Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-05
January 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO CONVERT METROBANK, EAST MOLINE, ILLINOIS TO A NATIONAL BANK CHARTER, RETAIN A TRAVEL AGENCY SUBSIDIARY SUBJECT TO DIVESTITURE, AND RELOCATE TO DAVENPORT, IOWA

I. INTRODUCTION

On September 30, 1996, Metrobank (the Bank), a state-chartered bank in East Moline, Illinois, applied to convert to a national bank charter under 12 U.S.C. § 35. The Bank, which currently has about $240 million in assets and operates seven branches in Illinois, is owned by a holding company, Metrocorp, Inc. (the Bank Holding Company) which also filed applications to charter a de novo bank in Illinois and acquire, through a purchase and assumption transaction, the branch network and most of the assets and liabilities of the converted Bank.[1] The Bank also seeks, assuming approval of the conversion, to relocate its main office to Davenport, Iowa.[2] In connection with its conversion application, the Bank has

[1] These applications were approved on December 10, 1996. See Letters by Barbara C. Healey, Deputy Comptroller, Central District to Gary D. Andersen, President, Metrobank (December 10, 1996) (one letter granting preliminary approval to the Bank Holding Company to establish a new national bank in Illinois with full fiduciary powers; the other letter granting approval to the new bank to undertake the purchase and assumption transaction with the Bank).

[2] The analysis in this Decision Statement regarding the proposed main office relocation assumes, and is based on the understanding, that at the time the relocation into Iowa occurs, the de novo bank charter will be in operation and the purchase and assumption transaction will have been consummated. Consequently, the Bank will have no branches in Illinois.

represented that it owns 100% of the stock of a small subsidiary engaged in the travel agency business. The Bank also has represented that subject to certain limitations, restrictions and divestiture requirements, it seeks to retain its investment in that enterprise following the charter conversion. The travel agency primarily sells airline, cruise ship and bus line tickets.

Consequently, this Decision Statement addresses the following issues: (1) the authority of the Bank to convert to a national bank charter; (2) the authority of the Bank to relocate to Iowa assuming approval of the conversion; and (3) the authority of the Bank to operate the travel agency subject to limitations, restrictions and divestiture requirements as described in this Decision Statement. While the conversion application is not subject to a notice and comment procedure under OCC regulations, the proposed relocation, which by necessity acknowledged the proposed conversion, and the other transactions concurrently filed were. No comments were received with respect to any of the proposed transactions.[3]

II. Analysis

A. Conversion authority

Title 12 U.S.C. § 35 states that a bank incorporated under state law may become a national banking association provided that (i) the conversion is not in contravention of state law, (ii) the bank's capital is sufficient to entitle it to become a national bank, and (iii) shareholders owning not less than 51% of the bank's capital stock vote for the conversion.

Illinois law provides that an Illinois state-chartered bank may convert into a national bank without the approval of any state authority. Ill. Ann. Stat. ch. 205, ¶ 5/20 (Smith-Hurd 1993 & Supp. 1996). In addition, the state statute provides that such a conversion must be approved by the affirmative vote of holders of at least two-thirds of the bank's outstanding shares.

Metrobank's proposal to convert to a national bank is permissible under 12 U.S.C. § 35. The conversion is in accordance with state law, the Bank's capital at the time of conversion is expected to exceed the minimum amounts required by 12 U.S.C. § 51 and 12 C.F.R. § 3, and in addition, Metrobank's sole shareholder has approved the transaction.[4]

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[3] We note that the state of Illinois protested the Bank's original proposal, which involved branch retention in Illinois following the main office relocation. That protest, however, was withdrawn when the proposal was restructured to its current form.

[4] Assuming that the conversion occurs prior to the consummation of the purchase and assumption transaction, including the divestiture of all of the Bank's branches, the Bank is permitted to retain the branches, all located in Illinois, that it had prior to the conversion. See 12 U.S.C. § 36(b)(1)(A) and (C) (respectively permitting a national bank, following conversion from a state bank, to retain branches that it could establish under section 36(c), incorporating intrastate branching law, and also permitting the converting bank to retain branches unless a state bank, converting from a national charter, would be prohibited from

B. Relocation of the Bank to Iowa

1. The Bank, Following Conversion, May Relocate its Main Office from East Moline, Illinois, to Davenport, Iowa, Pursuant to 12 U.S.C. § 30.

The authority of a national bank to relocate its main office is set out in 12 U.S.C. § 30(b), which provides:

> Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.

12 U.S.C. § 30(b) (emphasis added).

Statutory interpretation begins with the language of the statute itself, which must be interpreted in accordance with its plain meaning. See, e.g., Caminetti v. United States, 242 U.S. 470, 485 (1917). Under the "plain meaning" rule of statutory construction, Section 30 clearly permits a national bank to relocate its main office to any location within 30 miles. The plain language in Section 30 authorizes a national bank to relocate its statutory "main office" to "any other location" within thirty miles of the limits of the city in which the main office is currently located. This relocation authorization contains no limitation or other references to state borders or to state law. Nothing in the legislative history gives any reason not to adhere to the language. The OCC has consistently applied this interpretation in situations where a bank consisting solely of a main office has applied to move that main office over state lines.[5]

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retaining the branches). Illinois permits statewide branching. Ill. Ann. Stat. ch. 205, ¶ 5/5(15)(a) (Smith-Hurd 1993 & Supp. 1996). Consequently, the Bank, following conversion, may retain its pre-conversion branches. As stated, however, a separate application which has been approved contemplates the sale of each of these branches to an affiliated de novo bank. Of course, if the purchase and assumption transaction is consummated prior to the conversion, the Bank would have no branches requiring authorization.

[5] See Decision of the Office of the Comptroller of the Currency on the Applications of the First National Bank of Polk County, Copperhill, Tennessee (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision of the Comptroller of the Currency on the Application of the First National Bank of Spokane, Spokane, Washington, to Relocate its Main Office to Couer D'Alene, Idaho (1991); Decision of the Comptroller of the Currency on the Application of SouthTrust National Bank, Phenix City, Alabama, to Relocate its Main Office to Columbus, Georgia (1989); Decision of the Comptroller of the Currency on the Application of the Bank of New Jersey, National

Moreover, courts addressing interstate main office relocations, under the authority of section 30, by national banks with no branches in the former main office state, have consistently upheld the relocations. See State of Idaho Department of Finance v. Clarke, 994 F.2d 1441, 1444 (9th Cir. 1993) (Idaho) (stating that "on its face, [section 30] permits relocations without regard to state lines"). See also Synovus Finanacial Corp. v. Board of Governors of the Federal Reserve System, 952 F.2d 426, 428 and n.1, 435 (D.C. Cir. 1991) (Synovus) (reciting OCC precedent permitting interstate main office relocations); McEnteer v. Clarke, 644 F.Supp. 290, 292 (E.D. Pa. 1986) (McEnteer) (permitting an interstate main office relocation under the "plain language" of section 30). Even the district courts that have held that section 30 does not permit a national bank, that has relocated from one state to another, to retain the branches in the former main office state, have upheld the authority of the bank to undertake the initial relocation. See Ghiglieri v. Ludwig, pp. 16-17 (No. 3-95-CV-2001-H 9, N.D. Tex. May 22, 1996) (prior to considering the issue of retention of the relocating bank's branches in the former main office state, the court held that "there is nothing erroneous in the Comptroller's approval of the Bank's application to relocate the main office [from Arkansas to Texas] under Section 30"); Ghiglieri v. Sun World, National Association, p. 4 (No. EP-96-CA-324-DB, W.D. Texas Oct. 29, 1996) (absent a restriction in section 30, "it seems relatively obvious that [the bank's] relocation of its main office across the Texas/New Mexico state line was authorized under Section 30(b)").[6]

Association, Moorestown, New Jersey, to Relocate its Main Office to Philadelphia, Pennsylvania (1986); Decision of the Comptroller of the Currency on the Application of Mark Twain Bank, National Association, Independence, Missouri, to Relocate its Main Office to Overland Park, Kansas (1985), reprinted in [1984-85 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 86,180.

Because the approval of the Bank's relocation is predicated on approval of the sale of its entire branch network, no analysis need be undertaken in this Decision Statement of the Bank's ability to retain branches in Illinois following the relocation. In this regard, we note that changes to section 30 made by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) pertain only to interstate relocations involving branch retention in the former home office state. Consequently, they are irrelevant to this transaction.

[6] The third district court case to overturn an OCC decision permitting interstate relocations by the main offices of several banks, combined with branch retention and followed by a series of mergers, did not address the main office relocation issue. See Burke v. Ludwig (No. 3:96CV0579(AVG), D.C. Conn. August 23, 1996).

For a more complete discussion of the authority of a national bank to relocate its main office across state lines, where no branch retention issue arises, see, e.g., Decision of the Office of the Comptroller of the Currency on the Applications of Connecticut River Bank, Charlestown, New Hampshire, pp. 7-13 (OCC Corporate Decision No. 96-58, September 30, 1996).

Accordingly, national banks are authorized to move a main office to any location within 30 miles of its present site, even across state lines. Metrobank, N.A.'s proposed main office location in Davenport is approximately six miles from its present site in East Moline. Thus, Section 30 authorizes the relocation of Metrobank's main office.[7]

Finally, the Bank Holding Company Act, 12 U.S.C. §§ 1841-1850, does not affect this determination. See McEnteer, 644 F.Supp. at 292-94 (Section 30 independent of state law and Bank Holding Company Act). See also Synovus at 434-36 (relocation under section 30 is not an acquisition under section 3(a) of the Bank Holding Company Act; consequently, the Board has no authority over such transaction independent of Bank Holding Company Act); Idaho at p. 1446 ("unless an application [involving acquisition of a bank] is required under section 3(a), the express terms of the Douglas Amendment--which merely prohibit the approval of certain applications--have no effect").[8]

C. Operation of the travel agency

As stated, the Bank also operates a small travel agency known as Travel Tours, Inc. The Bank has been engaged in the travel agency business for more than 20 years in the city of East Moline, Ill., and seeks to retain its existing travel agency with a single office in Illinois and to operate that travel agency in accordance with Illinois law and subject to the same restrictions and requirements as would be applicable as if it continued to be a subsidiary of an Illinois-chartered bank. In addition, the Bank has represented that it will not expand its travel agency operations to sites in any other state unless other national banks have the power to operate travel agencies in such other state and that it will not station any travel agents or

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[7] Following its relocation, the Bank has asked that it be permitted to exercise fiduciary powers, pursuant to 12 U.S.C. § 92a, in Iowa. That provision permits a national bank to exercise fiduciary powers as permitted for state banks, trust companies and other corporations by the state where it is located. Since the Bank will be located in Iowa after its relocation, Iowa law is relevant. The law of Iowa permits state banks to exercise fiduciary powers and, thus, the Bank also may do so. See Iowa Code Ann. § 524.1001 (1993 & Supp. 1996).

[8] While the court in Idaho held that the Board might have authority over interstate relocations to prevent evasions of the Bank Holding Company Act, the court also held that the Board had unfettered enforcement discretion with regard to such matters. We note that the Board, though fully aware of the transaction as a result of the related filings made by the Bank Holding Company to establish a de novo bank in Illinois, has raised no concern about this transaction. Likewise, the state of Iowa has raised no concerns about this transaction. In any event, Board precedent clearly demonstrates that the relocation is in accordance with the Bank Holding Company Act. See Synovus at p. 428 (describing Board order permitting relocation of a national bank from one state to the other and concluding that the relocation was in accordance with applicable age restrictions, similar to those imposed by Iowa, of the state to which the main office was relocating).

distribute travel agency literature at the sites of the banking operations of its proposed affiliated bank in Illinois.[9]

Finally, because the Bank has proposed to relocate its main office to Iowa following the conversion, the Bank has made certain representations with respect to the operation of the travel
agency and the need for possible divestiture of the travel agency as a result of the interstate relocation. In this regard, the Bank has represented that in the event that its relocation to Iowa occurs, a state that does not currently permit state banks to own travel agencies, the Bank will dispose of the travel agency subsidiary within two years unless, under the authority of 12 U.S.C. § 35, holding a travel agency subsidiary at that time would be permissible for the Bank under relevant state law, had it remained a state bank, or would otherwise be permissible for the Bank under another authority. In addition, the Bank has represented that it will not open any travel agency office in Iowa and that it will not station any travel agents in any Iowa locations nor distribute travel agency literature through the Bank's Iowa offices. The Bank

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[9] The authority of the bank to own a travel agency is based on Ill. Ann. Stat. ch. 205, ¶ 5/5, § 5(22) (Smith-Hurd 1993 & Supp. 1996). That provision states:

> § 5. General corporate powers. A bank organized under this Act or subject hereto, shall . . . have all the powers conferred by this Act and the following additional general corporate powers:
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> (22) to own, possess, and carry as assets the stock of a corporation engaged in the ownership or operation of a travel agency or to operate a travel agency as a part of its business, provided that the bank either owned, possessed, and carried as assets the stock of such a corporation or operated a travel agency as part of its business before July 1, 1991.

Because the bank has operated the travel agency continuously, either directly or as a subsidiary corporation, for more than 20 years, it complies with the requirements of this provision.

Moreover, state bank travel agency activities, when authorized by state law, also are permissible under federal statutes and regulations pertaining to the activities of state banks. The Federal Deposit Insurance Act provides that a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the Corporation has determined that the activity poses no significant risk to the appropriate deposit insurance fund and the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency. 12 U.S.C. § 1831a(d)(1). The FDIC, in implementing this statute at 12 C.F.R. §§ 362.2(c) and 362.4(a)(1) (1996), expressly stated that "acting as an agent in arranging for travel services" does not come within the statutory limitations because the state bank "would not be acting 'as principal' in providing those services." 58 Fed. Reg. 64,462, 64,468 (December 8, 1993).

has stated that these commitments will continue until it is determined that the Bank, under relevant law, may operate a travel agency in Iowa, or until the travel agency is divested.

Subject to these representations, under the authority of section 35, the OCC has no objection to the continued operation by the Bank of the travel agency in Illinois following the Bank's relocation to Iowa.[10]

D. Other issues

1. Agency banking

On November 1, 1996, Metrobank notified the Illinois Banking Commissioner, the Iowa Superintendent of Banking, and the OCC that upon consummation of the transactions described above, the two banks intend to offer banking services to each other's customers, as authorized by 12 U.S.C. § 1828(r). This statute provides that:

> Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

12 U.S.C. § 1828(r)(1). Such an agent is not considered a branch of the affiliate. 12 U.S.C. § 1828(r)(2). The Iowa legislature has incorporated this "agency banking" concept into the state's own banking statute. See Iowa Code Ann. § 524.802.5 (West 1993 & Supp. 1996). Illinois also permits agency banking. Ill. Ann. Stat. ch. 205, ¶ 5/5(23) (Smith-Hurd 1993 & Supp. 1996). While the Iowa provision simply clarifies that the federal law applies to Iowa state banks, the Illinois statute requires any bank intending to create such an affiliate relationship to notify the Illinois Commissioner at least 30 days before doing so. See id. Metrobank, as a state bank, issued the referenced notification to satisfy this state requirement.

Provided that the two affiliates offer each other's customers the services listed in 12 U.S.C. § 1828(r), no legal questions arise. However, if in the future the banks seek to offer additional services not listed in the statute, further legal analysis may be needed. See, e.g., Letter from

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[10] The last paragraph of section 35 authorizes the Comptroller, in his discretion and subject to such conditions as he may impose, to permit converting national banks to retain assets that otherwise would be nonconforming for national banks. The OCC has authorized retention of nonconforming subsidiaries under this paragraph. See OCC Corporate Decision 95-55 (November 15, 1995) and Memorandum to Steven R. Steinbrink, Senior Deputy Comptroller (November 13, 1995) (publicly released under OCC's discretionary release authority) (involving subsidiaries engaged in insurance agency activities outside the place of 5,000 locations authorized under 12 U.S.C. § 92 and real estate brokerage activities). See also Interpretive Letter by Julie L. Williams, Chief Counsel, to James B. Watt, President, Conference of State Bank Supervisors (April 1, 1996). The analysis contained in such decision, memorandum and letter are incorporated by reference in this Decision Statement.

Eric Thompson, Director, Bank Activities and Structure, to Amy Bizar, Senior Counsel, Fleet Financial Group (November 28, 1995) (under certain circumstances, affiliated banks may also offer deposit withdrawal services to customers of each other even when not specifically authorized by statute).

2. Community Reinvestment Act Compliance

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications including conversions and main office relocations. See 12 U.S.C. §§ 2902(3)(A), (D); 2903; 12 C.F.R. § 25.29(a)(2), (4). In its last three CRA performance evaluations, Metrobank received an "outstanding" rating from the Federal Deposit Insurance Corporation. No public comments were received by the OCC relating to the current applications and the OCC has no other basis to question Metrobank's performance in complying with the CRA.

While changing the Bank's delineated community, the conversion and relocation should have no adverse effect on this institution's CRA performance. The CRA community delineation of the post-conversion and relocated bank will include all of the areas within a two-mile radius of both its main office and a potential, but not yet proposed, branch also in Davenport, Iowa. We note that the CRA community delineation of the de novo bank which has been approved by the OCC to be established and to acquire the entire branch network of the Bank will include all of the areas within a two-mile radius of each of that bank's offices, excluding any portion that crosses the Mississippi River. These offices are located in East Moline, Rapids City, Silvis, Milan, and Moline, Illinois. Thus, while the Bank will change the area and reduce the size of its delineated community, the combined communities proposed to be served by the two banks is larger than the area currently served by the Bank alone. No low or moderate income communities are excluded from the delineated communities.

III. Conclusion and approval

For the reasons set forth above, we find that Metrobank, East Moline, Illinois, is authorized to convert to a national bank charter under the authority of 12 U.S.C. § 35 and relocate its main and only office to Davenport, Iowa, under the authority of 12 U.S.C. § 30(b). The Bank may retain, subject to the restrictions, limitations and divestiture requirements set forth above, its existing travel agency subsidiary located in East Moline, Illinois. Accordingly, these applications are approved.

\s\ 01-03-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 96-CE-01-033; 96-CE-12-187; 96-CE-07-033