Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

Corporate Decision #2000-09
July 2000

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE FIRST NATIONAL BANK AND TRUST COMPANY, PARSONS, KANSAS, AND TEAMBANK, NATIONAL ASSOCIATION, FREEMAN, MISSOURI

June 20, 2000

I. INTRODUCTION

TeamBank, National Association, Freeman, Missouri, ("TeamBank") applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge The First National Bank and Trust Company, Parsons, Kansas, ("FNB") with and into TeamBank under TeamBank's charter and title under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the "Merger"). TeamBank is a national bank that has its main office in Freeman, Missouri, and branches in Missouri, Kansas, and Nebraska.[1] FNB is a national bank that has its main office and one branch in Kansas. Both banks are insured banks. As of March 31, 2000, TeamBank had approximately $315 million in assets and $256 million in deposits, and FNB had approximately $59 million in assets and $52 million in deposits. Both banks are wholly-owned indirect subsidiaries of Team Financial, Inc., a Kansas bank holding company.

In the application, TeamBank also requested OCC approval for the resulting bank after the Merger to retain and operate, as its main office, the TeamBank branch located at One South Pearl Street, Paola, Kansas, under 12 U.S.C. § 1831u(d)(1), and to retain and operate TeamBank's main office and other branches, and FNB's main office and branch, as branches of the resulting bank after the Merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

[1] TeamBank's current offices are the result of prior transactions. On May 31, 1997, TeamBank (then named The Miami County National Bank of Paola) changed the location of its main office from Paola, Kansas, to Freeman, Missouri, under 12 U.S.C. § 30, retained its then-existing branches in Kansas, and established a branch at the former main office site in Paola. *See* OCC Corporate Decision No. 97-31, May 31, 1997. In July 1997, TeamBank acquired two branches in Missouri from other banks. In January 1998, TeamBank acquired an additional branch in Kansas from another bank. In June 1999, TeamBank merged an affiliated bank in Nebraska into TeamBank and retained the affiliate's offices as branches.

TeamBank published notice of the application in *The Louisburg Herald*, a general circulation newspaper serving the Freeman, Missouri, area, in *The Miami County Republic*, a general circulation newspaper serving the Paola, Kansas, area, and in *The Parsons Sun*, a general circulation newspaper serving the Parsons, Kansas, area, on April 12, 2000, April 26, 2000, and May 10, 2000. TeamBank also sent copies of the OCC Merger application to the state bank commissioners of Missouri and Kansas. No written comments have been received. However, as discussed in Part II-B-1, the Missouri Division of Finance has indicated its belief that a provision of Missouri law is applicable to this transaction and that the Merger would not comply with it.

II. LEGAL AUTHORITY

A. The Merger is authorized under the interstate merger authority of the Riegle-Neal Act, 12 U.S.C. §§ 215a-1, 1831u, and 36(d).

At the present time, TeamBank's home state is Missouri and FNB's home state is Kansas. And so, in this Merger, national banks with different home states will merge. Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

> (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).[2] The Riegle-Neal Act permitted a state to elect to prohibit such interstate merger transactions under section 44 involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. *See* 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In the

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[2] Section 44 was added by section 102(a) of the 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 also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. *See* Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). Some interstate mergers may also be authorized under 12 U.S.C. § 215a. *See, e.g., Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction); Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998). Since TeamBank has branches in Kansas, it could have acquired FNB in a merger under section 215a; however, the present application was made under the Riegle-Neal Act.

For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). *See* 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

proposed Merger, the home states of the banks are Missouri and Kansas; neither of these states opted out. Accordingly, this application is covered by 12 U.S.C. §§ 215a-1 & 1831u(a).

TeamBank also requested that, upon the completion of the Merger, TeamBank (as the resulting bank in the Merger) be permitted (1) to retain and operate, as its main office, its current branch in Paola, Kansas, under 12 U.S.C. § 1831u(d)(1), and (2) to retain and operate, as branches, its main office and other branches and FNB's main office and branch, under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

In interstate merger transactions 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) (emphasis added). 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).[3]

Thus, in the present application, TeamBank (as the resulting bank after the Merger) may retain and operate as its main office "any office that [either TeamBank or FNB] was operating as a main office or branch immediately before the merger transaction." The Paola office is currently operating as a branch of TeamBank, and so the resulting bank may retain and operate it as its main office, provided the Merger is approved under section 1831u.

Similarly, TeamBank (as the resulting bank after the Merger) may retain and operate as branches "any office that [either TeamBank or FNB] was operating as a main office or branch immediately before the merger transaction." TeamBank's main office and other branches, and FNB's main office and branch, are all operating as main offices or branches, and so the resulting

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[3] 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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). By its action in adding section 36(d), Congress made it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 U.S.C. § 36(b)(2) that apply to mergers under 12 U.S.C. § 215a. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u.

bank may retain and operate them as branches, provided the Merger is approved under section 1831u.

Therefore, the Merger is authorized, and TeamBank may retain the proposed main office and branches,[4] provided the application meets the requirements for an interstate merger transaction under section 1831u.

B. TeamBank's application meets the requirements of the Riegle-Neal Act, and so it may be approved.

An application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, to the extent that the Riegle-Neal Act authorizes such 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. This application satisfies all these requirements to the extent applicable. Only the age requirement poses an issue in this application, and so we shall address it in more detail.

1. The application satisfies the Riegle-Neal Act's age requirement.

The application 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). But the maximum age requirement a state is permitted to impose is five years. 12 U.S.C. § 1831u(a)(5)(B).

The General Counsel of the Missouri Division of Finance informally advised the OCC by telephone that the Division of Finance believed a Missouri age-limit statute was applicable to TeamBank's proposed Merger and that the transaction would not comply with it. Subsequently, the Acting Commissioner of the Division of Finance related the same belief in a letter to TeamBank dated May 26, 2000. The Missouri statute imposes two requirements on banks that relocate into Missouri. First, it imposes a five-year age requirement so that such relocated banks may not engage in an interstate merger that results in Missouri branches until the relocated bank is at least

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[4] In addition, TeamBank will succeed to the fiduciary appointments of FNB as a result of the Merger, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates. *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); Decision on the Application to Merge Bank of America N.T. & S. A. and NationsBank, N.A. (OCC CRA Decision No. 94, May 20, 1999) (at page 6 n. 4). *See also* Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states). *Cf.* 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

five years old. Second, it mandates that the relocated bank calculate its age from the time it relocated to Missouri, not the actual age of the bank.[5]

The OCC has determined that the proposed Merger meets the Riegle-Neal Act's age requirement and this Missouri age provision cannot interfere with the authority to merge under the Riegle-Neal Act. First, the applicable state age limit for this interstate merger transaction is not that of Missouri but that of Kansas, as applied to FNB, because FNB is the bank being acquired in the transaction. Second, even if Missouri's were the age limit applicable under the Riegle-Neal Act, the Missouri provision at issue does not apply to TeamBank because TeamBank was already in Missouri before the statute was passed. Third, even if Missouri's were the age limit applicable under the Riegle-Neal Act and the Missouri provision at issue was intended to apply to TeamBank as a matter of Missouri law, the Missouri provision is not a valid state age limit under the Riegle-Neal Act, and so is not authorized to be incorporated and applied under the Act, because it treats relocated banks differently than other banks.

a. The applicable age limit is that of Kansas, and the Merger meets it.

In this interstate merger transaction, the applicable state age limit under the Riegle-Neal Act is not that of Missouri but that of Kansas, as applied to FNB, because FNB is the bank being acquired. In the proposed Merger, TeamBank currently with its main office in Missouri, is acquiring FNB whose main office is in Kansas; a Kansas bank (FNB) will be merged into a Missouri bank (TeamBank). But, as expressly authorized by section 1831u(d)(1), the resulting bank (TeamBank) will retain and operate the Paola office as its main office after the Merger. The proposed Merger results in a combined bank with its main office in Kansas. In this context the meaning of section 1831u(a)(5) with respect to which state's age limit is applicable is unclear: On the one hand, FNB -- a bank in Kansas -- is the bank being acquired; and so Kansas could be

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[5] The statute provides:

> Any state bank, trust company or national bank, already in existence in another state, which is relocated to Missouri de novo [*sic*] shall calculate the age of its bank charter for Missouri purposes as of the date such charter is moved to Missouri, and may not engage in an interstate acquisition or merger with the result that such charter is merged or relocated to another state with Missouri branches of such charter remaining in Missouri, until such bank or trust company's charter is at least five years old.

Mo. Rev. Stat. § 362.077(2). The provision was adopted and effective on July 13, 1999. *See* Mo. Laws 1999, S. B. No. 386, §§ B & C. The provision refers to *a bank* that is relocated to Missouri and to moving *the charter* to Missouri. These terms are not defined. We assume, for the sake of analysis, that a change in the location of a national bank's main office into Missouri under 12 U.S.C. § 30, while the bank retains branches in its original state, is included in what the provision refers to as relocating the bank and moving the charter. However, arguably the statute refers only to instances in which *the entire bank* relocates into Missouri, with no branches retained in the original state. *Compare* Mo. Rev. Stat. § 362.077(2) (relocation of "a bank") *with* Mo. Rev. Stat. §§ 362.462 - 362.464 (provisions for relocating "main banking house" into or out of Missouri while retaining existing branches in former state). If section 362.077(2) were intended to include relocations merely of the main banking house, while branches were retained in the former state, it could have used that term or referred to sections 362.462-362.464. Since TeamBank continued as the same national bank with the same charter and still had branches and substantial operations in Kansas, arguably it is not covered by section 362.077(2).

considered the "host state" for section 1831u(a)(5) purposes. On the other hand, upon consummation of the transaction, TeamBank's main office will be in Paola, and so Kansas will become the home state, and Missouri a host state, of the resulting bank going forward; and so Missouri could be considered the "host state" for section 1831u(a)(5) purposes as well.

The OCC has determined that in this context -- created by the interaction of sections 1831u(a)(5) and 1831u(d)(1) -- the better interpretation of the statute is the first one: FNB, a bank with its main office in Kansas is being acquired, and so Kansas is the "host state" for age limit purposes. This interpretation is closer to the language of section 1831u(a)(5), which is focussed on the bank being acquired, not on the later operations of the resulting bank. It is also more consistent with the apparent purpose of the section: to allow states to protect the market value of banks in the state by restricting the supply available to be acquired. The OCC has suggested this was the better interpretation in a number of prior decisions.[6]

The proposed Merger meets the age requirements in section 1831u(a)(5). Kansas has not yet enacted legislation with respect to the interstate merger and branching provisions of the Riegle-Neal Act, and so it presently does not have an age requirement for interstate mergers between banks.[7] And, in any event, FNB (and its predecessors) has been in existence since 1871, and so it is more than five years old -- the maximum state age limit that may be applied in the Riegle-Neal Act. Thus, the proposed Merger satisfies the Riegle-Neal Act's age requirements.

b. The Missouri age provision for relocated banks is not applicable to TeamBank.

Second, even if Missouri's were the age limit applicable under the Riegle-Neal Act, the Missouri provision at issue does not apply to TeamBank because TeamBank was already in Missouri before the statute was passed. The special Missouri provision for relocated banks in Mo. Rev. Stat. § 362.077(2) was enacted and effective on July 13, 1999. TeamBank had relocated its main office to Freeman on May 31, 1997, more than two years before the statute. For that two year period, TeamBank had no special five-year age limit applicable to it, and no special method

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[6] *See, e.g.*, Decision on the Application of First of America Bank, N.A., to Merge with First of America Bank-Illinois, N.A. (OCC CRA Decision No. 81, July 14, 1998) (page 3); Decision on the Application to Merge Mercantile Bank of Illinois, N. A., and Mark Twain Bank with and into Mercantile Bank N.A. (OCC Corporate Decision No. 97-51, June 20, 1997) (page 4). The question was not decided in the prior decisions because in those cases the transaction met the age requirement under either view: each bank met its respective state age limit. That may also be the case here. If we assume that TeamBank is the relevant bank for age limit purposes, TeamBank complies with the Riegle-Neal Act's age limit, to the extent Missouri age limits are properly applied to TeamBank, as set out in following subsections. TeamBank (and its predecessors) has been in existence since 1875, and so it is more than five years old. Thus, but for the special relocated bank age calculation provision, TeamBank meets the maximum age limit that may be applied under the Riegle-Neal Act under section 1831u(a)(5)(B).

In addition, again assuming that TeamBank is the relevant bank for age limit purposes, only Missouri law would be applicable, and not also that of Kansas and Nebraska where TeamBank has branches. Moreover, even if the age requirement were to be applied with respect to Kansas and Nebraska, this Merger would meet it, since TeamBank is more than five years old.

[7] *See* Kansas State Bank Commissioner Special Order 1997-2 (May 30, 1997) (applying state's wild card statute, in the absence of Kansas legislation, to permit interstate merger transactions).

of calculating its age for Missouri purposes. Since its age was more than five years as generally calculated, it could have been acquired by any out-of-state bank in an interstate merger. The question then is: was the 1999 statute intended to apply retroactively to change the merger rights of banks that had already relocated into Missouri?

There is no indication in the legislation that it was intended to apply retrospectively to banks that had already relocated their main offices into Missouri. There is no express language about retrospective application for this subsection. The language used to describe the banks to which the subsection applies is more naturally understood as intended to apply prospectively only (*i.e.*, to banks that relocate in the future, after the statute is adopted). The statute refers to a bank "which *is* relocated to Missouri" rather than, for example, a bank "which *has* relocated to Missouri." Moreover, another subsection does expressly address the retroactive application of any final court decision invalidating any provision of the section. Under subsection 362.077(4), such court decision shall *not* be given retroactive effect. This suggests that the provisions of the section themselves were not intended to be given retrospective effect. In addition, this interpretation is consistent with the general principle in Missouri law that statutes affecting substantive rights are not construed as intended to be applied retroactively in the absence of clearly expressed legislative intent.[8] Finally, the ambiguity in the statute (*i.e.*, whether it applies only to instances in which the whole bank relocates into Missouri or also to instances in which the main office relocates and the bank retains branches in its former state, *see* note 5) is another reason why it should not be given retroactive application to TeamBank. We believe the Missouri courts would conclude that subsection 362.077(2) does not apply to banks that relocated into Missouri before its enactment.

c. The special Missouri age provision is not valid under the Riegle-Neal Act.

Third, even if Missouri's were the age limit applicable under the Riegle-Neal Act and the Missouri provision at issue was intended to apply to TeamBank as a matter of Missouri law, the Missouri statute is not a valid state age limit under the Riegle-Neal Act. The Missouri law is not within the scope of state age laws incorporated and applied under the Act because it treats relocated banks differently than other banks. Under the Riegle-Neal Act, the OCC may not approve an interstate merger application "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state *that has not been in existence* for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A) (emphasis added). This permits the state to impose a minimum age requirement, subject to the five-year maximum of section 1831u(a)(5)(B). However, it permits the state to set a simple age limit only. It does not give the states the power to impose different age limits for banks that meet specified criteria, or to have different ways of calculating the age for banks that meet -- or failed to meet -- specified conditions.

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[8] *See* Mo. Const. art. I, § 13 (prohibiting enactment of laws retrospective in operation); *State ex rel. Clay Equipment Corp. v. Jensen*, 363 S.W.2d 666, 668-70 (Mo. 1963). *See also State ex rel. St. Louis-San Francisco Railway Co. v. Buder*, 515 S.W.2d 409, 410-11 (Mo. 1974); *Cattoor v. Wells*, 641 S.W.2d 492, 495 n.1 (Mo. App. E.D. 1982).

First, the federal statute refers to the time that a bank has been "in existence" and permits the state to require a minimum period of such time before the bank may be acquired. The plain meaning of "in existence" is the time that the bank (or its corporate predecessors) has been *in existence*. There is no indication in the statutory text or legislative history that "in existence" means anything other than the ordinary commonsense meaning, or that portions of a bank's existence can be disregarded for age limit purposes. Indeed, the language of section 362.077(2) on its face evidences inconsistency with section 1831u(a)(5): The Missouri statute refers to a bank "already in existence in another state" and at the same time purports to ignore the years it was "in existence in another state."

Second, if states could modify a bank's time of existence at their discretion, based on whatever conditions or criteria the state chose, it would be inconsistent with the Riegle-Neal Act. In the Act, Congress established a specified framework for interstate mergers. That framework includes state laws, but only in the limited ways expressly set out in the Act. If a state could impose conditions on what age limits applied or how a bank's age was calculated, then it could use age limits to indirectly impose requirements and conditions on Riegle-Neal Act mergers greater than what Congress permitted to them in the Act.

Third, while we believe this fundamental principle applies generally to any kind of state age-limit discrimination, it applies even more forcefully with respect to national banks that have relocated their main offices. With respect to age-limit discrimination directed at banks that have relocated their main offices from one state to another, as here, the Riegle-Neal Act's legislative history expressly indicates that relocated banks are to be treated the same as other banks in the state. The Conference Report states:

> Banks that have moved their main offices pursuant to 12 U.S.C. 30 should not be treated differently than other banks with their main offices in that state. Specifically, for purposes of section 3(d) of the Bank Holding Company [Act], and sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act, such banks shall be able to make acquisitions and establish branches in the state to which their main office is relocated to the same extent as any other bank with its main office in that state.

H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). This is a clear statement of general congressional intent that directly applies to the Missouri situation: banks that have relocated should not be treated differently, and so they cannot be treated differently for age limit purposes than other banks in the state. The specific references to section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d) (which governs out-of-state holding company acquisitions of banks) and to section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. § 1815(d)(3) (which incorporates section 3(d) standards for certain mergers with thrifts) are further evidence of congressional intent about age limits, since one of the primary requirements in section 3(d) is compliance with state age limits, similar to the age limits in section 1831u(a)(5) for interstate bank mergers. Similarly, the reference to section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c) (the Bank Merger Act), indirectly refers to the Riegle-Neal Act's own merger provision, since Riegle-Neal mergers are described as a subset of mergers approved under section 18(c). *See* 12 U.S.C. §

1831u(a)(1). At the end, the passage refers to acquisitions and branches within the new main office state; but those are merely illustrative examples, not a limit on the general principle of the first sentence.

Moreover, this statement in the Conference Report was not a peripheral matter. When considering the Riegle-Neal Act, Congress closely reviewed interstate main office relocations by national banks. It enacted certain provisions addressing branch retention by such relocating banks. *See* 12 U.S.C. §§ 30(c) & 36(e)(2); H.R. Conf. Rep. No. 651 at pages 56-57 (paragraphs preceding the one quoted above). Since Congress expressly addressed relocating national banks in the Riegle-Neal Act and decided to adopt only certain measures, while indicating in the legislative history that such relocating banks were to be treated the same as other banks for other purposes, clearly Congress did not intend other Riegle-Neal Act provisions -- such as the age limit provision in section 1831u(a)(5) -- to be used to create special requirements for relocated banks. When Congress desired special treatment for relocated banks, it expressly enacted a specific provision to do so.

The Missouri provision in subsection 362.077(2) treats banks that have relocated their main office into Missouri differently than other banks with their main office in Missouri, since it imposes a different method of calculating the bank's age on them. Under the Missouri provision, TeamBank would not be permitted to engage in an interstate merger at the present time while other banks in Missouri that were more than five years old would. And so the Riegle-Neal Act does not incorporate the special age provision and make it applicable to a Riegle-Neal interstate merger transaction, in view of the express congressional intent in the Riegle-Neal Act. Under the Riegle-Neal Act, TeamBank must be treated as other banks in Missouri for age limit purposes. Since TeamBank is more than five years old, it meets the maximum age limit that may be applied under the Riegle-Neal Act. Accordingly, even if Missouri were the applicable state for age limit purposes, the proposed application would satisfy the Riegle-Neal Act's age requirement.[9]

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[9] Moreover, other parts of section 362.077 discriminate against relocated banks in other ways as well. Subsection 362.077(2) imposes a five year age requirement on a relocated bank, as well as imposing the special age calculation method. The five year age limit in subsection 362.077(2) applies to *all* relocated banks in *any* merger with an out-of-state bank; but it applies *only* to relocated banks. There is no similar general five year age limit applied to other Missouri banks in mergers with an out-of-state bank. Subsection 362.077(1) imposes a five year limit, but it applies only to an out-of-state holding company's acquisition of a bank, not to the direct merger of a Missouri bank into an out-of-state bank. A holding company's acquisition of a bank is a different transaction than a direct bank-to-bank merger. Indeed, we note that subsection 362.077(2) expressly refers to both "interstate acquisition or merger," while subsection 362.077(1) refers only to holding company acquisitions of banks. Moreover, even if subsection 362.077(1) were construed to apply to direct bank-to-bank mergers with an out-of-state bank, it would apply only when the resulting out-of-state bank was owned by a holding company, not when it was an independent bank. This creates two other forms of discrimination. First, with respect to relocated banks in Missouri, they must be at least five years old in any merger transaction with an out-of-state bank, since subsection 362.077(2) applies to all mergers of a relocated bank into an out-of-state bank, while other banks have the five year age requirement of subsection 362.077(1) only if they merge with an out-of-state bank that is owned by a holding company. Second, with respect to out-of-state banks, it treats different classes of out-of-state banks differently -- one class (those owned by holding companies) may merge with a Missouri bank only if it is at least five years old, but other out-of-state banks may merge with any Missouri bank. Such forms of discrimination in the application of state age limits, just as the different age calculation method, are not permitted under the Riegle-Neal Act.

2. The application satisfies the Riegle-Neal Act's other requirements.

The proposed Merger 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. 12 U.S.C. § 1831u(b)(1).[10] The resulting bank in the Merger will have its main office in Kansas; and so Missouri will become a host state of the resulting bank for filing requirement purposes as a result of the Merger.[11] Missouri has no filing requirements for interstate merger transactions. TeamBank provided a copy of its OCC Merger Application to the Missouri state bank commissioner, as required by section 1831u(b)(1)(A)(ii). TeamBank also provided a copy to the Kansas state bank commissioner. Thus, this application satisfies the Riegle-Neal Act's filing requirements.[12]

The proposed Merger 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. 12 U.S.C. § 1831u(b)(2)(E). TeamBank and FNB are affiliates; and so section 1831u(b)(2) is not applicable to this Merger.

The proposed Merger also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve

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[10] 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. For a fuller discussion of this subject, *see, e.g.*, Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

[11] Thus, in the fact setting of this Merger, the "host state" for age limit purposes under section 1831u(a)(5) is different than the "host state" for filing requirement purposes under section 1831u(b)(1). While the age requirement of section 1831u(a)(5) applies within the merger itself, thus raising a question about which bank is the relevant one (and so which state is the relevant one) in contexts such as the one here, the filing requirements of section 1831u(b)(1) are related to the bank that results from the merger, and the host state for filing purposes is clearly determined with respect to that bank. The filing requirement provision is directed toward permitting a state to impose a filing requirement on an out-of-state bank doing business in the state. After this Merger is concluded, TeamBank will be an out-of-state bank with branches in Missouri. Thus, for filing purposes, Missouri -- not Kansas -- is the host state.

[12] Nebraska is currently a host state for TeamBank and will continue as such after the Merger, and so does not become one as a result of the Merger, and so the filing requirements of section 1831u(b)(1) do not apply with respect to it. *See* Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9). In any event, TeamBank complied with Nebraska filing requirements in its earlier merger with its Nebraska affiliate.

an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.[13] In this application, TeamBank and FNB are affiliates, and so this Riegle-Neal Act provision is not applicable. However, the CRA itself is applicable, as discussed below in Part III-B.

Finally, the proposed Merger 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. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, TeamBank and FNB 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, TeamBank will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

In summary, the proposed Merger is authorized under the Riegle-Neal Act, and TeamBank may retain the Paola office as its main office and the two banks' other offices as branches under the Act.[14]

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for a 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

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[13] It does not apply to mergers between affiliated banks because it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank 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). TeamBank has an affiliate and branches in Kansas, branches in Missouri, and branches in Nebraska. After the Merger, it will not have a branch or bank affiliate in any state in which it does not currently have one.

[14] Since the Merger is authorized under the Riegle-Neal Act, and the Missouri age calculation provision is not incorporated and applicable in the Riegle-Neal Act, for the reasons set forth above, the Missouri age provisions -- solely as a state law, not as an element incorporated into federal law -- cannot prohibit a merger that federal law authorizes. *See, e.g., Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 31-34 (1996); Decision on the Application to Merge NationsBank of Texas, N.A., with NationsBank, N.A. (OCC Corporate Decision No. 98-19, April 2, 1998) (pages 20-22); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995) (pages 63-79).

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 this Merger may be approved under section 1828(c).

1. Competitive Analysis.

Since both banks involved in this transaction 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 TeamBank and FNB are presently satisfactory. TeamBank expects to achieve administrative efficiencies by operating all the offices as branches of one bank. The future prospects of the institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger.

3. Convenience and Needs.

The Merger will not have an adverse impact on the convenience and needs of the communities to be served. TeamBank will continue to serve the same areas that it and FNB now serve. There will be no reductions in 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 branches will be closed as a result of the Merger. We believe the impact of the Merger on the convenience and needs of the communities to be served is consistent with approval of the 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 the community, including low- and moderate-income neighborhoods when evaluating certain applications. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicant's record of helping to meet the credit needs of its communities, including low- and moderate-income neighborhoods, is less than satisfactory. We further note that TeamBank received an Outstanding CRA rating as of October 29, 1998, and FNB a Satisfactory rating as of June 17, 1999. No public comments relating to CRA performance were received by the OCC relating to this application, and the OCC has no other basis to question the banks' performance in complying with the Community Reinvestment Act.

The Merger is not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging institutions currently serve. TeamBank will continue its current CRA programs and policies, and add the assessment area of FNB. 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 the parties have today as separate institutions. 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 of the states it serves.

We find that approval of the proposed Merger is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the proposed Merger between TeamBank and FNB is authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a); that TeamBank, as the resulting bank after the Merger, is authorized to retain and operate the Paola office as its main office and the other offices as branches, under 12 U.S.C. §§ 36(d) & 1831u(d)(1); and that the Merger meets the other statutory criteria for approval. Accordingly, this Merger application is hereby approved.

-signed- **06-20-00**

Julie L. Williams Date
First Senior Deputy Comptroller
and Chief Counsel

Application Control Number: 2000-MW-02-0012