



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-73
August 1997

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
TRI-STATE BANK, MONTPELIER, IDAHO, WITH AND INTO
ZIONS FIRST NATIONAL BANK, SALT LAKE CITY, UTAH**

July 30, 1997

I. INTRODUCTION

On June 16, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Tri-State Bank, Montpelier, Idaho ("Tri-State") with and into Zions First National Bank, Salt Lake City, Utah ("Zions") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) and 1831u(a) ("the Merger Application"). Both banks are insured banks. Zions and Tri-State became affiliated banks as of July 11, 1997, when Tri-State was acquired by Zions Bancorporation, the parent holding company of Zions.¹ Tri-State has its main office in Montpelier, Idaho. Prior to the merger, Tri-State is expected to have a total of 13 branches, all in Idaho.² Zions has its main office in Salt Lake City and operates branches in Utah. OCC approval is also requested for the resulting bank to retain Zions' main office as the

¹ On June 11, 1997, the Federal Reserve Bank of San Francisco approved Zions Bancorporation's proposed acquisition of Tri-State pursuant to Section 3(a)(3) of the Bank Holding Company Act. The State of Idaho Department of Finance approved the acquisition on June 12, 1997. As of the date of the acquisition, Tri-State's name was changed to Zions Bank. However, since the Merger Application identified the target bank as Tri-State, that name will be used in this decision.

² At the time of the application, Tri-State operated one branch in Paris, Idaho. On June 24, 1997, Tri-State, a state nonmember bank, received approval from the Federal Deposit Insurance Corporation ("FDIC") under the authority of 12 U.S.C. § 1828(c) to acquire the assets and assume the liabilities of ten branch offices of Wells Fargo Bank, N.A., San Francisco, California, in the following locations: Bonners Ferry, Burley, Gooding, Lewiston, Lewiston Orchards, Moscow, New Plymouth, Richfield, Weiser, and Wilder. Tri-State also received approval from the FDIC, pursuant to 12 U.S.C. § 1828(d), to establish the aforementioned ten locations as well as two de novo sites (in Twin Falls and Pocatello) as branch offices of Tri-State. On June 25, 1997, Tri-State received approval from the Director of Finance pursuant to Idaho Code §§ 26-908(7) and 26-301, to acquire the Wells Fargo branches and to open the two de novo branches. The ten branch acquisition was completed on July 18, 1997, and the two de novo branches were opened on July 21, 1997.

main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain Zions' branches and Tri-State's main office and branches as branches after the merger under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

II. LEGAL AUTHORITY

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

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the 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).³ 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. § 1831(a)(2) (state "opt-out" laws). In this Merger Application, the home states of the banks are Utah and Idaho; neither state has opted out. Accordingly, this Merger Application may be approved under 12 U.S.C. §§ 215a-1 and 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and

³ 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) and (10).

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.

Zions' and Tri-State's Merger Application 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). In this Merger Application, Zions is acquiring by merger a bank (Tri-State) in the host state of Idaho. Idaho requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Idaho bank must have been in existence for at least five years. See Idaho Code § 26-1605(1)(a). Tri-State was originally chartered as a national bank in July 1963 and converted to a state charter in September 1973. Thus, the Riegle-Neal Act's age requirement is met.

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).⁴ The Idaho interstate bank merger statute does not appear to contain a "qualify to do business" filing requirement applicable to out-of-state banks with branches in Idaho. However, the Idaho statute purports to require the approval of the state bank supervisor prior to a merger that would result in an out-of-state bank obtaining branches in Idaho.

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

See Idaho Code § 26-1604(3).⁵ Zions submitted a copy of its OCC Merger Application to the Idaho state bank supervisor, as required by section 1831u(b)(1)(A)(ii), and has applied for approval under the Idaho statute. Thus, the Merger Application 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). Since Zions and Tri-State are affiliated, section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, Zions (the bank submitting the application as the acquiring bank) and Tri-State are affiliated. Thus, this Riegle-Neal Act provision is not applicable to the Merger Application. 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, both Zions and Tri-State satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, Zions will

⁵ It is not clear whether this approval requirement is intended to apply to all mergers, especially mergers between two national banks, or only to mergers involving an Idaho state-chartered bank. To the extent it is asserted to be applicable to mergers between national banks, then it goes beyond the filing requirements permitted to the states under the Riegle-Neal Act and would not be applicable, as discussed in note 4. However, Tri-State is a state-chartered bank, and Zions indicated in its Merger Application that it would comply with this approval requirement.

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.

B. Following the Merger, the Resulting Bank May Retain Zions' and Tri-State's Existing Main Offices and Branches under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

The Applicant has requested that, upon the completion of the merger, Zions (as the resulting bank in the merger) be permitted to retain and continue to operate its main office in Salt Lake City as the main office of the resulting bank and to retain and continue to operate as branches (1) its own branches, and (2) the main office and branches of Tri-State in Idaho. 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, Zions, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both Zions and Tri-State under 12 U.S.C. §§ 36(d) and 1831u(d)(1).⁶

⁶ By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not

Moreover, at its branches in Idaho, as well as those in Utah, Zions is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), and 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). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

A. The Bank Merger Act.

1. Competitive Analysis.

Since Zions and Tri-State are already owned by the same bank holding company, the merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of both banks are presently satisfactory. Zions expects to achieve efficiencies by operating the offices in Idaho as branches rather than as a separate corporate entity. The geographic diversification of its operations will also strengthen the combined bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. Zions will continue to serve the same areas in Utah, and it will add Tri-State's offices in Idaho. Both banks currently offer a full line of banking services, and there will be no reductions

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).

in the products or services as a result of the merger. The combined bank will continue to offer a full line of banking products and services. No branch closings are contemplated as a result of this merger since the two banks serve different areas. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger Application.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. Zions has an outstanding rating, and Tri-State has a satisfactory rating, with respect to CRA performance. No public comments were received by the OCC on this Application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. In this regard, since the ten branches that Tri-State acquired from Wells Fargo Bank will have been owned by Tri-State for only a short period of time prior to the merger, Tri-State has not yet modified its CRA assessment areas for them.⁷ Zions has committed to complete its delineation of expanded assessment areas at the time of consummation of the merger and to introduce any new or modified product offerings as soon as practicable following the consummation date. When the new assessment areas have been defined and approved by Zions' Board of Directors, they will be filed with the OCC.

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 Zions and Tri-State have as separate banks. The merger 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 proposed merger is consistent with the CRA.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of Zions and Tri-State is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 and 1831u(a), that the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) and 1831u(d)(1), and that the merger meets the other statutory criteria for approval. Accordingly, this Merger Application is hereby approved.

⁷ In connection with its applications to the FDIC, see note 2, Tri-State committed to the FDIC to complete delineation of additional assessment areas within approximately 30 days of acquiring the branches and to determine the appropriateness of changes to its product offerings as soon as practicable following the acquisition.

