Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #99-34
November 1999

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO CONVERT BANK OF AMERICA FSB, SALT LAKE CITY, UTAH, INTO BANK OF AMERICA UTAH, NATIONAL ASSOCIATION, SALT LAKE CITY, UTAH, AND THEREUPON TO MERGE WITH AND INTO BANK OF AMERICA, NATIONAL ASSOCIATION, CHARLOTTE, NORTH CAROLINA

October 1, 1999

I. INTRODUCTION

These applications are part of a multi-step transaction by which Bank of America, National Association, Charlotte, North Carolina, ("BANA") will combine with its affiliate, Bank of America, FSB, Salt Lake City, Utah ("Utah FSB"). Both BANA and Utah FSB are subsidiaries of Bank of America Corporation ("BA Corp"), a registered bank holding company.[1] The home office of Utah FSB is or will be located in Salt Lake City, Utah.[2]

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[1] Utah FSB is a direct subsidiary of BA Corp. As of June 30, 1999, Utah FSB has assets of approximately $29.6 billion and deposits of approximately $745 million. BANA is a direct subsidiary of NB Holdings, a wholly-owned subsidiary of BA Corp with branches in 22 states and the District of Columbia. For a complete listing of BANA's states of operation, see Decision on the Application to Merge Bank of America, National Trust and Savings Association, San Francisco, California, and NationsBank, National Association, Charlotte, North Carolina (OCC CRA Decision No. 94, May 20, 1999).

[2] At the time of the filing of the applications, the home office of the Utah FSB was in Portland, Oregon; however, the applicant has advised the OCC that between the time of the filing of the application and the consummation of any of the proposed transactions, the home office will be relocated to Salt Lake City in accordance with the rules and regulations of the Office of Thrift Supervision (OTS). On August 17, 1999, the bank notified the OTS of the proposed relocation of its home office and closing of all of its remaining branches, including the Portland office. On September 28, 1999, the OTS approved the proposed relocation. In addition, the Utah Department of Financial Institutions has indicated that it has no objection to these transactions. This Decision Statement is based on the representation that, at the time of consummation of any of the transactions, the home office of the bank will be located in Salt Lake City and that the bank will not have any branch offices.

The remaining steps, taken by Utah FSB and BANA, are the subject of these applications. On August 17, 1999, BANA and Utah FSB filed applications with the Office of the Comptroller of the Currency ("OCC") for approval for the following transactions: (1) Utah FSB, after changing its home office to Utah, will convert from a federal savings bank in stock form into a national banking association, Bank of America Utah, National Association ("Utah Bank") under 12 C.F.R. § 5.24 ("the Conversion Application"); and (2) Utah Bank will merge with and into BANA under BANA's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application") (collectively, "Applications"). In the Merger Application, OCC approval is also requested for BANA, as the resulting bank, to retain Utah Bank's main office as a branch of BANA after the merger, and to retain BANA's main office and branches after the merger, under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

II. LEGAL AUTHORITY

A. Authority for the conversion

Regulations of both the OCC and the OTS permit the direct conversion of a Federal savings bank to a national bank. See 12 C.F.R. § 5.24 (1997) (providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing the application); 12 C.F.R. § 552.2-7 (providing that a Federal stock association may convert to a national charter after filing a notification or application with the OTS).[3] See also Decision of the Office of the Comptroller of the Currency to Approve Applications by TCF Financial Corp., Minneapolis, Minnesota, to Convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin and to Establish De Novo Banks in Ohio and Colorado and to Engage in Certain Related Transactions, pp. 4-5 (OCC Corporate Decision 97-13, February 24, 1997).

In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. See 12 C.F.R. § 5.24(d). A review of the application demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. Id. at §§ 5.13(b) and 5.24(d). A review of the record discloses

[3] Approval of this conversion by the OCC, as well as the other steps of the transaction, is based on the understanding that the Utah Bank, prior to consummation, complies fully with all OTS procedures and receives any required approvals. The OTS notified the OCC on September 17, 1999, that the OTS did not object to this conversion.

nothing that indicates that these factors provide a basis for denial of this application.[4] In addition, as will be discussed, the Conversion Application must be reviewed in light of CRA considerations, 12 C.F.R. § 25.29(a)(4), which will be discussed in Part III-B of this Decision Statement.

B. The Merger Application is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

1. The proposed merger may be approved under section 1831u(a).

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).[5] 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 proposed Merger, the home states of the banks are North Carolina and Utah; neither state opted out. Accordingly, this application may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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[4] Both prior to and following the conversion, the Utah Bank would remain insured under the Bank Insurance Fund.

[5] 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., 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). 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).

2. The Merger Application meets the requirements in sections 1831u(a) & 1831u(b).

An application by a national bank 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 Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

a. Compliance with state age laws.

The Merger 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).

In the Merger Application, BANA is acquiring by merger Utah Bank in the host state of Utah. Utah requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Utah bank must have been in existence for at least five years. See Utah Code Ann. § 7-1-703(7)(a)(i). However, this restriction does not apply to a merger between affiliate depository institutions. See Utah Code Ann. § 7-1-703(7)(d). BANA and Utah Bank are affiliates, and so the age restriction does not apply. Thus, the Merger Application satisfies the Riegle-Neal Act requirement of compliance with state age laws.

b. Compliance with state filing requirements.

The proposed merger meets the applicable filing requirements of the host state of Utah. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).[6]

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[6] 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

Copies of the OCC merger applications were sent to the Utah Department of Financial Institutions.

The Utah interstate bank merger statute provides that "an out-of-state depository institution that operates a branch in this state shall maintain a certificate of authority to transact business in this state and comply with all other applicable corporate filing requirements under Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the same extent as any nondepository corporation transacting business in this state." Utah Code Ann. § 7-1-702(12). The bank also must notify the state banking department of its certificate of authority. BANA provided a copy of the merger application to the Utah state bank supervisor and has committed to file for a certificate of authority to transact business in Utah.[7] Thus, the Merger Application satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

c. Riegle-Neal Act deposit concentration limits.

The proposed interstate merger transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). BANA and Utah Bank are affiliates; thus section 1831u(b)(2) is not applicable to this Merger.

d. Riegle-Neal Act community reinvestment compliance provisions.

The proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply

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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) ("OCC Wells Fargo Decision") (at pages 4-5, 12-14 & note 11).

[7] The Utah state bank supervisor has indicated to BANA that it may file for its certificate of authority upon relocation of Utah FSB to Salt Lake City. In addition, the Utah interstate branching statute also requires the approval of the Utah Commissioner of Financial Institutions prior to any merger with a depository institution or depository institution holding company "subject to the jurisdiction of the department [of Financial Institutions]." Utah Code Ann. § 7-1-703(1)(h). The statute does not define "subject to the jurisdiction of the department." If it were asserted to include national banks, then this approval requirement would exceed the filing requirement permitted under section 1831u(b)(1), and therefore would not be applicable to national banks. Although not clear, it appears the provision is intended for mergers with Utah state-chartered banks.

to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this merger application, BANA and Utah Bank are affiliates, and are also not otherwise obtaining a branch or bank affiliate in any state in which they did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to this merger application. However, the CRA itself is applicable, as discussed below, see Part III-B.

e. Riegle-Neal Act capital and management skills requirements.

The proposed interstate merger transaction satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the applications were filed, BANA and Utah Bank 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, BANA will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the Merger Application is legally permissible under section 1831u.

B. Following Merger Application, BANA may Retain Its Existing Main Office and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1) .

Finally, in the Merger Application BANA has requested that, upon completion of the merger, BANA (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Charlotte, North Carolina, 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 of Utah Bank in Salt Lake City, Utah.

In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

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

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)).

Therefore, BANA, the resulting bank in this interstate merger transaction, may retain its main office in Charlotte, North Carolina, after the Merger under section 1831u(d)(1) (emphasized language quoted above). Similarly, BANA may retain and continue to operate as branches both BANA's branches and Utah Bank's main office under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Moreover, BANA will succeed to the fiduciary appointments of Utah Bank 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).[8] See also Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust

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[8] Under section 4 of the National Bank Consolidation and Merger Act, 12 U.S.C. § 215a-1, "[A] national bank may engage in a consolidation or merger *under this Act* [*i.e.*, the National Bank Consolidation and Merger Act] with an out-of-State bank if the consolidation or merger is approved pursuant to section 44 of the Federal Deposit Insurance Act." 12 U.S.C. § 215a-1 (emphasis added). Sections 2 and 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. §§ 215 & 215a, authorize consolidations (section 215(a)) and mergers (section 215a(a)) between a national bank and another bank located in the same state. Sections 2 and 3 also contain the procedures, requirements, conditions, and rules for the status of the resulting institution that govern all consolidations and mergers that occur under the Act. In particular, section 2(e) of the Act, 12 U.S.C. § 215a(e) provides that, in a merger under the Act, the resulting national bank succeeds to all of the rights, franchises, and interests, including fiduciary appointments, of the merging banks, upon the merger and without the need for any further action. Since a merger under section 215a-1 is a merger under the National Bank Consolidation and Merger Act, these provisions, including section 215a(e), apply to it. The phrase "under this Act" in section 215a-1 clearly makes mergers under section 215a-1 subject to these provisions of section 215a. If they were not intended to be applicable, section 215a-1 would simply have authorized mergers that met the requirements of section 44, without any reference to the rest of the National Bank Consolidation and Merger Act. See also 12 C.F.R. § 5.33(h). Thus, this Merger is governed, inter alia, by section 215a(e). Accordingly, BANA automatically succeeds to all such rights, franchises, and interests, including fiduciary appointments, of Utah Bank by operation of federal law, any state law to the contrary notwithstanding.

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); OCC Interpretive Letter No. 695 (December 8, 1995) (same). 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).

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 addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis.

Since BANA and Utah Bank are already owned by the same bank holding company, this merger will have no anticompetitive effects.

2. Financial and managerial resources.

The financial and managerial resources of each of the merging banks are presently satisfactory. The applicants expect to achieve administrative efficiencies by operating the office of the Utah Bank as a branch rather than as separate corporate entities in different states. 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.

3. Convenience and Needs.

BANA, the resulting bank at the end of these applications, will help to meet the convenience and needs of the communities to be served. BANA will continue to serve the same areas it currently serves in the United States; and it will add the community to be served by the merger with Utah Bank. There will be no reductions in the products or services as a result of the merger. In addition, customers of the Utah FSB will be able to access the full range of BANA's products and services not previously offered at that institution.[9] The combined bank will continue to offer a full line of banking products and

[9] BANA's associates in the Salt Lake City branch will be able to refer customers to the appropriate person within BANA if the customer requests products or services not directly supported by the Salt Lake City branch.

services. The resulting bank will have the same commitment to helping meet the credit needs of the communities served by BANA and Utah Bank as separate banks.

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger Application.

B. The Community Reinvestment Act

The CRA requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including mergers. See 12 U.S.C. § 2903. BANA and Utah Bank both have outstanding ratings with respect to CRA performance. The OCC has no basis to question the banks' continuing performance in complying with the CRA.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. BANA will continue its current CRA programs and policies in all the states where it has branches. After the merger transaction, the merging bank's main office will remain open as a branch of BANA. 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 BANA and Utah Bank have as separate banks. As stated above, customers of the Utah FSB will be able to access a range of BANA's products and services not previously offered at that institution.[10] The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves.

Accordingly, 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 made by the applicants, we find that the Conversion and Merger Applications are legally authorized, and that in the Merger Application, as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), the resulting bank is authorized to retain and operate the offices of the merging banks under 12 U.S.C. §§ 36(d) &

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[10] Upon consummation of the merger, BANA's business strategy will be to market directly only limited products and services from its Utah office, and to refer customers requesting additional services to other BANA offices. The OCC will evaluate the CRA performance of BANA in Utah by applying the lending, investment, and service tests set forth in 12 C.F.R. 25.22, 25.23, and 25.24. BANA's business strategy will be only one of the factors the OCC will consider in determining BANA's CRA performance in Utah. If BANA requests, the OCC also will consider the activities of the bank's affiliates when evaluating BANA's CRA performance.

1831u(d)(1), and that the merger meets the other statutory criteria for approval.[11] Accordingly, these Applications are hereby approved.

/s/ 10-01-99

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

Application Control Numbers 1999-ML-01-0004 and 1999-ML-02-0026

[11] In addition, we note, because a portion of the deposits of Utah FSB, though a member of the Bank Insurance Fund, are insured by the Savings Association Insurance Fund (SAIF) as a result of prior transactions, this transaction satisfies the requirements of 12 U.S.C. § 1815(d)(3). The resulting institution will meet all applicable capital requirements upon consummation of the transaction, 12 U.S.C. § 1815(d)(3)(E)(iii), and the requirements of paragraph (d)(3)(F) are inapplicable since no SAIF member is involved in the transaction.