Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #98-18
May 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE FIRST COMMERCIAL BANK, N.A., MEMPHIS, TENNESSEE, WITH AND INTO FIRST COMMERCIAL BANK, N.A., OF WEST MEMPHIS, WEST MEMPHIS, ARKANSAS, AND RELATED APPLICATIONS

March 25, 1998

I. INTRODUCTION

On January 7 and 27, 1998, a series of applications was filed with the Office of the Comptroller of the Currency that would, if approved, result in the combination of First Commercial Bank, N.A., Memphis, Tennessee (the Tennessee bank) and Federal Savings Bank, West Memphis, Arkansas (the Federal savings bank).[1] The Tennessee bank is a wholly-owned subsidiary of First Commercial Corporation, Little Rock, Arkansas (the bank holding company) and, at the time of consummation, the Federal savings bank also will be a wholly-owned subsidiary of the bank holding company.[2] Each institution is a member of the

[1] At the time of the filing of the applications, the home office of the Federal savings bank was in Rogers, Arkansas; however, the applicant has advised the OCC that between the time of the filing of the application and the consummation of any of the proposed transactions, the home office will be relocated to West Memphis in accordance with the rules and regulations of the Office of Thrift Supervision (OTS). The Federal savings bank notified the OTS of the proposed relocation of its home office on February 11, 1998. This Decision Statement is based on the representation that, at the time of consummation of any of the transactions, the home office of the Federal savings bank will be located in West Memphis.

[2] The applicant has advised the OCC that on January 7, 1998, the bank holding company filed notification with the Federal Reserve Bank of St. Louis to acquire, through merger, KW Bancshares, Inc., Little Rock, Arkansas (the thrift holding company). The Federal Reserve Bank approved this merger on February 12, 1998. See Letter by John W. Block, Jr., Vice President, Federal Reserve Bank of St. Louis (February 12, 1998) (the Federal Reserve Bank letter). The Federal savings bank is a wholly-owned subsidiary of the thrift holding company. Following the holding company merger, it is proposed that the transactions set forth in the applications addressed in this Decision

Savings Association Insurance Fund (SAIF).[3] As of September 30, 1997, the Tennessee bank had assets of about $400 million and deposits of about $357 million and it has a main office and eight branches located solely in Tennessee. As of that same date, the Federal savings bank had assets of about $480 million and deposits of about $345 million. Immediately prior to the consummation of the proposed transactions, in addition to its home office in West Memphis, the Federal savings bank will have 11 branches located in Arkansas and three branches located in Memphis, Tennessee. Of the Arkansas branches, two are located in Little Rock, five are located in Rogers,[4] and four are located in Fort Smith.

To accomplish the proposed result, the applicant has sought approval for the following transactions, each of which will occur in sequence following acquisition of the thrift holding company by the bank holding company. First, the Tennessee bank will acquire two of the Memphis branches and the assets and liabilities associated with all three of the Memphis branches of the Federal savings bank[5]; First Commercial Bank, N.A., Little Rock, Arkansas (the Little Rock bank), will acquire through a purchase and assumption transaction, the assets and liabilities of the Federal savings bank's two Little Rock branches[6]; and Farmers and Merchants Bank, Rogers, Arkansas (the Rogers bank), a state-chartered bank, will relocate its main office to the former site of the home office of the Federal savings bank in Rogers, Arkansas, and acquire the other Rogers branches, and associated assets and liabilities, of the

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Statement would take place in sequence.

[3] The Tennessee bank was formed in 1990 to purchase the assets and assume the liabilities of Home Federal Savings and Loan Association pursuant to an agreement with the Resolution Trust Corporation. The Tennessee bank is considered to be a SAIF member because the acquired deposits were SAIF insured and they were not converted to deposits insured by the Bank Insurance Fund (BIF). Subsequently, the Tennessee bank acquired, through merger, a BIF member bank under authority of the Oakar Amendment, 12 U.S.C. § 1815(d)(3). Consequently, though a SAIF member, it also holds BIF deposits.

[4] The number of Rogers branches includes one branch in the nearby town of Bentonville. It also includes the office currently designated as the home office of the Federal savings bank which, following the relocation of the home office, will be a branch of the Federal savings bank prior to the consummation of these transactions.

[5] Assets and deposit liabilities attributable to the Tennessee branches are, respectively, $37,813,000 and $37,811,000. The assets and liabilities of the one branch that will not be acquired will be transferred to the main office of the Tennessee bank which is located within 1,000 feet of this branch. Because of the proximity, this constitutes a branch consolidation. See 58 Fed. Reg. 49,083, 49,085 (September 21, 1993).

[6] Assets and deposit liabilities attributable to the two Little Rock branches are, respectively, $34,253,000 and $23,478,000. These assets and liabilities will be transferred to branches of the Little Rock that are located within 1,000 feet of the two branches. Because of the proximity, these constitute branch consolidations. Id. The acquiring Little Rock bank has assets of about $1.8 billion and deposit liabilities of $1.5 billion. Its main office and all 30 of its branches are located in Arkansas. It is wholly owned by the bank holding company and is a member of the BIF.

Rogers branches.[7] Second, the Federal savings bank will convert to a national bank retaining its home office in West Memphis, Arkansas, and branches in Fort Smith, Arkansas (the West Memphis bank).[8] Finally, the West Memphis bank will acquire, through merger, the Tennessee bank and designate the current main office of the Tennessee bank in Memphis, Tennessee, as the main office of the resulting bank.[9]

No protests have been filed with the OCC in connection with any of these proposed transactions. In the only written comments filed with the OCC, the Commissioner of the Department of Financial Institutions of the State of Tennessee expressed no objection to any of the transactions and the Commissioner of the State Banking Department of Arkansas expressed no adverse comment.[10]

II. LEGAL AUTHORITY

A. The purchase and assumption transactions are authorized under 12 U.S.C. § 24(Seventh).

As stated, the Tennessee bank has proposed to acquire, through a purchase and assumption transaction, the assets and liabilities associated with the Tennessee branches of the Federal savings bank. Similarly, the Little Rock bank has proposed to acquire, through a purchase and assumption transaction, the assets and liabilities associated with the Little Rock branches of the Federal savings bank. National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh). See, e.g.. City National Bank of Huron v Fuller, 52 F.2d 870, 872-873 (8th Cir. 1931); In re Cleveland Savings Society, 192 N.E.2d 518, 523-24 (Ohio Com Pl. 1961). Such purchase and assumption transactions are commonplace in the banking industry.

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[7] Because the Rogers bank is state-chartered, the OCC has no jurisdiction over that part of the transaction. Rather, the applicant applied for approval of the sale of the Rogers branches to the state and to the Federal Reserve Bank of St. Louis. This latter approval was granted on February 12, 1998. See the Federal Reserve Bank letter.

[8] The Federal savings bank has notified the OTS of the proposed branch sale transactions and of the proposed conversion. The OTS has acknowledged receipt of those notifications in a letter to the Federal savings bank dated February 23,1 998 by Bruce E. Benson, OTS Midwest Region Deputy Director. The OTS has orally informed the OCC that it has no comment on the proposed transactions.

[9] The newly-converted bank will be called First Commercial Bank, N.A. of West Memphis and, in conjunction with the consummation of the merger, the applicant has notified the OCC, pursuant to 12 U.S.C. § 30(a), that the name of the bank will be changed to First Commercial Bank, Memphis.

[10] See Letters to Pansy G. Hale, National Bank Examiner/Senior Corporate Analyst, Comptroller of the Currency, Southwestern District Office, from Bill C. Houston, Tennessee Commissioner, (February 5, 1998); and from Bill J. Ford, Arkansas Commissioner (February 3, 1998).

Accordingly, the Tennessee bank and the Little Rock bank may, respectively, purchase the assets and assume the liabilities of the Tennessee and Little Rock branches of the Federal savings bank assuming that these transactions are consistent the Bank Merger Act (BMA), the Oakar Amendment and the Community Reinvestment Act (CRA). Compliance with those provisions will be discussed in Parts II.C. and III. of this Decision Statement.

B. The Arkansas purchase and assumption transaction complies with the Oakar Amendment and the Tennessee purchase and assumption transaction does not implicate the Oakar Amendment

Because the purchase of assets and liabilities associated with the Little Rock branches of the Federal savings bank involves the acquisition of SAIF-insured deposits by a BIF member bank, the transaction must be reviewed for compliance with the Oakar Amendment. See 12 U.S.C. §§ 1815(d)(3)(d)(2)(B)(iii)(I) and (iv)(II) and 1815(d)(3). The Oakar Amendment requires that the acquiring or resulting bank meet all applicable capital requirements upon consummation of the transaction. See id. at (d)(3)(E)(iii). The OCC has determined that the Little Rock bank meets all applicable capital requirements. In fact, both before and after the acquisition, the Little Rock bank at least meets all of the tests to be considered a well-capitalized institution. See 12 C.F.R. § 6.4(b)(1).[11]

C. Branch retention following the purchase and assumption transactions

Given authority under 12 U.S.C. § 24(Seventh) for the purchase and assumption transaction in Tennessee and assuming that, as will be discussed below, the transaction is consistent with the BMA and CRA, we next look to whether the Tennessee banks can retain, respectively, the

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[11] The Oakar Amendment also imposes a series of requirements that apply where the target SAIF member is being acquired by a BIF member that is a subsidiary of a holding company the home state of which is different than that of the target if the target were a state bank. See 12 U.S.C. §§ 1815(d)(3)(F); 1842(d)(1)(A). For these purposes, the home state of the target is considered to be Arkansas because it is located solely in Arkansas and if it were a state bank, it would have been chartered by Arkansas. See 12 U.S.C. 1841(o)(4)(B). The home state of the holding company also is Arkansas because that is the state in which the total deposits of its banking subsidiaries was the largest on August 1, 1983, the date on which it became a bank holding company. See 12 U.S.C. § 1841(o)(4)(C). Thus, because the home state of the holding company and of the target are the same, these requirements do not apply.

We further note that none of the requirements of the Oakar Amendment apply to the purchase and assumption transaction in Tennessee because both institutions involved are SAIF members.

acquired branches.[12] Retention of branches acquired in a purchase and assumption transaction is governed by 12 U.S.C. § 36(c).[13] 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.

Consequently, the ability of a national bank to establish or acquire intrastate branches depends on the branching rights given to state banks by state branching law as that law is incorporated by 12 U.S.C. § 36(c) and applied to national banks.

Tennessee permits full intrastate branching by state-chartered banks. See Tenn. Code Ann. § 45-2-614 (1993 & Supp. 1997). Consequently, national banks situated in Tennessee also may operate branches without geographic restriction in Tennessee and the Tennessee bank is authorized to operate as branches the two branches proposed to be acquired from the Federal savings bank and operated following consummation.

B. Conversion authority

Following consummation of the purchase and assumption transactions discussed above, as well as the purchase and assumption transaction involving the sale of the Rogers branches to the state-chartered Rogers bank, the Federal savings bank, at that point with its home office in West Memphis and four branches in Fort Smith, proposes to convert to a national bank.[14]

1. Authority for the conversion

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[12] Because of the Arkansas branch consolidations previously discussed at footnote 6, branch retention issues only arise with respect to the two branches of the Federal savings bank in Memphis sought to be retained by the Tennessee bank.

[13] See State of Washington v. Heimann, 633 F.2d.886, 889-90 (9th Cir.1980).

[14] As of September 30, 1997, the Federal savings bank's assets and liabilities attributable to its West Memphis and Fort Smith offices were, respectively, $290,464,000 and $167,479,000.

Regulations of both the OCC and the OTS permit the direct conversion of a Federal savings bank to a national bank. See 12 C.F.R. § 5.24 (1997) (providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing the application); 12 C.F.R. § 552.2-7 (providing that a Federal stock association may convert to a national charter after filing a notification or application with the OTS).[15] See also Decision of the Office of the Comptroller of the Currency to Approve Applications by TCF Financial Corp., 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, pp. 4-5 (OCC Corporate Decision 97-13, February 24, 1997) (the TCF Decision).

In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. See 12 C.F.R. § 5.24(d). A review of the application demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. Id. at §§ 5.13(b) and 5.24(d). A review of the record discloses nothing that indicates that these factors provide a basis for denial of this application.[16] In addition, as will be discussed, the conversion application must be reviewed in light of CRA considerations, 12 C.F.R. § 25.29(a)(4), which will be discussed in Part III.B. of this Decision Statement.

2. Branch retention following the conversion

Assuming approval of the conversion as described above, the question arises as to the authority of the West Memphis bank to retain the branches of the Federal savings bank. Title 12 U.S.C. § 36, governing branching by national banks, does not expressly address the retention of branches of a Federal savings bank following its conversion to a national bank. Section 36(b)(1), relating to branch retention following conversions, specifically addresses conversions only of state banks.

Nevertheless, 12 U.S.C. § 36(c) would permit a national bank resulting from the conversion of a Federal savings bank to continue to operate the branches of the Federal savings bank if a

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[15] Approval of this conversion by the OCC, as well as the other steps of the transaction, is based on the understanding that the Federal savings bank, prior to consummation, complies fully with all OTS procedures and receives any required approvals.

[16] Following the conversion, the Federal savings bank would remain SAIF-insured. For a discussion of the retention of SAIF insurance by a national bank following a conversion, see the TCF Decision at p. 5, n. 7.

state bank resulting from the conversion of a Federal savings bank could continue to operate the branches. This could occur if state law permitted state banks to a establish a branch at the site or sites de novo or if state law permitted a state bank, following its conversion from a Federal savings association, to operate a branch at the site. See, e.g., the TCF Decision at pp. 6-7 (and cases cited therein).

Arkansas law generally only permits branching within contiguous counties. Ark. Code Ann. 23-48-702(b)(1) (Michie 1994 & Supp. 1997). The Fort Smith branches are in Sebastian County, a county which is not contiguous with Crittenden County, the county in which the bank's main office is located. However, Arkansas law provides that "if . . . a converting bank has assets which do not conform to the requirements of state law for the resulting state bank or it carries on business activities which are not permitted for the resulting state bank, the commissioner may permit a reasonable time in which to conform with state law." Id. at § 23-48-508. Bill J. Ford, Commissioner of the Arkansas State Bank Department, has advised the applicant that it has no objection to the retention, in order to obtain conformance with state law, for up to one year of the Forth Smith branches that currently are conforming branches of the Federal savings bank and which may be considered nonconforming assets or business activities under section 23-48-508 of the Arkansas code following the conversion to a national bank charter.

The OCC is in full agreement with the Commissioner's analysis of state law, as incorporated into the McFadden Act and applied to national banks, and will permit the applicant to retain the branches for a period of one year in order to conform them with applicable state law.[17]

C. The merger between the West Memphis bank and the Tennessee bank

1. Authority

Following the conversion, the applicant proposes to merge the Tennessee bank into the West Memphis bank designating the current main office of the Tennessee bank as the main office of the resulting bank.

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

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[17] We note that, effective January 1, 1999, Arkansas law will permit full intrastate branching. Id. at § 23-32-1202(b)(4). The applicant has indicated it will act to transfer the branches to an affiliated bank that cannot currently operate the branches under existing state law, but would be legally authorized to do so once the new law takes effect on January 1, 1999.

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:

> (I) 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).[18] The Act permits a state to elect to prohibit 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). In this merger, the home states of the banks are Tennessee and Arkansas; neither state exercised its option to prohibit interstate mergers. Accordingly, the proposed interstate merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a) 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 requirements, if any, subject to the Act's limitations; (2) compliance with certain state filing requirements to the extent filing requirements are permitted by the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment act compliance; and (5) adequacy of capital and management skills.

The proposed interstate merger application satisfies all of 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

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[18] 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).

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." See 12 U.S.C. § 1831u(a)(5)(A). But the maximum age requirement permitted is five years. See 12 U.S.C. § 1831u(a)(5)(B). In this interstate merger, while the Tennessee and the West Memphis banks are combining under the charter of the West Memphis bank, the resulting bank will have Memphis, Tennessee, as its main office site under 12 U.S.C. § 1831u(d)(1), see Part II.C.2. below. Thus, in the context of this transaction, it is not clear which state is the host state for purposes of section 1831u(a)(5), and so which bank is subject to the age requirement. On the one hand, West Memphis is acquiring by merger a bank (the Tennessee bank) in the state of Tennessee, and so Tennessee could be viewed as the host state for age limit purposes. On the other hand, after the merger, the resulting bank's main office will be in Tennessee, and so Tennessee is the resulting bank's home state, and Arkansas is the host state for the resulting bank going forward. Thus, Arkansas could be viewed as the host state for age limit purposes as well.

The OCC believes that the first view is the better interpretation for applying section 1831u(a)(5) in this context. However, the proposed merger does not depend on a resolution of this question because it would satisfy the host-state imposed age requirement under either view. While Tennessee imposes a five year age limitation,[19] as discussed, the Tennessee bank has been in existence since 1990 and, thus, satisfies this age requirement. Likewise, Arkansas imposes a five year age requirement.[20] The age of a bank that converted from another form of charter, including that of a Federal savings association, includes the age of the institution from which it converted.[21] Because the Federal savings bank was formed in 1934, the Arkansas age requirements are satisfied.[22]

Second, the proposed merger meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must "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

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[19] See Tenn. Code Ann. § 45-2-1403(a)(2) (1993 & Supp. 1997).

[20] See Ark. Code Ann. §§ 23-48-903; 23-45-102(a)(18) (Michie 1994 & Supp. 1997).

[21] Id. at §§ 23-45-102(a)(18) and (38). See also Letter from Candace A. Franks, Deputy Bank Commissioner and General Counsel, Arkansas State Banking Department, to Philip K. Smith (December 17, 1997).

[22] The Federal savings bank was originally established in 1934 as First Federal Savings & Loan Association and converted to a stock Federal savings bank in 1988.

business in the host state. See 12 U.S.C. § 1831u(b)(1).[23] The Arkansas interstate bank merger statute requires an out-of-state bank that will be the resulting bank in an interstate merger transaction and which will operate branches in Arkansas to apply for a certificate of authority from the Arkansas state bank commissioner. See Ark. Code § 223-48-1001 *et seq*. (There are additional filing requirements if the merger is with an Arkansas state bank, see 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*. The applicant has represented that it has complied with the Arkansas requirements; consequently the filing requirements of the Arkansas statute, even assuming they are applicable to the proposed transaction (in which, while the resulting bank is an Arkansas bank, it will have its main office in Tennessee and operate only branches in Arkansas) are satisfied.[24]

In addition, a bank applying for an interstate merger transaction must submit a copy of the application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1). This requirement is satisfied in this case; in fact, the bank has represented that it has supplied a copy of the application to the state bank supervisors in both Arkansas and Tennessee. Thus, the proposed merger satisfies the filing requirements of the Riegle-Neal Act.

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

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[23] 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 only impose 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).

[24] Even assuming that Tennessee notice and filing requirements were applicable to this transaction, we note that the Tennessee interstate bank merger statutes do not contain any filing requirements for an interstate merger transaction involving only national banks; consequently, compliance is not an issue The notice and filing requirements in the Tennessee statute apply only where an out-of-state bank is the resulting bank in an interstate merger involving a Tennessee *state* bank. See Tenn. Code Ann. § 45-2-1409 (1993 & Supp. 1997). Thus, these requirements on their face are inapplicable to this transaction which does not involve the acquisition of a Tennessee state-chartered bank.

specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). At the time of consummation, the Tennessee bank and the West Memphis bank will be 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 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 the 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 because 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 application, the West Memphis bank (the bank submitting the application as the acquiring bank) has a bank affiliate in Tennessee before the transaction (the Tennessee 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 proposed merger. However, the CRA 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, the Tennessee bank and Federal savings bank (and the West Memphis bank on a pro forma basis) satisfied all regulatory and supervisory requirements related to adequate capitalization and each is at least satisfactorily managed. The OCC has determined that, following the merger, the resulting bank 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 the Tennessee bank and the West Memphis bank is legally permissible under sections 1831u and 215a-1.[25]

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[25] Because the Tennessee bank, though a SAIF-member, has BIF-insured deposits as a result of a prior Oakar transaction, we note that its merger into the SAIF-member West Memphis bank also meets the standards of the Oakar Amendment. As previously stated, the Oakar Amendment requires that the acquiring or resulting bank meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). The OCC has determined that both before and after the transaction, the West Memphis bank will

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

The applicant has requested that, upon completion of the merger, the West Memphis bank (the resulting bank in the merger) be permitted to retain and continue to operate the Tennessee bank's main office in Memphis, Tennessee, as the main office of the resulting bank and to retain and continue to operate as branches (1) the branches of the Tennessee bank and (2) the main office and branches of the West Memphis bank in Arkansas. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operations 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) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." See 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 Transaction. -- 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)(10)(B)). Therefore, the resulting bank in this interstate merger transaction, may retain and operate the Tennessee bank's main office in Memphis, Tennessee, as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate as branches all of the other existing banking offices of the two merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[26]

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at least meet all of the tests to be considered a well-capitalized bank. We also note that the standards set forth in 12 U.S.C. § 1815(d)(3)(F) are inapplicable to this transaction because the acquiring bank, the West Memphis bank, is a SAIF member.

[26] 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

Of course, the operation of the Fort Smith branches by the West Memphis bank following consummation of the merger is subject to the same one-year requirement of conformance, discussed above, as was applicable prior to consummation of the transaction.

Moreover, at its branches in Arkansas and Tennessee, the resulting bank 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 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, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-010 (national banks may engage in fiduciary business at trust offices and branches in different states.) Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS[27]

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger, including purchase and assumption transactions, between insured depository institutions where the resulting institution will be a national bank. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. In addition, the BMA also requires the OCC to take into consideration the financial and managerial resources of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons below, we find that the sale of the assets and liabilities associated with the Little Rock branches of the Federal savings bank to the Little Rock bank (the Little Rock purchase and assumption transaction), the sale of the assets and liabilities associated with

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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 to interstate national banks, because the OCC had approved interstate main office relocation transactions that also involved mergers with affiliated 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).

[27] Of course, the reviews under the BMA and CRA set forth below apply only to the transactions before the OCC. The sale of the branches of the Federal savings bank in Rogers to a state-chartered bank was reviewed under the BMA and CRA by the Federal Reserve Board.

the Memphis branches of the Federal savings bank to the Tennessee bank (the Tennessee purchase and assumption transaction); and the merger of the Tennessee bank into the West Memphis bank (the bank merger) may be approved under section 1828(c).

1. Competitive Analysis.

Because at the time of consummation of these transactions, the Tennessee bank, the West Memphis bank, and the Little Rock bank will already be owned by the same bank holding company, the Little Rock purchase and assumption transaction, the Tennessee purchase and assumption transaction; and the bank merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of the three institutions are presently satisfactory. The applicant is expected to achieve efficiencies in both the Memphis and Little Rock areas by operating the Memphis area offices, located in both Tennessee and Arkansas, of the two institutions as part of the same bank rather than in separate corporate entities and by combining the Little Rock operations of its Little Rock bank and the Federal savings bank. While the resulting bank, the West Memphis bank, will continue to operate, for a limited period of time, the Forth Smith branches of what is now the Federal savings bank, operation of those branches enables the bank to continue to serve the Forth Smith community pending revisions to Arkansas branching laws that will enable the branches to be transferred to an affiliated bank closer to the Forth Smith. Operation of these branches during the proposed time period pending their conformance with the revised Arkansas branching laws does not impair the financial and managerial resources of the West Memphis bank. Thus, we find that the financial and managerial resources factor is consistent with approval of the Little Rock purchase and assumption transaction, the Tennessee purchase and assumption transaction and the bank merger.

3. Convenience and needs

Following the consummation of all of the transactions, the acquiring institutions will help to meet the convenience and needs of the communities to be served. The West Memphis bank will continue to serve the Memphis area and provide more convenient service to customers on both sides of the Tennessee/Arkansas state line by operating branches under one banking entity. Following the bank merger, customers who frequently travel across the Tennessee/Arkansas state line in the Memphis area and business customers who have operations in both states in the Memphis area will be able to deal with same bank on either side of the state line and will be able to readily access their accounts with greater convenience. Though one branch of what is now the Federal savings bank will be consolidated with the main office of the Tennessee bank, no neighborhood will be deprived of banking services as a result of that consolidation -- in fact, those consolidating offices are in neighboring buildings. The West Memphis bank also will continue to serve the Fort Smith area by retaining the offices of

what is now the Federal savings bank until Arkansas branching law changes next year to enable a corporate reorganization that should facilitate more efficient service in the Fort Smith area. Likewise, the Little Rock purchase and assumption transaction is expected to promote more efficient banking operations and, even though the two branches of what is now the Federal savings bank will be consolidated with branches of the Little Rock bank, the consolidating offices are each within 1,000 feet of each other and no neighborhood will lose banking services as a result of the consolidation.

There will be no reduction in the banking products or services offered as a result of these transactions. The acquiring banks will continue to offer a full line of banking products and services and the Fort Smith market will gain an established commercial bank lending program. In addition, the applicant expects to obtain economies of scale that will allow for competitive interest rates on loans and deposits as well as competitive service charge packages. Accordingly, we believe the impact of the two purchase and assumption transactions and the bank merger on the convenience and needs of the communities to be served is consistent with approval of the transactions.

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 including mergers, purchase and assumption transactions and conversions such as those involved in this series of applications. See 12 C.F.R. § 25.29(a)(3), (4). The OCC determined that the Tennessee bank has a "Satisfactory" record of performance at its most recent CRA examination completed in April 1997, and determined that the Little Rock bank has a "Satisfactory" record of performance at its most recent examination completed in April 1997. The OTS determined that the Federal savings bank has a "Satisfactory" record of performance at its most recent examination completed in October 1996. The transactions do not alter the resulting banks' obligations to help meet the credit needs of the communities that each of the entities involved in the transactions serve through the offices in Tennessee, and West Memphis, Little Rock, and Fort Smith, Arkansas, and each of the resulting banks will have the same commitment to helping meet the credit needs of those communities that the combining entities serve as separate depository institutions. No public comments relating to CRA were received by the OCC relating to these applications, and the OCC has received no information critical of the institutions' performance in complying with the CRA.

The Federal savings bank's sale of assets and liabilities to the Little Rock bank and to the Tennesee bank, conversion to a national bank and acquisition of the Tennessee bank is not expected to have any adverse affect on CRA performance by the acquiring banks in the Memphis area, both in Tennessee and in Arkansas, as well as in Little Rock and Fort Smith,

Arkansas.[28] Management for the resulting institution will be composed of management teams from each institution and the applicant has represented that the resulting bank will review the existing assessment areas for the offices being merged and prepare appropriately revised assessment areas. With respect to the acquisition of the Little Rock branches of the Federal savings bank by the Little Rock bank, the bank expects no changes in its CRA activities. The resulting bank will continue to serve the same communities following consummation of this transaction and will continue its programs and policies. Accordingly, we find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, and assuming compliance with all other appropriate regulatory requirements and receipt of all appropriate regulatory approvals, we find that the purchase of the Memphis branches along with the Memphis assets and liabilities of the Federal savings bank by the Tennessee bank and its retention of two of the Memphis branches, the purchase of the Little Rock assets and liabilities of the Federal savings bank by the Little Rock bank, the conversion of the Federal savings bank to a national bank with retention of its branches in Fort Smith, Arkansas, and the merger of the Tennessee bank into the West Memphis bank, with its main office in Memphis and branches in Tennessee as well as in West Memphis and Fort Smith, Arkansas, are all legally authorized and meet the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 03-25-98

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 98-SW-01-002, 02-003, 02-010, 02-013

[28] As stated, CRA performance in the Rogers area would have been considered in the Federal Reserve Board's approval of the purchase of the Rogers branches by a state bank.