

Washington, DC 20219

Conditional Approval #406 July 2000

DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF OLD NATIONAL BANK, LAWRENCEVILLE, ILLINOIS

JUNE 22, 2000

INTRODUCTION

On March 30, 2000, an application was filed with the Office of the Comptroller of the Currency (“OCC”) for approval to merge Permanent Bank, Evansville, Indiana (“Permanent”) with and into Old National Bank, Lawrenceville, Illinois (“ONB”) under 12 U.S.C. §§ 215c, and 1828(c)(2) and consistent with section 1815(d)(3) (the Oakar Amendment). ONB has its main office in Lawrenceville, Illinois, and branch offices located in Illinois, Indiana, and Kentucky. Permanent has its main office in Evansville, Indiana, and branch offices located solely in Indiana.

As of December 31, 1999, ONB had assets of approximately \$6.6 billion and deposits of approximately \$5 billion. As of that same date, Permanent had assets of approximately \$497 million and deposits of approximately \$345 million. ONB is a wholly owned subsidiary of Old National Bancorp, Evansville, Indiana (“Old National”). Permanent is a wholly owned subsidiary of Permanent Bancorp, Evansville, Indiana (“FSB Bancorp”). ONB is a member of the Bank Insurance Fund (“BIF”). Permanent, a federally chartered savings bank, is a member of the Savings Association Insurance Fund (“SAIF”).

First, Old National will establish a merger subsidiary, Merger Corporation I to facilitate the elimination of Permanent’s immediate holding company, FSB Bancorp. Second, Permanent will merge into ONB pursuant to 12 U.S.C. §§ 215(c), 1815(d)(3), & 1828(c). Finally, FSB Bancorp will merge into Merger Corporation I (“Company Merger”).¹ These steps will occur concurrently.

¹ The Federal Reserve of St. Louis, acting on behalf of the Board of Governors of the Federal Reserve System, waived the notice requirement for the proposed transaction under section 4 of the Bank Holding Company Act.

STATUTORY AND POLICY REVIEWS

A. Oakar Amendment

The Oakar Amendment, section 1815(d)(3), permits merger transactions between BIF- and SAIF-member institutions provided that both BIF and SAIF proportionally insure the deposits of the resulting institution. *See* 12 U.S.C. § 1815(d)(3)(A) & (B). These transactions may be approved by the regulator of the acquiring institution if they are in accordance with certain capital requirements.² *See* 12 U.S.C. § 1815(d)(3)(E)(iii). Since Bank is a member of BIF and FSB is a member of SAIF, their merger must comply with the provisions of the Oakar Amendment. The OCC has determined that Bank, after the merger transaction with FSB, will meet all applicable capital requirements. Accordingly, the merger transaction complies with the provisions of the Oakar Amendment.

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for mergers between insured institutions where the resulting institution will be a national bank. Under the Act, the OCC generally may 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 reasons stated below, we find the merger involved may be approved under section 1828(c).

1. Competitive Analysis.

The OCC reviewed the impact of the proposed transaction on competition for the cluster of products and services offered by depository institutions in the areas surrounding the branches ONB is acquiring. There are two relevant geographic markets for this proposal, which are discussed below. The OCC finds that the markets are delineated in such a way as to accurately measure any adverse competitive effects from the proposed transaction and the effects of the proposed transaction, as now structured, will not result in a monopoly or be in furtherance of any combination or conspiracy to monopolize the business of banking in any part of the United States, and will not substantially lessen competition in any part of the country, or tend to create a monopoly, and will not be in restraint of trade.

³ In making this determination, the OCC carefully considered the report of the Department of Justice,

² The Oakar Amendment also imposes certain limitations on interstate transactions. *See* 12 U.S.C. §§ 1815(d)(3)(F) & 1842(d). Those limitations, however, are not applicable here since the principal office and branches of FSB, the SAIF-insured target, are all located within the home state of the acquiring bank's parent holding company.

³ In defining the geographic markets, the OCC considered the Federal Reserve Bank of St. Louis' market delineation, as well as evidence of the areas from which the involved banks derive the bulk of their deposits.

which similarly found the proposed transaction would not have a significant adverse effect on competition.⁴

a. Jasper Banking Market

This market includes Dubois County, Indiana; Carter, Harrison and Clay Townships in Spencer County, Indiana; and Clark township in Perry County, Indiana, and is the area where the Permanent's Jasper branch derives the bulk of its deposits, and where competition between ONB and Permanent's Jasper branch is direct and immediate. Within this market, ONB competes with seven other financial institutions for approximately \$1 billion in deposits. ONB is the largest depository institution with approximately twenty-eight percent of the market's total deposits. Permanent's branch is the smallest competitor in the market with approximately four percent of the deposits. While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse competitive effects would be mitigated by the presence of six other banking alternatives, and including one of the largest regional banks in the nation.

b. Evansville Banking Market

This market includes Vanderburgh, Posey and Warrick Counties, Indiana, Henderson County, Kentucky, plus portions of Gibson County, Indiana (Johnson, Barton, Union townships and the southern half of Montgomery township), and Spencer County, Indiana (Grass, Luce, Jackson and Ohio townships). This is where Permanent's Vanderburgh County and Gibson County branches derive the bulk of Permanent's deposits, and where competition between ONB and Permanent is direct and immediate. Within this market, ONB competes with thirteen other commercial banks and four thrifts for approximately \$4.5 billion in deposits. ONB is the largest depository institution with approximately thirty-seven percent of the market's total deposits. Permanent's branches rank fourth with approximately seven percent of the market's deposits. Upon consummation of the proposed transaction and excluding the deposits to be divested, ONB would remain the largest depository institution with approximately forty-three of the market's deposits. While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse competitive effects would be mitigated by the presence of a number of other banking alternatives, including three of the largest regional banks in the nation. Additionally, population growth in the Evansville metropolitan statistical area ("MSA"), mirrored by growth in deposits at depository institutions makes the market attractive for entry by other financial institutions. The recent opening of a de novo bank in March 2000 further indicates the attractiveness of the market. In addition, there are 13 credit unions operating in the Evansville market. Collectively, credit unions account for roughly 10 percent of combined bank-S&L-credit union deposits. The largest of these, Evansville Teachers' Credit Union, offers a relatively

⁴ In reaching this conclusion, the Department of Justice relied on commitments by ONB that it would divest itself of Permanent's Bellemeade Avenue and University Avenue branches. This was stipulated in the divestiture agreement between the Department of Justice, ONB and Permanent, dated June 20, 2000. ONB agreed that it would not consummate the merger until a contract with a competitively suitable purchaser as determined by the Department of Justice is signed by ONB and Permanent for the sale of the divested branches.

complete line of financial products, including business loans. Recent legislative change may indicate and increased potential for credit unions to act as competitors with banks and thrifts. On August 7, 1998, the President signed into law the Credit Union Membership Access Act ("CUMAA")⁵ The CUMAA expanded the field of membership requirements so that credit unions could accommodate new members, and promoted the creation of "multiple common-bond" credit unions.⁶ While quantitative data on the long run effects are not yet available, legislative and regulatory changes may result in an increased competitive presence from credit unions. Based on an analysis of these competitive factors, the merger application may be approved under section 1828(c).⁷

2. Financial and Managerial Resources.

The financial and managerial resources of ONB and Permanent are presently satisfactory. The future prospects of the institutions, individually and combined, are favorable. We find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and Needs.

The merger will not have an adverse impact on the convenience and needs of the communities to be served. ONB will continue to serve the same areas that it now serves. There will not be a reduction of products or services as a result of the merger. The resulting bank is expected to meet the convenience and needs of the community to be served. While ONB anticipates that some overlapping branches of the resulting institution will be closed as a result of the transaction, current ONB and Permanent customers, as customers of the resulting bank, will have a greater number of branches at which to bank. ONB represents that Permanent's customers will benefit from resulting bank's enhanced product availability such as fiduciary, insurance products and broker-dealer services, higher lending limits and more attractive deposit account terms. 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 application.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of the community, including low-and moderate-income neighborhoods, when evaluating certain applications. 12 U.S.C. § 2903;

⁵ 12 U.S.C. §§ 1751-1795.

⁶ *Id.* at 1759(b).

⁷ The Federal Reserve Bank of St. Louis, acting on behalf of the Board of Governors of the Federal Reserve System, reported that the merger could have a substantially adverse effect on competition, although it qualified its report by noting that it had not examined all the economic factors that may be relevant to the competitive effects of the proposal.

12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, the OCC evaluates performance of most large banks using the lending investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

A review of the record of this application and other information available to the OCC as a result of the its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low-and moderate-income neighborhoods is less than satisfactory. We further note that ONB received a "Satisfactory" CRA rating as of July 7, 1998. Permanent received a "Satisfactory" CRA rating as of November 3, 1997. We received no public comments on this application.

The transaction is not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities the ONB currently serves. ONB will continue its current CRA programs and policies. We find that approval of the proposed transaction is consistent with the Community Reinvestment Act.

D. Branch Retention Pursuant to 12 U.S.C. § 36(c)

Branch retention following a merger with a federal thrift institution is covered by the McFadden Act. *See* 12 U.S.C. § 36(c).⁸ Section 36(c) authorizes a national bank to establish new branches:

at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question ...(12 U.S.C. § 36(c)(2)).

Indiana law imposes no geographical limits on branching by state banks.⁹ Consequently, there are no geographical limits to be incorporated by 12 U.S.C. § 36 and applied to national bank branching in Indiana. Thus, following the merger transaction, ONB may retain as branches the main office and branches of Permanent.

E. Retention of Subsidiaries

Permanent currently has direct and indirect investments in subsidiaries that are engaged in activities that are permissible for a national bank as well as entities engaged in non-conforming activities for national banks. As a result of the merger ONB will acquire as operating subsidiaries Permavest, Inc. ("Permavest") and Perma Service Corp. ("Perma Serve").

⁸ *See* OCC Corporate Decision No. 97-70, August 14, 1997.

⁹ *See* Ind. Code Ann. § 28-2-18-20.

Permavest is a service corporation organized under the State of Delaware that provides custody, safekeeping and bond accounting services for Permanent's municipal bond portfolio. Permavest owns 99.5% of Permavest Partners, which provides custody, safekeeping and bond accounting services for approximately two-thirds of Permanent's taxable investment portfolio. FSB Bancorp owns the remaining .5% of Permavest Partners. Following the Company Merger, Merger Corporation I will own the .5% investment in Permavest Partners.

Perma Serve is a service corporation organized under the laws of Indiana that provides to its customers brokerage services through a third party (INVEST). Perma Serve also owns approximately 14.28% of Family Financial Life Insurance Company (the "Company"). The Company underwrites credit life and health and accident insurance, mortgage life insurance and mortgage disability insurance, and fixed annuities. The Company reinsures 70% of the insurance and 100% of the annuities underwritten. ONB requests that it be allowed two years in which to conform to applicable laws or divest Perma Serve's investment in the Company. The OCC has permitted similar transition periods in other contexts and find this one to be reasonable.¹⁰

Perma Serve owns 100% of the capital stock of Permanent Insurance, Inc. ("Permanent Insurance"). Permanent Insurance offers as agent, casualty, life, accident, health, mortgage disability and consumer credit insurance. ONB represents that at consummation of the merger, Orange County Bank, a subsidiary of Old National will acquire Permanent Insurance.

ONB may retain after the merger, Permanent's subsidiaries that engage in a variety of activities that are permissible for national bank subsidiaries under 12 U.S.C. § 24(Seventh) and § 12 C.F.R. 5.34, and 5.39.

CONCLUSION

The legal, policy and procedural requirements for the proposal are satisfied. ONB is in satisfactory condition and the transaction is consistent with the Community Reinvestment Act. We have analyzed this proposal pursuant to 12 U.S.C. §§ 215c, the Bank Merger Act (12 U.S.C. 1828(c)), 12

¹⁰ Conditional Approval No. 288 (September 30, 1998) (approving a merger of two banks and the continued operation for a two-year transition of a nonconforming insurance agency subsidiary); Conditional Approval No. 259 (October 31, 1997) (approving a two-year transition for nonconforming subsidiary engaged in credit-related insurance and annuity underwriting and sales that was being acquired by a national bank in the context of a merger of two bank holding companies); Corporate Decision 97-14 (March 4, 1997) (approving a conversion of a state bank to a national bank and granting a transition period in which to divest insurance agency subsidiaries or conform the activities to national banking law). See also 12 C.F.R. § 5.33(e)(5), dealing with business combinations, which provides:

An applicant shall identify any nonconforming activities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination, that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, with a reasonable time following the business combination.

C.F.R. 5.33, and 1815(d)(3) (the Oakar Amendment). Accordingly, the application is approved subject to the following conditions:

1. ONB must conform to applicable laws or divest of the investment in Family Life Insurance Company within two years from the date of consummation of the merger.
2. ONB must comply with the divestiture agreement between the Department of Justice, ONB and Permanent dated June 20, 2000.

These conditions of approval are conditions “imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. § 1818. As such the condition is enforceable under 12 U.S.C. § 1818.

 -signed-
Alan Herlands
Acting Deputy Comptroller
Bank Organization and Structure

 June 22, 2000
Date

Application Control Number: 2000-CE-02-0013