



Comptroller of the Currency
Administrator of National Banks

250 E Street, S.W.
Washington, DC 20219

CRA Decision #111
April 2002

March 1, 2002

OCC Control Nr. 2002-ML-02-0001

Ms. Courtney D. Allison
Assistant General Counsel
Legal Division
First Union National Bank
301 South College Street (NC0630)
Charlotte, North Carolina 28288-0630

Dear Ms. Allison:

This is to inform you that on this date, the Office of the Comptroller of the Currency (OCC) has granted final approval for the application to merge Wachovia Bank, National Association, Winston-Salem, North Carolina ("Wachovia") into and under the charter of First Union National Bank, Charlotte, North Carolina ("First Union") with the resulting bank titled Wachovia Bank, National Association.

This approval was granted based on a thorough review of all information available, including commitments and representations made in the application and those of First Union's representatives.

In reaching our decision on this application, the following factors were considered:

A. 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 their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including merger transactions subject to the Bank Merger Act and conversions involving insured depository institutions. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' records of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

The OCC did not receive any comments in connection with this application. However, in June 2001, in connection with the bank holding company merger application involving Wachovia Corporation and First Union Corporation, the OCC received several comments. The most significant comments in opposition to the holding company merger expressed concerns with: 1) First Union Corporation's performance under the Community Initiative it announced in 1998 in connection with its merger with CoreStates Financial Corp., Philadelphia, Pennsylvania; 2) potential branch closings that could adversely affect low- and moderate-income or predominately minority communities; 3) First Union's and Wachovia's treatment of minority individuals in home mortgage lending based on Home Mortgage Disclosure Act data; 4) the lending practices of First Union's former subsidiary, the Money Store; and, 5) First Union's provision of credit relationships with nonaffiliated subprime lenders.

The OCC forwarded those comments, both in support of and in opposition to the holding company merger, to the Federal Reserve Bank of Richmond for consideration. On August 13, 2001, the Board of Governors conditionally approved the application after considering all public comments. The Board's order concluded that considerations relating to the convenience and needs factor, including the Community Reinvestment Act ("CRA") performance records of the relevant banks, were consistent with approval of the merger.¹

We also reviewed recently issued CRA Public Evaluations ("PEs") of First Union (dated September 30, 2000) and Wachovia (dated December 31, 2000) in which both institutions were assigned an "Outstanding" CRA performance rating. The PEs disclosed that the OCC found no evidence of discrimination during the fair lending examination of these institutions.²

Based on our consideration of the CRA performance records of the institutions, the absence of public comments, and, the probable effects of the combination on the convenience and needs of the communities to be served, we concluded that approval of the merger is consistent with the Community Reinvestment Act.

B. Legal Authority

The application was filed pursuant to 12 U.S.C. §§ 215a and 1828(c). Both First Union and Wachovia are interstate national banks with their main offices in North Carolina and with branches in several states.³ The two banks are affiliates, and are wholly-owned subsidiaries of Wachovia Corporation, a North Carolina corporation and bank holding company. In the

¹ See the Federal Reserve System; Order Approving Merger of Bank Holding Companies involving First Union Corporation and Wachovia Corporation dated August 13, 2001.

² In finalizing the public evaluations, the examiner fully considered the public comments received by the Federal Reserve Bank of Richmond in connection with the recent holding company merger.

³ First Union has branches in Connecticut, Florida, Georgia, Maryland, North Carolina, Virginia, Pennsylvania, South Carolina, New Jersey, New York and the District of Columbia. Wachovia has branches in Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia.

Merger Application, First Union has also requested OCC approval, pursuant to 12 U.S.C. § 36(b)(2), for the Resulting Bank to retain Wachovia's main office and branches, as well as First Union's branches, as branches following the merger. First Union's main office will be the main office of the Resulting Bank.

Thus, while this merger involves two interstate banks, and of course an interstate resulting bank, it does not come under the interstate merger provisions of 12 U.S.C. § 1831u because those provisions address only mergers between banks with different home states.⁴ Rather, approval for this merger is sought pursuant to 12 U.S.C. § 215a, which permits mergers between national banks located in the same state. We concluded the proposed merger does not raise new issues, but requires only the application of established precedent for applying 12 U.S.C. §§ 215a and 36(b)(2) to an interstate national bank.

Section 215a authorizes a national bank to merge with other national banks "located within the same State." 12 U.S.C. § 215a(a). First Union and Wachovia are located in the same state, North Carolina, for purposes of 12 U.S.C. § 215a(a), because both have their main offices in North Carolina.⁵ In this instance, both First Union and Wachovia, which have their main offices in North Carolina, are located in North Carolina for purposes of section 215a, and so they may merge under section 215a.

First Union also requested OCC approval for the Resulting Bank to retain Wachovia's main office and branches, as well as First Union's branches, as branches following the merger. Branch retention in a merger under section 215a is covered by 12 U.S.C. § 36(b)(2).

With regard to First Union's existing branches, section 36(b)(2)(C) authorizes a national bank resulting from a merger to retain and operate as a branch any branch that the acquiring bank had prior to the merger, unless a state bank resulting from a merger in the state would be prohibited by state law from retaining as a branch an identically situated office of a state bank. Section 36(b)(2)(A) permits the resulting bank to retain the main office and branches of the target bank if the resulting bank, under section 36 and relevant state law incorporated into section 36, could establish them as *de novo* branches under section 36(c).

The OCC has previously concluded that the resulting bank is properly treated as situated in all of the states in which the participating banks were situated in order to then apply the standards set forth in sections 36(b)(2)(C) and (A) and 36(c).⁶

⁴ 12 U.S.C. § 1831u(a)(1). Section 1831u (new section 44 of the Federal Deposit Insurance Act) was added to the national banking laws 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 Sept. 29, 1994) ("the Riegle-Neal Act.").

⁵ That one or both of the banks has branches in other states does not change the fact that each bank is located in North Carolina and does not undercut the applicability of section 215a to this transaction. *See, e.g.*, Decision on the Application to Merge First Bank, N.A., Minneapolis, Minnesota, and FNB of East Grand Forks, East Grand Forks, Minnesota (OCC Corporate Decision No. 97-68, July 10, 1997) (OCC First Bank Decision").

⁶ *E.g.*, OCC First Bank Decision; Decision of the Office of the Comptroller of the Currency on the Applications of

Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks. Here, the acquiring bank's branches are situated in Connecticut, Florida, Georgia, Maryland, North Carolina, Virginia, Pennsylvania, South Carolina, New Jersey, New York, and the District of Columbia. None of these states have laws that would prohibit a bank, following a merger, from retaining its own similarly situated branches in the state.⁷ Therefore, in accordance with section 36(b)(2)(C), the Resulting Bank may retain First Union's branches in each of those states following the merger.

Likewise, the power of the resulting bank to retain the branches of the target bank following a merger in each state is determined by reference to that state's laws for that state's banks. Because the intrastate branching laws of each of those states permits state banks to establish branches statewide,⁸ we conclude that section 36(b)(2)(A), section 36(c) and state branching law incorporated therein, permit First Union to retain as branches the main office and each of the branches of Wachovia in Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia.⁹

Bank Midwest of Kansas, National Association, Lenexa, Kansas, and Bank Midwest, National Association, Kansas City, Missouri (OCC Corporate Decision 95-05, February 16, 1995); and cases cited therein.

⁷ All states in which First Union has branches, with the exception of New York, permit unlimited statewide branching. *See* Conn. Gen. Stat. Ann. § 36a-125; Md. Code Ann. § 5-1003; 7 Pa. Stat. § 904(a)(iii); N.J. Rev. Stat. § 17:9A-19; D.C. Code Ann. § 26-103; n. 6, *infra*. New York permits statewide branching except in cities with a population of under 50,000 in which another bank has its main office. However, because this restriction does not apply to branches acquired in a merger, it clearly could not apply to branches retained by the resulting bank in a merger. N.Y. Banking Law § 105.

⁸ *See* Fla. Stat. Ann. § 658.26; Ga. Code Ann. § 7-1-602; N.C. Gen. Stat. § 53-62; S.C. Code Ann. § 34-1-70; Tenn. Code Ann. § 45-2-614; Va. Code Ann. § 6.1-39.3.

⁹ While all six states permit statewide branching, five set forth various qualitative factors that should be considered in considering applications to branch within that state. Fla. Stat. Ann. § 658.26(b) (sufficiency of capital accounts in relation to deposit liabilities, earnings prospects, quality of management); Ga. Code Ann. § 7-1-602(a) (public need, profit potential, character and fitness of management and board, capital adequacy, and overall financial condition); N.C. Gen. Stat. 53-62 (financial history, capital adequacy, earnings prospects, quality and business experience of management, convenience and needs of community, probable business volume, and asset quality); S.C. Code Ann § 34-1-70 (compliance with applicable law, qualified applicants, and public interest); Va. Code Ann. § 6.1-39.3 (bank safety and soundness and public interest).

In addition, as discussed, we note that following the merger, First Union will retain its branches in Florida, Georgia, North Carolina, South Carolina, and Virginia. As a result, it is also considered to be "situated" in those states for that reason, enabling it to establish additional branches in those states under section 36(c) and relevant state law. *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974) (an interstate national bank is "situated" in each state in which it has offices for purposes of establishing additional branches in each state under section 36(c)); *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) (same, agreeing with *Seattle Trust*); 12 U.S.C. § 1831u(d)(2) (following an interstate merger under the Riegle-Neal Act, the resulting bank may establish or acquire additional branches at any location where any bank involved in the transaction could have established or acquired additional branches).

Accordingly, the OCC may authorize the merger under 12 U.S.C. 215a and may authorize the Resulting Bank to retain and operate as branches the main office and branches of Wachovia and the branches of First Union.¹⁰

In addition to sections 215a and 36(b) and (c) in order to approve the proposed transaction, the OCC also must take into consideration the Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c) (BMA), requires OCC approval for any merger between insured banks when the resulting institution will be a national bank. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA 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.

C. USA Patriot Act of 2001

The USA Patriot Act of 2001¹¹ further provides that in considering applications for mergers under the Bank Merger Act, the responsible agency, in this case the OCC because the Resulting Bank is a national bank, “shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches.”¹²

In reaching our decision on this merger application, we reviewed the results of recent Bank Secrecy Act (“BSA”) and antimoney laundering (“AML”) examinations conducted at First Union and Wachovia. We concluded that each bank has a satisfactory record of compliance with BSA/AML requirements and guidelines. We also noted that the banks continue to enhance their internal processes used to manage BSA/AML risks and have taken appropriate action to strengthen controls and practices.

D. Convenience and Needs

The application will have no adverse impact on the convenience and needs of the communities to be served. The transaction is an internal reorganization which will not result in any reduction in products or services to the general public. Based on preliminary studies of branch sites serving the same market areas, the Resulting Bank contemplates closing approximately 200 branches as a result of the merger.

¹⁰ As discussed in footnote 7, with regard to retention of the main office and branches of the target bank, Wachovia, the OCC should consider the factors set forth in the branching laws of the various states in which the resulting bank seeks to retain Wachovia’s branches.

¹¹ Pub. L. No. 107-56, Stat. (2001).

¹² *Id.* at § 327(b) *to be codified* at 12 U.S.C 1828(c)(11). This requirement applies to merger applications filed after December 31, 2001.

Of the population of physically redundant branches, First Union has represented that 140 or 70% are sufficiently close as to qualify as short distance consolidations under the Interagency Joint Policy Statement on Branch Closings. Branch closings occurring in low-to-moderate income ("LMI") census tracts comprise 34 of the 200 total. Of the LMI redundancies, 23 or 68% will qualify as short distance consolidations.

Inasmuch as the targeted branch office eliminations are based on physical proximity and that the current customers of each bank will gain access to a greatly expanded branch network of the Resulting Bank, we believe the impact of this application on community convenience and needs is consistent with the granting of an approval.

E. Competitive analysis

The OCC has reviewed the competitive effects of this proposal. As the banks involved are wholly owned and controlled by the same bank holding company, the contemplated will clearly have no adverse impact on competition.

In reviewing the application, the U.S. Department of Justice, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System also considered the competitive impact of the proposed transactions. They have similarly concluded the proposal will produce no significant adverse effect on competition or concentrate banking resources in a relevant geographic market.

F. Financial and Managerial Resources

The Bank Merger Act also requires the OCC to consider "...the financial and managerial resources and future prospects of the existing and proposed institutions...."

We found that the financial and managerial resources of the various parties to this merger do not raise concerns that would cause the applications to be disapproved. The proposed merger is merely a corporate reorganization structured to achieve efficiencies and economies of scale. Further, the participant banks are well capitalized and well managed. The future prospects of the proponents, individually and combined, are thus considered favorable and consistent with an approval.

Given the above, we concluded that approval of the merger is consistent with standards set forth in the Bank Merger Act and after the considering the banks' record of compliance with the Community Reinvestment Act and the effectiveness of the banks in combating money laundering activities as required by the USA Patriot Act of 2001, the OCC may authorize the proposed merger under 12 U.S.C. § 215a. In addition, the OCC may authorize the Resulting Bank to retain and operate the main office of First Union as its main office, to retain and operate the branches of First Union, and to retain and operate as branches the main office and branches of the target bank, Wachovia, under 12 U.S.C. §§ 36(b)(2) and 36(c) and applicable state branching law.¹³

¹³ We also note that both First Union and Wachovia exercise fiduciary powers. After the merger, the Resulting Bank will continue to be authorized to exercise fiduciary powers under 12 U.S.C. § 92a, as it will hold the fiduciary

As a reminder, this Office must be advised in writing in advance of the desired effective date for the merger so that the OCC may issue the necessary certification letter. Please note that the effective date may be on or after the date of this letter.

If the merger transaction is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period. A separate letter is enclosed requesting your opinion on how we handled your application. We would appreciate your response so we may improve our service.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or an officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

In the event of questions, I may be contacted at (202)-874-5060 or by e-mail: largebanks@occ.treas.gov. Please include the application control number in all correspondence.

Sincerely,

/s/

Richard T. Erb
Licensing Manager

Application Control Number: 2002-ML-02-0001

Enclosures: Survey Letter