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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

## **Corporate Decision #98-09 February 1998**

### **DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF STAR BANK, NATIONAL ASSOCIATION, CINCINNATI, OHIO TO PURCHASE AND ASSUME ALL OF THE ASSETS AND LIABILITIES OF GREAT FINANCIAL BANK, FSB, LOUISVILLE, KENTUCKY**

**January 28, 1998**

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#### **I. INTRODUCTION**

On November 11, 1997, Star Bank, National Association, Cincinnati, Ohio ("Star Bank") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to purchase and assume all of the assets and liabilities of Great Financial Bank, FSB, Louisville, Kentucky ("Great Financial"), under 12 U.S.C. § 24(Seventh). Star Bank has its main office in Cincinnati, Ohio and branch offices in Ohio, Kentucky, and Indiana. Great Financial has its home office in Louisville, Kentucky and branch offices in Kentucky and Indiana. In the application, OCC approval is also requested for Star Bank to operate Great Financial's home office in Kentucky and all of its branches in Kentucky and Indiana as branches under 12 U.S.C. § 36(c). Star Bank has also requested approval to acquire certain subsidiaries of Great Financial as a part of the purchase and assumption transaction, pursuant to 12 C.F.R. § 5.34.

As of June, 1997, Star Bank had assets of approximately \$10.5 billion, deposits of approximately \$8.2 billion, and 276 branches. As of that same date, Great Financial had assets of approximately \$3.0 billion, deposits of approximately \$1.9 billion, and 44 branches.<sup>1</sup> At the time of the proposed transactions, Star Bank and Great Financial will be wholly-owned subsidiaries of Star Banc

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<sup>1</sup>The state-by-state breakdown of deposits and offices for Star Bank is as follows: Ohio -- 230 offices and deposits of approximately \$7.1 billion; Kentucky -- 26 offices and deposits of approximately \$642 million; and Indiana -- 21 offices and deposits of approximately \$423 million. The state-by-state breakdown of deposits and offices for Great Financial is as follows: Kentucky -- 43 offices and deposits of approximately \$1.8 billion; and Indiana -- 2 offices and deposits of approximately \$10 million.

Corporation, Cincinnati, Ohio (“SBC”).<sup>2</sup> Star Bank is a member of the Bank Insurance Fund (“BIF”). Great Financial, a federally chartered savings bank, is a member of the Savings Association Insurance Fund (“SAIF”).

Notice of the Star Bank Purchase and assumption application was published in general circulation newspapers in Cincinnati, Ohio, and Louisville, Kentucky, as required by 12 U.S.C. § 1828(c)(3) and 12 C.F.R. § 5.33(f)(1). As a result of the publication the Ohio Community Reinvestment Program and The Metropolitan Housing Coalition provided the OCC with comments on the Purchase and assumption application. Both these organizations object to the approval of this application. Their concerns and issues are discussed below in Section III.C. of this decision.

## **II. LEGAL AUTHORITY**

### **A. The Purchase and Assumption Transaction is Authorized under 12 U.S.C. § 24(Seventh).**

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh).<sup>3</sup> *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931). Where insured deposits are being acquired by an insured national bank, the transaction must be reviewed by the OCC for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c),<sup>4</sup> and the transaction also must be reviewed in the context of the requirements of the Federal Community Reinvestment Act, 12 U.S.C. §§ 2901 *et seq* (“Federal CRA”). In addition, where BIF and SAIF members are combining, the transactions must be reviewed for compliance with the Oaker Amendment, 12 U.S.C. § 1815(d)(3). These statutory reviews are included in section III.

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<sup>2</sup>On December 18, 1997 the Board of Governors of the Federal Reserve System (“Board”) approved SBC’s merger with Great Financial Corporation and thereby the acquisition of its wholly-owned subsidiary Great Financial.

<sup>3</sup>Pursuant to 12 C.F.R. § 563.22(c) and following consultation with the Office of Thrift Supervision (“OTS”), Great Financial filed a notice of the proposed purchase and assumption transaction with the OTS on January 7, 1998 and SBC filed a supplement to that notice on January 28, 1998.

<sup>4</sup>In this regard, we note that transactions subject to approval under the Bank Merger Act are not subject to the requirements of 12 U.S.C. § 371c governing certain transactions with affiliates. *See* 12 C.F.R. § 250.241 (1997). Title 12 U.S.C. § 371c-1 also is inapplicable to this transaction because it does not apply to transactions between affiliated banks and, for purposes of section 371c-1, savings associations are treated as banks. *See* 12 U.S.C. §§ 371c-1(a)(2), (d)(1) and 1468(a)(2). Therefore, 12 U.S.C. 371c and 371c-1 are inapplicable to these transactions.

**B. Following the Purchase and Assumption, Star Bank May Operate as Branches of Great Financial's Existing Home Office and Branches under 12 U.S.C. § 36(c).**

Provided that, as will be discussed, the merger complies with the Oakar Amendment, the Bank Merger Act and the Federal CRA, the next question is whether, following the purchase and assumption transaction, Star Bank may retain as branches the existing offices of Great Financial.

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 acquisition by a national bank. Nevertheless, section 36(c) would permit a national bank that has purchased the assets and assumed the liabilities of a federal savings bank to continue to operate the branches of that federal savings bank if a state bank that purchased the assets and assumed the liabilities of a federal savings bank could continue to operate those branches. This could occur if state law permitted state banks to establish a branch at the site *de novo* or if state law permitted a state bank, following a particular transaction, to operate a branch at the site. *See* Decision of the Comptroller of the Currency to Approve Applications by TCF Financial Corporation., Minneapolis, Minnesota, to Convert Federal Savings Banks located in Minnesota, Michigan, Illinois, and Wisconsin and to Establish De Novo Banks in Ohio and Colorado and to Engage in Certain Related Transactions, p. 6-7 (OCC Corporate Decision 97-13, February 24, 1997); Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A., Bloomington, Illinois and Related Purchase and Assumption Transactions, p. 3 at n. 3 (OCC Conditional Approval 69, November 12, 1992). In this regard, we also note that while section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. *See State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

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.

For the purpose of section 36(c), a national bank is “situated” in each state where it maintains a banking office, whether a main office or branch. *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48 (9th Cir.), *cert. denied*, 419 U.S. 844 (1974); *see also Ghiglieri v.*

*Sun World National Association*, 117 F.3d 309 (5th Cir. 1997). Accordingly, Star Bank is “situated” in Indiana, Kentucky and Ohio for the purpose of section 36(c).<sup>5</sup>

## 1. Indiana Law

No issue is raised under this provision with respect to retention of Great Financial’s branches in Indiana, since Indiana law imposes no geographical limits on branching by state banks. *See* Ind. Code § 28-2-13-19 (Burns Supp. 1996). Consequently, there are no geographical limits to be incorporated by 12 U.S.C. § 36 and applied to national bank branching in Indiana. Thus, following the purchase and assumption transaction, Star Bank may retain Great Financial’s Indiana branches.<sup>6</sup>

## 2. Kentucky Law

Kentucky law permits state chartered banks in Kentucky to establish a branch within any county in which its principal office or an existing branch is located. *See* Ky. Rev. Stat. Ann. § 287.180(2) (Baldwin Supp. 1997). Great Financial’s branch in Lebanon, Kentucky is located in Marion County, a county in which Star Bank has an existing branch. Thus, Star Bank may continue to operate that branch following the purchase and assumption transaction pursuant to 12 U.S.C. § 36(c).<sup>7</sup>

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<sup>5</sup>A provision added to 12 U.S.C. § 36 in the Riegle-Neal Act further supports this result. Congress added section 36(f) to address the law applicable to interstate branching operations at branches in a host state of an interstate national bank. Among other provisions, section 36(f)(1)(A) provides that “[t]he laws of the host State regarding . . . establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except -- (i) when Federal law preempts the application of such State laws to a national bank . . . .” 12 U.S.C. § 36(f)(1)(A). Thus, under this provision, but for the preemption exception, it is clear that the subsequent establishment of branches within a host state is treated like the establishment of intrastate branches within the host state by the host state’s state banks. Since there are federal laws specifically governing in-state branching by national banks (*i.e.*, 12 U.S.C. §§ 36(b), 36(c), 36(g)(2)(B), & 1831u(d)(2)), those laws would preempt this provision under the preemption exception. However, since those laws also incorporate, and make applicable to national banks, state law for in-state branching by state banks, the outcome is generally the same.

<sup>6</sup>In approving a branch, Indiana law requires the regulator to consider the adequacy of the bank’s capital, management, and future earnings prospects. *Id.* Even assuming the applicability of these provisions, the OCC has determined that the Star Bank has the financial and managerial resources to successfully operate the bank and its branch network. Star Bank is, and following the purchase and assumption will continue to be, well capitalized and its future prospects are considered favorable.

<sup>7</sup>Ky. Rev. Stat. Ann. § 287.180(2) requires the regulator determine that the public convenience and advantage will be served by the branch establishment, and that there is a reasonable probability of the successful operation of the branch based on the financial and managerial impact of the branch on the bank. Even assuming the applicability of each of these provisions, these requirements are satisfied. *See* Part III.A.1. - A.3., *infra* (discussion of competitive analysis, financial and managerial resources, and convenience and needs which address the factors required by section 287.180 of the Kentucky statutes).

Kentucky law also provides that following a combination of commonly-controlled banks that have their principal offices located in the state and have been in existence for at least five years, the resulting entity may continue to operate the authorized offices of the combined banks as branches of the resulting bank. *See* Ky. Rev. Stat. Ann. § 287.915(1)(a) (Baldwin Supp. 1997). For the purposes of section 287.915, the term “combination” includes “. . . the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company.” Ky. Rev. Stat. Ann. § 287.915(3)(a) (Baldwin Supp. 1997). The term “bank” includes a federal savings bank. *See* Ky. Rev. Stat. Ann. § 287.915(3)(e) (Baldwin Supp. 1997).

These requirements are met with respect to the proposed purchase and assumption transaction. Star Bank proposes to purchase all of the assets of Great Financial, therefore the purchase and assumption transaction will be a “combination” for the purposes of Ky. Rev. Stat. Ann. § 287.915. At the time of the proposed purchase and assumption, both institutions will be commonly-controlled by SBC. Great Financial currently has its home office located in Louisville, Kentucky. Although Star Bank’s main office is in Cincinnati, Ohio, the bank is considered -- in order to incorporate state branching location limits under section 36(c) -- to have a “principal office” in Kentucky for purposes of applying Kentucky branching law to its branching within Kentucky. *See Seattle Trust*, 492 F.2d at 52-53 (adopting this usage for “principal place of business” in a similar Washington statute); Decision of the Office of the Comptroller of the Currency on the Applications of PNC Bank, Northern Kentucky, National Association, Fort Mitchell, Kentucky, and PNC Bank, Ohio, National Association, Cincinnati, Ohio (OCC Corporate Decision 95-13, March 14, 1995). Finally, both Star Bank and Great Financial meet the five year age requirement. Star Bank has been in existence since 1863. At the time of its merger with and into Star Bank in 1996, Star Bank, National Association, Kentucky, Covington, Kentucky, (“Star Bank - Kentucky”) had been SBC’s bank subsidiary located in Kentucky. Star Bank-Kentucky was established in 1864. Great Financial was established in Kentucky in 1915.<sup>8</sup>

Thus, after the purchase and assumption transaction, Kentucky law allows Star Bank, as the surviving institution, to operate the Kentucky branches and home office of Great Financial as branches. Accordingly, Star Bank may retain and operate those Great Financial offices pursuant to 12 U.S.C. § 36(c).

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<sup>8</sup>We note further that forty-one of the forty-three Kentucky offices being acquired in the proposed transaction were established or acquired more than five years ago. The two Great Financial branches that had been established or acquired less than five years ago are located in Jefferson and Daviess counties. Great Financial has other branches in each of those counties that have been in existence for more than five years. Thus, even if the five year age requirement of Ky. Rev. Stat. Ann. § 287.915 applies to each branch being acquired in a substantial purchase and assumption transaction, Star Bank may retain the Jefferson County and Daviess County branches after the transaction, pursuant to section 36(c), based on the Kentucky branching authority at Ky. Rev. Stat. Ann. § 287.180(2).

### **C. Star Bank May Acquire Great Financial's Operating Subsidiaries as Part of the Purchase and Assumption Transaction.**

Star Bank has requested approval to acquire and operate two of Great Financial's existing wholly-owned operating subsidiaries as part of the purchase and assumption transaction: Lanidrac Service Corp. ("LSC") and Great Financial Services, Inc. ("GFSI").<sup>9</sup> A national bank may acquire an operating subsidiary to conduct activities which are part of or incidental to the business of banking, or permissible under other statutory authority. 12 C.F.R. § 5.34(d)(1).<sup>10</sup>

#### **1. Low Income Housing Tax Credit Subsidiary**

LSC holds partnership interests in several low income housing tax credit ("LIHTC") real estate projects.<sup>11</sup> These LIHTC projects hold, develop or rehabilitate real estate for the purpose of providing affordable housing. Twelve U.S.C. § 29 permits a national bank to "purchase, hold, and convey" real estate only for use in its banking business or in satisfaction of previously contracted debts. Thus, the holding of real estate through these LIHTC investments would not be permitted by section 29.

However, 12 U.S.C. § 24(Eleventh) authorizes national banks to make equity investments in entities designed primarily to promote the public welfare, including those that provide housing. Despite section 29's restrictions on the purposes for which national banks may hold real estate, the OCC has determined that 12 U.S.C. § 24(Eleventh) permits national banks to participate as limited partners in partnerships, including LIHTC projects, that own and develop real estate for a public welfare purpose. *See, e.g.*, 12 C.F.R. §§ 24.1(b) and 24.6(a). LSC has committed to equity investments totaling \$8,700,000.00 in 13 projects. The OCC's Community Development Division has reviewed LSC's interests in the LIHTC projects and determined that they meet the requirements of 12 C.F.R. § 24. Accordingly, Star Bank may acquire LSC and make the investments in the 13 LIHTC projects.

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<sup>9</sup>Star Bank will also acquire four inactive subsidiaries from Great Financial as part of the proposed purchase and assumption transaction. Star Bank intends to dissolve those inactive corporations upon consummation of the proposed transaction.

<sup>10</sup>The OCC recently amended its operating subsidiary rule, 12 C.F.R. § 5.34, as part of a general revision of Part 5 under the OCC's Regulation Review Program. Operating subsidiaries in which a national bank may invest include corporations, limited liability companies, or similar entities if the parent owns (1) more than 50 percent of the voting (or similar type of controlling) interest, or (2) less than 50% so long as the bank "controls" the subsidiary and no other party controls more than 50 percent. 12 C.F.R. § 5.34(d)(2). Here, LSC and GFSI will qualify as operating subsidiaries since Star Bank will acquire 100 percent of each entity.

<sup>11</sup>LSC also provides mortgage loans to these LIHTC projects. National banks are authorized to make loans secured by real estate pursuant to 12 U.S.C. §§ 24(Seventh) and 371.

## **2. Insurance Agency Subsidiary**

GFSI is an insurance agency licensed in the state of Kentucky. As agent, GFSI sells annuities and life, health, property and casualty insurance.<sup>12</sup> The sale of annuities is authorized by 12 U.S.C. § 24(Seventh). *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 130 L. Ed. 2d 740 (1995). However, GFSI is located in a place with a population of more than 5,000, and therefore the agency is not authorized under 12 U.S.C. § 92.

The OCC generally permits a national bank that acquires a thrift or state bank a reasonable period of time after such transaction, not to exceed two years, to divest of or conform any nonconforming assets that it had acquired as part of the transaction. *See* OCC Bank Organization and Structure Memorandum 94-7. The OCC permits a reasonable divestiture period in these instances so that acquiring banks may be able to resolve nonconforming subsidiaries without undue hardship. Here, the Bank has requested a two year period to (1) divest of the insurance subsidiary or (2) restructure the activities to bring them into compliance with national banking law. In view of the nature of GFSI's business and the possibility that the activities of that subsidiary can be brought into conformance with national banking law relative to insurance sales, a two year divestiture period is reasonable. Accordingly, within two years of the purchase and assumption transaction the Bank must divest of GFSI or conform its insurance sales activities with OCC policies and guidance with respect to such activity.<sup>13</sup>

## **III. ADDITIONAL STATUTORY AND POLICY REVIEWS**

### **A. Compliance with Oakar Amendment**

The Oakar Amendment, section 1815(d)(3), permits purchase and assumption transactions between BIF- and SAIF-member institutions provided that the deposits of the resulting institution are proportionally insured by both BIF and SAIF. *See* 12 U.S.C. § 1815(d)(3)(A) & (B). These transactions may be approved by the regulator of the acquiring institution if they are in accordance with certain capital requirements and interstate limitations, as well as the Bank Merger Act. *See* 12 U.S.C. § 1815(d)(3)(E) & (F).

### **1. Compliance with capital requirements**

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<sup>12</sup>GFSI is also engaged, as agent, in the sale of securities and mutual funds. However, even though these are permissible activities, these activities of GFSI will be terminated prior to consummation of the proposed purchase and assumption transaction. GFSI also owns a 1.57 percent equity interest in Louisville Development Bancor ("LDB"), parent holding company of Louisville Community Development Bank ("LCDB"). LCDB provides loans to economically depressed neighborhoods in the Louisville area. As noted above, national banks may make investments, directly or through entities, designed primarily to promote the public welfare pursuant to 12 U.S.C. § 24(Eleventh). The OCC's Community Development Division has reviewed this investment and determined that it meets the requirements of 12 C.F.R. § 24; therefore Star Bank may retain GFSI's investment in LCDB.

<sup>13</sup>Star Bank has represented that, no later than two years after consummation of the transaction, it will conduct the insurance sales activities of GFSI in conformance with national banking law or cease such insurance sales activities.

An Oakar transaction may not be approved unless the resulting depository institution will meet all applicable capital requirements upon consummation of the transaction. 12 U.S.C. § 1815(d)(3)(E)(iii). The OCC has determined that Star Bank, after the purchase and assumption transaction, will meet all applicable capital requirements. Indeed, following this transaction, Star Bank will meet all of the tests to be considered a well-capitalized institution. *See* 12 C.F.R. § 6.4(b)(1).

## 2. Compliance with interstate requirements

Section 1815(d)(3)(F) provides that:

A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in [an Oakar transaction] unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

Thus, to determine whether the proposed transaction is consistent with the Oakar Amendment, we must postulate that Great Financial is a state bank, with forty-two branch offices and its home office in Kentucky and two branch offices in Indiana, being acquired by SBC.

Section 1842(d)(1)(A) governs the acquisition by a holding company of all or substantially all of the assets of a “bank *located* in a State other than the home state of such bank holding company . . .” (Emphasis added). It is clear that the “home state” of SBC is Ohio for the purposes of section 1842(d).<sup>14</sup> The next question, for purposes of section 1842(d)(1)(A), is where the hypothetical state bank with offices in Kentucky and Indiana is “located.”

The key statutory phraseology to be analyzed in resolving this issue is virtually identical to phraseology employed in section 1842(d) prior to September 29, 1995, when the current version of section 1842(d) took effect, and which was in effect at the time that the geographical language of the Oakar Amendment was originally adopted in 1989. Under this prior version of section 1842(d) (the Douglas Amendment), the language addressed the authority of “any bank holding company . . . to acquire . . . any additional bank *located outside of the State in which the operations of such bank holding company’s banking subsidiaries were principally conducted* on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, *unless the acquisition . . . of a State bank by an out-of-State bank holding company is*

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<sup>14</sup>The home state of a bank holding company, for purposes of section 1842(d)(1)(A), is the state in which the total deposits of all of its banking subsidiaries is the largest on the later of July 1, 1966 or the date on which it first becomes a bank holding company. *See* 12 U.S.C. § 1841(o)(4)(C). SBC first became a holding company in 1973. Since most of the deposits of SBC’s bank subsidiary at that time were in Ohio, the home state of SBC is Ohio.



*specifically authorized by the statute laws of the State in which such bank is located . . . .”*  
(Emphasis added.)

Thus, if this hypothetical acquisition of a state bank had been postulated before September 29, 1995, the same issue would have arisen: where would the target “state bank” be considered to be “located” for purposes of section 1842(d)? The OCC’s analysis of the Board precedent in applying the pre-September 29, 1995, language indicates that in applying the “located” language contained in section 1842(d) to a multistate target institution, the Board consistently determined that the institution is “located” in one state -- the state in which the institution is “predominantly located” -- for purposes of section 1842(d) analysis and analyzed the applicability of section 1842(d) to a particular transaction based only on the target institution’s location in that state.<sup>15</sup>

In determining the state in which a target bank is located for purposes of applying section 1842(d), the Board has taken into account a variety of factors including the location of the main office, the number of branches of the target institution in each state and the amount of deposits held by the institution in each state. *See* 70 Federal Reserve Bulletin 518 (June 1984) (approving the acquisition by Mitsubishi Bank, Limited, a bank holding company with its home state in California, of BanCal Tri-State Corp., a bank holding company which operated Bank of California, N.A.). *See also, e.g.*, 71 Federal Reserve Board 458 (June 1985) (permitting Midlantic Banks Inc., a New Jersey bank holding company, to acquire Heritage Bank, N.A., a national bank with 90 branches in New Jersey and one in Pennsylvania).

These tests suggest that Kentucky should be the state in which Great Financial is “located” for purposes of section 1842(d). Approximately 96% of Great Financial’s branches, including its home office, being acquired in the proposed transaction are located in Kentucky, and Kentucky accounts for about 99% of the deposit liabilities being assumed.

Having determined that the hypothetical state bank is located in Kentucky for purposes of section 1842(d)(1), we must apply the standards of that section on that basis. That section imposes, or permits the following limitations to be imposed, on acquisitions by out-of-state bank holding companies.

**a. Age requirements**

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<sup>15</sup>For further explanation of the Board’s analysis of section 1842(d), *see, e.g.*, Decision of the Office of the Comptroller of the Currency on the Application to Merge Chemical Bank FSB, Palm Beach, Florida, with and into the Chase Manhattan Private Bank (Florida) National Association, Tampa, Florida, and Operate Branches of Chemical Bank FSB as Branches of the Chase Manhattan Private Bank (Florida) (OCC Corporate Decision 96-60, October 31, 1996); Decision of the Office of the Comptroller of the Currency on the Applications of First Bank National Association, Minneapolis Minnesota, to Acquire First Bank, FSB, North Dakota, and To Engage in Certain Related Transactions (OCC Corporate Decision 97-32, May 31, 1997); Decision of the Office of the Comptroller of the Currency on the Applications to Merge Matewan National Bank/Kentucky, Pikeville, Kentucky with and into Matewan National Bank, Matewan, West Virginia, and to establish five branches in Virginia (OCC Corporate Decision 97-86, September 12, 1997).

First, section 1842(d) permits the host state -- that is, the state in which the acquisition is being made -- to prohibit acquisitions if the target is less than five years old. 12 U.S.C. §1842(d)(1)(B). Kentucky law prohibits a bank holding company from acquiring control of a bank having its principal place of business in Kentucky if the bank has been in existence for less than five years. *See* Ky. Rev. Stat. § 287.900(2).<sup>16</sup> For the purposes of section 287.900, “control” may be acquired through the purchase of assets. Great Financial was chartered in 1915. Moreover, forty-one of the Kentucky offices being acquired in the transaction have been in existence for more than five years. Consequently, the proposed purchase and assumption transaction meets the Kentucky age requirement.

**b. Deposit concentration limits**

Second, a purchase and assumption could not occur if after consummation of the transaction the national bank and all of its insured depository institution affiliates would control (1) more than 10% of the total amount of insured deposits in the United States, or (2) more than 30% of the insured deposits in the state of the bank to be acquired. *See* 12 U.S.C. § 1842(d)(2). Star Bank and Great Financial controlled about \$10 billion of insured deposits at June 30, 1997, significantly less than 1% of total United States deposits. Thus, the national concentration limit is met. The total Kentucky deposits of Star Bank and Great Financial were approximately \$2.4 billion as of June 30, 1997. This represents about 5.5 % of the total market share of deposits in Kentucky.<sup>17</sup> Consequently, the 30% state limitation imposes no obstacle. We further note that section 1842(d)(2)(C) may permit states to impose their own deposit concentration limits. Kentucky law imposes a 15% deposit concentration limit. *See* Ky. Rev. Stat. Ann § 287.900(3) (Baldwin Supp. 1997). However, even if Kentucky’s deposit concentration limit were applicable to this transaction, that requirement would be satisfied.

**3. Federal Community Reinvestment Act requirements**

Third, section 1842(d)(3)(A) requires consideration of the bank holding company’s compliance with the Federal CRA. That section requires the Federal Reserve Board (and, thus, the OCC in this instance), to consider bank holding company compliance with Federal CRA under section 804. Bank holding company compliance with Federal CRA is evaluated by looking to the CRA record of the bank holding company’s subsidiaries that are subject to the law. 12 C.F.R. § 228.29. SBC has two subsidiaries subject to CRA, Star Bank and Great Financial. Based on the most recent examinations, Star Bank has an outstanding CRA rating and Great Financial has a satisfactory rating.<sup>18</sup>

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<sup>16</sup>We note that Indiana imposes no age requirement with respect to acquisition of in-state banks by out-of-state holding companies.

<sup>17</sup>The total Indiana deposits of Star Bank and Great Financial were about \$432 million at June 30, 1997. This represents less than 1% of the total insured deposits in Indiana.

<sup>18</sup>*See also*, Section III. C for additional analysis of the OCC’s review of CRA compliance by the applicants.

In addition, section 1842(d)(3)(B) requires consideration of the bank holding company's record of compliance with applicable state community reinvestment laws. SBC has subsidiary institutions located in Ohio, Kentucky and Indiana. A review of the respective state statutes indicates that these states do not have state community reinvestment laws, or have laws which incorporate the Federal CRA. Consequently, the only applicable standards are those imposed by Federal CRA, which has been discussed above.

#### **4. Capital and management**

Fourth, we note that the condition of SBC, including its capital position and management, is consistent with approval of the acquisition under the standards set forth in section 1842(d)(1) as incorporated into section 1815(d)(3)(F).<sup>19</sup>

Consequently, we conclude that the transaction comports with the standards set forth in section 1842(d) as incorporated into the Oakar Amendment at 12 U.S.C. § 1815(d)(3)(F).

#### **B. The Bank Merger Act.**

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any transaction in which a national bank assumes insured deposits. Under the Act, the OCC generally may not approve such a transaction if it 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 purchase and assumption application may be approved under section 1828(c).

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<sup>19</sup>In addition, we note that section 1842(d)(4) provides that no provision of this section shall be construed as affecting the applicability of Federal or state antitrust laws. As discussed, the purchase and assumption transaction between affiliates has no competitive impact under Federal antitrust laws. Nor have we found any provisions of Kentucky, Indiana or Ohio antitrust law that this transaction may contravene, particularly since it constitutes the transfer of assets and liabilities between two entities wholly-owned by the same company. Moreover, Kentucky antitrust laws on their face are inapplicable to these transactions. See Ky. Rev. Stat. Ann. § 367.176 (Baldwin Supp. 1997) (providing an exemption for actions authorized or approved under any federal or state statute or regulation). Finally, we note that no comments were received about this transaction based on state antitrust grounds.

**1. Competitive Analysis.**

Since Star Bank and Great Financial will be owned by the same bank holding company at the time of the purchase and assumption transaction, their merger will have no anticompetitive effects.

**2. Financial and Managerial Resources.**

The financial and managerial resources of both banks are presently satisfactory. Star Bank expects the proposed transaction will result in substantial cost savings through the elimination of duplicative corporate overheads and administrative functions. 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 purchase and assumption application.

**3. Convenience and Needs.**

The resulting bank will help to meet the convenience and needs of the communities to be served. Star Bank will continue to serve the same areas in Ohio-Kentucky-Indiana tri-state area and it will add Great Financial's offices in other areas of Kentucky and Indiana. Both banks currently offer a full line of banking services, and there will be no reductions in the products or services as a result of the transaction.

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

**C. The Community Reinvestment Act.**

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' records of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including mergers. See 12 U.S.C. §§ 2902(3)(e) and 2903. Star Bank received an "Outstanding" rating at its most recent examination for CRA performance, dated December 16, 1996, and the Office of Thrift Supervision assigned Great Financial a "Satisfactory" rating at its most recent CRA examination dated September 10, 1996.

Ohio Community Reinvestment Program (OCRCP), an umbrella organization representing several community, civil rights and governmental organizations from Ohio, and the Metropolitan Housing Coalition (MHC), an affordable housing advocacy organization in Louisville, Kentucky, commented on this Purchase and Assumption Application. These two organizations also provided comments on the related holding company merger application filed with the Federal Reserve Bank of Cleveland. The Federal Reserve Board (FRB) approved that transaction on December 18, 1997.

Upon receiving copies of the comments filed by OCRP and MHC with the FRB, the OCC removed this Purchase and Assumption Application from its expedited review procedures. The OCC reviewed, investigated, and considered the OCRP and MHC comment letters dated November 17, 1997, which were filed with the FRB, and a December 9, 1997 comment letter from MHC filed with our office. In addition, the OCC also reviewed, investigated, and considered OCRP comments submitted to the OCC on December 17, 1997, seven days after the December 10, 1997 closing date for the public comment period. OCC staff in Washington, D.C. also met with representatives of OCRP on January 12, 1998 to discuss the organization's concerns with Star Bank's CRA performance.

According to its comments, OCRP believes that Star Bank has a poor record regarding community reinvestment in the areas of lending, investments, and services. Specifically, OCRP stated that based on data submitted under the Home Mortgage Disclosure Act (HMDA) for 1996, Star Bank's denial ratio for African-American credit applicants was significantly higher than its denial ratio for white applicants. OCRP also challenged the bank's lending record in low-income and minority census tracts in Cincinnati and Columbus. OCRP stated that Star Bank's lending record and outreach efforts are significantly stronger in Cleveland than they are in Cincinnati and Columbus because Star Bank has a formal written agreement with the City of Cleveland, and indicated that Star Bank should enter into a similar agreement with OCRP. OCRP also contended that Star Bank's contributions to community organizations represents only a small portion of its net income, and that it pays low interest on certain trust accounts earmarked under Ohio law to fund legal services for the poor. OCRP also stated that Star Bank has not participated in recent years in the Farmers Home Administration's Guaranteed Loan Program, although the bank is an approved lender for the program, and has minimal participation in affordable housing programs offered by the Federal Home Loan Bank (FHLB). OCRP also claimed that Star Bank's account services and fees work to discourage low-income customers from doing business with the bank. Finally, OCRP asserted that Star Bank's assigned CRA rating of "Outstanding" does not accurately reflect the bank's CRA performance.

MHC expressed concern that Star Bank will not meet the credit needs of the Louisville community to the same extent that Great Financial has in the past. Specifically, MHC stated that, in its experience, "affordable housing efforts have dimmed and diminished when other outside banks acquired local banks with a good CRA history of meeting our community's credit needs." MHC stated that Star Bank's CRA evaluation and HMDA reports indicate that the bank "may not be fully meeting the credit needs of the communities it serves." MHC noted that despite Star Bank's overall "Outstanding" CRA rating, in several Metropolitan Statistical Areas (MSAs) the bank received only "Satisfactory" ratings, and did not receive an "Outstanding" rating under the investment test for any examined geographic area. MHC also is concerned that Louisville will not be a large market area for the bank, and it believes the bank does not focus its CRA efforts in smaller markets. MHC stated that this concern is substantiated by the fact that the bank's overall CRA rating for the Commonwealth of Kentucky is only "Satisfactory" and the bank received a "Low Satisfactory" rating in the investment test for Kentucky. MHC further alleged that its review of the bank's CRA Public Evaluation for the Commonwealth of Kentucky indicated that Star Bank "does not know Kentucky or its credit needs." The group also is concerned with Star

Bank's short history of involvement with the Federal Home Loan Bank's Affordable Housing Program, which was widely used by Great Financial.

MHC further stated that since 1996 was the first year the new CRA standards were effective, it is difficult to know how well they were applied. MHC asserted that 98% of all banks evaluated under the new CRA procedures received "Satisfactory" or "Outstanding" ratings, and referred to a study by the Woodstock Institute which indicated that the CRA regulations may not be used as intended. Finally, MHC also noted that Star Bank is reluctant to enter into a signed written agreement with MHC, despite MHC's offer to withdraw negative comments if the bank would commit to working with MHC and accept goals set forth in a proposal by the organization.

OCC examiners with extensive consumer compliance experience, and who were not involved in the most recent CRA or fair lending examinations of Star Bank, conducted a targeted on-site investigation of the issues raised by OCRP and MHC. In summary, the key results of this investigation follow:

### **1. OCRP Concerns**

OCRP contended, citing 1996 HMDA data, that Star Bank's denial rate for African-American credit applicants is nearly four times the rate of denial for white applicants. Examiners reviewed this data and did find disparities in the denial rates for minority applicants in relation to white applicants. Because these disparities may present issues (but do not, by themselves, demonstrate illegal discrimination), the scope of our on-site investigation also included a review of the prior CRA and fair lending examination results. In our prior examinations, we also found that disparities existed for the time periods reviewed, but upon closer review, found no evidence that the bank violated fair lending laws or regulations. In addition, our on-site investigation found, based on a review of 1996 and preliminary 1997 HMDA data, that the bank's denial rate for African-American credit applicants is decreasing while the number of applications being received from African-American applicants is increasing.

OCRP also provided a study of loan originations involving African-American borrowers, low- and moderate-income (LMI) borrowers and loan originations in LMI areas. The study was based on the lenders' HMDA data for 1993 through 1995, and covered the twenty largest lenders in Ohio. The study ranked Star Bank's performance 12th among the twenty lenders studied. The overall ranking of each lender in the study was based on the percentage of African-American originations, the ratio of African-American to white originations, the percentage of LMI applications originated, and the percentage of mortgage credit applications received from LMI applicants and African-Americans. Our review of the study in conjunction with 1996 and 1997 HMDA data reviewed during the on-site investigation found that Star Bank's CRA performance and fair lending compliance remain satisfactory.

We found no reason to question the accuracy of the data used in the study. However, we noted that despite the bank's overall ranking, the study is consistent with a finding that Star Bank's lending performance is satisfactory. Specifically, the study showed that Star Bank's percentage of lending to African-Americans (9.4% of the bank's total home loans) is reasonably consistent with

the percentage of African-Americans in the population of the State of Ohio (10.6%) and comparable to the 9.1% of total home loans originated to African-Americans by the lender ranked first in the study. The study also states that Star Bank made 31.5% of its loans to LMI borrowers (compared to the average for all lenders of 30.3%), and that 17.8% of Star Bank's loans were made in LMI areas (compared to 16.9% for all lenders). Moreover, our review of 1996 and 1997 HMDA data found that the number of loan applications Star Bank received and the number of loans it has granted to LMI individuals and African-Americans have increased since the completion of the study. In addition, the number of applications received from and loans granted to LMI individuals and African-Americans in each of its markets is consistent with other lenders in those markets.

OCRCP stated that Star Bank's earnings are not reflected in the level of grants it makes to community development organizations. Star Bank's record reflects that CRA qualified investments in the form of grants to community organizations totaled \$153,795 for 1996 and \$205,365 for the first nine months in 1997. Grants to community organizations are only one form of qualified investment. When assessing a bank's investment performance, not only grants, but all qualified investments are taken into consideration. In addition to the grants, the OCC also found that Star Bank participates in other community development activities which would constitute qualified investments under the CRA regulation. These include limited partnership equity investments in 28 projects which provide funds for low-income housing tax credit investment projects. As of December 1997, the bank has funded \$5.1 million of a \$14.3 million commitment to such projects. The 1996 CRA examination concluded that the bank's investment performance was satisfactory, and our recent investigation confirmed that the bank continues to have a satisfactory investment performance.

OCRCP expressed concern with Star Bank's lowering of interest rates it was paying on certain trust accounts. The OCC believes that the interest rates paid by the bank on its deposit accounts are generally a business decision as long as the rates do not violate federal banking laws or regulations. Our on-site investigation reviewed OCRCP's concerns and found no violations of law with the interest rates being paid on these accounts. Further, the OCC also found that the rates being paid by Star Bank on these accounts were consistent with interest rates being paid by other banks in the market.

OCRCP commented that Star Bank has not participated in the Farmers Home Administration's Guaranteed Loan Program and has minimal participation in affordable housing programs of the FHLB. Our investigation confirmed that Star Bank does not participate in the Farmers Home Administration's Guaranteed Loan Program. While it may be desirable for a bank to participate in different kinds of lending programs offered by state and federal agencies, it is generally a business decision of the bank to determine which lending programs fit in to its lending goals and objectives. The bank's records reflect that Star Bank has participated in FHLB's affordable housing programs since becoming a member in 1993. To date, the bank has had six project applications approved by the FHLB for a total of \$1.8 million in loan subsidies and grants. Three additional applications are pending. The OCC does not believe that Star Bank's level of participation in these particular programs is inconsistent with approval of this application in light of the bank's overall record of lending and investments.

OCRCP believes that Star Bank's record of providing low-cost accounts and government check cashing services to low-income customers is "not friendly" and discourages banking relationships with these individuals. For example, OCRCP pointed out that Star Bank requires a depositor to maintain a \$750 minimum balance in order to waive the monthly service fees. In addition, OCRCP stated that there is a \$3 charge on savings accounts if the balance falls below \$200 and that Star Bank charges non-customers \$2 to cash government checks. Our investigation found that Star Bank provides checking and savings deposit options that are comparable with the services offered by competitors. For example, our investigation found that the bank offers, for a \$4 monthly service charge, a no-minimum balance checking account with five free checks per month. Moreover, a review of the 1996 CRA examination showed that Star Bank was rated "Outstanding" for the services test. The examination determined that Star Bank's branch services and business hours are tailored to the convenience of its customers in all geographic areas, including LMI areas.

OCRCP stated generally that Star Bank has demonstrated a poor performance in its community reinvestment activities and believes that this performance is inconsistent with the "Outstanding" CRA rating the bank received from the OCC. The OCC's investigation in connection with OCRCP's comments confirmed that Star Bank's CRA performance is satisfactory or better in all markets. Lending to LMI individuals and LMI areas is strong. Star Bank has used special loan programs which target low-income individuals and LMI areas. Community development investments and initiatives are satisfactory. The bank's public file contains numerous letters from community members, including Mayor White of Cleveland, who commend the bank's efforts in affirmatively addressing the credit needs of its communities.<sup>20</sup> In addition, our review confirmed that the bank's branch network offers services throughout its communities, including LMI areas. For example, the 1996 CRA examination noted that 23% of the bank's branches are located in LMI neighborhoods.

Finally, the 1996 examination was conducted by experienced CRA examiners. It was performed by members of OCC's Consumer Compliance Cadre, under the supervision of an experienced Examiner in Charge. Since new CRA examination procedures were used, the examination results and proposed rating were reviewed by district and headquarters compliance experts and managers prior to issuance to ensure consistency with ratings nationwide, and to provide assurance that the new procedures and regulation were being performed and interpreted in the manner in which they were intended.

## **2. MHC Concerns**

MHC expressed concern that Star Bank has not signed a CRA agreement with it. MHC believes that a written agreement will direct Star Bank's attention to community needs, and at a minimum, that Star Bank should commit to do at least what Great Financial had done in meeting the lending, investment and service needs of the community. MHC also stated that it wants to "preserve and expand programs offered by Great Financial," and is concerned with the effect on affordable

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<sup>20</sup>Indeed, OCRCP commented favorably on the positive effect of Star Bank's written agreement with the City of Cleveland on the Bank's lending efforts to LMI and minority credit applicants in the Cleveland MSA.



housing efforts of acquisitions local financial institutions by out-of-area banks. As noted above, Star Bank's overall CRA rating is "Outstanding," and each state rating and multi-state MSA rating is "Satisfactory" or above, including for the Commonwealth of Kentucky. In response to the comments and concerns raised, we reviewed Star Bank's CRA performance in various communities after the bank acquired institutions in those communities. We found no adverse changes in performance. While the mix of products and programs offered by Star Bank may be different from that offered by Great Financial, given Star Bank's strong CRA performance to date, the overall level of performance is not likely to diminish after this transaction. The bank has committed to 20 specialized home loans in the Louisville community involving the Community Development Bank (a non-profit, state-chartered, non-member bank in Louisville which focuses on providing credit products to economically depressed areas of Louisville), and has committed to funding 4 low-income housing tax credit investment projects totaling \$24 million. There are no indications that Star Bank's overall CRA performance in the Louisville market will be any less than that provided by Great Financial.

MHC noted that Star Bank received only "Satisfactory" CRA ratings in several geographic areas, including Kentucky, and did not receive an "Outstanding" rating in any investment test. The organization is concerned that Star Bank may not be fully meeting the credit needs of the communities it serves. The OCC's 1996 CRA examination concluded that the bank's performance was satisfactory or better for all tests, and in all communities. Our recent independent on-site review confirmed that the bank's performance from 1995 through September 30, 1997 has been satisfactory or better in all respects, and in all geographic areas. The bank's CRA public file also reflects that numerous community members believe that Star Bank is affirmatively addressing community credit needs.

MHC was concerned that Louisville will not be one of Star Bank's largest markets, and thus that the bank will not focus on the Louisville area for community reinvestment purposes. It further believes that Star Bank does not know Kentucky or its credit needs. Our on-site investigation concluded that the Louisville market will not be a small market in Star Bank's assessment areas. Based on the deposits of Great Financial, Louisville will rank as Star Bank's fourth largest market, following Cincinnati, Cleveland and Columbus. In terms of population size, the Louisville area will be the fifth largest market in Star Bank's assessment areas. Star Bank has worked with several community organizations in Kentucky in the past, and since the announcement of this transaction, has met with various community members from Louisville to ascertain specific credit needs in that market. In addition, based on our investigation, we found no evidence that Star Bank's CRA performance or fair lending compliance is better in its larger market areas than in its smaller market areas.

MHC, like OCRP, expressed doubt regarding the accuracy of Star Bank's CRA rating because of the new procedures in effect in 1996, and asserted that 98% of banks examined under the new procedures received "Satisfactory" or "Outstanding" ratings. MHC also contended that Star Bank's CRA Public Evaluation contains statistics that demonstrate that the bank is not meeting the credit needs of low-income individuals. Star Bank's 1996 CRA examination and LMI lending performance are discussed above in the paragraphs addressing OCRP's comments in these same two areas of concern.

Star Bank officials met with MHC representatives on October 3, November 7 and December 1, 1997. In addition, the bank wrote letters to MHC dated September 25, December 1 and December 5, 1997. Star Bank's purpose for these meetings and letters was to communicate its plans for meeting the Louisville community's credit, investment, and service needs. In its December 1, 1997 letter, Star Bank committed to continue its participation in the FHLB's Affordable Housing Program in an effort to address MHC's concerns that Star Bank may not be fully committed to this program. Also, in its letters, Star Bank committed to offer affordable and convenient deposit and check cashing products and services as well as other programs and products to all segments of the community. Star Bank stated to MHC its desire for a partnership, not only with MHC, but also with other community organizations in Louisville in order to achieve its community development goals. The bank further committed to retaining Great Financial's employees in Louisville, in order to carry forward their knowledge and experience regarding the Louisville market. Accordingly, there is no indication that the bank's CRA performance will adversely affect the credit, investments, or services provided to Louisville area residents.

### **3. Conclusion**

In summary, our on-site investigation and analysis of the issues raised by both OCRP and MHC did not find grounds that would serve as a basis for denial or conditioning the approval of the proposed Purchase and Assumption Application. Our on-site investigation included a review of the prior CRA and fair lending examinations of the applicant. We found no evidence of illegal lending discrimination or other prohibited practices, and determined that Star Bank's overall CRA performance was satisfactory or better in all respects, and in all geographic areas. Accordingly, we find that approval of the Purchase and Assumption Application is consistent with the CRA. We will, however, continue to monitor the CRA performance and fair lending compliance of the bank as part of our ongoing supervision.

**IV. CONCLUSION AND APPROVAL**

For the reasons set forth above, including the representations and commitments made by the applicants, and assuming compliance with appropriate regulatory requirements of the Office of Thrift Supervision, we find that Star Bank's purchase and assumption of all of the assets and liabilities of Great Financial is legally authorized under 12 U.S.C. §§ 24(Seventh), following the transaction Star Bank is authorized to retain and operate the former offices of Great Financial as branches under 12 U.S.C. §§ 36(c), and that the transaction meets the other statutory criteria for approval. Accordingly, this purchase and assumption application is hereby approved.

\_\_\_\_\_/s/  
Julie L. Williams  
Chief Counsel

\_\_\_\_\_/01-28-98  
Date

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