Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-36

Published in Interpretations and Actions July 1996

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

ON THE APPLICATION TO MERGE

BANKAMERICA NATIONAL TRUST COMPANY, NEW YORK, NEW YORK,

WITH AND INTO

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,

SAN FRANCISCO, CALIFORNIA

July 9, 1996

I. INTRODUCTION

On April 22, 1996, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge BankAmerica National Trust Company, New York, New York ("BANTCo") with and into Bank of America National Trust and Savings Association, San Francisco, California ("BofA") under the charter and title of the latter, under 12 U.S.C. 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). Both banks are insured national banks. BofA has its main office in San Francisco and operates branches in California. BANTCo has its main office in New York City and does not currently have branches. BANTCo engages primarily in an institutional trust business and in clearing and servicing activities for BofA and other affiliated banks. In the Merger Application, OCC approval is also requested for the resulting bank to retain BofA's main office as the main office of the resulting bank under 12 U.S.C. 1831u(d)(1) and to retain BofA's branches and BANTCo's main office, as branches after the merger under 12 U.S.C. 36(d) & 1831u(d)(1).

Both BofA and BANTCo are subsidiaries of BankAmerica Corporation ("BAC"), a multistate bank holding company with its headquarters in San Francisco, California. In the proposed merger, two of BAC's existing bank subsidiaries will be combined into one bank with branches. As of December 31, 1995, BofA had approximately $163.4 billion in assets and $119.2 billion in deposits and operated 1,974 branch offices in California. As of the same date, BANTCo had approximately $281 million in assets and $121 million in deposits and operated only its main office in New York.

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. --
>
> (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 --
>
> (i) applies equally to all out-of-State banks; and
>
> (ii) expressly permits interstate merger transactions with all out-of-State banks.
>
> (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 --
>
> (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 -- (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 New York) has a law that meets the provisions of subsection 1831u(a)(3)(A), and second, whether the applicant banks 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.

B. Both California and New York have laws that meet the provisions of 12 U.S.C. 1831u(a)(3)(A).

In this Merger Application, California is BofA's home state, and New York is BANTCo's home state. Since BofA and BANTCo are applying to merge in an interstate merger transaction under section 1831u(a) during the early opt-in period, the merger may be approved only if each home state (California and New York) has the requisite law "opting-in" to interstate mergers, i.e., "a law that -- (i) applies equally to all out-of-State banks; and (ii) expressly permits interstate merger transactions with all out-of-State banks." 12 U.S.C. 1831u(a)(3)(A). Both California and New York have such laws, and therefore, the merger authority of section 1831u is triggered.

California adopted legislation, effective October 2, 1995, expressly permitting mergers with out-of-state banks:

> (a)(1) No foreign (other state) bank may merge as the surviving corporation with a California bank or California industrial loan company except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).
> . . . . .

(b) This section constitutes:
(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).
. . . . .

Cal. Fin. Code 3824 (West 1996). <**NOTE:**The term "foreign (other state) bank" means a bank organized under the laws of another state of the United States, or a national bank whose main office is located in any other state of the United States. See Cal. Fin. Code 139.5 (West 1996). >

New York also has enacted legislation, effective February 8, 1996, expressly permitting mergers with out-of-state banks and branch acquisitions by out-of-state banks:

An out-of-state bank may engage in an acquisition transaction with a New York bank and may maintain as a branch or branches the place or places of business of any such New York bank which it has received into itself as a result of such transaction, subject to the requirements of this article.

N.Y. Banking Law 225 (as added by 1995 New York A.B. 8229 14). <**NOTE:** In the New York law, the term "out-of-state bank" includes both out-of-state state banks and out-of-state national banks, the term "out-of-state national bank" means a national bank whose main office is located outside of New York, and the term "acquisition transaction" means "any merger, consolidation or purchase or assets and assumption of liabilities of all or part of a banking institution." See N.Y. Banking law 222(1), (3) & (7). New York has imposed a nationwide reciprocal treatment condition on acquisition transactions by out-of-state banks until May 31, 1997: An out-of-state bank that does not operate a branch in this state may maintain one or more branches located in this state acquired by means of an acquisition transaction if the superintendent finds that the laws of the out-of-state bank's home state would authorize a New York bank to open, occupy or maintain a branch or branches in that state under comparable circumstances. N.Y. Banking Law 223 (emphasis added) (the conditional clause is removed after May 31, 1997). In reviewing similar reciprocity conditions in state statutes with regard to the establishment of de novo interstate branches under 12 U.S.C. 36(g), the OCC concluded the presence of a nationwide reciprocal treatment condition did not cause the state law to fail to meet the provisions of section 36(g)(1)(A), which are substantially similar to the provisions of section 1831u(a)(3)(A). See Decision on the Application of Patrick Henry National Bank, Bassett, Virginia, to Establish a Branch in Eden, North Carolina (OCC Corporate Decision No. 96-04, January 19, 1996). The same analysis applies here, and so the presence of a nationwide reciprocal treatment condition does not mean the New York law fails to trigger the early interstate merger authority of section 1831u(a)(3). See also Decision on the Application of NationsBank, N.A., Richmond, Virginia, and NationsBank, N.A. (Carolinas), Charlotte, North Carolina (OCC Corporate Decision No. 95-47, September 27, 1995) (at pages 5-6) (Riegle-Neal merger). >Thus, both California and New York have laws that apply equally to all out-of-state banks and that expressly permit interstate merger transactions with all out-of-state banks. Therefore, the early interstate merger transaction authority of section 1831u(a)(3) is triggered.

C. The proposed merger between BofA and BANTCo meets the requirements and conditions in 12 U.S.C. 1831u(a) & 1831u(b).

An application by national banks 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). These conditions are: (1) compliance with state-imposed age limits, if any; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. In addition, during the early opt-in period, the application may also be subject to state-imposed conditions permitted under section 1831u(a)(3)(B), if any, that pertain to the initial merger itself (as distinct from conditions relating to the later on-going operations of the branches of the resulting out-of-state bank until May 31, 1997).

BofA's and BANTCo's Merger Application satisfies all these conditions to the extent applicable. First, the proposal satisifes the state-imposed age requirements permitted by section 1831u(a)(5). Under that

section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. 1831u(a)(5)(A). In this Merger Application, BofA is acquiring by merger a bank (BANTCo) in the host state of New York. New York requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the New York bank must have been in existence for at least five years, unless the New York bank to be acquired was not chartered directly or indirectly by the out-of-state bank. See N.Y. Banking Law 223-A (1996). BANTCo was chartered in 1982. Thus, the BofA/BANTCo merger satisfies the Riegle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. 1831u(b)(1). The New York statute does not appear to contain any filing or notice requirement for an interstate merger transaction between two national banks. The New York interstate bank merger statute also does not appear to contain any provision imposing a "qualifying to do business" filing requirement on out-of-state banks with branches in New York. The only applicable filing requirement, then, is the requirement in section 1831u(b)(1)(A)(ii) to submit a copy of the application to the host state bank supervisor. BofA submitted a copy of its OCC Merger Application to the New York State Banking Department. BofA advises that the department indicated no additional application to the department is required. Thus, the BofA/BANTCo merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

Third, the proposed interstate merger transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. 1831u(b)(2)(E). BofA and BANTCo are affiliates.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (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. See 12 U.S.C. 1831u(b)(3). However, this provision applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, BofA (the bank submitting the application as the acquiring bank) has a bank affiliate in New York before the transaction (i.e., BANTCo), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the Merger Application. However, the Community Reinvestment Act itself

is applicable, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. 1831u(b)(4). As of the date the application was filed, both BofA and BANTCo satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. 1831o(b)(1)(A) and 12 C.F.R. 6.4. Additionally, the capital requirements of 12 U.S.C. 51 are satisfied. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the mergers, BofA will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. 1831u(b)(4) are therefore satisfied.

Finally, Congress permitted host states to impose conditions on a branch in the host state resulting from an interstate merger during the early opt-in period (i.e., until June 1, 1997), provided the condition does not discriminate against out-of-state banks, is not preempted by federal law, and does not apply or require performance after May 31, 1997. See 12 U.S.C. 1831u(a)(3)(B) (quoted above at page 3). In the present Merger Application, the host state of New York has imposed a reciprocity condition on the permissibility of interstate mergers. Under the New York interstate merger statute, prior to June 1, 1997, an interstate merger is permitted only if "the laws of the out-of-state bank's home state would authorize a New York bank to open, occupy or maintain a branch or branches in that state under comparable circumstances." N.Y. Banking Law 223 (1996). In other words, it is a condition for an interstate merger transaction between an out-of-state bank and a New York bank in which the out-of-state bank is the acquiring bank that the home state of the out-of-state bank permit New York banks to acquire banks in that state under comparable conditions. Such a reciprocal treatment condition, provided it is nationwide and does not discriminate among states, was specifically addressed by Congress as among the conditions permitted under section 1831u(a)(3). See 12 U.S.C. 1831u(a)(3)(B) (parenthetical phrase). Thus, for mergers before June 1, 1997, it is a permissible condition. California permits out-of-state banks, including New York banks, to merge with California banks. See Cal. Fin. Code 3824 (West 1996) (quoted above at page 5). Thus, the BofA/BANTCo merger complies with the reciprocal treatment condition permitted by the Riegle-Neal Act.

D. Following the merger, the resulting bank may retain BofA's and BANTCo's existing banking offices.

The Applicants have requested that upon the completion of the merger BofA (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in San Francisco as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main office of BANTCo in New York. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

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

12 U.S.C. 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. 1831u].

12 U.S.C. 36(d) (as added by Riegle-Neal Act 102(b)(1)(B)). Therefore, BofA, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both BofA and BANTCo under 12 U.S.C. 36(d) & 1831u(d)(1). <**NOTE:**By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Further, Congress certainly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u. Thus, BofA's retention of branches in this Merger Application is authorized under sections 36(d) and 1831u(d)(1), without regard to the complex branch retention provisions of section 36(b)(2) and the detailed inquiry into relevant state law required thereunder. >Moreover, at its branch in New York, BofA, as the resulting national bank in the merger, will continue to engage in the activities, including fiduciary activities, that its predecessor national banks were engaged in. See, e.g., 12 U.S.C. 215a-1 (Riegle-Neal mergers of national banks occur under the National Bank Consolidation and Merger Act) & 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

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

Since BofA and BANTCo are already owned by the same bank holding company, their merger would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. BofA expects to achieve efficiencies by operating the office in New York as a branch rather than as a separate corporate entity. The geographic diversification of its operations will also strengthen the combined bank. 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 Merger Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. BofA will continue to serve the same areas in California, and it will add BANTCo's office in New York. The office in New York will continue to engage in the business that BANTCo is currently engaged in, which is primarily serving institutional trust customers and performing clearing and servicing activities for other BAC bank subsidiaries. No branch closings are contemplated as a result of this merger since the two banks serve different areas. 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. BofA has an outstanding rating with respect to CRA performance. No public comments were received by the OCC relating to this Application that would cause the OCC to question the banks' performance in complying with the CRA.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. BofA will continue its current CRA programs and policies in California. After BANTCo is merged into BofA, its New York office will remain open as a branch of BofA. Its local community (or assessment area) will be delineated as the boundaries of New York City. BofA expects that, at this time, the New York branch will engage in the institutional trust business and other wholesale business performed by BANTCo. While BofA is a full-service bank, the nature of the business conducted by the New York branch will be taken into account in evaluating BofA's CRA performance in this assessment area, consistent with applicable regulatory provisions.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, the merger of BofA and BANTCo is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. 215a-1 & 1831u(a). The resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. 36(d) & 1831u(d)(1). The merger also meets the criteria for approval under other statutory factors. Accordingly, this Merger Application is hereby approved.

/s/
Julie L. Williams
Chief Counsel

Date: 07-09-96

Application Control Number: 96-ML-02-0026