and Heritage later became part of Midlantic National Bank); Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association, State Savings Bank, N.A., and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991), available in 1991 OCC Ltr. LEXIS 73 ("OCC Shawmut Decision") (both banks owned by Shawmut National Corporation; at the time of conversion State Savings Bank had branches in Rhode Island); Decision on the Application for the Merger of First Peoples National Bank, Kingston, Pennsylvania, with and into First Fidelity Bank, N.A., Salem, New Jersey (OCC Corporate Decision No. 94-07, February 23, 1994) ("OCC First Peoples Decision"); Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) ("OCC NationsBank/D.C.-Maryland Decision"); Decision on the Application for the Merger of Continental Bank, Norristown, Pennsylvania, into Midlantic National Bank, Newark, New Jersey (OCC Corporate Decision No. 94-37, August 12, 1994) ("OCC Midlantic Decision").

[3] See Decision of the Office of the Comptroller of the Currency on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,695 ("OCC NationsBank/Maryland National Decision"); Decision of the Office of the Comptroller of the Currency on the Applications of First Fidelity Bank, N.A., Pennsylvania, Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644 ("OCC First Fidelity/New Jersey Decision").

There were also a number of decisions involving only the interstate relocation of the main office. See Decision on the Applications of the First National Bank of Polk County (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision on the Application of the First National Bank of Spokane (1991) (relocation from Washington into Idaho); Decision on the Application of SouthTrust National Bank (1989) (relocation from Alabama into Georgia); Decision on the Application of the Bank of New Jersey, N.A. (1986) (relocation from New Jersey into Pennsylvania); Decision on the Application of Mark Twain Bank, N.A. (1985) (relocation from Missouri into Kansas).

particular, in one decision, a state bank commissioner objected to the transaction, arguing that the maintenance of interstate branches in the state would violate a state law and also raising interpretive questions under the Riegle-Neal Act.[4] In that decision, because of the issues raised by the objection, we revisited our analysis of existing law and thoroughly considered the impact of the Riegle-Neal Act on existing authority and the applicability of state law.

So, this Merger Application is similar to a number of prior interstate merger and branching applications approved by the OCC and does not raise new legal issues. The legal analysis and authorities are set forth in the prior decisions, and only a summary will be presented here. The earlier decisions should be consulted for the full analysis. Applying the same analysis to the present Merger Application, we find that the merger of Fleet-NY into NatWest is legally authorized under 12 U.S.C. § 215a. We also find that, after the merger, the resulting bank may retain the offices of both banks in New Jersey and New York as branches under 12 U.S.C. § 36(b)(2). Accordingly, this Merger Application is authorized.

A. Fleet-NY May Merge into NatWest under Section 215a.

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a provides in relevant part:

> One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association.

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[4] See Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision"). Other decisions after the Riegle-Neal Act include: Decision on the Applications of National Westminster Bank USA and National Westminster Bank NJ (OCC Corporate Decision No. 94-43, October 20, 1994) ("OCC NatWest Decision"); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994) ("OCC First Fidelity/Baltimore Decision"); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995) ("OCC Chase Decision"); Decision on the Applications of American National Bank and Trust Company of Wisconsin and American National Bank and Trust Company of Chicago (OCC Corporate Decision No. 95-12, March 8, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995) ("OCC PNC/Kentucky Decision"); Decision on the Application to Merge Citizens Bank & Trust of Kansas City into Bank Midwest N.A. (OCC Corporate Decision No. 95-17, April 20, 1995); Decision on the Applications of Firstar Bank Quad Cities, N.A., and Firstar Bank Davenport, N.A. (OCC Corporate Decision No. 95-16, April 27, 1995); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("OCC Midlantic/Old York Decision"); Decision on the Applications of BayBank Connecticut, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995) ("OCC BayBanks/Connecticut Decision"); Decision on the Applications of PNC Bank, New Jersey, N.A. and PNC Bank, N.A. (OCC Corporate Decision No. 95-36, August 7, 1995); Decision on the Application to Merge Republic Bank for Savings into Republic National Bank of New York (OCC Corporate Decision No. 95-51, October 25, 1995); Decision on the Applications of Fleet National Bank, Providence, Rhode Island, et al. (OCC Corporate Decision No. 96-__, March 27, 1996) ("OCC Fleet/New England Decision").

12 U.S.C. § 215a(a) (emphasis added). The proposed transaction complies with all other provisions of section 215a. The only issue is the interpretation of the phrase "located within the same State" as applied to banks that have offices in more than one State. In particular, in this proposal, the issue is whether NatWest is "located" in New York for section 215a purposes by virtue of its branches in New York, while it also has its main office and branches in New Jersey.

The OCC analyzed this issue in the earlier cases involving a merger or consolidation with an interstate bank. We concluded that, just as for branching purposes under section 36, a national bank with its main office and branch offices in more than one state was "located" in each such state, for the purpose of mergers with other banks in that state under 12 U.S.C. § 215a (mergers) or 12 U.S.C. § 215 (consolidations). This reading is consistent with the plain meaning of the statute and its legislative history. It is also supported by judicial construction of "situated" in section 36(c) and similar locational phrases in other sections of the National Bank Act. Finally, any other reading could render section 215a largely unworkable in the case of interstate banks. The OCC has adopted this analysis of sections 215 and 215a in previous decisions involving interstate banks.[5] The reasoning and support for this position are extensively set out in the earlier decisions and only a summary will be presented here.

Section 215a does not have any definition or explanation of where a bank is considered "located". There is nothing in the usual meaning of the word "located" that would preclude a national bank from being deemed "located" at its branch offices as well as its main office. Under section 81, both the main office and branches are places at which the general business of the bank is conducted.

Although no court has construed the word "located" in section 215a, there are several cases interpreting similar phrases elsewhere. The leading case involves the interpretation of 12 U.S.C. § 36(c) with respect to a bank with branches in more than one state. See Seattle

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[5] For example, there were a number of cases prior to the Riegle-Neal Act: In 1984, in the OCC Mellon Decision, we found that a national bank with its main office and branches in New Jersey and a grandfathered branch in Philadelphia was located in Pennsylvania for purposes of a merger with another Pennsylvania bank under section 215a. In 1991, in the OCC Shawmut Decision, we found that a national bank with its main office in Connecticut and all its branches in Rhode Island, was located in Connecticut for purposes of a merger with another Connecticut bank. In the OCC First Fidelity/New Jersey Decision, we applied the same analysis to "located" in 12 U.S.C. § 215 (the consolidation statute) and found that a national bank with its main office in New Jersey and all its branches in Pennsylvania was located in New Jersey for purposes of a consolidation with another New Jersey bank. In the OCC NationsBank/Maryland National Decision, we found that a national bank with its main office in Maryland and all its branches in the District of Columbia was located in Maryland for purposes of a merger with another Maryland bank. In the OCC First Peoples Decision, we found that a national bank with branches in Pennsylvania and its main office and other branches in New Jersey was located in Pennsylvania for purposes of a merger with another Pennsylvania bank. In the OCC NationsBank/D.C.-Maryland Decision, we found that a national bank with its main office and branches in Maryland and branches in the District of Columbia was located in the District for purposes of a merger with another District bank. In the OCC Midlantic Decision, we found that a national bank with its main office and branches in New Jersey and a grandfathered branch in Philadelphia was located in Pennsylvania for purposes of a merger with another Pennsylvania bank. Since passage of the Riegle-Neal Act, we have continued to apply this analysis. See OCC Bank Midwest Decision (Part II-C-1). See also OCC decisions listed in note 4 above.

Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974) (an interstate national bank is "situated" in each state in which it has offices for purposes of establishing additional branches under section 36(c) and may establish branches within each state to the extent that state allows its state banks to have branches). Under 12 U.S.C. § 36(c), a national bank may establish branches "within the State in which [the bank] is situated" if state law allows state banks to have branches. 12 U.S.C. § 36(c) (emphasis added). In Seattle Trust, the Bank of California (a bank with its main office in California and existing branches in California, Oregon, and Washington) applied to establish an additional branch in Washington. The court held that because of its existing branches, the bank was "situated" in Washington for purposes of establishing branches in that state and could establish branches to the extent Washington allowed Washington banks to have branches. See Seattle Trust, 492 F.2d at 51. The OCC has applied this principle from Seattle Trust in prior decisions involving national banks with operations in more than one state. See OCC Bank Midwest Decision (Parts II-B and II-C-1); OCC NationsBank/Maryland National Decision (Parts II-B-2 and III); OCC First Fidelity/New Jersey Decision (Parts II-B-2 and III). See also OCC decisions listed in notes 2 and 4 above.[6]

Under section 36(c), as construed in Seattle Trust and subsequently applied by the OCC, a national bank is "situated" in each state in which it has its main office or branches for purposes of establishing branches. We believe the same reasoning and result are equally applicable to the interpretation of "located" in section 215a. In particular, in light of the Seattle Trust holding, if section 215a is not construed similarly, it would lead to the anomalous result that a national bank with existing branches in a state could establish new branches or could acquire additional branches through purchase from another bank in that state under section 36(c), but could not acquire branches through merger with another bank in that state.

In the present case, we also note that the banks could accomplish the same result by having NatWest purchase all the assets and assume all the liabilities of Fleet-NY, including taking over its main office and branches, acquiring these offices as branches under section 36(c) under Seattle Trust. The resulting institution would have its main office in Jersey City, New Jersey, and all the branches in New Jersey and New York. The fact that the same transaction

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[6] This statutory language and interpretation for section 36(c) continue after the Riegle-Neal Act. See discussion in Part II-C below. Indeed, the section of the Riegle-Neal Act that sets out the new source of interstate branching authority in the new interstate merger transactions provides that interstate banks formed under its provisions ("section 44 interstate banks") have a similar rule covering the establishment of additional branches by section 44 interstate banks within each state in which they have existing branches. See Riegle-Neal Act § 102(a) (new section 44(d)(2)). Under section 44(d)(2), a section 44 interstate bank may establish or acquire additional branches at any location where any bank involved in the section 44 interstate merger could have established or acquired a branch if such bank were still a separate bank. See 12 U.S.C. § 1831u(d)(2) (quoted in note 13 below). Thus, within each state, the interstate bank establishes additional branches under section 36(c) or acquires branches in mergers under section 36(b), in the same way that the merging bank would have done as a separate bank. In addition, the provisions in the Riegle-Neal Act regarding state opt-in to permit interstate branching through de novo branches apply only to the de novo establishment of a bank's first branch in another state (other than the bank's home state) "in which the bank does not maintain a branch." See Riegle-Neal Act § 103(a) (adding new subsection 36(g)). It does not apply to situations where a bank is establishing a new branch in its home state or in one of the states in which it already has a branch. In those situations, existing law under section 36(c) still applies.

could be done as a purchase and assumption as well as by a statutory merger supports our interpretation of the merger statute. Since the same result could occur in another form, there is no policy reason for interpreting section 215a narrowly.

Accordingly, just as with "situated" in section 36(c), we conclude that, in section 215a, a national bank is "located" in each state where it maintains a banking office, whether the main office or a branch. Fleet-NY, with its main office and branches in New York, and NatWest, with branches in New York, are therefore located in the same state for purposes of section 215a. The merger is legally authorized under 12 U.S.C. § 215a.[7]

B. The Resulting Bank may Retain the Offices of both Banks in New York and New Jersey as Branches under 12 U.S.C. § 36(b)(2).

The Applicants have also requested OCC approval for the bank resulting from the merger (referred to in this section as "Fleet-Resulting" or "the Resulting Bank" to distinguish it from Fleet-NY or NatWest prior to the merger) to retain the main office and branches of Fleet-NY in New York and the branches of NatWest in New York and New Jersey as branches of the resulting bank after the merger. Branch retention following a merger or consolidation is covered by the McFadden Act. See 12 U.S.C. § 36(b)(2).[8] Applying the various provisions of section 36(b)(2) to the different groups of branches involved in the Merger Application, we find that Fleet-Resulting is legally authorized to retain all the offices as branches.

1. Retention of Fleet-NY's Main Office and Branches in New York.

In the proposed merger Fleet-NY is the target bank, since the merger is effected under the charter of NatWest. Fleet-Resulting is authorized to retain the main office and branches of Fleet-NY in New York under section 36(b)(2)(A). Under section 36(b)(2)(A), the resulting bank may retain the branches or the main office of the target bank if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under

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[7] We also reviewed this merger under 12 U.S.C. § 1815(d)(3). Fleet-NY is a member of the Savings Association Insurance Fund, since it was formed to take over the deposits and branches in New York of a SAIF-member federal thrift. See note 14. NatWest is a member of the Bank Insurance Fund. Mergers between insured depository institutions that are members of different insurance funds must comply with conditions set forth in section 1815(d)(3). We considered the specific factors required for approval under section 1815(d)(3)(E) & (F) and found this merger transaction complies with them. The merger is permissible under section 1815(d)(3).

[8] The McFadden Act authorizes the national bank resulting from the consolidation or merger of a national bank with another bank or banks to retain branches in three ways. First, under section 36(b)(2)(A), the resulting bank may retain as branches any of the main offices or branches of any of the target banks in the merger or consolidation if it might be established as a branch by the resulting bank under section 36(c). Second, under section 36(b)(2)(B), the resulting bank may retain any branch of any bank participating in the merger or consolidation that was in operation by any bank on February 25, 1927. Finally, under section 36(b)(2)(C), the resulting national bank may retain the pre-merger branches of the lead national bank (i.e., the national bank under whose charter the merger or consolidation is effected) unless a similarly situated state bank resulting from the merger of other banks into a state bank would be prohibited by state law from retaining as a branch an identically situated office. See 12 U.S.C. § 36(b)(2).

section 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. See Seattle Trust, 492 F.2d at 51. In applying the branch retention provisions of section 36(b)(2)(A) in the context of mergers involving interstate banks, it is therefore necessary to determine in which state(s) the resulting bank is situated. The OCC previously concluded that the resulting bank is properly treated as situated in all of the states in which the participating banks were situated in order to then apply the section 36(c) standard. We first reached this analysis in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank, see OCC Shawmut Decision, and have applied it in subsequent decisions involving mergers with interstate banks both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-a); OCC Chase Decision (Part II-B-1); OCC NatWest Decision (Part III-B-1); OCC BayBanks/Connecticut Decision; OCC PNC/Kentucky Decision. See also OCC First Peoples Decision; OCC NationsBank/Maryland National Decision; OCC First Fidelity/New Jersey Decision.[9]

Accordingly, in the present Merger Application, the resulting bank, Fleet-Resulting, is situated in New York (as well as in New Jersey) for purposes of sections 36(b)(2)(A) & 36(c). New York law allows a New York bank to open a de novo branch at any location in the state (with an exception for home office protection in small towns) and to acquire branches by merger or acquisition (without the home office protection exception). See N.Y. Banking Law §§ 105(1) (de novo branches) & 105(5)(a) (branches acquired by merger or acquisition). A New York state-chartered bank could have branches at the locations of Fleet-NY's main office and branches in New York. Thus, a national bank situated in New York also could establish branches at those locations under 12 U.S.C. § 36(c). Therefore, Fleet-Resulting may retain and operate Fleet-NY's main office and branches as branches under section 36(b)(2)(A).[10]

2. Retention of NatWest's Grandfathered Branches in New York.

Under section 36(b)(2)(B), the resulting bank may retain any branches of the participating banks that were in operation on February 25, 1927, as branches of any bank. The McFadden Act expressly authorizes national banks to retain such grandfathered branches -- i.e., branches in existence when the Act was adopted, February 25, 1927. See 12 U.S.C. §§ 36(a),

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[9] In addition, we note that in the new interstate merger transactions authorized under the Riegle-Neal Act essentially the same result occurs: the resulting bank keeps the branches of the participating banks under 12 U.S.C. § 1831u(d)(1). In the Riegle-Neal Act, Congress has created this result for the broad class of interstate mergers that the Act authorizes. It is not inappropriate to interpret section 36(b)(2)(A) to have the same result in the limited situations in which interstate mergers can occur under prior law.

[10] For purposes of section 36(b) and section 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state's banks within the state. State laws pertaining to the activities of the state's banks outside the state or to the activities of out-of-state banks within the state are not within the scope of what the McFadden Act refers to. See, e.g., OCC PNC/Kentucky Decision (at page 12, note 10); OCC Bank Midwest Decision (Parts II-B, II-C-2, II-D, III-B-1-b). Thus, any provisions of New York or New Jersey law that might authorize state banks to have branches in other states, authorize out-of-state banks to have branches within the state, or that might be construed to bar out-of-state banks from operating branches in the state are not the state laws incorporated in sections 36(b) and 36(c).

36(b)(1)(B), & 36(b)(2)(B). This authority is without qualification and without conditions based on other provisions in the McFadden Act, on State law, or on the location of the bank's main office and other branches. See, e.g., OCC NationsBank/Maryland National Decision (Part II-B-2-a); OCC First Fidelity/New Jersey Decision (Part II-B-2-a). NatWest has at least two such grandfathered branches in New York.[11] Thus, Fleet-Resulting may retain those branches under section 36(b)(2)(B).

3. Retention of NatWest's Branches in New York and New Jersey.

In the proposed merger, NatWest is the acquiring or lead bank, i.e., the bank under whose charter the merger is effected. Section 36(b)(2)(C) of the McFadden Act authorizes the national bank resulting from a merger to retain and operate as a branch any branch of the lead bank that existed prior to the merger, unless a state bank resulting from a merger would be "prohibited" by state law from retaining as a branch an identically situated office of a State bank. Paragraph (C) was added in 1962 to address a problem that had arisen under prior law. Section 36(b)(2) now differentiates between branches of target banks and branches of the lead bank. State law on the establishment of new branches applies to the resulting bank's retention of the branches of the target bank under paragraph (A); but it does not apply to the resulting bank's retention of the branches of the lead bank under paragraph (C). Instead, a different rule applies: The branches may be retained unless the state has expressly prohibited it.

In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to lead banks that have offices in more than one state. We determined that section 36(b)(2)(C) should be applied in the same manner as sections 36(c) and 36(b)(2)(A), so that the resulting national bank is treated as situated in each state in which it operates in applying section 36(b)(2)(C). Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state. We reached this conclusion in decisions both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2-b); OCC Midlantic/Old York Decision (Part II-B-3); OCC First Fidelity/Baltimore Decision (Part III-B-3). See also OCC Midlantic Decision; OCC NationsBank/D.C.-Maryland Decision; OCC First Peoples Decision; OCC NationsBank/Maryland National Decision; OCC First Fidelity/New Jersey Decision.[12]

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[11] In 1927 the Grand Street Branch (318 Grand Street) and the Williamsburg Branch (47 Graham Avenue) in New York City were branches of different earlier institutions and subsequently became part of NatWest. Moreover, because of the grandfathered branches in New York, as well as its other branches in New York, Fleet-Resulting is situated in New York for further branching purposes. See Seattle Trust, 492 F.2d at 51. Thus, in addition to the branch retention authority under sections 36(b)(2)(A) (discussed above) and 36(b)(2)(C) (discussed below), Fleet-Resulting could establish branches at the other existing locations of both banks in New York.

[12] In addition, we note that in the new interstate merger transactions authorized under the Riegle-Neal Act essentially the same result occurs: the resulting bank keeps the branches of the participating banks under 12 U.S.C. § 1831u(d)(1). In the Riegle-Neal Act, Congress has created this result for the broad class of interstate mergers that the Act authorizes. It is not inappropriate to interpret section 36(b)(2)(C) to have the same result in the limited situations in which interstate mergers can occur under prior law.

Thus, under section 36(b)(2)(C), for each state, the resulting bank may retain the branches of the lead bank unless the state has expressly prohibited branch retention for identically situated offices in a merger between its state banks. With respect to NatWest's New York branches, there is no provision of New York law that would prohibit a New York-chartered bank, following a merger with another New York bank, from retaining NatWest's New York branches if such offices were branches of the New York-chartered bank. Indeed, while affirmative state authority is not necessary to satisfy section 36(b)(2)(C), we note that the lead bank in a state merger also could have branches in New York without geographic limitation under the general branching statute. See N.Y. Banking Law §§ 105(1) & 105(5)(a). Thus, Fleet-Resulting may retain the New York branches of NatWest under section 36(b)(2)(C).

Similarly, with respect to the New Jersey branches of NatWest, there is no provision of New Jersey law that would prohibit a New Jersey-chartered bank, following a merger with another New Jersey bank, from retaining NatWest's New Jersey branches if such offices were branches of the New Jersey-chartered bank. Indeed, while affirmative state authority is not necessary to satisfy section 36(b)(2)(C), we note that the lead bank in a state merger is authorized to continue its branches. See New Jersey Stat. Ann. § 17:9A-139(2). The branches could also be established under the general state branching statute. See New Jersey Stat. Ann. § 17:9A-19(K). Thus, Fleet-Resulting may retain the New Jersey branches of NatWest under section 36(b)(2)(C).

C. This Existing Authority for National Banks under Federal Law is Continued in the Statutory Language and Legislative History of the Riegle-Neal Act.

Our analysis of the legal authority for this Merger Application is based on pre-existing current law for national banks, in particular 12 U.S.C. §§ 36(b), 36(c), & 215a. The new interstate banking and branching legislation does not change the legal analysis and result, and indeed has confirmed it. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act adds a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. It also makes conforming amendments to the provisions on mergers and consolidations of national banks (adding a new section that follows sections 215 and 215a) and to the McFadden Act (adding a new subsection 36(d)) that add merger and branching provisions for national banks to correspond to the section 44 transactions. See Riegle-Neal Act §§ 102(b)(1)(B) & 102(b)(4).

The statutory changes and legislative history of the Riegle-Neal Act shows that Congress was completely aware of the OCC's prior interstate decisions. Some of those decisions involved the interstate relocation of a national bank's main office under 12 U.S.C. § 30, as well as the OCC's interpretation and application of sections 36 and 215a for an interstate merger in the manner set forth above, because the transactions in those applications involved an interstate main office relocation followed by an interstate merger. See OCC NationsBank/Maryland National Decision; OCC First Fidelity/New Jersey Decision. Other OCC decisions prior to the Riegle-Neal Act also addressed interstate mergers and involved similar issues and analysis of sections 36 and 215a. See OCC decisions listed in note 2 above. In the Riegle-Neal Act Congress did not change sections 36(b), 36(c), or 215a or express any disagreement with OCC's interpretation

and application of them. The Riegle-Neal Act also does not change section 30 with respect to the power to change the location of the main office across a state line. But it does change sections 30 and 36 with respect to the power of the bank to keep existing branches in the state from which it relocated. See Riegle-Neal Act §§ 102(b)(1) (adding new subsection (e) to section 36) & 102(b)(2) (adding new subsection (c) to section 30). However, this change to the authority to continue existing branches in an interstate main office relocation does not take effect until June 1, 1997.

Congress did not alter existing authority in sections 215 and 215a and in sections 36(a), 36(b) and 36(c). The statutory language and legislative history clearly contemplate that existing authority under these provisions remains in effect. First, the language of these sections is not changed. Second, the legislative history contains no indication of any intent to modify the operation of these sections. Third, nothing in the new sections added in the Riegle-Neal Act necessarily conflicts with any authority in these sections. For example, the provision on exclusive authority for additional branches (subsection 36(e)) is not effective until June 1, 1997. In addition, even after it is effective, it expressly does not apply in states in which the bank has its main office or already has a branch; and so in those states the operation of existing authority for additional branches by establishment or merger under sections 36 and 215a continues unaffected. Moreover, subsection 36(e) also expressly includes, as a continuing source of authority, branching authorized "under this section" (i.e., Revised Statutes § 5155, which includes subsections 36(a), 36(b), and 36(c)). See Riegle-Neal Act § 102(b)(1) (adding new subsection (e) to section 36).

The legislative history of the changes to section 30 is also illuminating. The Conference Report expressly shows that Congress was aware of existing authority and of OCC analyses and approvals under that authority (such as the OCC NationsBank/Maryland National Decision, the OCC First Fidelity/New Jersey Decision, and the other decisions cited in note 2 above) and expected it to continue until June 1, 1997:

> The Comptroller of the Currency (OCC) has used the 30 mile relocation provision of the National Bank Act (section 2 of the Act of May 1, 1886, 12 U.S.C. 30), to approve several transactions which have permitted national banks to move their main offices to other States but to retain branches in the States left by the main offices. Section 102(b)(2) amends the provision so that after June 1, 1997, a national bank relocating its main office to another state may maintain its branches in the first state only if those branches could have been established by a bank with its home State in the new State. . . .
>
> The Conferees are aware of the OCC procedures in permitting relocation across state lines. The Conferees concur with those procedures, including the application of appropriate State law and authority. The Conferees expect the OCC to continue to follow those procedures until the provisions of Title I become fully applicable on June 1, 1997.

H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (August 2, 1994) ("Conference Report"). This statement clearly shows a Congressional understanding that under existing law a national

bank can move its main office across state lines while keeping branches in its former state and that this existing authority is being changed by the amendment. We believe the reference in the Conference Report to the OCC's prior decisions includes the aspects of the prior decisions that involved the subsequent interstate merger under sections 36 and 215a, as well as the analysis of main office relocation and branch retention under section 30. If the other aspects of the legal analysis in the prior decisions were not also valid, the final results in those decisions would not have been legally authorized. In that event, Congress' concurrence in the decisions would have been a nullity. The legislative history specifically mentions interstate branch retention under section 30 because that is the part of prior law that is being changed on June 1, 1997.

The fact that Congress, during legislation in which it was comprehensively considering interstate branching, left these statutes and OCC interpretation of them unaffected is conclusive evidence that the intended meanings of sections 30, 36, and 215a in the interstate context are those previously expressed by the OCC and set out above. When Congress revisits a statute that has an established administrative or judicial interpretation without pertinent change, "congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." Commodity Futures Trading Commission v. Schor, 478 U.S. 833, 846 (1986) (quoting NLRB v. Bell Aerospace Co., 416 U.S. 267, 274-75 (1974). See also Cannon v. University of Chicago, 441 U.S. 677, 698-99 (1979); Lorillard v. Pons, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change, [citations omitted]."); Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 496 (S.D. Ohio 1976) ("[W]here prior agency interpretations have not been overturned during subsequent congressional reenactment or amendments, these interpretations take on added importance."). Our analysis of the relationship of the Riegle-Neal Act to existing law was also discussed in more detail in the OCC Bank Midwest Decision (Part II-D) and in the OCC Fleet/New England Decision (Part II-A-2).

There is one way in which the Riegle-Neal Act might be construed to supplant existing authority in a merger transaction like the present one. Some merger transactions under existing authority are also transactions that could come within the scope of, and be approved under, the new section 44 authority for interstate merger transactions in the Riegle-Neal Act and the corresponding new provision authorizing national banks to engage in section 44 mergers, 12 U.S.C. § 215a-1.[13] If the Riegle-Neal Act were interpreted such that the new section 44 interstate merger provision was intended to supersede existing authority in cases where both

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[13] In the case of national banks, these would include transactions, such as the present one between NatWest and Fleet-NY, in which an interstate national bank, with its main office in state A and branches in state B proposed to merge with another national bank whose main office was in state B. In that transaction, both banks are "located" in state B for section 215a purposes and the branches could be retained under section 36(b)(2), and so the transaction is permissible under prior law. In addition, the two banks have different "home states" for section 44 purposes, and so could come within the scope of section 44(a)(1)'s authority for mergers between banks with different home states. Similarly, the interstate bank could apply to acquire some additional branches from another bank in state B in a purchase and assumption transaction. Those additional branches would be permissible under section 36(c). That transaction could also come within the scope of section 44(a)(4). There can also be examples of overlap between existing authority under state law for state banks and section 44 mergers for state banks.

could apply, then such transactions could no longer be approved under existing law (sections 36(b), 36(c), and 215a, in the case of national banks) but would have to be processed under section 44. However, review of the statutory framework and legislative history shows that the intended operation of section 44 and section 215a-1 is that they are a separate and parallel source of authority for interstate merger transactions. They will allow interstate mergers after June 1, 1997, overriding any conflicting state laws. Section 44 permits states to opt-out or to opt in early. But it does not supplant existing federal laws for national banks that allow some forms of interstate transaction. Nor does section 44 supplant state laws that may allow limited interstate branching. The Riegle-Neal Act does limit other sources of interstate branching authority, but that occurs in the separate provisions on exclusive authority for additional branches. See 12 U.S.C. §§ 36(e) (national banks) & 1828(d)(3) (state nonmember banks). Thus, a transaction that can come under other existing authority continues to be authorized under that authority, provided it is consistent with the provisions on exclusive authority for additional branches. The OCC previously addressed this issue in other transactions similar to the present Merger Application, see OCC Midlantic/Old York Decision, and that decision should be consulted for a fuller discussion

In this Merger Application, NatWest -- a national bank with its main office in New Jersey that already operates branches in New York -- is acquiring additional branches in New York by a merger with another bank in New York. The acquisition or establishment of additional branches in a state in which an interstate bank already has a branch is not subject to the exclusivity provisions of the Riegle-Neal Act. See 12 U.S.C. § 36(e)(1). Cf. 12 U.S.C. § 1831u(d)(2). See also Conference Report at 56-57 (exclusivity provisions make Riegle-Neal provisions the exclusive means for a bank's "initial interstate entry into a host State"). Thus, this Merger Application is authorized under existing federal law for national banks. In the Riegle-Neal Act, Congress confirmed that existing authority, changed the authority under section 30 beginning June 1, 1997, but left the merger authority under section 215a and branch retention authority under section 36(b)(2) unchanged.

D. Conclusion

In conclusion, our legal analysis of this Merger Application follows our analysis of prior merger proposals involving an interstate bank. We find that the merger of Fleet-NY into NatWest is legally authorized under 12 U.S.C. § 215a. We also find that after the merger the resulting bank, Fleet-Resulting, is legally authorized to retain and operate as branches the main office of Fleet-NY and the branches of both banks in New York and New Jersey under the McFadden Act, 12 U.S.C. § 36(b)(2). Accordingly, the Merger Application is legally authorized.

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 any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In

addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis

The OCC has reviewed the competitive effects of the proposed merger by using its standard procedures for determining whether a merger clearly has no or minimal anticompetitive effects, and the proposed merger satisfies the criteria for a merger with no or minimal anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. After the merger and change of ownership, much of the current management of NatWest will remain at the resulting bank. New managers are experienced at other Fleet Financial Group banks. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. Fleet-Resulting will serve the same areas as NatWest. Upon completion of the merger, Fleet-Resulting will continue the banking products and services offered by NatWest and will add additional products and services from the Fleet Financial Group. The bank's customers will also have access to the additional branches in the New York City and Long Island areas that were formerly Fleet-NY (or FBNY) branches. Former Fleet-NY and FBNY customers also will gain access to a significantly larger number of NatWest branches in New York and New Jersey. While some redundant branches may close (as discussed below in connection with a comment), other branches will continue to serve the same neighborhoods. Thus, the branch closures should not significantly affect access to the bank's loan products and services. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Application.

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 their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. NatWest has an outstanding rating with respect to CRA performance. Fleet-NY is

recently chartered and began operating in June 1995.[14] It has not yet had a CRA examination and does not yet have a CRA rating. Based upon other information available, the OCC has no reason to believe Fleet-NY's performance is less than satisfactory. In this merger, NatWest is the surviving charter, and after the merger and the divestiture of the upstate branches (i.e., the Fleet-NY branches) to FBNY, Fleet-Resulting will use the same CRA statement and serve the same delineated community as NatWest.

Two commenters filed timely objections to the merger, raising concerns bearing upon the convenience and needs factor under the Bank Merger Act and upon the CRA. One commenter, the Passaic County (New Jersey) Legal Aid Society ("PCLAS"), raised allegations concerning lending activity in New Jersey by Fleet Finance, Inc., a non-bank subsidiary of Fleet Financial Group. Fleet Finance, a non-bank subsidiary of the holding company, is not a part of the merger application or the Resulting Bank. Moreover, the holding company's primary supervisor, the Federal Reserve Board ("Board") has extensively reviewed prior lending practices of Fleet Finance, and the steps taken by Fleet Financial Group and Fleet Finance to address issues raised by allegations concerning Fleet Finance's lending practices have been cited in various Board Orders approving acquisitions by the holding company.[15] See 82 Fed. Res. Bull. 50, 69 (1995); 80 Fed. Res. Bull. 818, 820 (1994); 80 Fed. Res. Bull. 170, 173 (1994). In the Board's Order approving the acquisition of branches by FBNY, the Board noted that Fleet Financial Group had taken a number of steps to address Fleet Finance's alleged improper mortgage lending practices. See 80 Fed. Reg. at 173. "For example, Fleet Finance has discontinued its practice of purchasing individual third-party loans, except for packages in bulk from regulated financial institutions or the Resolution Trust Corporation, and has stopped financing home improvements." Id.

The other commenter, Inner City Press/Community on the Move ("ICP"), objected to the fact that the Resulting Bank likely would close branches in the Long Island and New York City areas and that the branches that would be closed were not specifically identified in the Merger Application to allow comment on particular proposed branch closings. After the merger, Fleet-Resulting will have some branches in the New York City and Long Island areas that overlap, i.e., current branches of FBNY and NatWest that are close to each other and serve the same neighborhoods. Some of the redundant branches will be closed. However, the specific

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[14] Fleet-NY was chartered as a new national bank in 1995 by Shawmut National Corporation to take over the branches in New York of an interstate federal thrift that Shawmut acquired. The thrift's other branches in Connecticut and Massachusetts were taken over by Shawmut's banks in those states. Shawmut National Corporation was later acquired by Fleet Financial Group.

[15] Another subsidiary of Fleet Financial Group, Fleet Mortgage Company, has also been investigated by the Board for possible violations of the Equal Credit Opportunity Act and the Fair Housing Act relating to "overage" policies. In the Board's Order approving the merger of Fleet Financial Group, Inc. and Shawmut National Corporation, the Board concluded that it was appropriate to approve the merger in spite of the possible violations because of the corrective actions taken by Fleet Financial Group and the limited number of offices affected. The Board noted that it has authority to take supervisory action, if appropriate, upon any resolution of the matter and conditioned the approval of the merger on the continuation of Fleet Financial Group's corrective practices. See 82 Fed. Res. Bull. at 173. Fleet Mortgage Company also is not a part of the merger application or of the Resulting Bank.

branches to be closed have not yet been definitively identified and announced. In a bank merger application, the applicants are not required to identify the specific branches, if any, that may be closed later as a result of the merger. When the branches are identified, Fleet-Resulting will be required to provide notice of the proposed branch closing to the OCC and to the branch customers under 12 U.S.C. § 1831r-1. Also, because Fleet-Resulting will be an interstate bank, if the bank proposes to close a branch in a low- or moderate-income area, the provisions of 12 U.S.C. § 1831r-1(d) will also apply. Pursuant to these provisions, a person from the area in which the branch is located may submit to the OCC a written request relating to the branch closing. The request must contain a statement of specific reasons, including a discussion of the adverse effects of the proposed closing on the availability of banking services in the area. If the request is not frivolous, the OCC must consult with community leaders and others, as appropriate, in the area affected by the proposed branch closing to explore the possibility of obtaining alternative facilities or services for the area. Furthermore, as a part of each CRA examination of Fleet-Resulting, the OCC will evaluate the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. See 12 C.F.R. § 25.7; see also 60 Fed. Reg. 22,156, 22,181 (May 4, 1995) (to be codified at 12 C.F.R. § 25.24).

ICP sent a subsequent comment letter on March 21, 1996. In this letter, ICP repeated the concerns about branch closings and raised additional issues. The March 21st letter, received after the close of the comment period, is not part of the official record for this Merger Application.[16] We note, however, that the additional substantive issues raised by ICP in its March 21st letter involve CRA and fair lending allegations concerning Fleet Financial Group's state bank subsidiary in New York and Fleet Mortgage Company (at the time a non-bank subsidiary of the holding company), both entities supervised by the Board. These allegations repeat matters previously raised in proceedings before the Board on applications by Fleet Financial Group and addressed in detail by the Board (see discussion above and in footnote 15) and would not alter our decision.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, the Merger Application is legally authorized under 12 U.S.C. §§ 36(b) and 215a. The transaction also meets the criteria for approval under other statutory factors. Accordingly, this Application is hereby approved.

Julie L. Williams
Chief Counsel

4-12-96
Date

Application Control Number: 96-ML-02-0004

[16] Many of the comment letters in support of the merger were also received after the end of the public comment period. Sixteen letters in support were received on or before March 4, 1996; an additional 95 letters in support of the merger were received after that date.