



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-105
December 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF
WATERHOUSE NATIONAL BANK, WHITE PLAINS, NEW YORK,
TO RELOCATE ITS MAIN OFFICE TO JERSEY CITY, NEW JERSEY**

December 6, 1997

I. INTRODUCTION

Waterhouse National Bank, White Plains, New York, ("Waterhouse") applied to the Office of the Comptroller of the Currency ("OCC") for approval to change the location of its main office from White Plains, New York, to Jersey City, New Jersey. The proposed main office location in Jersey City -- 525 Washington Street -- is less than 30 miles from the city limits of White Plains. Waterhouse proposes to retain and continue to operate as a branch its existing branch at 100 Wall Street, New York City (the "Manhattan Branch"). It does not propose to establish a new branch at the site of its main office in White Plains. Waterhouse's reason for relocating its main office is to enable greater consolidation of operations by placing its main office within closer proximity to the main office of its holding company, Waterhouse Investor Services, Inc., and the main office of its affiliate Waterhouse Securities, Inc. Waterhouse published notice of the application as required by 12 C.F.R. § 5.8. Copies of the application also were provided to the New Jersey and New York state banking departments.

II. LEGAL AUTHORITY

A. Waterhouse may Relocate its Main Office to Jersey City under 12 U.S.C. § 30(b).

The relocation of Waterhouse's main office is legally authorized under 12 U.S.C. § 30(b). Section 30(b) authorizes a national bank to change the location of its main office to any location within 30 miles of the limits of the city in which its main office is located. Section 30(b) provides:

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or,

with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.

12 U.S.C. § 30(b) (emphasis added). Such a relocation, even across state lines, is authorized by the literal language of the statute, and nothing in the legislative history gives any reason not to adhere to the literal language. Section 30, its legislative history, and caselaw are discussed further in earlier OCC decisions involving interstate main office relocations. See, e.g., Decision on the Applications of Sun World, N.A., El Paso, Texas (OCC Corporate Decision No. 96-40, August 2, 1996) ("OCC Sun World Decision") (Part II-A-1); Decision on the Applications of First Fidelity Bank, N.A., Pennsylvania, Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 89,644 ("OCC First Fidelity/New Jersey Decision") (Part II-A).

The proposed new location for Waterhouse's main office in Jersey City is less than 30 miles from the city limits of White Plains. Accordingly, the main office relocation is authorized under section 30(b).

B. After the Interstate Relocation of its Main Office, Waterhouse may Retain and Continue to Operate its Manhattan Branch under 12 U.S.C. §§ 30(c) & 36(e).

Waterhouse also currently operates a branch at 100 Wall Street in New York City (the Manhattan Branch). In its application, Waterhouse proposes to retain and continue to operate the Manhattan Branch after it relocates its main office from New York to New Jersey. Since this transaction will occur after May 31, 1997, Waterhouse's authority to retain the Manhattan Branch is governed by 12 U.S.C. §§ 30(c) and 36(e), two new provisions that were added in 1994. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 102(b)(1)(B) & 102(b)(2), 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act").

Congress added these new provisions in the Riegle-Neal Act expressly to address the retention of existing branches in the original state when a national bank relocates its main office from one state to another. Under these provisions, Waterhouse clearly is permitted to retain branches in New York; and therefore, its retention and operation of the Manhattan Branch after the relocation to Jersey City is authorized.

In the Riegle-Neal Act, Congress added new provisions to 12 U.S.C. §§ 30 and 36 that address branch retention in interstate main office relocations. New subsection 30(c) provides:

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State from which the bank relocated such office only to the

extent authorized in section 5155(e)(2) of the Revised Statutes [12 U.S.C. § 36(e)(2)].

12 U.S.C. § 30(c). New subsection 36(e)(2) provides:

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in subsection (g)(3)(B)) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in paragraph (1), to acquire, establish, or commence to operate a branch in such State if --

- (A) the bank had no branches in such State; or
- (B) the branch resulted from --
 - (i) an interstate merger transaction approved pursuant to section 44 of the Federal Deposit Insurance Act; or
 - (ii) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Federal Deposit Insurance Corporation under section 13(c) of such Act.

12 U.S.C. § 36(e)(2).¹

In the transaction proposed in this application, Waterhouse clearly is authorized to retain the Manhattan Branch under subparagraph 36(e)(2)(A). Under subparagraph 36(e)(2)(A), the relocating bank may retain and operate branches in its former home state (*i.e.*, the state in which its main office was located before the relocation), if the bank would be authorized under section 36, or any other provision referred to in section 36(e)(1) (namely, sections 13(f), 13(k), or 44 of the Federal Deposit Insurance Act) to acquire, establish, or commence to operate a branch in such state if the relocating bank had no branches in such state. In the context of Waterhouse's proposed transaction, therefore, Waterhouse can retain its Manhattan Branch if Waterhouse would be permitted (under section 36 or section 44 of the Federal Deposit Insurance

¹ These new provisions change the authority to retain branches in the bank's original home state when it relocates its main office to another state; branch retention authority in other situations is unaffected. Previously, no statute required a national bank to divest its existing branches or re-establish their permissibility from the perspective of the new location of the bank's main office when it relocated its main office under section 30, and the OCC had determined that national banks could retain and continue to operate such branches without limitation in main office relocation transactions occurring before June 1, 1997. See, e.g., OCC Sun World Decision; OCC First Fidelity/New Jersey Decision. The courts upheld that interpretation. See Ghiglieri v. Sun World, National Ass'n, 117 F.3d 309 (5th Cir. 1997), *reversing* 942 F.Supp. 1111 (W.D. Tex. 1996) (reviewing OCC Sun World Decision); Ghiglieri v. Ludwig, No. 96-10818 (5th Cir. October 29, 1997); McQueen v. Ludwig, No. 5:96-CV-36 (W.D. Mich. September 2, 1997), *appeal docketed*, No. 97-2005 (6th Cir. September 25, 1997).

Act) to acquire, establish, or commence to operate a branch in New York, assuming that Waterhouse had its main office in New Jersey and had no branches in New York.²

If Waterhouse had its main office in New Jersey, it would be permitted to acquire a branch in New York because New York's interstate merger and branching statute permits single branch acquisitions. See N.Y. Banking Law §§ 223, 225 & 222(7). Therefore, an interstate branch acquisition would be authorized under 12 U.S.C. § 1831u(a)(4) (section 44 of the FDI Act), and the branch would be authorized under 12 U.S.C. §§ 36(d) and 1831u. Accordingly, Waterhouse (like any other New Jersey-based bank) could acquire a branch in New York.

Since Waterhouse, as a bank with its main office in New Jersey, could acquire a branch in New York under section 36(d) and section 44 of the FDI Act, it may retain the Manhattan Branch in the relocation under section 36(e)(2)(A). Accordingly, Waterhouse's retention and continued operation of the Manhattan Branch is permissible under 12 U.S.C. §§ 30(c) & 36(e).³

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

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, including main office relocations. See 12 U.S.C. § 2903. See also 12 C.F.R. § 25.29. Waterhouse has a satisfactory rating with respect to CRA performance. No comments concerning CRA performance were received by the OCC on this application, and the OCC has no other basis to question the bank's performance in complying with the CRA.

² The legislative history confirms the plain meaning of subparagraph 36(e)(2)(A). See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (August 2, 1994).

³ In addition, the retention of the Manhattan Branch may also be permitted under subparagraph 36(e)(2)(B). In relevant part, section 36(e)(2)(B) provides:

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in subsection (g)(3)(B)) before the relocation of such office only to the extent the bank would be authorized, under this section or [section 44 of the FDI Act] to acquire, establish, or commence to operate a branch in such State if . . . (B) the branch resulted from -- (i) an interstate merger transaction approved pursuant to section 44 of the Federal Deposit Insurance Act;

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12 U.S.C. § 36(e)(2) (emphasis added). The language of this provision appears to provide that the relocating bank may retain branches in the original state if the bank would be authorized to acquire branches in that state in a Riegle-Neal interstate merger transaction under section 44 (12 U.S.C. § 1831u). In the case of Waterhouse's proposal, since a bank in New Jersey would be authorized to acquire branches in New York if the branches resulted from an interstate merger transaction with a New York bank in which the New Jersey bank was the surviving bank, then arguably, Waterhouse can retain the Manhattan Branch under section 36(e)(2)(B). Since retention of the Manhattan Branch is permitted under subparagraph 36(3)(2)(A), we do not need to consider further the scope and applicability of subparagraph 36(e)(2)(B) at this time.

The relocation of Waterhouse's main office to New Jersey should have no adverse effect on its CRA performance. The relocated bank will continue to serve the same assessment area (the New York Metropolitan Statistical Area) it served prior to the relocation. In addition, as a result of the relocation, Waterhouse will expand its CRA assessment area to include Essex County and Hudson County in New Jersey. Because the majority of the bank's business is conducted by phone and mail, the loss of a physical office in White Plains, New York, will not hamper its ability to effectively serve the New York MSA. The relocated bank will continue to use its existing CRA policies, programs, and personnel. Waterhouse's commitment and ability to help meet the credit needs of all the communities it serves should be no different after the relocation. The relocation and operation of an interstate branch do not alter the bank's obligation to help meet the credit needs of its communities in New York and New Jersey.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the relocation of Waterhouse's main office from White Plains, New York, to Jersey City, New Jersey, is authorized under 12 U.S.C. § 30(b), that Waterhouse's retention and continued operation of its Manhattan Branch is authorized under 12 U.S.C. §§ 30(c) & 36(e), and that the application meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

_____/s/
Julie L. Williams
Chief Counsel

12-06-97
Date

Application Control Number: 97-NE-07-0006