Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-104
December 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE THIRTY-ONE AFFILIATED BANKS WITH AND INTO UNION PLANTERS NATIONAL BANK, MEMPHIS, TENNESSEE

December 3, 1997

I. INTRODUCTION

On October 21, 1997, Union Planters National Bank, Memphis, Tennessee ("UPNB" or "the Bank"), filed an Application ("Merger Application") with the Office of the Comptroller of the Currency ("OCC") for approval to merge fifteen affiliated banks located in other states with and into UPNB under UPNB's charter and title, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Interstate Merger"),[1] and to merge sixteen affiliated banks in Tennessee with and into UPNB under UPNB's charter and title, pursuant to 12 U.S.C. §§ 215a & 1828(c) ("the In-state Merger").[2] Simultaneously with the merger, UPNB will change its name to Union Planters

[1] The affiliated banks in other states participating in the Interstate Merger are: Union Planters Bank of Alabama, Decatur, Alabama ("Alabama affiliate bank"); Union Planters Bank of Central Arkansas, National Association, Clinton, Arkansas, Union Planters Bank of Northeast Arkansas, Jonesboro, Arkansas ("Arkansas affiliate banks"); Simpson County Bank, Franklin, Kentucky ("Kentucky affiliate bank"); Union Planters Bank of Louisiana, Baton Rouge, Louisiana ("Louisiana affiliate bank"); Union Planters Bank of Southeast Missouri, Cape Girardeau, Missouri, Union Planters Bank of Mid-Missouri, Columbia, Missouri, Union Planters Bank of Mississippi County, East Prairie, Missouri, Union Planters Bank of Missouri, St. Louis, Missouri, Union Planters Bank of Southwest Missouri, Springfield, Missouri ("Missouri affiliate banks"); Union Planters Bank of Northwest Mississippi, Clarksdale, Mississippi, Union Planters Bank of Mississippi, Grenada, Mississippi, Union Planters Bank of Southern Mississippi, Hattiesburg, Mississippi, Union Planters Bank of Central Mississippi, Jackson, Mississippi, and Union Planters Bank of Northeast Mississippi, National Association, New Albany, Mississippi ("Mississippi affiliate banks"). Each of the banks currently operates branches only in its home state, except Union Planters Bank of Southern Mississippi, which acquired branches in Alabama as a result of its merger with Magnolia Federal Bank for Savings, Hattiesburg, Mississippi, on November 1, 1997.

[2] The affiliated banks in Tennessee participating in the In-state Merger are: Union Planters Bank of the Tennessee Delta, Brownsville, Tennessee; Union Planters Bank of Chattanooga, National Association, Chattanooga, Tennessee; Union Planters Bank of the Cumberlands, Cookeville, Tennessee; The First National Bank of Crossville, Crossville, Tennessee; Union Planters Bank of North Central Tennessee, Erin, Tennessee; Bank of Goodlettsville, Goodlettsville, Tennessee; Union Planters Bank of the Tennessee Valley, Harriman, Tennessee; Union Planters Bank of South Central Tennessee, Hohenwald, Tennessee; Union Planters Bank of West Tennessee, Humboldt, Tennessee;

Bank, National Association. All banks in the merger transactions are members of the Bank Insurance Fund ("BIF") except Union Planters Bank of Alabama, Decatur, Alabama, which is a member of the Savings Association Insurance Fund ("SAIF"). UPNB has its main office in Memphis, Tennessee, and currently operates branches in Tennessee, Arkansas, and Mississippi. In the Merger Application, OCC approval is requested for UPNB, as the resulting bank, to retain UPNB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain UPNB's branches and the main offices and branches of the other merging banks, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1) (in the case of the Interstate Merger) and under 12 U.S.C. § 36(b)(2) (in the case of the In-state Merger).

UPNB will succeed to the fiduciary appointments and activities of the affiliated banks through the mergers by operation of statute. See 12 U.S.C. § 215a(e). In addition to conducting trust operations at the main office and branches of UPNB, UPNB will continue to operate two locations as nonbranch trust offices.[3]

All of the banks are direct or indirect subsidiaries of Union Planters Corporation, a multistate bank holding company headquartered in Memphis, Tennessee. In the proposed mergers, a number of Union Planters Corporation's existing bank subsidiaries will be combined into one bank with branches in seven states.

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized, and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

1. The Interstate Merger is authorized.

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

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Union Planters Bank of Jackson, National Association, Jackson, Tennessee; Union Planters Bank of East Tennessee, National Association, Knoxville, Tennessee; Union Planters Bank of Lexington, Lexington, Tennessee; Union Planters Bank of Middle Tennessee, National Association, Nashville, Tennessee; First National Bank of Shelbyville, Shelbyville, Tennessee; Union Planters Bank of Southwest Tennessee, Somerville, Tennessee; and Bank of Commerce, Woodbury, Tennessee ("Tennessee affiliate banks"). Each of the banks operates branches only in Tennessee.

[3] These two nonbranch trust offices are offices of Union Planters Bank of Mississippi, Grenada, Mississippi, located at 4270 I-55 North, Suite 202, Jackson, Mississippi, and Union Planters Bank of Northwest Mississippi, Clarksdale, Mississippi, located at 219 E. Second Street, Clarksdale, Mississippi. These offices do not receive deposits, pay checks, or lend money; and so these locations are not "branches" for purposes of the McFadden Act. See 12 U.S.C. § 36(j).

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, codified at 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:

> (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).[4] 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 this Merger Application, the home states of the banks are Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. None of these states has opted out. Accordingly, the Interstate Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a). [5]

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

The Interstate Merger satisfies all these conditions to the extent applicable. First, the proposal satisfies 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

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[4] 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).

[5] The mergers between UPNB and each of the affiliate banks in the Interstate Merger are structured as separate, but simultaneous, mergers of each affiliate bank into UPNB. Thus, we treat each one of them as an interstate merger transaction under the Riegle-Neal Act.

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 the proposed Interstate Merger, UPNB is acquiring, by merger, banks in the host states of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri. Alabama, Arkansas, Louisiana, and Mississippi each has a five-year age requirement. See Ala. Code § 5-13B-23(c), Ark. Code Ann. §§ 23-45-102(A)(18) and 23-48-903, La. Rev. Stat. §§ 6.532(11) and 6:536(C), and Miss. Code Ann. § 81-23-9(2)(c). Kentucky law does not impose an age requirement on an interstate merger transaction of commonly controlled banks where the resulting bank is an out-of-state national bank.[6] Missouri has not yet enacted legislation with respect to the interstate merger and branching provisions of the Riegle-Neal Act, and so it currently does not have an age requirement for interstate mergers between banks. Each of the Alabama, Arkansas, Louisiana, Mississippi and Missouri affiliate banks has been in existence for five years.[7] Thus, the Interstate Merger of the affiliated banks satisfies the age requirements of the Riegle-Neal Act.

Second, the proposed Interstate Merger satisfies 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).[8] The Alabama interstate bank merger statute

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[6] The Kentucky interstate bank merger statute does not impose an age requirement in an interstate merger transaction where the resulting bank is a national bank. It imposes a five-year age requirement when an out-of-state state bank is the resulting bank or when a Kentucky state bank is the resulting bank. See Ky. Rev. Stat. Ann. § 287.920(4). In the proposed transaction, the resulting bank (UPNB) is an out-of-state national bank; and so the Kentucky age restriction does not apply. Moreover, Simpson County Bank, the target Kentucky state bank has been in operation for more than five years; and so, the age restriction, if applicable, would be met.

[7] Ala. Code § 5-13B-23(c) provides that the Alabama state bank participating in an interstate merger transaction must have been in continuous operation for at least five years. The Alabama affiliate bank, Union Planters Bank of Alabama, converted to an Alabama-chartered commercial bank in 1996. Its predecessor federal savings bank, Valley Federal Savings Bank, was in continuous operation as a federal stock savings bank since 1987, and since 1934 as a mutual savings association. The five-year requirement of section 5-13B-23(c) is met.

[8] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11). In addition, the filing requirements of section 1831u(b)(1) apply only with respect to the host states

requires any out-of-state bank that will be the resulting bank in an interstate merger transaction with an Alabama state bank to notify the superintendent of banks of the proposed merger not later than the date on which it files its merger application with the appropriate federal regulatory agency, to submit a copy of the application to the superintendent, and to pay the filing fee, if any, required by the superintendent. Ala. Code § 5-13B-24. Additionally the Alabama state bank must comply with Ala. Code § 5-7A-1 et seq. (specifying corporate formalities associated with mergers, including shareholders votes, resolutions, meeting notes, etc.) and with any other laws generally applicable to merger transactions. Id. In addition, the resulting out-of-state bank must provide to the superintendent satisfactory evidence of compliance with or exemption from Ala. Code § 10-2B-15.01 et seq. (Alabama's general rules regarding qualification of foreign corporations to conduct business in Alabama). UPNB notified the superintendent and provided a copy of its OCC Merger Application and paid the filing fee. UPNB has stated that it will comply with § 10-2B-15.01 et seq. and make filings necessary under this statute.

The Arkansas interstate bank merger statute requires an out-of-state bank that will be the resulting bank in an interstate merger transaction involving an Arkansas state bank to notify the state bank commissioner of the proposed merger not later than the date on which it files the merger application with the responsible federal bank supervisory agency, submit a copy of the application and pay the filing fee, if any, required by the commissioner. Ark. Code Ann. § 23-48-905. Any state bank which is a party to the interstate merger must comply with Ark. Code Ann. § 23-48-501 et seq., which requires the state bank to file with the commissioner a certified complete copy of the articles of merger. See Ark. Code Ann. § 23-48-502(c). Any out-of-state resulting bank must also comply with Ark. Code Ann. § 23-48-1001 et seq., which requires that the resulting out-of-state bank, on or before consummation, apply for a certificate of authority to transact business in Arkansas by filing an application with the commissioner. Ark. Code Ann. § 23-48-905. The requirements for this certificate of authority for out-of-state banks are similar to those for out-of-state nonbanking corporations under Arkansas' general corporation law, see Ark. Code Ann.
§ 4-27-1501 et. seq. UPNB provided a copy of its OCC merger application to the Arkansas state bank commissioner, as required by section 1831u(b)(1), and has obtained a certificate of authority from the commissioner.

The Louisiana interstate bank merger statute provides that an out-of-state bank shall not acquire a Louisiana bank unless it has filed with the commissioner all applications and other information filed with any federal agency in connection with the acquisition and paid the fee prescribed by the commissioner by regulation. See La. Rev. Stat. § 6:536A. UPNB provided a copy of its OCC Merger Application to the Louisiana banking commissioner. The commissioner has not required payment of a fee.

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that will become host states as a result of the merger transaction under review in the application, not the host states in which the acquiring bank already operates branches. See Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9). Here, UPNB already operates branches in the host states of Arkansas and Mississippi, and so the filing requirements of section 1831u(b)(1) do not apply for those states in this Interstate Merger. Although not required under the Riegle-Neal Act, UPNB elected to file with those states in connection with this Interstate Merger.

The Kentucky interstate bank merger statute does not place any notice or filing requirements on mergers in which the resulting bank is an out-of-state national bank.[9] The Mississippi interstate bank merger statute also does not contain any filing requirements for an interstate merger transaction involving an out-of-state national bank as the resulting bank.[10] Similarly, Missouri has no filing requirements for interstate merger transactions, since it has not yet enacted legislation implementing the Riegle-Neal Act. UPNB notified and provided a copy of its OCC Merger Application to the state bank commissioners of these three states, as required by section 1831(u)(b)(1)(A)(ii).

In summary, UPNB has provided a copy of its OCC Merger Application to the state bank supervisor of each host state and has complied with the applicable state filing requirements under section 1831u(b)(1). Thus, the Interstate Merger satisfies the Riegle-Neal Act's requirement of compliance with state filing requirements.[11]

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). UPNB and all the merging banks are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction 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

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[9] The filing requirements in the Kentucky statute apply to out-of-state state banks and Kentucky banks that are the resulting banks in an interstate merger transaction. See Ky. Rev. Stat. Ann. § 287.920(2) & (3).

[10] The notice, filing, and application requirements in the Mississippi statute apply only when a Mississippi state bank is the acquiring bank or when an out-of-state state bank is the acquiring bank. See Miss. Code Ann. §§ 81-23-11 & 81-23-13. UPNB advises that the Mississippi Commissioner of Banking confirmed there are no other requirements for out-of-state banks other than those found in Miss. Code Ann. § 81-23-13.

[11] Thirteen of the affiliate banks in the host states of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri (participating in the Interstate Merger) and ten of the affiliate banks in Tennessee (participating in the In-state Merger) are state banks; thus, their mergers into UPNB are mergers of state banks into a national bank. The basic merger provision in federal law governing national bank mergers (12 U.S.C. § 215a, incorporated for Riegle-Neal mergers by section 215a-1) provides that, in a merger of a state bank into a national bank, the merger shall not "be in contravention of the law of the State under which such bank is incorporated." The mergers in this application do not contravene state law; indeed, the states permit such mergers. See Ala. Code §§ 5-13B-23(a) and 5-7A-40, Ark. Code Ann. §§ 23-48-903 and 23-48-502, Ky. Rev. Stat. Ann. § 287.173, La. Rev. Stat. §§ 6:533(2) and 6:536C, Miss. Code Ann. § 81-23-7(2), Mo. Rev. Stat. § 362.240, and Tenn. Code Ann. § 45-2-1302(a). UPNB has represented that it has complied with filing, notice or other applicable requirements in these statutes which govern the merger of state banks into national banks.

account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it 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 interstate merger transaction, UPNB (the bank submitting the application as the acquiring bank) has a bank affiliate in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri before the transaction (i.e., the merging banks), 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 Interstate Merger. However, the Community Reinvestment Act itself is applicable, as discussed below, 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, UPNB and each of the merging banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, UPNB 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.

2. Following the merger, the resulting bank may retain all the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicant has requested that, upon the completion of the merger, UPNB (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Memphis 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 offices and branches of the merging affiliated banks in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri. 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, UPNB, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of UPNB and the merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[12]

Moreover, at its branches in its host states, as well as those in Tennessee, UPNB is authorized to engage in all activities permissible for national banks, including fiduciary activities. See e.g.,12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank 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), & 1831u(d)(1) (continued operations at retained interstate branches). See also Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997); 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).

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[12] 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). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, 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 apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

3. The merger of the Alabama affiliate bank into UPNB complies with 12 U.S.C. § 1815(d).

The merger of the Alabama affiliate bank, Union Planters Bank of Alabama (UP-Alabama) into UPNB also complies with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). UP-Alabama is a member of SAIF, and UPNB is a member of BIF. The merger of a SAIF member into a BIF member is a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(ii). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above in section II-A-1, the OCC has determined the acquiring and resulting banks meet all applicable capital requirements.

In addition, in the case of a merger of a SAIF member into a BIF member that is a subsidiary of a bank holding company, as here, the Oakar Amendment also incorporates the standards for an interstate bank acquisition from section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), and applies them to the transaction, with the target SAIF member being treated as a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F).[13] In the case of the merger of UP-Alabama into UPNB, this analysis is self-evident because UP-Alabama, while a SAIF member, is in fact a *state bank* already owned by the bank holding company. Thus, this transaction is unlike the usual Oakar transaction which involves the acquisition of a SAIF-insured *thrift*. Nevertheless, we will briefly set out the analysis.

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal Community Reinvestment Act requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution. All of these are met with respect to UP-Alabama.

First, the age limit is met. Alabama law provides that the superintendent of banks shall not approve an acquisition of an Alabama bank by an out-of-state bank holding company unless the Alabama bank to be acquired has been in existence and in continuous operation for five years or more. Ala. Code § 5-13B-6(d). UP-Alabama and its predecessors have been in existence and continuous operation for more than five years. See note 7.

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[13] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank located in a state other than the holding company's home state. The home state of Union Planters Corporation is Tennessee, and UP-Alabama is located in Alabama and so it is necessary to undertake the analysis.

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, UPNB and all of its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). They controlled about $ 12.7 billion in domestic deposits as of June 30, 1997, less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). If this transaction is not considered an initial entry in the Oakar analysis and so paragraph (d)(2)(B) is applicable to this transaction, this limit is met. Union Planters Corporation's total Alabama deposits of its insured depository institutions was about $534 million, less than one percent of the total Alabama deposits, as of June 30, 1997 The statewide concentration limit is satisfied.

Third, the bank holding company's compliance with the federal Community Reinvestment Act and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). The applicant bank has a "satisfactory" federal CRA rating. Union Planters Corporation's other depository institution subsidiaries -- the affiliated banks here, as well as the insured depository institutions not included in these merger transactions -- all have at least a satisfactory rating. With respect to compliance with applicable state community reinvestment laws, none of the states directly implicated in this transaction (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee) have state community reinvestment laws that place requirements on banks. No public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance.

Finally, we note that the condition of the bank holding company, including its capital position and management, is consistent with approval of this transaction under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment. Accordingly, the merger of UP-Alabama into UPNB complies with the Oakar Amendment.

B. The In-State Mergers in Tennessee are Authorized, and the Resulting Bank May Retain the Offices of the Banks, under 12 U.S.C. §§ 215a and 36(b)(2).

Upon completion of the Interstate Merger, UPNB, already an interstate bank by virtue of its branches in Arkansas and Mississippi, will now become an interstate bank with branches in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri, as well as in its home state, Tennessee. UPNB also applied for approval to merge sixteen affiliated banks in Tennessee into UPNB. While UPNB has applied for this transaction along with the Interstate Merger, UPNB and the affiliate banks have the same home state (Tennessee). Thus, this merger remains an in-state merger, authorized by, and subject to, the statutes governing such mergers, even though UPNB

is an interstate bank operating in other states. This in-state merger is authorized under 12 U.S.C. § 215a, and the resulting bank may retain the offices of the merging banks under 12 U.S.C. § 36(b)(2). This merger does not raise new issues, but only the application of established precedent for applying sections 215a and 36(b) to in-state mergers involving interstate national banks.[14]

Mergers of national banks or state banks into a national bank "located within the same State" are authorized under 12 U.S.C. § 215a. In the proposed In-state Merger, UPNB and the affiliated Tennessee banks have their main offices in, and have branches in, Tennessee; and so they are located in the same state. The In-state Merger is authorized under section 215a.

UPNB has also requested OCC approval for the bank resulting from the In-state Merger (referred to in this section as "UPNB-Resulting" or "the Resulting Bank" to distinguish it from UPNB or the target banks prior to the mergers) to retain the branches of all merging banks under 12 U.S.C. § 36(b)(2).[15] Retention of the branches of the target banks and of the lead bank in a merger are addressed in different paragraphs of section 36(b)(2). First, under section 36(b)(2)(A), the resulting bank may retain the main office or branches of the target bank (here, each of the sixteen affiliate banks) if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d. 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974). See also Ghiglieri v. Sun World, N.A., 117 F.3d 309, 315-16 (5th Cir. 1997). Here, the resulting bank is situated in Tennessee. Tennessee law allows state banks in the state to establish or acquire branches without limitation within the state, see Tenn. Code Ann. § 45-2-614, and so a national bank situated in that state could establish branches without limit in the state, including at the locations of the main office and branches of the affiliate banks under section 36(c). Therefore, UPNB-Resulting may retain and operate the main office and branches of the affiliate banks under section 36(b)(2)(A).

Second, in the In-state Merger, UPNB-Resulting 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

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[14] The scope of the Riegle-Neal Act and the continuing authority of 12 U.S.C. §§ 36(b), 36(c), and 215a with respect to subsequent mergers with an interstate national bank in one of the states in which it already has its main office or a branch are discussed in earlier OCC decisions. See, e.g., Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank N.A. (OCC Corporate Decision No. 96-20, April 12, 1996) (Part II-C); 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) (Part II-C). See also Decision 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") (Part II-D) (general discussion of relationship of Riegle-Neal Act and prior law). Here, where the bank to be acquired has the same home state, the in-state nature of the merger is even more self-evident.

[15] Section 36(b)(2) governs branch retention by national banks in mergers generally, while section 36(d) covers branch retention in an interstate merger transaction done under the Riegle-Neal 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. Section 36(b)(2) 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.

Thus, under section 36(b)(2)(C), 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 in which a state bank is the resulting bank. With respect to UPNB's branches in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee, there are no provisions in the laws of these states that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state if such offices were branches of the state-chartered bank.[16] Therefore, UPNB-Resulting, as the resulting bank in the In-state Merger, may retain its branches under section 36(b)(2)(C).

C. Summary.

In summary the Interstate Merger may be approved as an interstate merger transaction under 12 U.S.C. §§ 215a-1 & 1831u(a). The merger of UP-Alabama into UPNB meets the requirements of 12 U.S.C. § 1815(d)(3). UPNB, as the resulting bank after the Interstate Merger, may retain all the offices of the affiliate banks in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri, as well as UPNB's own offices, under 12 U.S.C. §§ 36(d) & 1831u(d)(1). The In-state Merger with UPNB and the Tennessee affiliate banks is authorized under 12 U.S.C. § 215a, and the Resulting Bank may retain and operate the main offices and branches of those banks under 12 U.S.C. § 36(b)(2). Accordingly, both the Interstate Merger and the In-state Merger are legally authorized.[17]

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[16] 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); other OCC decisions cited in note 16.

[17] UPNB and merging affiliate banks in Arkansas, Louisiana, Mississippi, Missouri, and Tennessee have a number of subsidiaries, as listed in the application. By operation of the merger, the subsidiaries will become subsidiaries of the resulting bank, see 12 U.S.C. § 215a(e). Two subsidiaries, Colonial Loan Association, a consumer finance company owned by Union Planters Bank of East Tennessee, National Association, and First North Central Insurance, Inc., Clinton, Arkansas, a general insurance agency owned pursuant to 12 U.S.C. § 92 by Union Planters Bank of Central Arkansas, National Association, are currently subsidiaries of national banks, engaged in activities permissible for national banks. Therefore, the resulting bank is authorized to acquire them. Some of the state banks also have subsidiaries. Union Planters Bank of Louisiana wholly owns Capital Equity Corporation, which holds a non-transferable

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 all of the banks involved in these transactions are owned directly or indirectly by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of all banks which are participating in these merger transactions are satisfactory. UPNB will realize certain efficiencies through the combination of all operating systems and the centralization of most policy-making decisions. 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.

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country club membership, and Union Planters Bank of Southern Mississippi wholly owns Magna Mortgage Company, a mortgage banking company engaged in the business of originating and servicing single-family first mortgage loans. Both of these activities are permissible for national banks and, therefore, the subsidiaries may be acquired by UPNB. UPNB will acquire from affiliate state banks two general insurance agencies, located in towns of less than 5,000: Union Planters Insurance Agency, Bassfield, Mississippi, which is currently wholly owned by Union Planters Bank of Southern Mississippi, and Union Planters Insurance Agency, Trenton, Tennessee, which is currently wholly owned by Union Planters Bank of West Tennessee, Humboldt, Tennessee. UPNB has represented that the activities of these general insurance agencies will be conducted in accordance with 12 U.S.C. § 92, Interpretive Letter No. 753 (November 4, 1996), the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994), and other applicable national banking laws, rulings and regulations, and applicable state laws. UPNB will also acquire First Savings Financial Corporation, Mt. Vernon, Missouri, a wholly owned subsidiary of Union Planters Bank of Southwest, Missouri, which engages in agency sales of certain credit-life insurance products. In a separate transaction that is not a part of the mergers, UPNB will acquire Planters Life Insurance Company, an Arizona corporation engaged in reinsurance of credit-related life insurance and credit-related disability insurance. National banks and their subsidiaries may engage in the underwriting, as reinsurer, and sale of credit-related insurance in connection with loans made by the bank. See Interpretive Letter No. 277 (December 21, 1983); Interpretive Letter No. 283 (March 16, 1984); 12 C.F.R. Part 2. Moreover, the transfer of Planters Life Insurance Company to UPNB by the donation of stock from Union Planters Corporation, its parent holding company, is in compliance with the requirements of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1. The acquisition of these subsidiaries by UPNB is permissible. UPNB also will acquire four inactive subsidiaries, currently owned by affiliate banks, that are being dissolved and will not be reactivated.

3. Convenience and Needs.

The resulting bank will be able to help to meet the convenience and needs of the communities to be served. UPNB will continue to serve the same areas in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are currently being served by the affiliate banks separately. UPNB will continue to receive advice on meeting the needs of local communities through local advisory boards and local area presidents. All banks currently offer a full line of banking services, and there will be no reductions in products or services in any markets as a result of the merger.

Upon completion of the mergers, customers will have access to a significantly greater number of branches, spanning several states in the southern United States. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the mergers, customers would be able to conduct business with UPNB as one bank in different states, thereby facilitating greater convenience, such as ready access to their accounts, and a better relationship with the bank. Especially benefitting will be those customers who live in one state and work in another, particularly in the Memphis Metropolitan Statistical Area. The merger should permit the resulting bank to better serve its customers at a lower cost.

No branch closings are contemplated as a result of this merger since most of the banks serve different areas. However, as part of its ongoing business plans, UPNB evaluates its branch system, including branches acquired in transactions, and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and consideration of the community affected.

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 Merger Application.

B. The Community Reinvestment Act.

The Community Reinvestment Act 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. UPNB has a satisfactory rating with respect to CRA performance, and each of the affiliate banks involved in this transaction has a satisfactory or better rating with regard to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the banks' performance in complying with CRA.

The mergers are not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue its current CRA programs and policies in Tennessee and the other states where it will have branches. All offices of the banks will remain open. UPNB will carry forward the same CRA programs and policies that the banks have today.

As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all communities it serves as well as the communities served by the separate banks. The merger and operation of the interstate branches do not alter the resulting bank's obligation to help meet the credit needs of the communities in all the states it serves. We find that approval of the proposed merger is consistent with the CRA.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of UPNB with the Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Missouri affiliate banks is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of all the banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1); that the merger of UPNB and the Tennessee affiliate banks is legally authorized as an in-state merger transaction under 12 U.S.C. §§ 215a, and the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. § 36(b)(2); and that the mergers meet the criteria for approval under other statutory factors. Accordingly, this Merger Application is hereby approved.

/s/ 12-03-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-SE-02-0055