



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #99-11
May 1999**

**DECISION OF THE COMPTROLLER OF THE CURRENCY
TO APPROVE AN APPLICATION
BY LOCAL FINANCIAL CORPORATION
TO CHARTER LOCAL OKLAHOMA BANK, NATIONAL ASSOCIATION,
OKLAHOMA CITY, OKLAHOMA,
WHICH WILL THEN ACQUIRE THROUGH MERGER
LOCAL OKLAHOMA BANK, F.S.B., OKLAHOMA CITY, OKLAHOMA**

April 29, 1999

I. Introduction

On March 17, 1999, Local Financial Corporation, a thrift holding company (the thrift holding company), filed an application with the Office of the Comptroller of the Currency to form a new national bank in Oklahoma, Local Oklahoma Bank, National Association (the national bank). The proposed national bank would have its main office in Oklahoma City, Oklahoma. The thrift holding company also proposes to merge its subsidiary federal savings bank, Local Oklahoma Bank, F.S.B. (the federal savings bank),¹ into the national bank, the surviving institution. Following consummation of the merger, the national bank would retain and operate as branches the branches of the federal savings bank.

As of December 31, 1998, the federal savings bank had assets of approximately \$2.1 billion and deposits of approximately \$1.7 billion. In addition to its home office, it has 48 branches and has approval from the Office of Thrift Supervision (OTS) to operate two additional branches and has

¹ The FSB recently changed its name from Local Federal Bank, F.S.B.

complied with OTS procedures to relocate one of the existing branches.² The applicant has represented that the two new branches will open in temporary facilities at their approved locations, and that the third branch will be relocated, prior to the consummation of this transaction. All of the branches are in Oklahoma. The federal savings bank is a member of the Savings Association Insurance Fund (SAIF) and following its merger into the new national bank, the resulting national bank will remain a SAIF member.³

The OCC has received no protests or comments concerning the proposed transaction.⁴

II. Summary

For the following reasons, subject to other applicable regulatory actions, the OCC approves:

- (1) the chartering of the new national bank;
- (2) the acquisition by the new national bank of the federal savings bank; and
- (3) the retention and operation by the new national bank of each of the branches of the federal savings bank including the two branches to be opened prior to consummation of this transaction.

² Letter by Jearlene Miller, Applications Manager, OTS, Midwest Region (June 26, 1998) (branch in Afton, Oklahoma); Letter by Melissa A. Wagner, Applications Analyst, OTS, Midwest Region (January 20, 1998) and Letter by Ms. Miller (April 21, 1999) (branch in Edmond, Oklahoma); Letter to Ms. Wagner by Christopher C. Turner, Executive Vice President, Local Federal Bank F.S.B. (May 6, 1998) (notice to OTS under 12 C.F.R. 545.95(c) regarding relocation of branch in Purcell, Oklahoma).

³ The Federal Deposit Insurance Corporation (FDIC) advised the applicant on March 25, 1999, that no insurance application was necessary to obtain deposit insurance for the new national bank because it would not operate independently but would rather facilitate the transformation of the federal savings bank to a national bank charter. Letter by Keith W. Seibold, Regional Director, FDIC, Dallas Regional Office, Division of Supervision, to Michael R. Ford (March 25, 1999) (responding to an inquiry from the applicant requesting deposit insurance for the new national bank so that, following the transaction, the resulting national bank would continue to be insured as a member of the SAIF).

⁴ In addition to the response from the FDIC, discussed above, the holding company also has received approval from the Federal Reserve Bank of Kansas City to become a bank holding company as a result of the proposed transaction. Letter by John E. Yorke, Senior Vice President, Federal Reserve Bank of Kansas City, to Jan A. Norton, President, Local Financial Corporation (March 25, 1999). Finally, the applicant has received from the OTS a letter acknowledging the applicant's notice to the OTS under 12 C.F.R. 563.22(b)(1)(ii) and 563.22(h)(1) of the proposed transformation of the federal savings bank to a national bank. Letter by Bruce E. Benson, Regional Deputy Director, OTS Midwest Region, to Board of Directors, Local Federal Bank, FSB (March 4, 1999). Though this notice was acknowledged by the OTS before the precise method for obtaining a national bank charter for the federal savings bank was identified, the applicant has represented that it has kept the OTS informed and that no additional filings were required.

III. Analysis

A. Chartering of the new national bank

As stated, the thrift holding company has proposed to charter a new national bank in Oklahoma City. The proposed national bank is an interim bank. The National Bank Act authorizes the chartering of national banks.⁵ OCC regulations set out special requirements and procedures for chartering an interim national bank -- that is, a national bank that does not operate independently but exists solely as a vehicle formed for a “business combination.”⁶ The transaction for which the national bank is being established (the merger transaction) constitutes a business combination.⁷ The OCC has conducted a review of this application in light of the requirements of section 5.33 with respect to interim banks,⁸ as well as those in 12 U.S.C. 21, 26 and 27 for chartering a new bank. The OCC concludes that these requirements are satisfied. Accordingly, the formation of the national bank is authorized.⁹

B. Merger of the federal savings bank into the national bank

The national bank may merge with the federal savings bank under the authority of 12 U.S.C. 215c. Section 215c permits a national bank to acquire another insured depository institution. Section 215c(a) provides:

(a) Subject to section 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] of this title and all other applicable

⁵ *E.g.*, 12 U.S.C. 21, 26 and 27.

⁶ 12 C.F.R. 5.33(d)(4). A business combination is defined as “any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank” 12 C.F.R. 5.33(d)(1). “Depository institution” means a bank or savings association. 12 C.F.R. 5.4(f).

⁷ *Cf.* Decision of the Comptroller of the Currency to Approve an Application by First Richmond, S.B., Richmond, Indiana, p. 2 (Corporate Decision 97-112, December 30, 1997) (merger of mutual savings bank into interim national bank).

⁸ This provision governs merger transactions. Because interim banks are always formed in connection with mergers, the special rules regarding organization of interim banks were transferred to this section in 1996 from sections 5.20 and 5.21 which specifically pertain to the organization of banks. 61 Fed. Reg. 60,342, 60,348 (November 27, 1996) (preamble accompanying final rule changes to 12 C.F.R. Part 5).

⁹ The holding company received preliminary approval to organize an interim national bank on March 17, 1999. See 12 C.F.R. 5.33(e)(4)(ii).

laws, any national bank may acquire or be acquired by any insured depository institution.¹⁰

Since the national bank may acquire any insured depository institution, the national bank may acquire the federal savings bank provided that the transaction meets the requirements of the Oakar Amendment and the Bank Merger Act, as applicable, and other applicable laws as discussed below in Part IV of this decision.

C. Continued operation by the national bank of the branches of the federal savings bank following the merger

Following the consummation of the merger, the national bank seeks to operate as branches the branches of the federal savings bank.

Title 12 U.S.C. 36, governing branching by national banks, does not expressly address the retention of branches of a federal savings bank following its merger into a national bank. Section 36(b)(2), relating to branch retention following mergers, specifically addresses mergers only involving a state bank. Nevertheless, 12 U.S.C. 36(c) would permit a national bank that acquires a federal savings bank through merger to operate the branches of the federal savings bank if state statutory law permitted a state bank that acquired the federal savings bank to operate the branches. This could occur if state law permitted state banks to establish a new branch at the site or if state law permitted a state bank, as part of the acquisition of the federal savings bank, to acquire and operate a branch at the site.¹¹

¹⁰ 12 U.S.C. 215c(a) (emphasis added). For purposes of this section, the term 'acquire' means to acquire through a merger, consolidation or acquisition of assets or assumption of liabilities, provided that, following the acquisition, the acquirer may not own shares of the acquired insured depository institution. *Id.* at 215c(d). Provisions parallel to section 215a(c) and (d) are codified in the Home Owners' Loan Act authorizing federal savings associations to combine with any insured depository institution. 12 U.S.C. 1467a(s)(1), (3).

¹¹ *E.g.* Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A. and Related Purchase and Assumption Applications, p.3 n. 3 (Conditional Approval 69, November 12, 1992) (national bank acquiring Federal savings association can continue to operate its branches under 12 U.S.C. 36(c) if state bank following such an acquisition could continue to operate its branches); Decision of the Office of the Comptroller of the Currency on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, With and Into Union Planters National Bank, Memphis, Tennessee and Operate Branches of Leader Federal Bank for Savings as Branches of Union Planters National Bank, pp. 5-6 (OCC Corporate Decision 96-56, September 30, 1996). *Cf.* Decision of the Comptroller of the Currency to Approve Applications by TCF Financial Corp., Minneapolis, Minnesota, to Convert Federal Savings Banks, pp. 6-12 (Corporate Decision 97-13, February 24, 1997) (operation of branches following conversion of federal savings association to a national bank).

In this regard, it is important to note that section 36(c) is not limited to the establishment of new branches but also applies, for instance, to branches obtained through acquisition.¹² Moreover, the Supreme Court has recognized that where state law restricts one method of branching but provides an alternative method of branching, for example, by restricting new branches but permitting branching by acquisition, national banks are limited to branching by the same method.¹³

Thus, we note that while Oklahoma places substantial limitations on the establishment of new branches by state banks,¹⁴ state law permits state banks to branch through acquisition. The relevant statute provides:

Subject to limitations in subsection D of this section,¹⁵ any bank may acquire and operate as branch banks at which any banking function may be performed an unlimited number of banks or savings associations or branch banks or savings association branches without restriction on location. Any such acquisition of a bank or savings association may include all of the assets and liabilities of the bank or savings association and all branches or facilities thereof which have been established prior to the date of the acquisition as determined by the Board or the Comptroller of the Currency.¹⁶

The state statute also imposes age restrictions on the target institution:

E. Authorized acquisitions. Subject to [deposit concentration limits], a bank or savings association shall not be acquired by a

¹² *State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

¹³ *First National Bank of Logan v. Walker Bank and Trust Co.*, 385 U.S. 252 (1966).

¹⁴ For instance, state banks may establish no more than two new branches in the city in which they are located or within 25 miles if in a city or town in which no other state or national bank is located. Okla. Stat. Ann. tit. 6, 501.1.A. (West 1996 & Supp. 1998) State banks also may establish up to three “detached facilities” (which are “branches” for purposes of section 36) subject to requirements relating to their proximity to the bank’s main office. *Id.* at 415.

¹⁵ Subsection D prohibits banks that control more than 15 percent of deposits in insured institutions in Oklahoma to acquire any other bank or savings association in the state. In the present case, this deposit limitation is inapplicable since the national bank, at the time of acquisition, would control no deposits in the state. We note, too, the federal savings bank, as stated, controls about \$1.7 billion in deposits as of December 31, 1998. In contrast, total Oklahoma deposits controlled by insured institutions in Oklahoma well exceed \$30 billion.

¹⁶ *Id.* at 501.1.C. “Board” refers to the state banking board. *Id.* at 102.6. “Savings association” includes a federal savings bank with its main office in Oklahoma. *Id.* at 102.59. “Bank” includes “any bank chartered by the office of the Comptroller of the Currency with its main office in this state.” *Id.* at 102.3.

bank and operated as a branch bank until the bank or savings association to be acquired has been in existence and continuous operation for a period of five years.¹⁷

The federal savings bank meets this aging requirement tracing its origins to 1908 having been founded as a building and loan association. It has been a federal savings association for more than 60 years. Consequently, the age limitations are met and following consummation of the merger, the national bank may operate the branches of the federal savings bank as branches.¹⁸

IV. ADDITIONAL STATUTORY REVIEWS

Title 12 U.S.C. 215c requires that a merger approved under this provision be subject to the Bank Merger Act (the BMA),¹⁹ the Oakar Amendment²⁰ and all other applicable laws. Thus, it is necessary to analyze the permissibility of the transactions under standards set forth in the BMA, the Oakar Amendment, and the Community Reinvestment Act,²¹ and to consider the impact of other laws pertaining to the merger authority off national banks.

A. The Bank Merger Act

The BMA requires the OCC's approval for any merger between insured depository institutions where the resulting institution will be a national bank. Under the Act, the OCC generally may

¹⁷ *Id.* at 501.1.E. This provision goes on to state that after January 1, 1997, a branch bank or savings association branch shall not be acquired by a bank and operated as a branch bank until the branch to be acquired has been in existence and continuous operation for a period of five years. It is clear that this provision applies only where a bank branch, as opposed to the entire bank, is being acquired. Were it not so, the provision in section 501.1.C. that where a bank is acquired, the acquisition may include *all* of its branches that were established prior to the date of acquisition as determined by the Board or the Comptroller of the Currency would make no sense. We note that the Oklahoma Supreme Court has consistently held that every provision of a statute is presumed to have been intended for some useful purpose and should be given effect. *E.g. Curtis v. Board of Education of Sayre Public Schools*, 914 P.2d 656, 659 (Okla. 1995).

¹⁸ We again note that the applicant has represented that, prior to consummation of this transaction, temporary facilities at the two new branch sites and at the new site of the relocating branch, each of which has been approved in accordance with OTS procedures but which were not open at the time this application was filed, will be open to engage in branching functions. In the past, the OCC has taken the position that approved but unopened branches that are acquired by a national bank in Oklahoma as a result of a merger with a federal savings bank under section 501.1.C.1. are considered to be established for purposes of that statute and, thus, may be operated as branches by the acquiring national bank. See Decision of the Comptroller of the Currency of the Applications of Bank IV Oklahoma, N.A., Tulsa, Oklahoma, to Relocate Two Branches (November 27, 1994) (unpublished).

¹⁹ 12 U.S.C. 1828(c).

²⁰ 12 U.S.C. 1815(d)(3).

²¹ 12 U.S.C. 2903(2), 2902(3)(A) and(E).

not approve a merger that 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 may be approved under section 1828(c).

1. Competitive analysis

Since this application results in a corporate reorganization and would not involve the reduction of any competition, the merger of the federal savings bank into the national bank would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources are presently satisfactory. The future prospects of the national bank are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. The national bank will continue to serve the same areas in Oklahoma as the federal savings bank. No branch closings are contemplated as a result of this merger. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of this application.

B. The Oakar Amendment

The Oakar Amendment imposes certain requirements on mergers involving the merger of a BIF member and a SAIF member where the deposits of the resulting bank are to insured in part by the BIF and in part by the SAIF. As discussed, the federal savings bank is a member of SAIF and, following consummation of this proposal, the resulting national bank is expected to be a member of the SAIF with all deposits insured by the SAIF. Consequently, we conclude that the Oakar Amendment is not applicable to this transaction.²²

C. The Community Reinvestment Act

²² In any event, assuming the applicability of the Oakar Amendment, we note that because the resulting national bank will meet all applicable capital requirements, the Oakar Amendment requirements are satisfied. 12 U.S.C. 1815(d)(3)(E)(iii). The requirements concerning Oakar transactions undertaken on an interstate basis are inapplicable to this transaction because the holding company and the parties to the merger are each located in Oklahoma. 12 U.S.C. 1815(d)(3)(F).

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.²³ The federal savings bank has a rating of satisfactory with respect to CRA performance. No public comments were received by the OCC relating to the proposed transactions. Consummation of the proposal is not expected to have any adverse effect on the federal savings bank's CRA statement, policies, commitments, agreements and procedures which will be continued by the resulting national bank. The resulting national bank also will continue to serve the delineated communities of the federal savings bank.

D. Other laws

In addition, it is necessary under 12 U.S.C. 215c to ascertain that the transaction is in accordance with other laws governing national bank mergers, or to determine that those laws do not apply to this merger. A review of other statutes applying to mergers involving national banks demonstrates that these statutes -- 12 U.S.C. 215, 215a, 215a-1, and 36(d) -- are inapplicable to the transaction at issue which involves the intrastate merger of a federal savings bank into a national bank, and the continued operation of the intrastate branches of the federal savings bank.²⁴ For the above reasons, we conclude that these other laws governing national bank mergers are inapplicable to the proposed transaction and, consequently, the proposed merger between the national bank and the federal savings bank is consistent with section 215c.

V. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicant and assuming compliance with all other regulatory requirements, the establishment of the national bank and its merger with the federal savings bank are legally authorized under 12 U.S.C. 26, 27, 215c, and 1828(c). The resulting national bank is authorized to operate the branch offices of the federal savings bank under 12 U.S.C. 36(c) and applicable state law. Approval of the establishment of the new national bank and the merger also is consistent with

²³ 12 C.F.R. 2903.

²⁴ Sections 215 and 215a address combinations between national banks and with state chartered institutions. Sections 215a-1 and 36(d) involve interstate mergers and interstate branching. As previously discussed, section 36(b)(2), addressing branch retention following a merger or consolidation between a national bank and a state-chartered bank also is inapplicable to this transaction.

The determination that section 215c provides sufficient merger authority between a national bank and a depository institution that is outside the authority of section 215 or 215a is consistent with prior OCC decisions. *E.g.*, Decision of the Office of the Comptroller of the Currency on the Application to Merge Magna Bank, FSB, Des Moines, Iowa; Magna Bank, Indianola, Iowa; Magna Bank, Monticello, Iowa; Magna Bank, Oelwein, Iowa; with and into Magna Bank, National Association, Waterloo, Iowa, and subsequently to Merge Magna Bank, National Association, Waterloo, Iowa, with and into Magna Bank, National Association, Brentwood, Missouri, and to Engage in Certain Related Transactions, pp. 21-22 (OCC Corporate Decision 97-70, July 14, 1997).

CRA. Accordingly, the establishment of Local Oklahoma Bank, National Association, and its acquisition, through merger, of Local Oklahoma Bank, F.S.B., is hereby approved.

_____/s/_____

Julie L. Williams
Chief Counsel

_____04-29-99_____

Date

Application Control Number: 99-SW-02-0019