# Office of the Comptroller of the Currency

## Interpretations - Corporate Decision #96-29

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**ON THE APPLICATIONS TO MERGE**

**FIRST INTERSTATE BANK OF ALASKA, N.A., ANCHORAGE, ALASKA,**

**FIRST INTERSTATE BANK OF IDAHO, N.A., BOISE, IDAHO,**

**FIRST INTERSTATE BANK OF NEVADA, N.A., LAS VEGAS, NEVADA,**

**FIRST INTERSTATE BANK OF NEW MEXICO, N.A., SANTA FE, NEW MEXICO,**

**FIRST INTERSTATE BANK OF OREGON, N.A., PORTLAND, OREGON, AND**

**FIRST INTERSTATE BANK OF UTAH, N.A., SALT LAKE CITY, UTAH,**

**WITH AND INTO**

**WELLS FARGO BANK, N.A., SAN FRANCISCO, CALIFORNIA**

**June 1, 1996**

### I. INTRODUCTION

On April 8, 1996, Wells Fargo Bank, National Association, San Francisco, California ("Wells") filed a group of Applications with the Office of the Comptroller of the Currency ("OCC") for approval to merge a number of affiliated national banks located in other states into Wells under Wells' charter and title, under 12 U.S.C. § 215a-1, 1828(c) & 1831u(a) ("the Merger Applications"). The transactions are structured as a series of separate mergers of each affiliated bank into Wells. The affiliated banks are: First Interstate Bank of Alaska, National Association, Anchorage, Alaska ("FIB-Alaska"), First Interstate Bank of Idaho, National Association, Boise, Idaho ("FIB-Idaho"), First Interstate Bank of Nevada, National Association, Las Vegas, Nevada ("FIB-Nevada"), First Interstate Bank of New Mexico, Santa Fe, New Mexico ("FIB-New Mexico"), First Interstate Bank of Oregon, National Association, Portland, Oregon ("FIB-Oregon"), and First Interstate Bank of Utah, National Association, Salt Lake City, Utah ("FIB-Utah"). <**NOTE:** Wells also applied to merge First Interstate Bank of Arizona, National Association, Phoenix, Arizona, and First Interstate Bank of Washington, National Association, Seattle, Washington, into Wells. Those applications are pending and will be acted upon separately.> All of the banks are national banks. Each bank currently has branches only in its home state. In each of the Merger Applications, OCC approval is also requested for Wells, as the resulting bank in each merger, to retain Wells' main office as the main office

of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain the branches of both merging banks, and the main office of each acquired bank, as branches after the merger under 12 U.S.C. § 36(d) & 1831u(d)(1).

All of the banks are wholly-owned subsidiaries of Wells Fargo & Company ("WFC"), a multistate bank holding company with its headquarters in San Francisco, California. The First Interstate banks became subsidiaries of WFC, and affiliates of Wells, earlier this year as a result of the merger of First Interstate Bancorp with and into WFC. *See Wells Fargo & Company*, 82 Federal Reserve Bulletin 445 (March 6, 1996). In the proposed mergers, a number of WFC's existing bank subsidiaries will be combined into one bank with branches. The purposes of the bank mergers are to streamline the operation of WFC's banking business, enhance the ability of customers to conduct banking transactions and obtain services across state lines, and to reduce the expenses associated with maintaining separate corporate entities. Wells believes that the combination of operations into an interstate national bank will produce a stronger bank that can deliver products and services to its customers more efficiently, reduce its operating costs, and minimize risk by diversifying the geographic concentration of its business.

As of December 31, 1995, adjusted for its recent merger with First Interstate Bank of California, Wells had approximately $76 billion in assets and $58.9 billion in deposits and operated 1317 branch offices in California. As of the same date, FIB-Alaska had approximately $52 million in assets and $39 million in deposits and operated three branch offices in Alaska, FIB-Idaho had approximately $1 billion in assets and $849 million in deposits and operated 32 branch offices in Idaho, FIB-Nevada had approximately $3.85 billion in assets and $3.5 billion in deposits and operated 76 branch offices in Nevada, FIB-New Mexico had approximately $119 million in assets and $108 million in deposits and operated four branch offices in New Mexico, FIB-Oregon had approximately $6.6 billion in assets and $5.3 billion in deposits and operated 165 branch offices in Oregon, and FIB-Utah had approximately $954 million in assets and $866 million in deposits and operated 32 branch offices in Utah.

## II. LEGAL AUTHORITY

### A. The statutory framework: During the early opt-in period, national banks with different home states may merge under 12 U.S.C. § 215a-1 & 1831u(a) if each home state has a law that meets the provisions of section 1831u(a)(3)(A) and the banks meet the relevant conditions of section 1831u(a) & (b).

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. *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 added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. *See* Riegle-Neal Act 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. *See* Riegle-Neal Act 102(b)(4) (adding a new section 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. *See* Riegle-Neal Act 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states, creating an interstate bank:

> (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). <**NOTE:** For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). *See* 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).> The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. *See* 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws).

In addition, the Act also provides that interstate merger transactions may be approved before June 1, 1997 (the "early opt-in period") if the home states of the merging banks have the requisite enabling legislation:

> (3) State Election to Permit Early Interstate Merger Transactions. --
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> (A) In General. -- A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that --
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> (i) applies equally to all out-of-State banks; and
>
> (ii) expressly permits interstate merger transactions with all out-of-State banks.
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> (B) Certain Conditions Allowed. -- A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if --
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> (i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);
>
> (ii) the imposition of the conditions is not preempted by Federal law; and
>
> (iii) the conditions do not apply or require performance after May 31, 1997.

12 U.S.C. § 1831u(a)(3).

The availability of the authority for an interstate merger transaction under section 1831u(a) during the early opt-in period, therefore, is triggered by the existence of the requisite state law in the home states of the merging banks. The federal merger authority in section 1831u(a) is available only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). However, section 1831u appears to structure the relationship between federal authority and state law differently than some other federal banking statutes that refer to state law. The Riegle-Neal Act's interstate merger transaction provisions do not make federal law completely supplant state law. But they also do not defer entirely to each state's law, or entirely incorporate each state's law, regarding the extent and manner in which interstate merger transactions can occur in that state.

On the one hand, the federal authority in section 1831u(a) is triggered, during the early opt-in period,

only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). But section 1831u does not expressly prohibit states from having other features in their interstate merger laws beyond those needed to meet the provisions of section 1831u(a)(3)(A). In fact, the Act expressly reserves to each state the right to determine branching by that state's state-chartered banks.<**NOTE:** Section 1831u(c)(3) provides:

> (3) Reservation of Certain Rights to States. -- No provision of this section shall be construed as limiting in any way the right of a State to --
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> (A) determine the authority of State banks chartered by that State to establish and maintain branches; or
>
> (B) supervise, regulate, and examine State banks chartered by that State.

12 U.S.C. § 1831u(c)(3). While the Act thus preserves for the states their rights with respect to interstate mergers and branching by the state's own state-chartered banks, the Riegle-Neal Act did not give the states any additional powers with respect to national banks (or state banks chartered by other states), other than in the areas specifically set out in section 1831u.> Nor does section 1831u(a) provide that the federal merger authority is ineffective if the state adds other features. That is, the state may add other features to its interstate merger law, and, as long as those features do not cause the state law to fail to meet the provisions of section 1831u(a)(3)(A), the federal merger authority in section 1831u(a) continues to be available.

But, on the other hand, section 1831u, once triggered during the early opt-in period, singles out and specifically incorporates into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. Similarly, after June 1, 1997 (when subsection 1831u(a)(3) will no longer be relevant), section 1831u continues to single out and specifically incorporate into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. In addition to the state law features that are included in section 1831u on that permanent basis, Congress permitted host states, during the early opt-in period, to impose conditions on branches within the host state, as long as the conditions met the requirements of section 1831u(a)(3)(B) -- namely, that they do not discriminate against out-of-state banks, that they are not preempted by federal law, and they do not continue beyond May 31, 1997. Indeed, the inclusion of section 1831u(a)(3)(B) allowing host states to impose other conditions during the early opt-in period (subject to the limits in the section) indicates Congress believed that, without such permission (and therefore also in the period after June 1, 1997), host states would not have the authority to impose any conditions or requirements beyond those included in the specific provisions of section 1831u that refer to state law (including the reserved authority of a state to regulate its own state-chartered banks in section 1831u(c)(3)). <**NOTE:** If the states otherwise had the power to impose additional conditions and requirements, there would have been no need for section 1831u(a)(3)(B)'s permission for certain conditions during the early opt-in period and section 1831u(c)(3)'s reservation of rights to states with respect to their own state-chartered banks.> This would follow from the fact that in the Riegle-Neal Act Congress has created the comprehensive federal framework governing interstate merger transactions.

Thus, in summary, the Riegle-Neal Act's provisions for interstate merger transactions set forth a federal framework for mergers of banks with different home states that includes state law in specified ways in certain specific areas, but only in those areas. Those areas include the basic determination whether to participate or to opt-out. But the opt-out provision is carefully crafted by Congress to be only the single decision to be in or out of the congressionally set framework. There is no provision for a partial opt-out, a conditional opt-out, partial participation, or modification of the terms of the framework by each state (other than in the specific areas set out in section 1831u). <**NOTE:** The relationship of the federal framework and state law in the interstate merger transaction provisions in the Riegle-Neal Act is similar to the relationship of the federal framework and state law in the interstate bank acquisition provisions of the Riegle-Neal Act: in both, a comprehensive federal framework is established, and it provides for state authority only in certain specified areas. *See*

Riegle-Neal Act 101(a) (amending section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d)). One difference is that until June 1, 1997, states are permitted to opt-out of the interstate merger transaction framework, but that difference does not affect the underlying relationship between federal and state law in the framework. Thus, even apart from considerations relating to preemption and state authority over national banks generally, under the provisions of the Riegle-Neal Act, after May 31, 1997, host states have no more authority to approve, or place other conditions on, interstate merger transactions that do not involve a state bank chartered by the host state than they do to approve, or place conditions on, an interstate bank acquisition of a bank in the host state by an out-of-state bank holding company. And until May 31, 1997, the conditions a host state may impose are limited by section 1831u(a)(3)(B).>

Therefore, in evaluating an application for an interstate merger transaction under section 1831u during the early opt-in period, the OCC must determine, first, whether each of the home states of the merging banks (here, California and, respectively for each merger, Alaska, Idaho, Nevada, New Mexico, Oregon, and Utah) has a law that meets the provisions of subsection 1831u(a)(3)(A), and second, whether the applicant banks in each merger meet the requirements and conditions for approval in section 1831u, including state provisions to the extent applicable in section 1831u. We now address these matters in turn.