



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-95
November 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF
HAMILTON BANK, N.A., MIAMI, FLORIDA,
TO ESTABLISH A BRANCH IN SAN JUAN, PUERTO RICO**

October 31, 1997

I. INTRODUCTION

On August 25, 1997, Hamilton Bank, N.A., Miami, Florida, ("Bank") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to establish a branch in San Juan, Puerto Rico ("the San Juan Branch") under 12 U.S.C. § 36(g) (the "Branch Application"). The Bank's main office is in Miami, Florida, and all its existing branches are in Florida.

II. LEGAL AUTHORITY

The Bank has applied for approval to establish an initial *de novo* branch in another state under 12 U.S.C. § 36(g).¹ Under 12 U.S.C. § 36(g), an out-of-state national bank may establish an initial *de novo* branch in a host State if the host State has a law that meets the provisions of section 36(g)(1) and the bank meets the conditions of section 36(g)(2). These requirements are met here, and so the Bank's proposed San Juan Branch is authorized.

Section 36(g) authorizes a national bank to establish such a branch, subject to the requirements of the section:

¹ Twelve U.S.C. Section 42 states:

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico.

Therefore, the Commonwealth of Puerto Rico is considered to be a "State" for purposes of this application.

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a *de novo* branch in a State (other than the bank's home State) in which the bank does not maintain a branch if --

- (A) there is in effect in the host State a law that --
 - (i) applies equally to all banks; and
 - (ii) expressly permits all out-of-State banks to establish *de novo* branches in such State; and
- (B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

12 U.S.C. § 36(g)(1) (Revised Statutes § 5155(g)(1), as added by section 103(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, 2352 (enacted September 29, 1994) (the "Riegle-Neal Act")). In this Branch Application, Florida is the Bank's home State, and Puerto Rico is the host State.²

The availability of the authority for a national bank to establish an initial *de novo* branch in a host State under section 36(g) therefore is triggered by host State law. The federal authority in section 36(g) is available only if the host State has a law that meets the features specified in paragraph 36(g)(1)(A). However, section 36(g) appears to structure the relationship between federal authority and host State law differently than some other federal banking statutes that refer to state law. Although the federal authority in section 36(g) is triggered only if the host State has a law that meets the features specified in paragraph 36(g)(1)(A), section 36(g), once triggered, singles out and specifically incorporates into the federal authority and makes applicable to national banks only those aspects of state law referenced in section 36(g)(2).

Thus, in evaluating an application for a *de novo* branch in a host State under section 36(g), the OCC must determine, first, whether the host State (here, Puerto Rico) has a law that meets the provisions of paragraph 36(g)(1)(A), and second, whether the applicant bank has met the conditions in section 36(g)(2). We now address these requirements in turn.

The Bank applied to establish a *de novo* branch in San Juan, Puerto Rico. Puerto Rico law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in Puerto Rico. See Act of August 28, 1997, 1997 Amended Laws Number 108

² For purposes of section 36(g), the following definitions apply: The term "home State" means "the State in which the main office of a national bank is located." 12 U.S.C. § 36(g)(3)(B). 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. § 36(g)(3)(C). The term "de novo branch" means a "branch of a national bank which (i) is originally established by the national bank as a branch, and (ii) does not become a branch of such bank as a result of (I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution or (II) the conversion, merger, or consolidation of any such institution or branch." 12 U.S.C. § 36(g)(3)(A). Moreover, section 36(g) applies only to a national bank's initial *de novo* branch in a host State. Once the bank has a branch or branches in the state, then that state is not one "in which the bank does not maintain a branch." In such states, subsequent branching by a national bank is governed by the other subsections of section 36, as appropriate.

(amending Law 55 of May 12, 1933)(Spanish version, translation not yet available).³ Accordingly, Puerto Rico has a law that meets the provisions of paragraph 36(g)(1)(A). The federal authority in section 36(g) for national banks to establish *de novo* interstate branches is triggered for Puerto Rico.

An application by a national bank to establish an interstate *de novo* branch under section 36(g) is also subject to certain conditions set forth in 12 U.S.C. § 36(g)(2)(A). These conditions are incorporated from the provisions for approval of an interstate merger transaction by the appropriate federal banking agency under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u. Specifically, the conditions are those contained in paragraphs (1), (3), and (4) of 12 U.S.C. § 1831u(b). These conditions are: (1) compliance with state filing requirements, (2) community reinvestment compliance, and (3) adequacy of capital and management skills.

The Bank's Branch Application satisfies all these conditions to the extent applicable. First, the proposal complies with applicable filing requirements. A bank applying for an interstate branch must (1) comply with the filing requirements of the host State 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. § 36(g)(2)(A) (incorporating section 1831u(b)(1)). Puerto Rico law requires that a bank that transacts business in Puerto Rico, the main office of which is located in a state other than Puerto Rico, must file as a foreign bank with the Secretary of State of Puerto Rico. See 14 L.P.R.A. §§ 2201 - 2401. These statutes make out-of-state banks subject to the same foreign corporation filing requirements as out-of-state nonbanking corporations. The Bank sent a copy of its OCC Branch Application to the Commissioner of Financial Institutions of Puerto Rico, as required by section 1831u(b)(1)(A)(ii), and will file the required notice under Puerto Rico law. Thus, this Branch Application satisfies the Riegle-Neal Act's filing requirements.

Second, the proposal satisfies all requirements relating to community reinvestment compliance. In determining whether to approve an application under section 36(g), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the CRA evaluations of any affiliated banks of the applicant bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3) (as incorporated by section 36(g)(2)(A)). The CRA requires the OCC to take into account the Bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, the Bank has a satisfactory rating with respect to CRA performance. Florida does not have community reinvestment laws applicable to

³ See also, 7 L.P.R.A. § 181 (Section 39 of the Banking Act) and Circular Letter Number 95-96-D-55-2, September 29, 1995 (from Joseph P. O'Neill, Commissioner of Financial Institutions, Government of Puerto Rico (Official interpretation of Law Number 55 of May 12, 1933, as amended, known as the "Banking Law of Puerto Rico" in light of certain provisions of the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994")). The Circular Letter interpreted the Banking Law of Puerto Rico and concluded that Puerto Rico's law met the requirements of the Riegle-Neal Act for *de novo* interstate branches.

the Bank. The Bank does not have any affiliates. Therefore, this Branch Application satisfies the Riegle-Neal Act's requirements relating to community reinvestment compliance.

Third, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for a *de novo* branch under section 36(g) only if the bank is adequately capitalized as of the date the application is filed and will continue to be adequately capitalized and adequately managed after the transaction. See 12 U.S.C. § 1831u(b)(4) (as incorporated by section 36(g)(2)(A)). As of the date the application was filed, the Bank satisfied all regulatory and supervisory requirements relating to adequate capitalization, and it currently is at least satisfactorily managed. The OCC has also determined that, following the transaction, the 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.

The proposed San Juan Branch is permissible under section 36(g)(1), and the Bank's Branch Application satisfies the conditions of section 36(g)(2). Accordingly, the San Juan Branch is authorized under 12 U.S.C. § 36(g).

III. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Bank's establishment of the San Juan Branch is authorized under 12 U.S.C. § 36(g), and that other relevant factors are consistent with approval. Accordingly, the Branch Application is hereby approved.

_____/s/
Julie L. Williams
Chief Counsel

10-30-97
Date

Application Control Number: 97-SE-05-0196