



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

Corporate Decision #98-07 February 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE SUN WORLD, NATIONAL ASSOCIATION, SANTA TERESA, NEW MEXICO, WITH AND INTO NATIONSBANK, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA

January 15, 1998

I. INTRODUCTION

On October 23, 1997, NationsBank, National Association, Charlotte, North Carolina ("NationsBank"), and its national bank affiliate, Sun World, National Association, Santa Teresa, New Mexico, ("Sun World") applied to the Office of the Comptroller of the Currency ("OCC") for approval to merge Sun World with and into NationsBank, under NationsBank's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Sun World Merger"). NationsBank has its main office in Charlotte, North Carolina, and operates branches in North Carolina, South Carolina, Georgia, Florida, Virginia, Maryland, the District of Columbia, Illinois, Iowa, Missouri, Kansas, Oklahoma, New Mexico, and Arkansas.¹ Sun World has its main office in Santa Teresa, New Mexico, and operates three branches across the border in El Paso, Texas.² In

¹ NationsBank's branches in these states are the result of earlier transactions. *See, e.g.*, Decision on the Applications to Merge Boatmen's National Bank of Arkansas, Little Rock, Arkansas, and Twenty-Five Other Affiliated Banks into NationsBank, N.A. (OCC Corporate Decision No. 97-75, August 7, 1997); Decision on the Applications to Merge Boatmen's Bank of Vandalia, Vandalia, Missouri, and Twenty-Two Other Affiliated Banks into NationsBank, N.A. (OCC Corporate Decision No. 97-47, June 6, 1997); Decision on the Application to Merge NationsBank, N.A. (South) into NationsBank, N.A. (OCC Corporate Decision No. 97-40, June 1, 1997).

² Sun World's locations in Texas and New Mexico are the result of an earlier interstate main office relocation transaction under 12 U.S.C. § 30. *See Ghiglieri v. Sun World, National Ass'n*, 117 F.3d 309 (5th Cir. 1997), *reversing* 942 F.Supp. 1111 (W.D. Tex. 1996) ("*Ghiglieri v. Sun World*") (reviewing the OCC's Decision on the Applications of Sun World, N.A., El Paso, Texas (OCC Corporate Decision No. 96-40, August 2, 1996) ("*OCC Sun World Relocation Decision*").

the Sun World Merger application, OCC approval is also requested for NationsBank (as the resulting bank in the merger) to retain NationsBank's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain NationsBank's branches and Sun World's main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).³

Both banks are indirect subsidiaries of NationsBank Corporation ("NBC"), a multistate bank holding company headquartered in Charlotte, North Carolina.⁴ After the merger is completed, the banking offices of Sun World in New Mexico and Texas would operate as branches of NationsBank (NationsBank Corporation's lead bank) rather than as offices of a separate subsidiary bank of the holding company.

Notice of the Sun World Merger application was published in general circulation newspapers in El Paso and Charlotte, as required by 12 U.S.C. § 1828(c)(3) and 12 C.F.R. § 5.33(f)(1). In addition, NationsBank sent copies of the application to the Director of the New Mexico Financial Institutions Division and to the Commissioner of the Texas Department of Banking. The New Mexico Director advised the bank he had no objection to the Sun World Merger. The Texas Commissioner's comments on the Texas Merger, see note 3, indicate she does not object to the Sun World Merger.

³ In a second application also filed on October 23, 1997, NationsBank and another affiliate, NationsBank of Texas, National Association, Dallas, Texas, ("NationsBank/Texas") applied to the OCC for approval to merge NationsBank/Texas with and into NationsBank, under NationsBank's charter and title, under 12 U.S.C. §§ 215a & 1828(c) (the "Texas Merger"). Comments have been filed objecting to the Texas Merger, and the OCC is continuing to review the Texas Merger application and the issues raised by the commenters. The OCC's action today approves only the Sun World Merger.

The proposed Texas Merger would occur only after the Sun World Merger was completed and NationsBank thereby had acquired the Sun World branches in El Paso. The Texas Banking Commissioner (the "Commissioner"), the Independent Bankers Association of Texas ("IBAT"), and six members of the Texas State House of Representatives ("the Texas Legislators") submitted comments to the OCC objecting to the Texas Merger and raising questions about the legal authority for that merger. The Commissioner also filed suit in federal district court against NationsBank and NationsBank/Texas regarding the Texas Merger. See Ghiglieri v. NationsBank of Texas, N.A. Case No. CA3:97-CV-289-P (N.D. Texas, filed November 26, 1997). However, neither the Commissioner's comment letter nor the lawsuit objected to the Sun World Merger. The Commissioner's Complaint in the lawsuit expressly says the State of Texas is not opposing the Sun World Merger. (Original Complaint at page 4) The Texas Legislators' comment letter did peripherally object to the Sun World Merger; however, most of their comments are directed to the Texas Merger. With respect to the Sun World Merger, the Texas Legislators only assert that the OCC's interpretation regarding branches and interstate main office relocations in the OCC Sun World Relocation Decision was erroneous, the OCC should reconsider it, and so not permit NationsBank to succeed by merger to the erroneously-obtained Sun World branches. (Texas Legislators' letter at page 6). However, the Fifth Circuit has upheld the OCC's earlier decision and determined that Sun World's operation of branches in Texas was lawful. See Ghiglieri v. Sun World, 117 F.3d at 314-16.

⁴ NationsBank is a direct wholly-owned subsidiary of NB Holdings Corporation ("NB Holdings"), which is in turn a direct wholly-owned subsidiary of NationsBank Corporation. Sun World is a direct wholly-owned subsidiary of NationsBank Texas Bancorporation, Inc ("Bancorporation"), which is in turn a direct wholly-owned subsidiary of NB Holdings.

II. LEGAL AUTHORITY FOR THE MERGER

A. The Sun World Merger is Authorized under 12 U.S.C. §§ 215a-1 & 1831u (the Riegle-Neal Act).

The merger of Sun World into NationsBank is authorized under the Riegle-Neal Act. In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).⁵ The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks (state "opt-out" laws):

(A) In General. -- Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after the date of enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and before June 1, 1997, that --

- (i) applies equally to all out-of-State banks; and
- (ii) expressly prohibits merger transactions involving out-of-State banks.

⁵ 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).

12 U.S.C. § 1831u(a)(2). In the Sun World Merger, the home states of the two banks are New Mexico and North Carolina. Neither state has opted out.⁶ Accordingly, the Sun World Merger application may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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

The Sun World Merger application satisfies all these conditions to the extent applicable. First, it meets the state-imposed age requirement 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 the states may impose is five years. See 12 U.S.C. § 1831u(a)(5)(B). In the Sun World Merger, NationsBank is acquiring a bank in the host state of New Mexico.⁷ New Mexico law requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the New Mexico bank must have "been in continuous operation under an active charter for a period of at least five years." N.M. Stat. Ann. § 58-1C-5(C). Sun World has been in continuous operation under an active charter since March 1986. Thus, the Sun World Merger meets the Riegle-Neal Act's age requirement.

Second, the proposed Sun World 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

⁶ Sun World also has branches in Texas, and so Texas is a host state for Sun World. Texas has enacted a statute that purports to opt-out of interstate merger transactions under the Riegle-Neal Act. See Tex. Fin. Code § 32.0095. However, under the Riegle-Neal Act, the state election to opt-out of Riegle-Neal interstate merger transactions is determined solely by reference to the home states of the banks, not by the host states the merging banks may already have. Here, while Texas is a host state of Sun World, the only two home states are New Mexico and North Carolina. Thus, the merger authority of section 1831u(a)(1) continues to be available for the Sun World Merger. In addition, NationsBank has suggested that the Texas statute is not effective as an opt-out under the Riegle-Neal Act because it does not meet the criteria of section 1831u(a)(2) because Texas law permits some out-of-state banks to merge with some Texas state banks. We need not consider this issue in the context of the Sun World Merger because, even if the Texas statute is an effective opt-out under the Riegle-Neal Act, it does not apply to this merger, as discussed above.

⁷ While Sun World also has branches in Texas, New Mexico -- the bank's home state -- is the only state in which NationsBank is "acquir[ing] a bank" for purposes of section 1831u(a)(5)(A). Moreover, even if the age requirement were to be applied with respect to Texas, this merger would meet it. Sun World is more than five years old, and so it meets the maximum age requirement that a state may impose under the Riegle-Neal Act. See 12 U.S.C. § 1831u(a)(5)(B).

as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).⁸ The New Mexico interstate bank merger statute does not appear to contain a filing requirement when the New Mexico bank is a national bank.⁹ Texas also has no filing requirements for an out-of-state national bank that results from an interstate merger transaction. NationsBank provided a copy of its OCC merger application to the New Mexico and Texas state bank supervisors, as required by section 1831u(b)(1). The Riegle-Neal Act's filing requirement therefore is met.

Third, the proposed Sun World 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. See 12 U.S.C. § 1831u(b)(2)(E). NationsBank and Sun World are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed Sun World 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 an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.¹⁰

⁸ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

⁹ The provision requiring an out-of-state bank that will be the resulting bank in an interstate merger to notify the state banking supervisor, provide a copy of its federal application, and pay a fee applies only to "an interstate merger transaction involving a New Mexico state bank." N.M. Stat. Ann. § 58-1C-7 (emphasis added). In any event, NationsBank notified the New Mexico state bank supervisor and sent a copy of its OCC merger application.

¹⁰ The provision 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

NationsBank and Sun World are affiliates. Thus, this Riegle-Neal Act provision is not applicable to this merger application. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-C.

Fifth, the proposed Sun World 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. See 12 U.S.C. § 1831u(b)(4). As of the date this application was filed, both banks 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, NationsBank will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

B. Following the Merger, the Resulting Bank may Retain and Operate the Main Offices and Branches of Both Banks Participating in the Merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the merger, NationsBank (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Charlotte as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main office and branches of Sun World in New Mexico and Texas. In an interstate merger transaction under section 1831u, the resulting bank's authority to retain and continue to operate the offices of the participating banks is expressly provided for:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11).

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):

(as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this application, NationsBank (the bank submitting the application as the acquiring bank) has branches or bank affiliates in New Mexico and Texas before the transaction and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before.

(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 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Moreover, at the time it acted on Section 44, Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers and the way in which those provisions applied for interstate national banks. The OCC had approved interstate main office relocation transactions that also involved subsequent mergers of the resulting interstate bank with an affiliate bank in which the resulting bank's authority to retain branches in the merger was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u.¹¹

Accordingly, under sections 36(d) and 1831u(d)(1), the resulting national bank in an interstate merger transaction under section 1831u may retain the branches of any bank participating in the merger. These provisions directly and expressly cover branch retention in such Riegle-Neal mergers; and, unlike other parts of the McFadden Act, they do not refer to or incorporate state law in any way.¹² Therefore, NationsBank, the resulting bank in the Sun World Merger, may retain and continue to operate all of the existing banking offices of NationsBank and Sun World under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Thus, after the Sun World Merger, NationsBank will operate a new branch in Santa Teresa, New Mexico, and three branches in El Paso, Texas. At its branches in New Mexico and Texas, as well as those in North Carolina (its home state) and its other host states, NationsBank is authorized to engage in all activities permissible for national banks, including fiduciary

¹¹ Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u.

¹² Since branch retention in a Riegle-Neal merger occurs under the direct authority of sections 36(d) and 1831u(d)(1), which do not include any reference to state law, Texas' purported opt-out statute, see Tex. Fin. Code § 32.0095, and other Texas provisions that purport to bar out-of-state banks from establishing, acquiring, maintaining, or operating branches in Texas, see Texas Constitution, Art. XVI, § 16(a) (third paragraph); Tex. Probate Code § 105A(c), do not affect the authority of NationsBank to retain and operate Sun World's branches in Texas under sections 36(d) and 1831u.

activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). 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) (“OCC Bank One Trust Decision”). 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).¹³

C. Conclusion

In conclusion, the legal analysis of this merger application is similar to the analysis in prior OCC decisions. The Sun World Merger is authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u. NationsBank, as the resulting bank in the merger, may retain and operate the branches of both merging banks, including Sun World’s branches in Texas, under 12 U.S.C. §§ 36(d) & 1831u(d)(1), which preempt any Texas state laws that would prohibit or limit the exercise of these federally granted powers. Accordingly, the Sun World Merger application is legally authorized.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Oakar Amendment.

The Sun World Merger also must be reviewed for compliance with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). Sun World is a member of the Savings Association Insurance Fund (“SAIF”). NationsBank is a member of the Bank Insurance Fund (“BIF”). The merger of a SAIF member into a BIF member is a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(ii). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above, the OCC has determined the acquiring and resulting bank (NationsBank) meets all applicable capital requirements.

¹³ Several provisions of Texas law attempt to prohibit NationsBank from operating the branches in Texas or from conducting all permissible activities for a national bank at them. See Tex. Fin. Code § 32.0095(a)(2): Texas Constitution Article XVI, § 16(a) (third paragraph); Tex. Probate Code § 105A(c). These provisions directly conflict with the authority granted to NationsBank under federal law (in particular, the authority granted in sections 1831u, 36(d), and 36(f)), and therefore they clearly are preempted. See, e.g., Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. ___, 134 L.Ed.2d 237, 245-46 (1996); OCC Bank One Trust Decision (Part II-C, pages 7-11). The applicability of these Texas laws to the branches in El Paso similarly arose earlier in connection with Sun World’s main office relocation. See OCC Sun World Relocation Decision (Part II-C, pages 37-41). The Fifth Circuit upheld Sun World’s authority to have the branches in El Paso. See Ghiglieri v. Sun World, 117 F.3d at 314-16.

In addition, a BIF member which is a subsidiary of a bank holding company may not be the acquiring and resulting bank in an Oakar transaction unless the transaction would comply with the requirements for an interstate bank acquisition of section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), if the SAIF member involved in the transaction was a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F). However, review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank located in a state other than the holding company's home state. If the hypothetical bank acquisition is an in-state acquisition, then section 1842(d) would not apply to it. And so then section 1815(d)(3)(F) does not apply in reviewing the Oakar transaction. See Decision on the Applications of First Western Bank, N.A., New Castle, Pennsylvania (OCC Corporate Decision No. 97-84, September 5, 1997) (notes 4 and 9).

In the case of the Sun World Merger, the hypothetical bank acquisition in the Oakar analysis would be an in-state acquisition. Sun World is a multistate bank; it has its main office in New Mexico and three branches in Texas. Most of its assets and deposits are associated with the branches in Texas. Under the criteria used by the Federal Reserve Board in prior decisions applying section 1842(d) in the case of a multistate target bank, Sun World would be considered "located" in Texas for purposes of section 1842(d). See Decision on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, into Union Planters National Bank, Memphis, Tennessee (OCC Corporate Decision No. 96-56, September 30, 1996) (pages 13-17) (discussing prior Board analyses). NationsBank Corporation generally is a North Carolina holding company for purposes of section 1842(d). However, for purposes of acquiring additional banks located in Texas, it has the status of a Texas holding company. It has this status because, in 1988, it acquired a bank in Texas under 12 U.S.C. § 1823(f) (authorizing assisted emergency interstate acquisitions). After that acquisition, it is authorized to "acquire any other insured bank and establish branches in such State [Texas] to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches." 12 U.S.C. § 1823(f)(4)(D)(I). See also *Statement by the Board of Governors of the Federal Reserve System Regarding the Application by NCNB Corporation to Acquire C&S/Sovran Corporation*, 78 Fed. Res. Bull. 141, 142 n.8 (1992) (noting special status under section 1842(d) with respect to Texas because of section 1823(f)).

Accordingly, the hypothetical Oakar acquisition in which NationsBank Corporation were applying to acquire a state bank in the same position as Sun World would be considered an in-state acquisition under the Bank Holding Company Act, since a Texas holding company would be acquiring a Texas bank. And so it would not be subject to section 1842(d). Consequently, the Sun World Merger is not considered to be a transaction subject to section 1815(d)(3)(F). Therefore, approval of the Sun World Merger is consistent with the Oakar Amendment.¹⁴

¹⁴ Moreover, even if section 1815(d)(3)(F) did apply, this transaction would be consistent with it. If Sun World were considered "located" in New Mexico for section 1842(d) purposes, or if NationsBank Corporation were considered to be a North Carolina holding company with respect to the hypothetical acquisition, the Oakar Amendment would be satisfied. These hypothetical situations would involve an interstate acquisition (a North Carolina holding company

B. The Bank Merger Act.

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

1. Competitive analysis.

Since both banks are already owned by the same bank holding company, the merger will have no anticompetitive effects.

2. Financial and managerial resources.

The financial and managerial resources of both banks are presently satisfactory. NationsBank expects to achieve efficiencies by operating the offices of Sun World as branches rather than a separate corporate entity. The geographic diversification of its operations will also strengthen the combined bank. The addition of Sun World's offices and operations to NationsBank will not materially affect NationsBank's financial and managerial resources. 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 application.¹⁵

3. Convenience and needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. NationsBank will continue to serve the same areas in North Carolina and its other states,

acquiring either a Texas bank or a New Mexico bank). In either case, the transaction would comply with the requirements of section 1842(d) (*i.e.*, NationsBank Corporation could acquire a state bank in either Texas or New Mexico). The age requirements would be met since Sun World is more than five years old. The deposit concentration limits would be met since the total amount of deposits in NationsBank Corporation's depository institution subsidiaries (including Sun World) is below the applicable national and statewide concentration limits. The community reinvestment compliance factor would be met. *See* Part III-C below. Finally, the condition of the bank holding company, including its capital position and management, is consistent with approval.

¹⁵ The OCC has carefully considered letters received by Inner City Press/Community on the Move ("ICP") relating to the managerial factor. ICP cited a number of concerns that they maintained should reflect adversely on NationsBank's managerial resources, including an administrative complaint filed by the Department of Labor alleging that NationsBank engaged in employment discrimination in Charlotte, North Carolina. The OCC notes that the Department of Labor complaint has not resulted in any adjudication of wrongdoing by NationsBank. After reviewing examination and other supervisory information relating to NationsBank's managerial resources, and in light of the fact that the proposed transaction represents a corporate reorganization, the OCC has concluded that the managerial concerns raised by ICP do not warrant denial, conditional approval, or delay of this application.

and it will add Sun World's offices in New Mexico and Texas. The proposed merger will result in an expansion and enhancement of banking services in the market served by Sun World because of the broader array of products and services offered by NationsBank and the geographic scope of NationsBank's branch and automated teller networks. Upon completion of the merger, customers of Sun World will have available to them a significantly greater number of branches at which to bank. 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. The merger will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, will provide a more substantial capital cushion for unexpected losses as well as provide business customers of Sun World with a higher lending limit.

No branch closings are expected in connection with this merger. However, as part of its ongoing business plans, NationsBank and NBC continually evaluate its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such later closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Sun World Merger 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. § 2903. See also 12 C.F.R. § 25.29. At the most recently completed CRA examinations of the banks, each received an "Outstanding" rating (NationsBank in September 1995 and Sun World prior to its conversion to a national bank in January 1996).

No comments relating to CRA performance were received by the OCC directed at this application. However, the OCC received letters from a Bronx, New York, community group, Inner City Press/Community on the Move ("ICP"), which related primarily to an application for NBC's proposed acquisition of another company which had been filed with the Federal Reserve. In addition to issues specific to that transaction, ICP raised numerous issues relating to NationsBank's CRA and fair lending record (as well as the organization's managerial resources, discussed previously).¹⁶

ICP expressed concern with the disparities in loan denial rates for White and minority credit applicants by various NBC banks and their affiliates, and NationsBank's marketing to protected classes. ICP also raised concerns with two subsidiaries of NBC, NationsBanc Mortgage

¹⁶ The Federal Reserve Board ("FRB") approved that application on December 10, 1997.

Corporation (“NBMC”) and NationsCredit Consumer Corporation (“NationsCredit”). NBMC is NBC’s largest mortgage lender and NationsCredit is NBC’s finance company subsidiary. ICP also criticized the fair lending record of these entities based on their relative market shares of loans to White and minority borrowers. Additionally, ICP expressed concerns regarding the process of referring applicants between NationsCredit and NBC banks, and referral fee policies; and NBC’s practices responding to compliance complaints. ICP also commented on NationsBank’s level of lending to low- and moderate-income (“LMI”) borrowers, lending to upgrade properties, and affordable housing activities.

In order to appropriately assess these concerns, as part of the review of this merger proposal, OCC examiners investigated the relevant issues raised by ICP. Examiners reviewed prior examination reports and more recent bank records in connection with a regularly-scheduled fair lending examination of NationsBank currently in process.

With respect to loan denial rate disparities by NBC banks and affiliates, for example, ICP alleged that data reported under HMDA for 1996, including disparities in denial ratios for White and minority credit applicants, level of lending to minority borrowers, and relative market shares of loans to White and minority borrowers evidenced that these entities engage in racial discrimination in home mortgage lending. While the OCC found that the data ICP submitted appeared to represent accurately the reported HMDA data of NBC subsidiaries,¹⁷ the disparities and market share discrepancies do not by themselves demonstrate illegal discrimination. These data are useful for monitoring purposes and tailoring examination activities and, accordingly, these data were used by OCC examiners in their review of ICP’s comments and in connection with the ongoing examination.¹⁸ Examiners have found that, overall, NationsBank had instituted effective measures to monitor its compliance with fair lending laws and had developed and implemented strong, commendable processes to help ensure the fair treatment of all applicants. These processes included enhanced training, community involvement, independent testing, and statistical modeling. In connection with the current examination to date, we determined that the bank is following comparable procedures to those it followed in 1995 and has comparable approval and denial ratios.

ICP expressed concern that NationsBank disproportionately excluded protected classes from its marketing. We reviewed the marketing efforts of all NBC subsidiaries that the OCC supervises through the CRA examination process. We found that the banks market their credit products throughout their communities, including in low- and moderate-income areas. In addition, NBC banks’ CRA assessment areas were found not to arbitrarily exclude LMI tracts.

With respect to allegations concerning NationsCredit, we determined that NationsCredit is a wholly-owned subsidiary of NBC, is not an insured depository institution, and is not subject

¹⁷ The OCC notes that in some markets, including Brevard County, FL, NationsBank had a significantly higher market share of loans in LMI and minority areas than it did overall.

¹⁸ In the prior examination of NationsBank in 1995, when NationsBank had approval and denial ratios comparable to those in subsequent years, our examiners reviewed its lending policies and procedures, reviewed actual lending data, and concluded that the bank had not violated fair lending laws.

to examination under the CRA or supervision by the OCC. In a recent order of December 10, 1997, the FRB stated that it would not conduct a special on-site examination of NBC's nonbank subsidiaries for fair lending compliance at the present time, noting that the primary authority for enforcement of the fair lending laws for nonbanking subsidiaries of bank holding companies is the Federal Trade Commission and the Department of Housing and Urban Development. Accordingly, while the allegations pertaining to NationsCredit that do not involve NBC's banks were not within the scope of OCC's consideration of the merger, we have forwarded a copy of ICP's submissions to the FTC and HUD for appropriate handling.

With respect to the referral policies and fees involving NationsCredit and NBC banks, ICP expressed various concerns, including that the bank's incentive programs foster unfair practices. Our examiners found that the referral incentive program has been eliminated for referrals from NBC banks to NationsCredit. Additionally, a program for referrals from NationsCredit to the banks has not yet been implemented. Examiners found no violations of law or regulation in connection with these matters.

OCC also investigated the issues raised by ICP regarding the toll-free phone number for fair lending complaints, including concerns that the OCC will have difficulty scrutinizing the bank's performance. OCC examiners have reviewed aspects of this program since its introduction in 1994, and will continue such reviews. NationsBank has taken steps to centralize the monitoring of complaints where possible to help ensure consistent and fair treatment in lending practices. The toll-free number is one feature of NationsBank's overall internal complaint program. Examinations of this activity have found no evidence of discriminatory or other illegal practices, and have afforded the OCC a full opportunity to review NationsBank's operation of this program.

ICP also raised questions regarding NationsBank's affordable housing efforts. OCC examiners determined that the bank works closely with its mortgage subsidiary, NBMC, to address community credit needs for affordable mortgage loans. The organization's credit products include loans with flexible underwriting criteria and low application fees. The bank also participates to a significant extent in loans and loan pools on the local, state, and national levels to promote affordable rental and owner-occupied housing for LMI consumers.

ICP also raised specific concerns relating to NationsBank's level of lending in LMI areas, and housing rehabilitation loans, in Brevard County, Florida. With respect to the bank's level of lending in LMI areas, examiners found in 1995 that NationsBank had established reasonable community delineations in Florida which did not arbitrarily exclude any LMI areas. Additionally, examiners determined that NationsBank had a reasonable geographic distribution of credit throughout its communities in Florida; that the bank's overall lending activity and credit distribution effectively reached LMI individuals and geographies based on available data reviewed by examiners; and that the bank effectively identified potentially underserved areas and targeted such areas for priority attention and additional resources. OCC examiners also have reviewed the bank's 1996 HMDA data for the Melbourne MSA (which encompasses Brevard County) and found that the bank had a significantly higher market share in LMI areas than it did overall in this MSA.

With respect to rehabilitation loans in Brevard County, the OCC notes, as an initial matter, that the CRA does not require a bank to offer any particular type of credit product. OCC examiners found that NationsBank does not separately report housing rehabilitation loans, and thus, the bank cannot provide specific information on which of its housing-related activities are for rehabilitation purposes. HMDA data, however, indicate that the bank does offer and make home improvement loans in the Melbourne MSA. Moreover, examiners noted that the bank does make rehabilitation loans and investments in conjunction with some of its community development initiatives in Florida, such as the First Housing Development Corporation, a loan consortium that rehabilitates and constructs new LMI multifamily housing throughout the state.

In summary, our investigation and analysis of the issues raised did not find grounds that would serve as a basis for denial or conditioning the approval of the Merger Application. If our regularly scheduled fair lending examination currently in progress identifies other information or matters which require further action, the OCC will respond to those concerns in the normal course of its examination and supervision of the bank, as well as take information developed from the examination into account in subsequent CRA-covered applications filed by the bank.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. NationsBank will continue its current CRA programs and policies in North Carolina and its other states. After the merger occurs, Sun World's offices in New Mexico and Texas will remain open as branches of NationsBank. NationsBank will carry forward the same CRA programs and policies and assessment areas that it has today, and will add Sun World's offices to them. 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 NationsBank and Sun World have today as separate banks. The merger and operation of interstate branches do not alter the resulting bank's obligation under the CRA to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed Sun World 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 Sun World Merger is authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), that NationsBank (as the resulting bank) is authorized to retain and operate the offices of the banks, including the branches in El Paso, under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the merger meets the other statutory criteria for approval. Accordingly, the Sun World Merger application is hereby approved.

_____/s/_____

Julie L. Williams
Chief Counsel

_____**01-15-98**_____

Date

Application Control Number: 97-ML-02-0039