Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-70
August 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS TO MERGE MAGNA BANK, FSB, DES MOINES, IOWA, MAGNA BANK, INDIANOLA, IOWA, MAGNA BANK, MONTICELLO, IOWA, MAGNA BANK, OELWEIN, IOWA, WITH AND INTO MAGNA BANK, NATIONAL ASSOCIATION, WATERLOO, IOWA AND SUBSEQUENTLY TO MERGE MAGNA BANK, NATIONAL ASSOCIATION, WATERLOO, IOWA WITH AND INTO MAGNA BANK, NATIONAL ASSOCIATION, BRENTWOOD, MISSOURI AND TO ENGAGE IN CERTAIN RELATED TRANSACTIONS

July 14, 1997

I. INTRODUCTION

On May 1, 1997, Magna Bank, National Association, Brentwood, Missouri ("Magna") and its holding company, Magna Group, Inc. (the "Holding Company"), filed a series of applications with the Office of the Comptroller of the Currency ("OCC") for approval to merge their affiliated national, state and Federal savings banks located in Iowa into Magna under Magna's charter and title. All the banks, including the Federal savings bank, are wholly-owned direct or indirect subsidiaries of the Holding Company, a multi-state bank holding company headquartered in Brentwood, Missouri.

The merger is structured as a series of transactions with affiliated target institutions located in Iowa. The Iowa affiliated banks are: Magna Bank, FSB, Des Moines, Iowa ("Magna FB"), Magna Bank, Indianola, Iowa ("Magna Indianola"), Magna Bank, Monticello, Iowa ("Magna Monticello"), Magna Bank, Oelwein, Iowa ("Magna Oelwein"), and Magna Bank, National Association, Waterloo, Iowa ("Magna Iowa") (together referred to as "Iowa Banks").

Magna proposes to acquire its affiliated Iowa Banks as follows.[1] First, the Holding Company proposes to charter six interim national banks, five of which will acquire through purchase and assumption transactions and one through a merger transaction, under 12 U.S.C. §§ 24(Seventh), 215c, and 36(c), the branching network of Magna FB and the associated assets and liabilities. Second, the Holding Company proposes to merge the six interim national banks and the three state banks (Magna Indianola, Magna Monticello, and Magna Oelwein) (together referred to as "Iowa State Banks") into Magna Iowa (the Iowa Merger), under the authority of 12 U.S.C. § 215a, with its main office in Waterloo, Iowa, and retaining all but one of the offices of the combining banks. As part of the Iowa merger, to comply with Iowa branching law requirements restricting the number of branches in Waterloo, one branch located in Waterloo will close and its accounts will be transferred to the Waterloo main office of the resulting national bank.

Finally, Magna Iowa will merge into Magna under Magna's charter and title, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Interstate Merger").[2] In this Interstate Merger, OCC approval is also requested for Magna, as the resulting bank, to retain Magna's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain Magna's branches and the main office and branches of Magna Iowa as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

In addition to the authorities cited, the merger and purchase and assumption transactions mentioned above must be analyzed under the Bank Merger Act, 12 U.S.C. § 1828(c), and those transactions, as well as the applications for charters described above, must be analyzed under the Federal Community Reinvestment Act, 12 U.S.C. §§ 2901--2907 (the Federal Community Reinvestment Act). Transactions involving combinations of Bank Insurance Fund ("BIF") and Savings Association Insurance Fund ("SAIF") member institutions also must be analyzed in accordance with the provisions of the Oakar Amendment, 12 U.S.C. § 1815(d)(3). The various chartering, purchase and assumption and merger transactions described above were subject to public notice and comment procedures. No comments or protests were received.

As of March 31, 1997, Magna had approximately $5.4 billion in assets, Magna FB had approximately $425 million in assets, Magna Indianola had approximately $143 million in assets, Magna Monticello had approximately $149 million in assets, Magna Oelwein had approximately $100 million in assets, and Magna Iowa had approximately $661 million in assets. Magna FB and, under these facts, the interim national banks are considered to be members of the SAIF; the other banks are members of the BIF.

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[1] As a part of this transaction, the Holding Company also will be merging its middle-tier holding company in Iowa. Pursuant to a written waiver from the Federal Reserve Bank of St. Louis, no Federal Reserve approval is necessary for the holding company merger.

[2] See The 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").

II. Summary

For the following reasons, the OCC approves, subject to other appropriate regulatory actions:

- the chartering of six de novo interim national banks in Iowa under the authority of 12 U.S.C. §§ 26, 27 and 12 C.F.R. § 5.33(e)(4) to acquire, through five purchase and assumption transactions and a merger transaction, the branches of Magna FB in Iowa under the authority of 12 U.S.C. §§ 24(Seventh), 215c, and 36(c) and consistent with the Bank Merger Act, the Federal Community Reinvestment Act, and the Oakar Amendment, as applicable;

- the merger of the six Iowa interim national banks and the Iowa State Banks into Magna Iowa, and the retention of the main offices and the branches of each bank proposed to be retained as either the main office or branches of the resulting bank under the authority of 12 U.S.C. §§ 215a and 36(c) and consistent with the Bank Merger Act, the Federal Community Reinvestment Act, and the Oakar Amendment, as applicable; and

- the merger of Magna Iowa into Magna under Magna's charter and title, pursuant to 12 U.S.C. §§ 215a-1 and 1831u(a) retaining the main office and branches of each as either the main office or branches of the resulting bank under the authority of 12 U.S.C. §§ 36(d) and 1831u(d)(1) and consistent with the Bank Merger Act and the Federal Community Reinvestment Act.

III. LEGAL AUTHORITY FOR CHARTERING SIX INTERIM BANKS

A. Authority for Charters

The Holding Company has applied to establish six interim national banks (the Iowa interim national banks) in six Iowa cities or towns. Five of the Iowa interim national banks will purchase from the Magna FB a number of branches, along with associated liabilities -- including the SAIF-insured deposit liabilities -- and certain associated assets. Immediately following the transactions, Magna FB, a SAIF-member institution, will merge into the one remaining interim national bank, located in Des Moines, retaining the Des Moines main office and the remaining two branches of Magna FB.

Magna FB has a main office and eight branch offices in Iowa with assets of approximately $425 million and deposit liabilities of approximately $234 million as of March 31, 1997. The Holding Company has proposed to establish six interim banks in the following cities or towns each to acquire (either through a purchase and assumption or merger) a varying number of the branches along with their liabilities -- including deposits insured by the SAIF -- and certain associated assets. The following lists the location, the number of offices to be

acquired (including offices that will be designated as the main office), the amount of assets as of March 31, 1997, and the amount of deposit liabilities as of March 31, 1997:

Place	*No. of offices*[3]	*Assets*[4]	*Liabilities*[5]
Cedar Rapids	1	$8.5	$7.7
Decorah	1	$25.9	$23.4
Des Moines	3	$220.5	$192.3
Iowa City	1	$39.8	$34.0
Vinton	1	$26.6	$24.1
Waterloo	2	$103.2	$91.3

OCC regulations provide for the establishment of interim banks to accomplish a "business combination," that conditional approval for an interim bank is granted when the OCC acknowledges receipt of the application for the related business combination and that an interim bank becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim bank's duly executed articles of association and organization certificate. OCC acceptance occurs on the date the OCC advises the interim bank that its articles of association and organization certificate are acceptable or on the date the interim bank files articles of association and an organization certificate that conform to OCC requirements. See 12 C.F.R. § 5.33(e)(4). A "business combination" includes a merger, a consolidation, or "the assumption by a national bank of deposit liabilities of another depository institution." Id. at § 5.33(d)(1). Because the transaction pursuant to which the six interim national banks are being established constitutes a "business combination" and because the requirements of section 5.33, with respect to interim banks, are satisfied, as well as the standards for chartering a new bank set forth in 12 U.S.C. §§ 26 and 27, the interim banks are approved.[6]

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[3] These figures include the offices to be designated as the main office of each interim bank. Thus, only two of the interim banks -- Des Moines and Waterloo -- will have branches.

[4] Dollar amounts are expressed in millions.

[5] Dollar amounts are expressed in millions.

[6] In addition, we note that because each of the interim banks in Iowa will exist for only a moment in time and not open for business, the applicant has submitted a written request that director residency requirements, as set forth in 12 U.S.C. § 72, be waived. Section 72, as amended by section 2241 of the EGRPRA, provides in pertinent part that:

> [A]t least a majority of the directors must have resided in the State . . . in which the association is located, or within 100 miles of the location of the office of the association, for at least one year immediately preceding their election and must be residents of such state or within a one-hundred mile territory of the location of the association during their continuance in office, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency.

B. Federal Community Reinvestment Act

The Federal Community Reinvestment Act applies to the granting of charters. This law will be discussed in Part VII.B. of this Decision Statement.

IV. LEGAL AUTHORITY FOR THE PURCHASE AND ASSUMPTION TRANSACTIONS AND THE MERGER TRANSACTION

As described above, following the granting of the six charters for the Iowa interim national banks, the applicant proposes that five of the Iowa interim national banks will purchase from Magna FB a number of branches, along with associated liabilities -- including the SAIF-insured deposit liabilities -- and certain associated assets, consistent with 12 U.S.C. § 24(Seventh), Iowa branching law as incorporated into 12 U.S.C. § 36(c), the Bank Merger Act, the Federal Community Reinvestment Act and other applicable law. Immediately thereafter, Magna FB, will merge into the one remaining interim national bank located in Des Moines, pursuant to 12 U.S.C. § 215c, the Bank Merger Act, the Federal Community Reinvestment Act and other applicable law, retaining the Des Moines main office and branches, pursuant to 12 U.S.C. § 36(c).

A. The Purchase and Assumption Transactions and the Merger Transaction are Authorized under 12 U.S.C. § 24(Seventh) and 12 U.S.C. § 215c.

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872 (8th Cir. 1931). Federal savings banks and national banks are authorized to merge under 12 U.S.C. §§ 215c and section 5(s) of the Home Owners' Loan Act (codified at 12 U.S.C. § 1467a(s)). In addition, where insured deposits are being acquired by an insured national bank,[7] the transaction must be reviewed by the OCC for compliance with the Bank Merger Act,[8] and the transaction also must be reviewed in the context of the requirements of the Federal Community Reinvestment Act. In addition, where BIF and SAIF members are combining, the transactions must be reviewed for compliance with the Oakar Amendment.

Under the circumstances presented, and in accordance with the representations of the applicant regarding the temporary existence of each of these banks, we have determined to waive the residency requirement.

[7] Interim Federally-chartered depository institutions, which will not open for business, are considered to be FDIC-insured upon issuance of the institution's charter by the Federal agency. See 12 U.S.C. § 1815(a)(2).

[8] In this regard, we note that transactions subject to approval under the Bank Merger Act are not subject to the requirements of 12 U.S.C. § 371c governing certain transactions with affiliates. See 12 C.F.R. § 250.241 (1996). Title 12 U.S.C. § 371c-1 also is inapplicable to this transaction because it does not apply to transactions between affiliated banks and, for purposes of section 371c-1, savings associations are treated as banks. See 12 U.S.C. §§ 371c-1(a)(2), (d)(1) and 1468(a)(2). Therefore, 12 U.S.C. 371c and 371c-1 are inapplicable to these transactions.

B. Branch Acquisition by an Interim Bank

Assuming approval of the purchase and assumption transactions, as set forth above, because one of the interim banks -- with its main office in Waterloo -- proposes to acquire a branch office from the Federal savings bank, it is necessary to review applicable Federal and state law to determine the permissibility of the retention of that Federal savings bank branch.

While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. § 36(b)(2), section 36(c) applies to branches to be established by a bank through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980).

Title 12 U.S.C. § 36(c) provides:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to restrictions as to location imposed by the law of the State on State banks.

Therefore, the authority of a national bank to acquire intrastate branches is dependent on state law as incorporated into Federal law by 12 C.F.R. § 36(c) and applies to national banks.

Iowa branching law provides that:

> No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.
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> 2.a. A state bank may establish bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, subject to the following conditions and limitations:
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> (1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than four bank offices.

> (2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.
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> (3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than six bank offices.

Iowa Code Ann. § 524.1202 (West 1993 & Supp. 1997). The branch to be established by the Iowa interim national bank with its main office in Waterloo is permissible under these standards. First, the bank will acquire a branch only in the municipal corporation in which it is located. Secondly, according to the 1990 census, Waterloo had a population of under 100,000 thus authorizing the bank to operate up to four offices in addition to its main office. Consequently, the requirements of state law applicable to the acquisition of one branch in Waterloo by the Iowa interim national bank with its main office in Waterloo and no other branches are satisfied.

C. Branch retention following the Merger of Magna FB into the Iowa Interim Bank located in Des Moines

Assuming approval of the merger of Magna FB into the Iowa interim national bank with its main office in Des Moines, as set forth above, it is necessary to review applicable Federal and state law to determine the permissibility of the retention by the resulting national bank with its main office in Des Moines of its other offices.

While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. § 36(b)(2), that provision applies where the target in a merger is a national bank or a state bank -- not a Federal savings association. See, e.g., Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A., Bloomington, Illinois and Related Purchase and Assumption Transactions, p. 3 at n. 3 (Conditional Approval 69, November 12, 1992). Retention of branches acquired from a Federal savings bank is governed by 12 U.S.C. § 36(c). Id. In this regard, we note that while section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980). Thus, if following a particular transaction, a state bank can operate a branch under the provisions of state law, so can a national bank following the same transaction. See Decision of the Comptroller of the Currency to Approve Applications by TCF Financial Corporation., Minneapolis, Minnesota, to Convert Federal Savings Banks located in Minnesota, Michigan, Illinois, and Wisconsin and to Establish De Novo Banks in Ohio and Colorado and to Engage in Certain Related Transactions, p. 6-7 (OCC Corporate Decision 97-13, February 24, 1997) (the "TCF Decision").

Iowa law provides that following a merger of affiliated banks located in the state and that have been in existence and operated as banks continuously in the state for at least five years, the resulting entity shall be a united community bank. See Iowa Code Ann. § 524.1213.3. (West 1993 & Supp.1997) (subsection 3). These requirements are met: the banks are affiliates for purposes of this statute and they are located in Iowa. Moreover, under section 524.1213.4A, enacted into law on April 18, 1997, they satisfy the state aging requirements. With regard to aging requirements, that provision states:

> For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

See id. at 1997 Iowa Acts H.F. 475 (enacted April 18, 1997) (to be codified at § 524.1213.4A). The interim bank is to be chartered for the sole purpose of acquiring control of a branch owned and operated, as of January 1, 1997, by an affiliated savings association[9] and will not open for business prior to that acquisition. Moreover, as discussed, Magna FB, the Federal savings association which sold the branch, is more than five years old; consequently, under section 524.1213.4.A., the interim national bank is considered to be more than five years old.

In addition, the Iowa statute requires that offices of a target bank cannot be retained following a merger if it would cause the resulting bank to exceed the numerical limits on offices within a municipality. Id. at § 524.1213.11. The retention of the two branches of the Iowa interim bank with its main office in Des Moines is permissible under this standard. Id. at § 524.1202.2.a. According to the 1990 census, Des Moines had a population of between 100,000 and 200,000, thus authorizing it to have up to five offices in addition to its main office. Since the interim bank in Des Moines will have only two offices in addition to its main office, the resulting bank also will comport with these numerical limitations.

A united community bank may retain and operate the offices of the parties to the merger, subject to the above numerical limitations.[10] Id. at § 524.1213.3.b.; §

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[9] Magna FB is a savings association within the meaning of this statute, which incorporates the definition of savings association set forth in 12 U.S.C. § 1813(b)(1) and which includes Federal savings associations.

[10] Of course, a national bank must designate in its organization certificate, the place of its operations (see 12 U.S.C. § 22) and the location of its main office is not dependent on state law. See, e.g., 12 U.S.C. § 30(b); Ramapo Bank v. Camp, 425 F.2d 333, 341-42 (3d Cir.), cert. denied, 400 U.S. 828 (1970). Thus, while the state statute at section 524.1213.a. explicitly provides that a united community bank shall retain and operate as its principal

524.1213.3.c.; 12 U.S.C. § 36(c). Thus, the resulting bank may retain the main office and two branches of Magna FB in Des Moines.

D. Oakar Amendment

As discussed, the merger of Magna FB into Iowa interim bank headquartered in Des Moines is authorized under 12 U.S.C. § 215c. Title 12 U.S.C. § 215c provides:

> **(a) In general**
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> Subject to sections 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.
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> * * * * *
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> **(d) Acquire defined**
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> For purposes of this section, the term 'acquire' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

The Oakar Amendment, section 1815(d)(3), which section 215c(a) expressly incorporates, permits mergers, consolidations and purchase and assumption transactions between BIF- and SAIF-member institutions provided that the deposits of the resulting institution are proportionally insured by both BIF and SAIF. See 12 U.S.C. § 1815(d)(3)(A), (B).

As discussed, under the plain language of 12 U.S.C. § 215c, the purchase and assumption and merger transactions would need to be consistent with the Oakar Amendment. The Oakar Amendment permits a BIF-insured depository institution to acquire or merge with a SAIF-insured depository institution after a review of compliance with 12 U.S.C. § 1815(d)(3). However, the Oakar Amendment does not appear to apply to these transactions because all institutions involved in the purchase and assumption and merger transactions are members of the same insurance fund (SAIF).[11] Moreover, even if the six interim banks were

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place of business one of the principal places of business of the banks that are parties to the merger, we need not rely on that authority in permitting the resulting interim national bank in Des Moines to designate its main office prior to the merger as its main office after the merger.

[11] According to counsel for the Holding Company, following consultations with the Kansas City Federal Deposit Insurance Corporation, the six Iowa interim banks would be considered members of SAIF since they are formed to take over deposits of a SAIF-insured savings bank. Further, such an interpretation is consistent with past

considered to be BIF members, rendering the purchase and assumption and merger transactions as Oakar transactions involving acquisitions by an out-of-state holding company, the transactions would be consistent with the Oakar Amendment.[12]

OCC precedents. Cf. Decision of the Office of the Comptroller of the Currency on the Application to Merge Fleet Bank of New York, National Association, Schenectady, New York, with and into NatWest Bank National Association, Jersey City, New Jersey, Under the Charter of the Latter and with the Title, Fleet Bank, National Association, p.7 n.7 (OCC Corporate Decision 96-20, April 12, 1996). Consequently, these transactions would be solely between SAIF-member banks and would not constitute Oakar transactions.

[12] The Oakar Amendment provides that a BIF-member which is a subsidiary of a bank holding company may not be the acquiring depository institution unless the transaction would comply with the requirements of 12 U.S.C. § 1842(d) if, at the time of the transaction, the SAIF member involved in such transaction was a State bank that the bank holding company was applying to acquire. Section 1842(d) imposes specific requirements where a State bank is proposed to be acquired by a bank holding company located in another state. In the present case, the SAIF-member is located in Iowa. The Holding Company is located in Illinois, the state in which its total deposits were greatest on the later of July 1, 1966 or the date on which it became a bank holding company. See 12 U.S.C. § 1841(o)(4)(C). (Because section 1842(d) is triggered based on the location of the Holding Company, it is irrelevant to determine the location, for purposes of section 1842(d), of the Holding Company's second tier holding companies).

Consequently, because the Holding Company and the Federal savings bank are located in different states, the criteria set forth in sections 1815(d)(3)(F) and 1842(d) must be satisfied. The Holding Company satisfies the requirements pertaining to management and capital and its performance under the Federal Community Reinvestment Act is consistent with approval. In this regard, we note that holding company compliance with the Federal Community Reinvestment Act is evaluated by looking to the Federal Community Reinvestment Act record of its subsidiaries that are subject to the law. See 12 C.F.R. § 228.29(1996). (For a full discussion of the application of this requirement, see Decision of the Comptroller of the Currency to Approve Applications by First Bank National Association, Minneapolis, Minnesota, To Acquire First Bank, FSB, Fargo, North Dakota, and to Engage in Certain Related Transactions, pp. 13-14 (May 31, 1997)). In this case, based on the most recent examinations, Magna, Magna Indianola and Magna Monticello have satisfactory ratings and Magna Iowa, Magna Oelwein and Magna FB have ratings of outstanding with respect to Federal Community Reinvestment Act performance. Moreover, no issues arise under state community reinvestment standards. In fact, Iowa and Illinois have no state community reinvestment requirements. By statute, Missouri permits banks to make debt or equity investments, not otherwise permitted by statute, to promote the development of the community and its welfare. See Mo. Ann. Stat. § 362.105.1.(14) (Vernon 1968 & Supp. 1996). This statute, however, has no mandatory provisions. Moreover, no public comments or protests were received by the OCC relating to Federal Community Reinvestment Act compliance or raised any issues under state law and the OCC has no other basis to question the Holding Company's performance. The Federal Community Reinvestment Act performance of the depository institutions that are parties to this transaction will be more fully discussed in Part VII.B. of this Decision Statement.

The transactions also are consistent with the 10% nationwide and 30% statewide deposit concentration limits established by the Riegle-Neal Act. The total amount of the bank holding company's deposits in Iowa as of March 31, 1997 was approximately $990 million which is less than 3% of the total deposits held by state commercial banks alone as of that date -- a figure exceeding $35 billion. In addition, even if applicable to this transaction, the state-imposed concentration limit of 10 percent (Iowa Code Ann. § 524.1802.1. (West 1993 & Supp. 1997)) is satisfied.

The transactions also are consistent with the five year Iowa aging threshold. See Iowa Code Ann. § 524.1805.1 (West 1993 & Supp. 1997) (subsection 1). These limitations are satisfied because under a recently enacted Iowa statute, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by an affiliated savings association, as defined at 12 U.S.C. § 1813(b)(1), which includes Federal savings

E. The Bank Merger Act and the Federal Community Reinvestment Act

As discussed, the Bank Merger Act and the Federal Community Reinvestment Act also apply to the purchase and assumption and merger transactions described above. In addition, any transactions under the authority of 12 U.S.C. § 215c must be consistent with other applicable laws. These laws will be discussed in Parts VII.A., B., and C. of this Decision Statement.[13]

V. LEGAL AUTHORITY FOR MERGER OF THE SIX IOWA INTERIM BANKS AND THE THREE IOWA STATE BANKS INTO MAGNA IOWA

A. Authority for the Merger

The transaction in which the three Iowa State Banks and the six Iowa interim national banks merge into Magna Iowa with its main office in Waterloo is authorized under 12 U.S.C. § 215a governing mergers between national banks and with state banks under a national bank charter. If the six Iowa interim national banks are considered to be SAIF members, the transaction would involve the acquisition of SAIF member banks by a BIF-member bank and it must be reviewed for compliance with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). Moreover, this transaction is subject to review under the Bank Merger Act and the Federal Community Reinvestment Act. These statutes are discussed in Parts VII.A. and B. of this Decision Statement.

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associations, assumes the age of the savings association to be acquired. See 197 Iowa Acts H.F. 475 (enacted April 18, 1997) (to be codified at § 524.1805.3A). As discussed, Magna FB is over five years old. Moreover, we note that for purposes of section 1815(d)(3)(F), Magna FB is the SAIF member "involved in the transaction" and, consequently, under the Federal statute, also, the age of the Federal savings bank would control.

In addition, no issues arise under Iowa antitrust laws which, on their face, are inapplicable to this transaction. See Iowa Code § 553.6(4) (1987 & Supp. 1996) (providing an exemption for actions expressly approved or regulated by a regulatory body under the authority of the United States). Finally, we note that, as required by 12 U.S.C. § 1815(d)(3)(E)(iii), each resulting Iowa interim national bank meets all of its applicable capital requirements.

[13] As part of the merger of Magna FB into one of the interim national banks, the interim national bank will acquire one active and four inactive subsidiaries of Magna FB. The active subsidiary is Magna Student Loan Company; the inactive subsidiaries are Homeland Investment Company, MidAmerica Financial Products Co., Realty Services, Inc., and Homeland Trust Company. Immediately following the Iowa Merger and the Interstate Merger, the applicant has represented that the inactive subsidiaries will be merged into Magna Student Loan Company which will then adopt a plan of complete liquidation, file articles of dissolution with the State and distribute assets to Magna.

We also note that the OTS has acknowledged compliance by Magna FB with its notification and application requirements, codified at 12 C.F.R. §§ 563.22(b)(1)(I) and 563.22(h)(1), applicable to the acquisition by the six Iowa interim national banks of the Iowa branch offices and of the main office of Magna FB. In addition, the application and approval requirements of the Bank Holding Company Act, codified at 12 U.S.C. § 1842(a)(3), with respect to the formation of the six Iowa interim national banks have been waived by the Federal Reserve Bank of St. Louis.

B. Branch Retention Authority following the Iowa Roll-up

Assuming approval of the merger of the three Iowa State Banks and the six Iowa interim national banks into Magna Iowa, as set forth above, it is necessary to review applicable Federal and state law to determine the permissibility of the retention by the resulting national bank, with its main office in Waterloo, of its own branch offices and the main offices and branch offices of the nine acquired banks. As stated, 12 U.S.C. § 36(c) governs branching by national banks, through establishment or acquisition, and incorporates relevant state law. See State of Washington v. Heimann, 633 F.2d 886, 889-890 (9th Cir. 1980). Thus, if following a particular transaction, a state bank can operate a branch under the provisions of state law, so can a national bank following the same transaction. See TCF Decision.[14]

As discussed, Iowa law provides that following a merger of affiliated banks located in the state and that have been in existence and operated as banks continuously in the state for at least five years, the resulting entity shall be a united community bank. See Iowa Code Ann. § 524.1213.3. (West 1993 & Supp.1997) (subsection 3). These requirements are met: the banks are affiliates for purposes of this statute and they are located in Iowa. Moreover, as discussed, under section 524.1213.4A, enacted into law on April 18, 1997, they satisfy the state aging requirements. The three Iowa State Banks are over five years old. Each of the six interim banks has been chartered for the sole purpose of merging with Magna FB and/or acquiring control of a branch or branches owned and operated, as of January 1, 1997, by an affiliated savings association[15] and will not open for business prior to that acquisition. Moreover, as discussed, Magna FB, which sold the branches is more than five years old. Consequently, under section 524.1213.4.A., each of the interim national banks assumes the age of Magna FB, which exceeds five years, and, thus, each satisfies the state's aging requirements.

In addition, the Iowa statute requires that offices of a target bank cannot be retained following a merger if it would cause the resulting bank to exceed the numerical limits on offices within a municipality. Id. at § 524.1213.11. Upon consummation of the merger, all offices would comport with the numerical office limitations of Iowa law in each municipality with the exception of Waterloo. As discussed, according to the 1990 census, Waterloo had a population of under 100,000 thus authorizing a bank to have four offices in addition to its main office. In order to comply with the limitation on the number of branches permissible in Waterloo, the office of the Iowa interim bank located in Waterloo at 405 Jefferson Street will be closed and its accounts transferred to the current main office of Magna Iowa, located at 180

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[14] While 12 U.S.C. § 36(b)(2) generally governs retention of branches by a national bank following a merger with another national or state bank, it has long been held that section 36(c) provides an alternative source of authority for the operation by an acquiring bank of branches of a target bank that do not fit precisely within paragraph (b). See, e.g., 36 Op. Att'y Gen. 116, 119 (1929). Thus, it is unnecessary to determine whether the offices proposed to be retained in this transaction were "in operation" within the meaning of 12 U.S.C. § 36(b)(2).

[15] As previously noted, Magna FB is a savings association within the meaning of this statute, which incorporates the definition of savings association set forth in 12 U.S.C. § 1813(b)(1) and which includes Federal savings associations.

East Park Avenue.[16] With this action, the number of offices in Waterloo following the mergers will comport with the numerical limits in Iowa law.[17]

Further, a united community bank may retain and operate the offices of the parties to the merger.[18] The resulting bank, Magna Iowa, also may retain the remaining principal places of business of the banks that are parties to the merger. Id. at § 524.1213.3.b.; 12 U.S.C. § 36(c). Finally, the state statute provides that the resulting national bank may retain and continue to operate as retained bank offices any of the bank offices that are being operated as of the date of the merger by any of the banks that are parties to the merger. Id. at § 524.1213.3.c.; 12 U.S.C. § 36(c). Thus, the resulting bank, Magna Iowa, may retain its main office and branches and, as branches, the main offices and branches of the six interim national banks and of the Iowa State Banks.[19]

C. Oakar Amendment

As discussed, the merger of SAIF-member depository institutions, the six interim Iowa national banks, into a BIF-insured depository institution, Magna Iowa, must be reviewed for compliance with 12 U.S.C. § 1815(d)(3). Assuming the interim banks are SAIF members, their merger into Magna Iowa, a BIF member, would comport with the Oakar requirements for the reasons discussed in footnote 12, supra.

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[16] The applicant has advised the OCC that the branch closing notice requirements set forth in 12 U.S.C. § 1831r-1 have been satisfied with respect to this closing. See also 58 Fed. Reg. 49,083 (September 21, 1993) (policy statement on branch closings).

[17] The applicant also plans to close an administrative facility, which conducts only accounting and credit review functions, operated by Magna Iowa at 229 East Park Avenue, Waterloo, at the time of this transaction. That facility, however, is not a branch because members of the public do not have physical access to it for the purpose of making deposits, paying checks or borrowing money. See 12 C.F.R. § 5.30(d)(1)(ii)(A).

[18] As previously noted, a national bank must designate in its organization certificate, the place of its operations (see 12 U.S.C. § 22) and the location of its main office is not dependent on state law. See, e.g., 12 U.S.C. § 30(b); Ramapo Bank v. Camp, 425 F.2d 333, 341-42 (3d Cir.), cert. denied, 400 U.S. 828 (1970). Thus, while the state statute at section 524.1213.a. explicitly provides that a united community bank shall retain and operate as its principal place of business one of the principal places of business of the banks that are parties to the merger, we need not rely on that authority in permitting the resulting national bank in Waterloo to designate its main office prior to the merger as its main office after the merger.

[19] We note, in this context also, that paragraph 4.A., as cited above, provides that for purposes of section 3, an interim bank and the target's (Magna FB's) branches are considered to be in continuous existence and operation. Consequently, there can be no question that the branches are considered for purposes of paragraph 3.c. as being operated as of the date of the merger.

The Iowa statute also requires that an office retained under the authority of section 524.1213 have a united community bank office board at least half of the members of which are residents of the county in which the bank office is located. Id. at § 524.1213.2. The applicant has represented that these boards will be formed, as required by Iowa law, prior to the operation of the offices as offices of any bank and will continue in existence following consummation of the Interstate Merger.

D. The Bank Merger Act and the Federal Community Reinvestment Act

As discussed, the Bank Merger Act and the Federal Community Reinvestment Act apply to the purchase and assumption and merger transactions described above. These laws will be discussed in Parts VII.A. and B. of this Decision Statement.

VI. LEGAL AUTHORITY FOR THE INTERSTATE MERGER

Following the merger of the six interim banks and the Iowa State Banks into Magna Iowa, the applicant proposes to merge Magna Iowa with and into Magna.

A. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

In 1994, Congress enacted thee Riegle-Neal Act to create a framework for interstate mergers and branching by banks. The 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, 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).[20] 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 the Interstate

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[20] 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).

Merger, the home state of Magna is Missouri and the home state of the merging bank is Iowa. Neither Missouri or Iowa has not opted out. Accordingly, as discussed below, the Interstate Merger may be approved under the standards of 12 U.S.C. §§ 215a-1 and 1831u(a).

An application by a national bank to engage in an interstate merger transaction under 12 U.S.C. § 1831u is 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.

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 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, Magna is acquiring by merger a bank in the host state of Iowa.

Iowa's interstate bank merger statute has a five-year age requirement. See Iowa Code Ann. § 524.1805(1) (West 1996). Magna Iowa has been in existence for more than five years.[21] Thus, the merger of Magna Iowa into Magna satisfies the Riegle-Neal Act's age requirement.

Second, the proposed merger meets the applicable filing requirements of the host state of Iowa. 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).[22]

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[21] As discussed in Part V, the six interim banks and the three Iowa State Banks will have been merged into Magna Iowa just prior to the merger of Magna Iowa into Magna. Each of the three state banks have been in existence for more than five years. The six interim national banks were chartered in Iowa to merge with or purchase the Iowa branches of Magna FB prior to their merger, along with the three Iowa State Banks, into Magna Iowa. Each of these six interim national banks, even without the merger into Magna Iowa, would have been deemed to be more than five years old, for purposes of Iowa Code Ann. § 524.1805(3)(A), since they had purchased branches from a savings association that is more than five years old, even if they had sought to merge directly into Magna. See Iowa Code Ann. § 524.1213.4A.

[22] 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

Magna submitted a copy of its OCC merger application to the state bank supervisor in the host state of Iowa.

The Iowa interstate bank merger statute requires that an "out-of-state bank or out-of-state bank holding company that is organized under laws other than those of this state is subject to and shall comply with the provisions of chapter 490, division XV, relating to foreign corporations, and shall immediately provide the superintendent of banking with a copy of each filing submitted to the secretary of state under that division." Iowa Code Ann. § 524.1805(5). Chapter 490, division XV contains the provisions for out-of-state nonbanking corporations to qualify to do business in Iowa. See Iowa Code Ann. § 490.1501 et seq. As implemented to date, the filing requirements of section 524.1805(5) do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. Magna provided a copy of its OCC Merger Application to the Iowa state bank supervisor and is obtaining a certificate of authority under the Iowa filing requirement. Magna advises the Iowa state bank supervisor asked for no further action. Thus, the Magna/Magna Iowa merger satisfies the Riegle-Neal Act's filing requirement.

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). The two banks involved in the interstate merger transaction are affiliates; thus, section 1831u(b)(2) is not applicable to the 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; (2) take into account the Federal Community

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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 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). Thus, for this merger transaction, Magna must comply with the filing requirements of section 1831u(b)(1) for Iowa, not for Missouri and Illinois, states in which Magna already has branches before this merger.

Reinvestment Act evaluations of any bank which would be an affiliate of the resulting bank; and (3) take into account the applicant banks' records 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 Merger Application, Magna (the bank submitting the application as the acquiring bank) has a bank affiliate in the host state before the transaction (i.e., the merging bank), 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 Federal Community Reinvestment Act itself is applicable, as discussed below. See Part VII.B.

Fifth, the proposed merger transaction 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, Magna and Magna Iowa satisfied all regulatory and supervisory requirements relating to adequate capitalization. The banks are at least adequately managed. The OCC has also determined that, following the merger, Magna 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.

Accordingly, the proposed interstate merger transaction between Magna and Magna Iowa is legally permissible under section 1831u.

B. Following the Merger, the Resulting Bank may Retain Magna's and the Merging Bank's Existing Main Offices and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Applicants have requested that, upon the completion of the merger, Magna (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Brentwood 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 and branches of Magna Iowa in Iowa. 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, Magna, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of Magna and the merging bank under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[23]

Moreover, at its branches in its host state of Iowa, as well as in its branches in Missouri and Illinois, Magna 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),

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[23] 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) refers 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).

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 OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states); 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).

VII. 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 or purchase and assumption transaction 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 that the merger and purchase and assumption transactions described above may be approved under 12 U.S.C. § 1828(c).

1. Competitive Analysis

Each of the merger or purchase and assumption transactions listed above would constitute a transaction between affiliated institutions owned by the same bank holding company. Consequently, the transactions will not have anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of all of the banks are presently satisfactory. Magna expects to achieve efficiencies by operating the offices in the different states as branches, rather than as a separate corporate entity (or, in the case of Iowa, five separate corporate entities) in each state. 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 and purchase and assumption transactions.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. Magna will continue to serve the same areas in Missouri and Illinois where it has branches and in Iowa where Magna Iowa, Magna FB (and the six interim banks), and the three State Iowa Banks have offices. Magna will continue to offer a full line of banking products and services. There will be no reductions in the products or services as a result of the merger

and purchase and assumption transactions. The merger and purchase and assumption transactions will permit the resulting bank to better serve its customers and at lower cost.

Upon completion of the merger and purchase and assumption transactions combining the six depository institutions with offices in three states into one bank, customers of all of the combining banks will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across state lines or within Iowa or for business customers who have operations in more than one state or in various locations in Iowa. Following the consummation of the transactions, customers would be dealing with the same bank in the different states and in many locations within Iowa and will be able to readily access their accounts with greater convenience. Especially benefitting will be those customers who live in one state and work in another or travel frequently within Iowa. Although one branch, currently a branch of Magna FB, in Waterloo, Iowa, will be closed and its accounts transferred to a nearby office of Magna, this action is necessitated only by the need to comply with Iowa branching requirements that limit the number of branches that a bank may operate in towns such as Waterloo. Without this closing, one of the Iowa depository institutions with offices in Waterloo could not be included in the combination. This would result in a lessening of the benefits of this transaction. Moreover, the effect of this closing on customers of the branch to be closed is minimal and is expected to be outweighed by the benefits of the transaction. While their primary branch location will be several blocks from the current branch office, they will, in fact, have more branch offices in Waterloo at which to do their banking[24] as well as the capability of undertaking banking transactions at Magna offices elsewhere in Iowa as well as in Missouri and Illinois. In addition, as customers of Magna, they will have access to a wider range of products and services than currently available to them as customers of Magna FB. In addition with respect to branch closings, as part of its ongoing business plans, Magna 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 will consider the needs of the community affected.

Accordingly, we believe the impact of the merger and purchase and assumption transactions on the convenience and needs of the communities to be served is consistent with approval of these transactions.

B. The Federal Community Reinvestment Act

The Federal Community Reinvestment Act requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. The types of applications involved in this series of transactions that are subject to

[24] Magna FB has two branch offices in Waterloo; following consummation of the proposed combination, Magna will have five offices in Waterloo.

review under the Federal Community Reinvestment Act are applications for the six interim national banks charters, and the merger and purchase and assumption transactions. 12 C.F.R. § 25.29(a)(4). In undertaking this evaluation, the OCC considers the Federal Community Reinvestment Act performance evaluation of each participating insured depository institution. Additionally, the OCC considers any public comment letter received related to any national bank participant. Based on the most recent examinations, Magna, Magna Indianola, and Magna Monticello have satisfactory ratings, and Magna Iowa, Magna Oelwein and Magna FB have ratings of outstanding with respect to Federal Community Reinvestment Act performance. No public comments were received by the OCC relating to the merger and purchase and assumption transactions, and the OCC has no other basis to question the banks' performance in complying with the Federal Community Reinvestment Act.

The merger and purchase and assumption transactions are not expected to have any adverse effect on the resulting bank's Federal Community Reinvestment Act performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. Magna will continue its current Federal Community Reinvestment Act programs and policies in Missouri and Illinois. Following the merger, Magna will carry forward the same Federal Community Reinvestment Act programs and policies that the banks have today and will add other programs developed by Magna. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as separate banks. The merger and purchase and assumption transactions and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the chartering of the six interim national banks and the proposed merger and purchase and assumption transactions is consistent with the Federal Community Reinvestment Act.

C. Other laws

It is also necessary to determine whether transactions accomplished under the authority of 12 U.S.C. § 215c(a) are in accordance with other laws governing national bank mergers or to determine that those laws do not apply to this merger. In the present series of applications, the only transaction accomplished under the authority of section 215c is the merger of Magna FB, with its main office and branches in Des Moines, Iowa, into one of the six acquiring interim banks.[25] A review of other statutes applying to mergers and interstate branching involving national banks demonstrates that these statutes -- 12 U.S.C. §§ 215a, 215a-1, 36(d) and 36(g) -- are inapplicable to the transaction at issue which involves the merger of a Federal savings bank into a national bank, and the acquisition of intrastate branches of the Federal savings bank.

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[25] As discussed, the other merger or purchase and assumption transactions are accomplished under other sources of statutory authority. The Iowa branch acquisitions of Magna FB by five of the six interim banks are authorized under 12 U.S.C. § 24(Seventh), the merger of the six interim national banks and the three Iowa State Banks into Magna Iowa are authorized under 12 U.S.C. § 215a, and the merger of Magna Iowa into Magna is authorized under 12 U.S.C. §§ 215a-1, 1828(c) and 1831u(a).

VIII. CONCLUSION AND APPROVAL

For the reasons set forth above, and in accordance with all other appropriate state and Federal regulatory action, we approve the establishment of six de novo interim national banks in Iowa and their acquisition, through five purchase and assumption transactions and a merger transaction, of the branches of Magna FB in Iowa. With respect to these six interim national banks, we grant the request, under 12 U.S.C. § 72, to waive the director residency requirements. We also approve the merger of the six Iowa interim national banks and the Iowa State Banks into Magna Iowa, and the retention of the main offices and the branches proposed to be retained of each bank as either the main office or branches of the resulting bank.

Finally, for the reasons set forth above, we find that the merger of Magna and Magna Iowa is legally authorized as an interstate merger transaction under the Riegle-Neal Act and the resulting bank is authorized to retain and operate all of its offices and those of Magna Iowa.

Accordingly, for the reasons set forth above, including the representations and commitments made by the applicants, these applications are hereby approved.

/s/ 07-14-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 97-CE-02-030 through 97-CE-02-037