



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

December 21, 2004

Ms. Courtney D. Allison
Assistant General Counsel
Wachovia Corporation
301 South College Street / NC0630
Charlotte, North Carolina 28288

CRA Decision 125
January 2005

OCC Control Nr. 2004-ML-02-0010

Dear Ms. Allison:

This is to inform you that today the Office of the Comptroller of the Currency (“OCC”) approved the application to merge SouthTrust Bank, Birmingham, Alabama, into Wachovia Bank, National Association, Charlotte, North Carolina. As discussed below, this approval was granted based upon a thorough review of statutorily required evaluative factors utilizing all information available and in reliance upon commitments and representations made in the application and those of Wachovia Bank, N.A.’s representatives.

I. INTRODUCTION

Wachovia Bank, N.A. (“WBNA”) applied to the OCC for approval to merge with and into its charter, SouthTrust Bank (“STB”), a state-chartered bank with its main office in Birmingham, Alabama under 12 U.S.C. §§ 215a-1, 1831u, and 1828(c).¹ STB has branches in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.² WBNA is a national bank with its main office located in Charlotte, North Carolina. WBNA has branches in Connecticut, Florida, Georgia, North Carolina, Virginia, Pennsylvania, South Carolina, New Jersey, New York, and the District of Columbia. WBNA, as the resulting institution, will retain the main office of STB as a branch and the branches of STB as branches of WBNA, and will also retain the main office and branches of WBNA.

WBNA applied to retain various subsidiaries of STB after the Merger. All but one of these subsidiaries engage in activities permissible for national banks under Part 24 or Part 28, or through operating subsidiaries under 12 C.F.R. Part 5 or under OCC precedent. However, one of

¹ The Federal Reserve Board approved the merger of Wachovia Corporation and SouthTrust Corporation, the parent holding companies of WBNA and STB on October 15, 2004, and the holding company merger was consummated on November 1, 2004. Thus, WBNA and STB are now affiliates.

² In addition to these domestic branches, STB maintains a foreign branch in the Cayman Islands under the authority of Regulation K, 12 C.F.R. § 211.3.

STB's subsidiaries, SouthTrust Development Corporation ("STDC") holds real property that does not conform to the requirements for assets acquired and held by national banks. STDC was acquired by STB through the acquisition by a predecessor bank of a Georgia state-chartered thrift. WBNA will divest any nonconforming assets within the two-year time of consummation of the merger.³

II. AUTHORITY FOR THE TRANSACTION

The proposed transaction is an interstate merger of an FDIC-insured Alabama-chartered bank into an FDIC-insured national bank located in North Carolina. Such interstate transactions are authorized under section 44 of the Federal Deposit Insurance Act:

"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) (the "Riegle-Neal Act").]⁴

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

First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank 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) (emphasis

³ See Business Combinations booklet, Comptroller's Licensing Manual (January 2004) at p.35.

⁴ Section 44 was added by section 102(a) of the Riegle-Neal Interstate Banking and Branching and Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the "Riegle-Neal Act"). The Riegle-Neal Act also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

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 "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.

added). 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. 12 U.S.C. § 1831u(f)(5). In this merger application, Alabama is the host state and for purposes of this section, specifies that a bank must be in existence and continued operation for a period of five years prior to being acquired.⁵ STB has been in continuous operation for more than five years.⁶ Thus, the merger satisfies the Riegle-Neal Act’s age requirement.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) “comply with the filing requirements of any host State of the bank which will result from such transaction” as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host State on out-of-state nonbanking corporations doing business in the host State, and (2) submit a copy of the application to the state bank supervisor of the host State. *See* 12 U.S.C. § 1831u(b)(1).⁷ WBNA submitted a copy of its OCC Application to the Superintendent of the State of Alabama Banking Department as required by section 1831u(b)(1) and Section 5-13B-5 of the Alabama Code. Copies of the Application were also sent to the banking authorities in the other states where STB has branches and WBNA does not, *i.e.*, Mississippi, Tennessee, and Texas. WBNA has complied with any applicable additional state 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 deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. 12 U.S.C. § 1831u(b)(2)(E). WBNA and STB are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act (“CRA”), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank’s record of compliance with applicable state community reinvestment laws. 12 U.S.C.

⁵ *See* Ala.Code § 5-13B-6.

⁶ STB, through predecessor institutions, has been in business since 1887, but the present entity was chartered as a national bank in 1996. In 2000, STB converted to an Alabama state-chartered bank pursuant to section 5-7A of the Code of Alabama. Section 5-7A-22 of the Code of Alabama states that “[u]pon such conversion becoming effective, the state bank shall be deemed to be a continuation of the entity and identity of the national bank....” Therefore, the age of STB relates back to the charter granted in 1996.

⁷ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. For a fuller discussion of this subject, *see, e.g., Decision on the Application 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).

§ 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.⁸ In this Application, WBNA and STB are affiliates, and so this Riegle-Neal Act provision is not applicable. However, the CRA itself is applicable, as discussed below.

Fifth, 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. 12 U.S.C. § 1831u(b)(4). As of the date the Application was filed, WBNA and STB satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, the banks are at least satisfactorily managed. The OCC has also determined that, following the consolidation, 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 merger is legally authorized under the Riegle-Neal Act.⁹

The Applicant has also requested that, after the merger, WBNA, as the resulting bank, be permitted (1) to retain its own main office and branches and (2) to retain the target bank's main office and branches (subject to the DOJ divestiture agreement) as branches of WBNA. Such continued operation is permissible under 12 U.S.C. § 1831u(d)(1) and 12 U.S.C. § 36(d).¹⁰

⁸ It 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 affiliates 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).

⁹ The merger also meets the requirements of 12 U.S.C. § 215a. In particular, since the target is a state bank, the merger must not be in contravention of state law. Alabama permits its state banks to merge into national banks. *See* Ala. Code § 5-13B-23. In addition, there will be no non-conforming assets or subsidiaries in STB, as WBNA commits to divesting from its subsidiary SouthTrust Development Corporation, all remaining nonconforming assets within two years.

¹⁰ In interstate transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the combining banks is expressly provided for: “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(g)(11). In addition, Congress added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831 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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Section 36(d) makes it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 U.S.C. 36(b)(2) that apply to combinations under 12 U.S.C. §§ 215 or 215a. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the

Therefore, WBNA, the resulting bank, may retain and operate the requested main offices and branches.

The Applicant has also requested that, WBNA, as the resulting bank, be permitted to retain STB's foreign branch in the Cayman Islands. This is permissible under 12 U.S.C. § 601 and Regulation K, 12 C.F.R. § 211.3(b).¹¹

Retention of subsidiaries

STB owns a number of subsidiaries that will become subsidiaries of WBNA as a result of the merger. Most of these subsidiaries qualify as operating subsidiaries and the Applicant seeks to retain them as operating subsidiaries. Operating subsidiaries are those that conduct activities that are permissible for a national bank to engage in directly and conduct those activities pursuant to the same authorization, terms, and conditions that apply to the conduct of those activities by their parent bank.¹² All of these subsidiaries, except as discussed below concerning SouthTrust Development Corporation, engage in activities permissible for national banks by statute, regulations, and prior OCC precedent, and thus may be retained by WBNA. The subsidiaries, as described by the Applicant, include:

- First State Service Corporation acts as a trustee for deeds of trust and holds other real estate owned (“OREO”).
- Magic City, Inc. (“MCI”), an intermediate holding company, holds all of the stock of Magic City Three, Inc.
- Magic City Three, Inc. is located in Delaware and manages investment securities for STB.¹³
- SC Realty, LLC holds SouthTrust Bank OREO.
- SouthTrust Capital Funding Corp. holds and services loans from STB's portfolio.

McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in transactions under section 1831u.

¹¹ WBNA will retain STB's Cayman Islands branch but since WBNA also maintains a foreign branch in the Cayman Islands, it may decide to consolidate them into one branch. Under 12 C.F.R. § 28.3(a), national banks are required to notify the OCC regarding foreign branches. Applicant included the foreign branch in the application in fulfillment of this requirement. Nothing in the OCC's rules relieves the Applicant from complying with requirements that are imposed by the Federal Reserve Board under Regulation K, (12 C.F.R. Part 211). *See* 12 C.F.R. 28.10(c). However, since WBNA already maintains a foreign branch in the Cayman Islands, no prior notice to the FRB is required to establish additional branches there. *See* 12 C.F.R. § 211.3(b)(4).

¹² 12 C.F.R. § 5.34(e)(1)(3).

¹³ The Applicant has represented that all of the investment assets held in this subsidiary are permissible for a national bank under 12 U.S.C. § 1.

- SouthTrust Mobile Services Funding Corp. was the depositor (*i.e.*, serves as a special purpose vehicle) of STB mobile home loans in asset securitization transactions.
- ST Holding (TN), Inc., an intermediate holding company, holds all of the stock of Omniplus Capital Corp., ST Realty, Inc., ST Realty 3, Inc. and ST Realty 4, Inc.
- ST Realty, Inc. is a captive real estate investment trust.
- ST Realty 3, Inc. is a captive real estate investment trust.
- ST Realty 4, Inc. is a captive real estate investment trust.
- SouthTrust Community Development Management Corporation, an intermediate holding company, holds one percent interests in two STB community development corporations: SouthTrust Community Development LLC and SouthTrust Community Development Series A, LLC. All three of these companies are inactive.
- ST Holding (SC), Inc., an intermediate holding company, holds the stock of SC Financial Insurance Company.
- ST Holding (AL), Inc. (“STHAL”), an intermediate holding company, holds the stock of its subsidiary, ST Holding (TN), Inc.¹⁴

The above listed subsidiaries conduct activities that are permissible for national banks and their operating subsidiaries. *See* 12 C.F.R. § 5.34(e)(5)(v)(A), which authorizes an operating subsidiary to hold assets acquired by the parent bank, including investment assets, and property acquired through foreclosure or to collect a debt previously contracted.

SouthTrust Mortgage Corp. is engaged in mortgage lending activities. This is a permissible activity for national banks and their operating subsidiaries. 12 C.F.R. § 5.34(e)(5)(v)(C).

Omniplus Capital Corporation purchases, sells, services and warehouses loans. This is a permissible activity for national banks and their operating subsidiaries. 12 C.F.R. § 5.34(e)(5)(v)(D).

HNB Auto Exchange, LLC engages in automobile leasing activities. This is a permissible activity for national banks and their operating subsidiaries. 12 C.F.R. § 5.34(e)(5)(v)(M).

SC Financial Insurance Company (“SCFIC”) reinsures credit related insurance and private mortgage insurance. This is a permissible activity for national banks and their operating subsidiaries. 12 C.F.R. § 5.34(e)(5)(v)(L) and (Q). In addition, SCFIC also provides excess lines

¹⁴ On December 2, 2004, the Applicant requested that the Application be amended to include the retention of STHAL, an Alabama corporation and the parent of ST Holding (TN), Inc. (“STHTN”). STHTN is the parent of various subsidiaries that hold real estate related assets.

coverage for STB-related risks.¹⁵ The excess lines coverages provided by SCFIC for STB-related risks are within the types of insurance coverages a national bank subsidiary may provide for its parent bank and bank affiliates. The OCC concluded in Interpretive Letter No. 845 (October 20, 1998) that a national bank and its operating subsidiary could, in general, “self-insure” the risks associated with operating a bank as a business enterprise.¹⁶

Section 302 of the Gramm-Leach-Bliley Act (“GLBA”), 15 U.S.C. § 6712, preserved the authority of national banks to continue to engage in these activities. Under Section 302, national banks and their subsidiaries may not provide insurance products as principal, except for “authorized products.” The term “authorized products” is defined to include any product that the OCC had determined in writing, as of January 1, 1999, that national banks may provide as principal, provided that, as of such date, no court had rendered a final judgment overturning such determination. The OCC authorized national banks to “self-insure” the risks associated with operating a bank as a business enterprise prior to January 1, 1999,¹⁷ and these determinations have not been overturned by any court. The excess lines coverages provided by SCFIC involve self-insurance of risks of STB relating to its operating as a bank. Accordingly, SCFIC’s excess lines insurance for STB-related risks satisfies the “authorized product” exception in Section 302 of the GLBA, and is permissible for national banks and their subsidiaries.

SouthTrust Bank also owns two subsidiaries that conduct foreign operations authorized under the Federal Reserve Act, 12 U.S.C. § 601 *et seq.*¹⁸ The OCC’s rules provide that “a national bank may engage in any activity in a foreign country that is permissible under the FRB’s Regulation K, 12 C.F.R. Part 211.”¹⁹

The four subsidiaries formed to engage in community development activities provided under 12 C.F.R. Part 24 (ST Community Redevelopment, LLC, SouthTrust Community Development Series A, LLC, SouthTrust Community Reinvestment Company, LLC, and SOCO Community Development Company, LLC) are discussed later in the Community Investments section D.

¹⁵ WBNA represents that STB has primary insurance in place from a third party insurance company up to a certain amount and SCFIC provides insurance coverage in excess of the limits in those policies. WBNA represents that SCFIC provides the following coverages: excess employment practices liability, bankers professional liability, excess bankers’ professional liability, excess business aircraft, excess fidelity computer crime, excess business interruption, and excess umbrella liability.

¹⁶ *See also*, Corporate Decision # 99-03 (December 21, 1998).

¹⁷ *See* Interpretive Letter No. 845 (October 20, 1998); and Corporate Decision # 99-03 (December 21, 1998).

¹⁸ SouthTrust International, Inc. is an “Agreement corporation” organized pursuant to 12 C.F.R. § 211.5(g). It is an intermediate holding company which holds all of the stock of SouthTrust Hong Kong, Ltd. SouthTrust Hong Kong, Ltd. is engaged in issuing and processing letters of credit for STB in connection with the export/import activities of its customers, as authorized pursuant to 12 C.F.R. § 211.10. The Federal Reserve Board approved the acquisition of South Trust International, Inc. by Wachovia pursuant to the Federal Reserve Act, 12 U.S.C. § 601 *et seq.* and Regulation K, 12 C.F.R. § 211.5, in its Holding Company Merger Decision dated October 15, 2004.

¹⁹ *See* 12 C.F.R. § 28.4(b). The Applicant has consulted with the Federal Reserve Board and determined that no additional filing is required.

Lastly, South Trust Development Corporation holds some nonconforming assets. However, WBNA represents that it will divest all remaining nonconforming assets within two years after consummation of the proposed merger.²⁰

Consequently, the resulting bank may retain these above-referenced subsidiaries.

III. ADDITIONAL REVIEWS

A. The Bank Merger Act

1. Competitive Effects

WBNA and STB have subsidiary depository institutions that compete directly in forty-one banking markets in five states. The Federal Reserve Board (“FRB”) reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including public comment on the HC proposal with only two comments opposing based on competitive effects. The FRB considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets controlled by both banks, the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice (“DOJ”) guidelines, and other characteristics of the markets. The FRB also considered commitments made by Wachovia Corporation (WC) to the DOJ to reduce the potential that the proposal would have adverse effects on competition by divesting eighteen STB branches that account for approximately \$592 million in deposits, in four banking markets.

Since the FRB and the DOJ identified banking markets likely to become anti-competitive and obtained an Agreement with WC to divest 18 branches and the associated deposits to prevent lessening of competition prior to approving the HC merger, the OCC waived analysis of anti-competitive effects and will rely on the Agreement made between the FRB, the DOJ and WC to divest eighteen STB branches to reduce identified anti competitive effects. Therefore, in light of the divestiture agreement between WC and the FRB as detailed in the FRB’s conditional approval for the merger of SouthTrust Corporation (“STC”), the merger of STB into WBNA will not have an anticompetitive effect on any of the related banking markets.

WBNA has subsequently represented to the OCC that: (1) it has entered into a contract to sell all branches and accounts subject to the divestiture agreement; (2) the buying depository institution has received required regulatory approval; and, (3) the subject branches and accounts will remain operationally segregated from WBNA until consummation of their sale.

2. Convenience and Needs

The proposed bank merger will enhance the combined banks’ ability to serve the convenience and needs of the communities that it will operate in. The resulting bank will be able to offer a greater number of credit products, a broader range, and expanded access to financial products and services. The resulting bank will also be able to compete effectively with large national financial institutions that are emerging from consolidation in the financial services industry.

²⁰ See discussion at note 9, *supra*.

Specifically, the combined bank will be able to offer improved checking and savings accounts with greater ATM access for its customers (minimum deposit and ATM fees will be reduced or eliminated). Loan products offered to customers will enhance the bank's ability to continue the strong home equity and mortgage lending business to include risk-based pricing and lower loan pricing. WBNA plans to offer affordable housing mortgage loans to STB's customers in the low- and moderate-income category. Also, STB customers will benefit from WBNA's student loan program offered under the trade name "Educaid", a long-time leader in the government-backed student loan business currently ranked 7th largest student loan provider and the 4th largest holder of student loans in the nation.

As one of the largest commercial lenders in the USA, WBNA plans to continue to provide superior services and loan products while making available a variety of loan products to mid-size and small business customers. Through an operating subsidiary, WBNA is a national leader in providing U.S. Small Business Administration loans. As of August 2004, the WBNA ranked sixth in the nation among SBA Section 7(a) lenders on a national level; Number 1 in Alabama, and North Carolina; Number 2 in Florida and Virginia, Number 5 in Georgia; and has obtained "Preferred Lender" status with the SBA. In addition to participating in the SBA Section 7(a) program, WBNA participates in the SBA Express program, which makes smaller loan amounts, and the SBA Section 504 Program to provide long-term financing for fixed assets like buildings or land.

WBNA also will continue to offer a wide array of financing products to service the needs of small businesses including: lines of credit, credit cards, vehicle and equipment leases, letters of credit, term loans, mortgages, and construction loans. To further serve the needs of small business clients, WBNA will continue to have dedicated staff, small business specialists, in branches and small business loan underwriting centralized to allow for increased efficiency and consistency in the decision process.

STB customers will have access to a wide array of investment options. WBNA will continue to offer mutual fund products known as the Evergreen Funds with approximately \$109 billion assets under management. Customers will enjoy access to Wachovia Securities, LLC a registered broker-dealer affiliate of WBNA available in all branches.

Customers will experience improved access to ATMs and branches throughout the combined service areas. WBNA has nearly 2,500 branches and STB has 742 branches with combined 5,300 ATMs. Customers will not pay surcharges when using the branch/ATM network. The bank merger is expected to enhance the resulting bank's efforts to help meet the "Convenience and Needs of the Community", and is expected to strengthen bank efforts to further comply with the Community Reinvestment Act. STB customers will see the benefits from an extended branch and ATM network into Pennsylvania, New Jersey, New York and the District of Columbia. WBNA customers will see the benefits from an extended branch network into Alabama, Mississippi, Tennessee, and Texas. Also, WBNA plans to continue its Call Center and On-line Banking operations allowing 24-hour access.

WBNA plans to retain 100% of its customers during the branch conversion phase of the bank merger. To minimize customer impact and to allow time to correct any problems that may arise, the branch conversion process will take place gradually beginning in the second quarter of 2005

and ending in the first quarter of 2006 given the bank merger occurs as hoped on or about January 3, 2005. WBNA has previously announced that between 175 and 200 branches will be closed or consolidated as a result of the merger. Most of the branches that will be subject to consolidation are in close proximity to one another and therefore will be serving overlapping census tracts. WBNA represents that any anticipated branch closings or consolidations will occur well after the proposed date of the merger and will comply with 12 U.S.C. 1831r-1 with a separate 90-day branch closing notice.

3. Financial and Managerial Resources

Given both banks' well-capitalized position and the expectations that the resulting bank will continue in well-capitalized status, the combined banks are projected to maintain adequate financial resources to operate effectively. The pro forma Tier 1 capital ratio of 7.97%, pro forma Total capital ratio of 11.41%, and a pro forma Leverage capital ratio of 6.34% will facilitate the bank to be a leading East Coast bank post merger with total assets of \$428.9 billion and deposits of \$294.7 billion. WBNA and STB are well-managed institutions and will remain well-managed post merger. The Board of Directors and Senior Executive Officers of WBNA before the bank merger will continue to serve in their respective positions after the merger. The combined banks are also expected to retain virtually all of the technically and analytically skilled staff to function in the various service areas needed to ensure the banks continued good financial condition.

B. The Community Reinvestment Act

1. CRA Record of Performance

The CRA requires the OCC to take into account the applicants' record of helping to meet the credit needs of the entire community, including low- and moderate-income neighborhoods, when evaluating certain applications, including transactions subject to the Bank Merger Act.²¹ The OCC's review revealed no evidence that applicants' records of helping meet the credit needs of their communities, including low- and moderate-income neighborhoods, are less than satisfactory.

WBNA received an "Outstanding" CRA rating in the OCC's September 30, 2000, Performance Evaluation ("PE"). At that time, the bank was operating under the name First Union National Bank, Charlotte, North Carolina. In 2002, when First Union National Bank merged with WBNA First Union National Bank assumed the name WBNA. Prior to the 2002 merger, WBNA also received an "Outstanding" CRA rating in the OCC's December 31, 2000 PE. STB received a "Satisfactory" CRA rating in the Federal Reserve Bank of Atlanta's May 5, 2003 PE. None of these PEs disclosed any fair lending concerns.

2. Discussion of Public Comments

The OCC received a comment from a community organization that expressed concerns that WBNA and STB do not provide a sufficient amount of credit to African-American farmers and business owners in their respective markets.²² As mentioned above, both banks have been

²¹ See 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

²² The Board of Governors of the Federal Reserve System received similar comments from the same community organization in connection with the application to merge WC and STC. The Order approving the merger of these holding companies, dated October 15, 2004, considered the concerns raised by the commenter but found no basis to deny or conditionally approve the application. The Order noted that WBNA had provided financial support and

examined for fair lending and neither bank has a record of violating substantive provisions of fair lending laws.²³ In addition, WBNA noted that it made over \$221 million in small farm loans in 2003.²⁴ WBNA also noted that it assisted more than 70,000 entrepreneurs start or expand their businesses in 2003.²⁵

The commenter also expressed concerns that WBNA and STB Bank do not provide sufficient outreach and support to African-American farmers and community organizations. WBNA responded that, in connection with the proposed merger, WBNA and STB contacted over 325 community organizations within a 15-state market area, including the commenter.²⁶ Of those contacted, 201 completed surveys, which enabled the banks to collect information on community credit program needs to incorporate into the banks' community plan following the merger. The plan pledges \$75 billion over five years in the nine states affected by the merger and sets forth annual state-by-state goals. In addition, WBNA indicated that, since 2001, it had provided technical and financial support to the commenter for purposes including establishing the community organization and sponsoring annual conferences of the organization. WBNA also indicated that in 2003 and 2004 it sponsored or otherwise provided financial support to several other conferences or organizations benefiting African-American or other minority agricultural producers.

C. REQUEST FOR PUBLIC HEARING

The commenter also requested that the OCC conduct a public hearing. After careful consideration, the OCC has determined not to conduct a hearing on this merger application.

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11, which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the

technical assistance to many community organizations, including the commenter. In addition, since the commenter expressed concerns with the lack of "black farm loans in the USDA guaranteed program", the Order noted that CRA does not require banks to provide specific kinds of credit products or programs. Subsequently, WBNA indicated to the OCC that while it is a USDA lender, the bank does not generate a high volume of these types of loans due in part to the high administrative expense of that program.

²³ The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, implemented by Regulation B, 12 C.F.R. Part 202, prohibits banks from collecting data regarding the race of an applicant unless the loan is primarily for the purchase or refinancing of a dwelling to be occupied by the applicant as a principal residence and the loan is secured by such dwelling, or such collection is in connection with a self-test. See 12 C.F.R. §§ 202.5, 202.13.

²⁴ For example, WBNA indicated that to meet the credit needs of small farmers in Virginia, it extended a \$5 million loan as part of a \$25.5 million syndicated participation agreement. The syndicated fund is managed by a division of a cooperative, and the loan was extended to establish a financing program that targets small farmers with annual revenues up to \$500,000. An analysis of that lending portfolio indicated that almost 90 percent of the extensions of credit were in amounts of \$500,000 or less, and 89 percent of all loans were extended to local farms that would not qualify for traditional, conventional loans.

²⁵ WBNA indicated that it has created products, channels and processes to benefit its small business customers. The bank delivers small business services including loans, real estate loans, vehicle and equipment leasing and other financing products, such as a commercial credit card product.

²⁶ WBNA indicated that 38 of those contacts were with minority organizations and four were with rural/farming organizations.

decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The commenter believed the OCC should conduct public hearings in order to obtain additional information from the banks regarding the commenter's concerns and the plans developed for the community. The commenter indicated that it had not been able to obtain such information from the banks. As noted in footnote 23, *supra*, the banks are generally prohibited from collecting data with regard to the race of applicants for the types of loans in question. The banks otherwise provided information to the OCC responding to the commenter's concerns regarding lending and outreach by the banks and the banks' plans for the community. The OCC was not persuaded that the proposed testimony would provide the OCC with additional information beneficial to the OCC's decision-making process on the pending application, nor that a hearing would be in the public interest.

D. Community Investments

WBNA will acquire three STB community development investments under the investment authority of 12 U.S.C. § 24(Eleventh) (the "Statute") and 12 C.F.R. Part 24 (the "Regulation") concerning national bank investments in community and economic development entities, community development projects, and other public welfare investments:

- SouthTrust Community Development, LLC (\$5,000.00)
- SouthTrust Community Development Series A, LLC (\$1,000.00)
- SouthTrust Community Reinvestment Company, LLC (\$108,135,911.32)

These STB investments primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or the investments would receive consideration as "qualified investments" under 12 C.F.R. § 25.23. The aggregate amount of these investments under the Statute and the Regulation is \$108,141,911.32. The aggregate amount of WBNA's investments under the Statute and the Regulation following the acquisition will be \$1,961,718,491.32, which will be less than 5 percent of WBNA's capital and surplus following the merger. Furthermore, the acquisition of the investments will not expose WBNA to unlimited liability. Therefore, the acquisition of the investments by WBNA is consistent with the Statute and the Regulation.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, and in reliance on the representations and commitments of the Applicant, we find that the merger transaction, together with the requests to retain and operate main offices and branches and the retention of various subsidiaries, are legally authorized under 12 U.S.C. §§ 215a-1, 1831u(a), and 1828(c), 36(d) and 1831u(d)(1) and 12 C.F.R. § 5.34. The Application also meets the other relevant statutory criteria for approval, and the transactions raise no supervisory and policy concerns. Accordingly, the Application is hereby approved.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or employee of the U.S., and do

not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

In the event of questions, please contact Large Bank Licensing Manager Richard T. Erb who may be reached by e-mail: largebank@occ.treas.gov or by telephone at (202) 874-5060. Please include the application control number in all correspondence.

Sincerely,

/s/ Lawrence E. Beard

Lawrence E. Beard
Deputy Comptroller for Licensing

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