



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #2000-03
April 2000**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON APPLICATIONS INVOLVING
FAMILY BANK, FSB, HAVERHILL, MASSACHUSETTS;
FIRST MASSACHUSETTS BANK, N.A., WORCESTER, MASSACHUSETTS;
BANK OF NEW HAMPSHIRE, MANCHESTER, NEW HAMPSHIRE;
FARMINGTON NATIONAL BANK, FARMINGTON, NEW HAMPSHIRE;
GRANITE SAVINGS BANK AND TRUST COMPANY, BARRE, VERMONT;
THE HOWARD BANK, N.A., BURLINGTON, VERMONT;
FRANKLIN LAMOILLE BANK, ST. ALBANS, VERMONT; AND
FIRST VERMONT BANK AND TRUST COMPANY, BRATTLEBORO, VERMONT**

March 8, 2000

I. INTRODUCTION

These applications involve certain of the subsidiary banks of Peoples Heritage Financial Group, Inc. (PHFG[®]), and Banknorth Group, Inc. (Banknorth[®]), registered bank holding companies. PHFG has applied to merge Banknorth into PHFG (Parent Merger[®]).¹ In these applications, the two holding companies= subsidiary banks in Massachusetts, New Hampshire, and Vermont will be restructured and combined. The transactions in these applications will occur after the Parent Merger.

Family Bank, FSB, Haverhill, Massachusetts (Family Bank[®]), a federal savings bank, applied to the Office of the Comptroller of the Currency ("OCC") for approval to convert into a national banking association with the title (Family Bank, National Association[®]) (Family Bank, N.A.[®]) and to retain its branches after the conversion (the Family Bank Conversion[®]). Family Bank operates branches in Massachusetts and four branches in Rockingham County in southeastern New Hampshire near the Massachusetts border.

¹ An application for approval for the Parent Merger is pending with the Federal Reserve System.

First Massachusetts Bank, National Association, Worcester, Massachusetts (AFirst Massachusetts@) applied to the OCC for approval, immediately after the Family Bank Conversion, to merge Family Bank, N.A., into First Massachusetts under First Massachusetts's charter and title under 12 U.S.C. ' ' 215a & 1828(c) (the AFamily Bank Merger@). Both institutions are members of the Bank Insurance Fund. First Massachusetts operates branches only in Massachusetts. First Massachusetts also requested OCC approval for the resulting bank to retain Family Bank, N.A.'s main office and branches, as well as First Massachusetts' branches, as branches after the merger under 12 U.S.C. ' 36(b)(2).

Farmington National Bank, Farmington, New Hampshire (AFarmington@) applied to the OCC for approval to merge Bank of New Hampshire, Manchester, New Hampshire (ABNH@), a state-chartered bank, into Farmington under Farmington's charter and with the title ABank of New Hampshire, National Association@ (ABNHNA@), under 12 U.S.C. ' ' 215a & 1828(c) (the ABNH Merger@). Both banks are members of the Bank Insurance Fund. Both banks operate branches only in New Hampshire. OCC approval is also requested for the resulting bank, BNHNA, to retain BNH's main office and branches, as well as Farmington's branches, as branches after the merger under 12 U.S.C. ' 36(b)(2), and for BNHNA to exercise fiduciary powers under 12 U.S.C. ' 92a.

The Howard Bank, National Association, Burlington, Vermont (AHoward Bank@), applied to the OCC for approval to merge Granite Savings Bank and Trust Company, Barre, Vermont (AGSB@), a state-chartered bank, into Howard Bank under Howard Bank's charter and title, under 12 U.S.C. ' ' 215a & 1828(c) (the AGBS Merger@). Both banks are members of the Bank Insurance Fund. Both banks operate branches only in Vermont. OCC approval is also requested for the resulting bank to retain GSB's main office and branches, as well as Howard Bank's branches, as branches after the merger under 12 U.S.C. ' 36(b)(2).

Franklin Lamoille Bank, St. Albans, Vermont (AFranklin@), a state-chartered bank, applied to the OCC for approval to convert into a national banking association with the title AFranklin Lamoille Bank, National Association@ and to retain its branches after the conversion, under 12 U.S.C. ' ' 35 & 36(b)(1) (the AFranklin Conversion@). Franklin operates branches only in Vermont.

First Vermont Bank and Trust Company, Brattleboro, Vermont (AFirst Vermont@), a state-chartered bank, applied to the OCC for approval to convert into a national banking association with the title AFirst Vermont Bank and Trust Company, National Association@ and to retain its branches after the conversion, under 12 U.S.C. ' ' 35 & 36(b)(1) (the AFirst Vermont Conversion@). First Vermont operates branches only in Vermont.

II. LEGAL AUTHORITY

A. The Family Bank Conversion.

Family Bank may convert into a national bank. Regulations of both the OCC and the Office of Thrift Supervision (OTS) permit the direct conversion of a federal savings bank to a national bank.² 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. 12 C.F.R. ' 5.24(d). A review of the application for the Family Bank Conversion 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. 12 C.F.R. ' ' 5.13 & 5.24(d). A review of the record discloses nothing that indicates that these factors provide a basis for denial of the application.

Family Bank currently exercises fiduciary powers. It has requested OCC approval to exercise all permissible fiduciary powers under 12 U.S.C. ' 92a after the conversion. Under section 92a, a national bank may be granted the authority to act in the eight listed fiduciary capacities and in any other fiduciary capacity permitted to state institutions, when not in

² 12 C.F.R. ' 5.24; 12 C.F.R. ' 552.2-7. The OCC has approved many such conversions. See, e.g., Decision on the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-13, February 24, 1997). Recently, Congress added a provision to the Home Owners=Loan Act that confirmed this authority, while also addressing branch retention, for those federal savings association into national bank conversions covered by the new provision. See 12 U.S.C. ' 1464(i)(5), as added by the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, ' 739, 113 Stat. 1338, 1480 (November 12, 1999) (discussed further below).

contravention of state law.³ Massachusetts and New Hampshire (in view of Family Bank's branches there, to the extent that Family Bank conducts fiduciary activities at those branches) do not prohibit their state banks from engaging in fiduciary activities; indeed, each state permits its state banks to engage in a wide variety of fiduciary activities.⁴ Thus, Family Bank, N.A., is authorized to exercise fiduciary powers under section 92a after the conversion.

Family Bank currently operates branches in Massachusetts and four branches in Rockingham County in southeastern New Hampshire near the Massachusetts border. It has requested OCC approval to retain these branches after its conversion. Family Bank, N.A.'s authority to retain the branches after the conversion is expressly permitted in a provision in the Gramm-Leach-Bliley Act:

Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State bank supervisor, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.

12 U.S.C. ' 1464(i)(5)(A), as added by the Gramm-Leach-Bliley Act ' 739.

³ See generally OCC Interpretive Letter No. 872 (October 28, 1999); OCC Interpretive Letter No. 866 (October 8, 1999); OCC Interpretive Letter No. 695 (December 8, 1995).

⁴ Mass. Gen. L. ch. 167G, ' 3; N.H. Rev. Stat. Ann. tit. 35, ' 390:13(I). While Family Bank, N.A.'s authority to conduct fiduciary activities in New Hampshire is based on section 92a and does not depend on state law addressing out-of-state banks, see, e.g., letters cited in note 3, we note that New Hampshire permits certain out-of-state banks, including Family Bank, to exercise trust powers in New Hampshire and establish places of business for the conduct of trust activities. N.H. Rev. Stat. Ann. tit. 35, ' ' 384:63-a(I) & 390:13(II). We further note that, while Family Bank has the authority, it generally does not conduct fiduciary activities for New Hampshire customers. Instead, it refers them to its affiliate, BNH.

This provision directly permits a national bank resulting from the conversion of a federal savings association to retain its branches, without regard to the geographic branching limits of 12 U.S.C. ' 36,⁵ provided the federal savings association is covered by the provision and the resulting national bank meets the listed requirements. Family Bank is covered by section 1464(i)(5) since Family Bank was chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, and it had branches in operation in one or more states before such date. The resulting bank will encompass one or more of the branches in operation before such date in one or more states. The OCC has determined that Family Bank, N.A., the national bank resulting from this conversion, will meet all applicable financial, management, and capital requirements, and that Family Bank, N.A., will meet the capital requirements

⁵ The branch retention authority of section 1464(i)(5) is clearly intended to operate independently of section 36. First, the provision stands on its own, without a reference to section 36. Second, if the various geographic limitations of section 36 also applied, then no new authority would in fact be granted under section 1464(i)(5), which is clearly contrary to its language. Third, if section 36 also applied, then national banks and state member banks that resulted from a conversion of a federal savings association would be treated differently than state nonmember banks resulting from a similar conversion. There is no evidence of an intent to treat the types of banks differently. In particular, with respect to Family Bank's branches in New Hampshire, the resulting national bank's retention of branches in a conversion under section 1464(i)(5) is not affected by section 36(e)(1), which states that a national bank may not acquire, establish, or operate a branch in a new state unless it is authorized under one of the provisions listed in section 36(e)(1). First, a converting institution's retention of its own branches does not fall within section 36(e)(1) because it does not constitute the acquisition or establishment of a branch in a new state; the converting institution is the same entity as before, and it already has the branch in that state. Second, if such branch retention would fall within section 36(e)(1), then there is a conflict between section 36(e)(1) and section 1464(i)(5). We believe that, in the event of such conflict, section 1464(i)(5) controls because it was later in time and is more specifically about retaining existing branches in a conversion. In effect, section 1464(i)(5) is an implied amendment of section 36(e)(1), such that branches allowed under 1464(i)(5) are added to the 36(e)(1) list.

for branches contained in 12 U.S.C. ' 36(c). Thus, Family Bank, N.A., may retain the branches in Massachusetts and New Hampshire.

Accordingly, Family Bank's application to convert into a national bank and to retain its branches after the conversion is legally authorized.⁶

B. The Family Bank Merger.

In this transaction, Family Bank, N.A., an interstate national bank whose home state is Massachusetts, will merge into another national bank, First Massachusetts, whose home state is also Massachusetts. Thus, while this merger includes an interstate bank, and an interstate resulting bank, it does not come under the interstate merger provisions of 12 U.S.C. ' 1831u because it is not a merger between banks with different home states.⁷ However, mergers between an already existing national bank and another national bank in one of the states in which the interstate bank has offices are authorized under 12 U.S.C. ' 215a, and the resulting bank may retain the offices of the banks under 12 U.S.C. ' 36(b)(2). The OCC previously has considered many such applications under sections 215a and 36(b) both before and after the Riegle-Neal Act. Accordingly, the Family Bank Merger does not raise new issues, but only the application of established precedent for applying sections 215a and 36(b) to interstate national banks.

⁶ Family Bank has several subsidiaries that it will retain after the conversion. These subsidiaries will become subsidiaries of First Massachusetts as a result of the immediately following Family Bank Merger. They are discussed below in connection with the merger.

⁷ Section 1831u(a) provides:

(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) (section 44 of the Federal Deposit Insurance Act, as 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").

1. Family Bank, N.A., may merge into First Massachusetts under 12 U.S.C. ' 215a.

Mergers of national banks, and of state banks into national banks, generally are authorized under 12 U.S.C. ' 215a. Section 215a provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association *located within the same State*, under the charter of the receiving association.

12 U.S.C. ' 215a(a) (emphasis added). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied section 215a in the context of a merger involving an existing interstate national bank and concluded that a national bank with its main office and branch offices in more than one state is "located" in each such state, for the purpose of mergers with other banks in that state under section 215a.⁸ Here, First Massachusetts has its main office and branches in Massachusetts, and Family Bank, N.A., has its main office and branches in Massachusetts, as well as four branches in New Hampshire. Accordingly both Family Bank, N.A., and First Massachusetts are located in Massachusetts for purposes of section 215a, and so the Family Bank Merger is authorized under section 215a.⁹

⁸ 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) (*OCC Texas Merger Decision*); Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), *reprinted in* Fed. Banking L. Rep. (CCH) & 90,474 ("*OCC Bank Midwest Decision*"); other OCC decisions cited in the *OCC Texas Merger Decision*. In litigation challenging the *OCC Texas Merger Decision*, the federal district court agreed with the OCC's position that the merger was authorized under 12 U.S.C. ' 215a and that such mergers continue to be authorized after the Riegle-Neal Act and independently of that Act. See *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction).

⁹ Family Bank has several subsidiaries and service corporations that will become subsidiaries of Family Bank, N.A., in the Family Bank Conversion and then will become subsidiaries of First Massachusetts in the Family Bank Merger. Subject to the limitations discussed here, these subsidiaries are engaged in activities permissible for national banks, and Family Bank, N.A.'s and First Massachusetts' ownership of them is approved. Bradford Investment Corp. holds bank-permissible investment securities. CFX Investments, Inc., owns all the common stock and a substantial majority of the preferred stock of CFX Preferred Capital Corp., a real estate investment trust which holds bank-permissible residential mortgage loans, participations, and mortgage-backed securities. Another subsidiary holds a portfolio of loans secured by real estate that are bank-permissible. It no longer originates loans, and its portfolio is decreasing as loans are paid off. The remaining subsidiaries hold real estate, either directly or through limited partnership interests. Most of the real estate investments are permissible for national banks: bank premises and real estate obtained in satisfaction of debts previously contracted permissible under 12 U.S.C. ' 29, or community development and public welfare investments permissible under 12 U.S.C. ' 24(11) and 12 C.F.R. Part 24. The community development and public welfare investments will be included in First Massachusetts' holdings subject to the aggregate investment limits of Part 24, and the subsidiaries that hold these investments will become community development corporations when owned by First Massachusetts. A few of the properties are real estate investments permissible for a federal savings bank, but not permissible for national banks. Family Bank no longer engages in this activity, and Family Bank, N.A., and First Massachusetts will not engage in it. The existing real estate investments not permissible for national banks will be brought into conformance, or disposed of, within a reasonable time.

2. The resulting bank may retain the offices of both banks after the merger.

First Massachusetts has also requested OCC approval for the bank resulting from the merger (referred to in this subsection as "First Massachusetts-Resulting" or "the Resulting Bank" to distinguish it from First Massachusetts prior to the merger) to retain and operate the main office and branches of Family Bank, N.A. in Massachusetts and New Hampshire and the branches of First Massachusetts as branches of the Resulting Bank after the merger. Branch retention in a merger under section 215a is covered by 12 U.S.C. ' 36(b)(2). Section 36(b)(2) applies different standards for the resulting bank=s retention of the main office and branches of the bank(s) being acquired in the merger (target

banks) and for its retention of the branches of the bank under whose charter the merger is effected (the acquiring bank). In the Family Bank Merger, the banks are combining under the charter of First Massachusetts, and so Family Bank, N.A., is the target bank, and First Massachusetts is the acquiring bank. Applying the various provisions of section 36(b)(2) to the groups of branches involved in this merger, we find that First Massachusetts-Resulting is legally authorized to retain all the offices as branches.

a. The Resulting Bank may retain and operate the main office and branches of Family Bank, N.A., under subsection 36(b)(2)(A).

First Massachusetts-Resulting may retain and operate the main office and branches of Family Bank, N.A., under subsection 36(b)(2)(A). Under section 36(b)(2)(A), the resulting bank may retain the branches or the main offices of the target banks if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks.¹⁰ Thus, in order to apply the branch retention provisions of section 36(b)(2)(A) in the context of mergers involving interstate banks, it is necessary to determine in which state(s) *the resulting bank* is situated.¹¹ The OCC previously concluded that, for section 36(b) purposes, the resulting bank is situated in all of the states in which the participating banks were situated in order to then apply the section 36(b)(2)(A) and 36(c) standard for the retention of the target bank's branches, using each state's law for the retention of branches for the branches in that state.¹¹ This necessarily follows from the courts' holdings regarding section 36(c) and the fact that section 36(b)(2)(A) refers to section 36(c).¹² In essence, we determined that, when an interstate national bank merges with another national bank in the same home state, the resulting bank is authorized to continue to operate its predecessor bank's branches, including interstate branches, provided the retention was permitted under section 36(b) and no other federal law required otherwise.

¹⁰ 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 under section 36(c)). See also *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) (*ASun World*) (same, agreeing with *Seattle Trust*).

¹¹ For purposes of section 36(b) and section 36(c) of the McFadden Act, the state law that is incorporated is state law dealing with branching by that state's banks within the state. State laws pertaining to the activities of the

state's banks outside the state or to the activities of out-of-state banks within the state are not the state laws these sections of the McFadden Act refer to. *See, e.g., OCC Bank Midwest Decision* (Parts II-B, II-C-2, II-D, III-B-1-b).

¹² *See, e.g., OCC Texas Merger Decision* (Part II-A-2-a) (pages 9-10); *OCC Bank Midwest Decision* (Part II-C-2-a). *See also Ghiglieri v. NationsBank of Texas, N.A., supra* note 8, slip op. at p. 7

We first considered the statute in this type of interstate context and applied it in this way in 1990 in a decision involving the conversion of an interstate state bank and its subsequent merger into a national bank with the same home state as the interstate bank and in other decisions before the Riegle-Neal Act.¹³ We have continued to apply it in many subsequent merger decisions involving interstate banks after the Riegle-Neal Act.¹⁴ Thus, the power of the resulting bank to retain the target bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state.

¹³ See Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991 (approved December 14, 1990)) (*OCC Shawmut Decision*) (both banks owned by Shawmut National Corporation; at the time of conversion, State Savings Bank had branches in Rhode Island). See also Decision on the Applications of First Fidelity Bank, N.A. (Pennsylvania) and First Fidelity Bank, N.A. (New Jersey) (OCC Corporate Decision No. 94-04, January 10, 1994) (also included grandfathered branches); Decision on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994) (also included grandfathered branches); Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) (Part II-B-2) (same).

¹⁴ See, e.g., Decision on the Applications of First Fidelity Bank, N.A. (New York) and First Fidelity Bank, N.A. (OCC Corporate Decision No. 94-42, October 20, 1994); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995); Decision on the Application to Merge First Bank N.A., Minneapolis, Minnesota, and First National Bank of East Grand Forks, East Grand Forks, Minnesota (OCC Corporate Decision No. 97-68, July 10, 1997). Cf. Decision on the Application of Republic Bank for Savings, New York, New York (OCC Corporate Decision No. 95-32, July 25, 1995) (in conversion of state-chartered savings bank with branches in New York and Florida, resulting national bank is considered *Asituated* in both states for purposes of applying branch retention provisions of 12 U.S.C. ' 36(b)(1)).

In a merger under section 215a, the resulting bank is situated in each state where the participating banks had a main office or branches for purposes of applying the branch retention provisions of sections 36(b)(2)(A) & 36(c). And so, in the Family Bank Merger, First Massachusetts-Resulting is situated in Massachusetts and New Hampshire, and it may retain, as branches, Family Bank, N.A.'s main office and branches in each state in the same way that other national banks situated in each state could retain branches in that state in a merger there under sections 36(b)(2)(A) & 36(c). Both Massachusetts and New Hampshire permit their state-chartered banks to acquire branches in a merger, or to establish branches *de novo*, without geographic limit within the state.¹⁵ Thus, a national bank situated in Massachusetts could acquire in a merger, and retain as branches under sections 36(b)(2)(A) and 36(c), the locations of Family Bank, N.A.'s main office and branches in Massachusetts; and a national bank situated in New Hampshire could acquire in a merger, and retain as branches under sections 36(b)(2)(A) and 36(c), the locations of Family Bank, N.A.'s branches in New Hampshire. Therefore, First Massachusetts-Resulting may retain Family Bank, N.A.'s main office and all its branches as branches under sections 36(b)(2)(A) and 36(c).

b. The Resulting Bank may retain and operate the branches of First Massachusetts under subsection 36(b)(2)(C).

In this merger, First Massachusetts is the acquiring bank. Section 36(b)(2)(C) authorizes the national bank resulting from a merger to retain and operate as a branch any branch 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. Here, the acquiring bank's branches (First Massachusetts) are all in a single state, Massachusetts. There is no provision in Massachusetts law that would prohibit a Massachusetts state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Indeed, as noted above, Massachusetts permits state-wide branching. Therefore, First Massachusetts-Resulting may retain the branches of First Massachusetts under section 36(b)(2)(C).

¹⁵ Mass. Gen. L. ch. 167C, ' 3; N.H. Rev. Stat. Ann. tit. 35, '' 384-B:2(I), 384-B:2(II) & 388:16.

Accordingly, First Massachusetts-Resulting may retain and operate as branches the main office and branches of Family Bank, N.A., and the branches of First Massachusetts.¹⁶

3. The authority for national banks for mergers and branch retention under 12 U.S.C. ' 215a & 36(b) continues after the Riegle-Neal Act.

In the Family Bank Merger, the authority for the merger and branch retention is based on longstanding provisions governing national banks, 12 U.S.C. ' ' 215a & 36(b). The Riegle-Neal Act did not change existing authority under sections 215a and 36(b). The Riegle-Neal Act created a new merger authority that allows mergers between banks with different home states. However, in the Family Bank Merger, the banks have the same home state, and so the Riegle-Neal Act's merger provisions do not apply to this merger. Yet, one of the banks has interstate branches. More generally, the Riegle-Neal Act did not directly address retention of a bank's existing interstate branches when it participates in a merger with another bank that is not a Riegle-Neal Act merger.¹⁷

¹⁶ First Massachusetts and Family Bank exercise fiduciary powers. After the merger, First Massachusetts-Resulting will continue to be authorized to exercise fiduciary powers under 12 U.S.C. ' 92a, it will succeed to the fiduciary appointments of both as a result of the merger, and it will be authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in both states in which it operates. See, e.g., 12 U.S.C. ' 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks): Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust 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 Letters cited in note 3 above (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).

¹⁷ It may be addressed for some banks in some situations in 12 U.S.C. ' 1831u(d)(2). Section 1831u(d)(2) addresses the authority of a Riegle-Neal Act interstate bank to establish or acquire additional branches. Among other things, it in effect codifies the *Seattle Trust* case's approach and the OCC's related interpretation of sections 215a and 36(b) and 36(c) for Riegle-Neal interstate national banks for situations covered by the provision. See also 12 U.S.C. ' 36(g)(2)(B) (applying section 1831u(d)(2) for subsequent branches when a national bank entered a state initially with a Riegle-Neal *de novo* branch). Thus, it is consistent to also apply sections 215a, 36(b), and 36(c) in interstate

transactions that the Riegle-Neal Act does not expressly address.

Only one provision in the Riegle-Neal Act addresses the question of exclusivity of branching authority and relationship to other laws and could be thought to supersede other law for national banks regarding mergers and branching.¹⁸ Thus, a branching transaction that is authorized under other authority clearly continues to be authorized under that authority, if it is consistent with section 36(e). Such is the case here. In the Family Bank Merger, section 36(e) is complied with because First Massachusetts-Resulting retains and operates its branches under the authority of section 36(b), a part of *this section* referred to in section 36(e)(1).

Moreover, we note that this result is not inconsistent with the overall framework or underlying purposes of the Riegle-Neal Act and that it is necessary in order to avoid absurd results. First, as noted above, the Riegle-Neal Act does not cover mergers between two banks with the same home states. If one of the banks already has branches in other states from a prior transaction (*e.g.*, a Riegle-Neal merger, a Riegle-Neal interstate *de novo* branch, or, as here, a conversion of

¹⁸ See Riegle-Neal Act ' 102(b)(1)(B) (adding new subsection 12 U.S.C. ' 36(e)(1) on exclusive authority for additional branches for national banks). Section 36(e)(1) provides:

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under *this section* or section 13(f), 13(k), or 44 of the Federal Deposit Insurance Act.

12 U.S.C. ' 36(e)(1) (emphasis added). The term *this section* refers to Revised Statutes ' 5155, 12 U.S.C. ' 36. A similar provision was added for state banks. See 12 U.S.C. ' 1828(d)(3). In addition, subsection 36(e)(2) (along with new subsection 30(c)) affects prior law regarding branch retention in interstate main office relocations. The Family Bank Merger does not involve a relocation, and so that provision is not involved here.

an interstate institution), it is inconceivable that Congress would have intended that such a bank could not merge with another bank in *its own home state*, without the resulting bank being required to surrender all its branches in all the other states. But that is the result that could follow if sections 215a and 36(b) are not applicable in the manner the OCC has determined. Second, in this transaction, the Resulting Bank has the same home state and operates the same branches in New Hampshire that Family Bank, N.A., did before the transaction. There are no new branches being operated in a new host state.¹⁹

4. Conclusion.

¹⁹ Moreover, we note that the banks here could have structured the transaction differently and reached the same result under the Riegle-Neal Act. Family Bank could have changed the location of its main office to one of the branch locations in New Hampshire under OTS procedures for a federal savings bank to change its main office location. Then Family Bank would convert to a national bank and retain its branches under section 1464(i)(5). Then Family Bank, N.A., could merge into First Massachusetts under the Riegle-Neal Act (since the banks would then have different home states), and the resulting bank would retain branches in both states under the Riegle-Neal Act. The alternative structure involves an extra step and may raise additional issues. Moreover, such alternatives may not be available in all instances, and so the continuing applicability of section 36(b) as outlined is needed.

The legal authority for the Family Bank Merger is similar to the analysis in many prior OCC decisions. The merger is authorized under 12 U.S.C. ' 215a, and the Resulting Bank may retain and operate the branches under the authority of 12 U.S.C. ' 36(b)(2) and consistent with 12 U.S.C. ' 36(e)(1). Accordingly, the Family Bank Merger is legally authorized.²⁰

C. The BNH Merger.

Farmington applied for approval to merge BNH into Farmington. Both banks have their main offices and all their branches in New Hampshire. Since the two banks are located in the same state, their merger is authorized under section 215a.²¹ BNH currently exercises fiduciary powers under New Hampshire law, and the applicants have requested OCC approval for the resulting bank, BNHNA, to exercise fiduciary powers under 12 U.S.C. ' 92a. New Hampshire permits its state banks to engage in a wide range of fiduciary activities. N.H. Rev. Stat. Ann. tit. 35, ' 390:13(I). Thus, national banks may conduct fiduciary activities in New Hampshire under section 92a. BNHNA's exercise of fiduciary powers after the BNH Merger is authorized.

Farmington also requested OCC approval for the bank resulting from the merger (BNHNA) to retain and operate the main office and branches of BNH (the target bank) and the branches of Farmington (the acquiring bank) as branches of BNHNA Bank after the merger. As discussed

²⁰ In addition, we note, because a portion of the deposits of Family Bank, though a Bank Insurance Fund member, are insured by the Savings Association Insurance Fund as a result of prior transactions, this transaction satisfies the requirements of 12 U.S.C. ' 1815(d)(3). The resulting bank will meet all applicable capital requirements.

²¹ BNH is a New Hampshire state-chartered bank. It does not have assets or engage in activities not permissible for national banks. It has two subsidiaries -- one that holds DPC real estate and another that services, and holds interests in, securitized lease pools comprised of bank-permissible lease-financing assets -- that will become subsidiaries of BNHNA as a result of the merger. The merger is not in contravention of state law for purposes of 12 U.S.C. ' 215a. The merger of a New Hampshire-chartered bank into a national bank is expressly authorized by New Hampshire law. N.H. Rev. Stat. Ann. tit. 35, ' 389:1. In addition, we note, because a portion of the deposits of BNH, though a Bank Insurance Fund member, are insured by the Savings Association Insurance Fund as a result of prior transactions, this transaction satisfies the requirements of 12 U.S.C. ' 1815(d)(3). The resulting bank will meet all applicable capital requirements.

above, branch retention following a merger under section 215a is covered by 12 U.S.C. ' 36(b)(2). Here, the main office and all the branches of both banks are in New Hampshire, and so the resulting bank is situated in New Hampshire. New Hampshire permits its state-chartered banks to acquire branches in a merger, or to establish branches *de novo*, without geographic limit within the state.²² Thus, BNHNA may retain the main office and branches of BNH under sections 36(b)(2)(A) and 36(c). And it may retain the branches of Farmington under section 36(b)(2)(C).

D. The GSB Merger.

²² N.H. Rev. Stat. Ann. tit. 35, ' ' 384-B:2(I), 384-B:2(II) & 388:16.

Howard Bank applied for approval to merge GSB, a Vermont state-chartered bank, into Howard Bank. Both banks have their main offices and all their branches in Vermont. Since the two banks are located in the same state, their merger is authorized under section 215a.²³ Howard currently exercises fiduciary powers under 12 U.S.C. ' 92a and will continue to be so authorized after the merger.

Howard Bank also requested OCC approval for the bank resulting from the merger (referred to here as AHoward-Resulting@ to distinguish it from Howard Bank prior to the merger) to retain and operate the main office and branches of GSB (the target bank) and the branches of Howard Bank (the acquiring bank) as branches of Howard-Resulting after the merger. As discussed above, branch retention following a merger under section 215a is covered by 12 U.S.C. ' 36(b)(2). Here, the main office and all the branches of both banks are in Vermont, and so the resulting bank is situated in Vermont. Vermont permits its state-chartered banks to acquire branches in a merger, or to establish branches *de novo*, without geographic limit within the state. Vt. Stat. Ann. tit. 8, ' 651. Thus, Howard-Resulting may retain the main office and branches of GSB under sections 36(b)(2)(A) and 36(c). And it may retain the branches of Howard Bank under section 36(b)(2)(C).

E. The Franklin Conversion and the First Vermont Conversion.

Franklin, a Vermont state-chartered bank, applied to convert into a national bank. First Vermont, a Vermont state-chartered bank, also applied to convert into a national bank. State banks may convert into national banks under 12 U.S.C. ' 35, which provides in pertinent part that:

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the owrd Anational@. *Provided, however,* That said conversion shall not be in contravention of the State law. . . .

12 U.S.C. ' 35. *See also* 12 C.F.R. ' 5.24.

²³ GSB is a Vermont state-chartered bank. It does not have assets or engage in activities not permissible for national banks. It has no subsidiaries. The merger is not in contravention of state law for purposes of 12 U.S.C. ' 215a. The merger of a Vermont-chartered bank into a national bank is expressly authorized by Vermont law. Vt. Stat. Ann. tit. 8, ' 1002.

The proposals to convert Franklin and First Vermont to national banks are permissible under 12 U.S.C. ' 35. Each bank's capital at the time of conversion will exceed the minimum amount required by 12 U.S.C. ' 51. It also meets the requirements of 12 C.F.R. Parts 3 and 6. Each bank's holding company, its sole shareholder, has approved the transaction. The conversion is not in contravention of state law. Vermont law authorizes its state banks to convert to a national bank. Vt. Stat. Ann. tit. 8, ' 1002. Neither bank has assets, or engages in activities, that are not permissible for national banks. Franklin has no subsidiaries. First Vermont has one subsidiary, a mortgage company that engages in residential mortgage lending permissible for national banks. Neither bank has fiduciary powers, and neither has requested fiduciary powers in its conversion.

When they convert, each bank may retain its branches. When a state bank converts into a national bank, the authority of the resulting national bank to retain the branches of the state bank is provided by 12 U.S.C. ' 36(b)(1). The resulting bank may retain branches if: (A) the branch might be established as a new branch under section 36(c); (B) the branch is grandfathered (*i.e.*, it was a branch on February 25, 1927); or (C) a similarly situated state bank resulting from a conversion of a national bank would not be prohibited by state law from retaining the branch. 12 U.S.C. ' 36(b)(1)(A) - (C). As discussed above, under section 36(c), a national bank may establish and operate new branches within the state in which it is situated to the same extent that state law authorizes state banks to establish and operate such branches. Vermont permits its state-chartered banks to establish or acquire branches without geographic limit within the state. Vt. Stat. Ann. tit. 8, ' 651. Here, after its conversion, Franklin could establish new branches at all the existing locations of its branches under section 36(c); and so it may retain those branches under section 36(b)(1). Similarly, after its conversion, First Vermont could establish new branches at all the existing locations of its branches under section 36(c); and so it may retain those branches under section 36(b)(1).

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 any 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 that Family Bank Merger, the BNH Merger, and the GSB Merger may be approved under section 1828(c).

1. Competitive Analysis.

The OCC has reviewed the competitive effects of the Family Bank Merger, the BNH Merger, and the GSB Merger by using its standard procedures for determining whether these business combinations clearly have minimal or no adverse competitive effects. The OCC finds that the proposed mergers satisfy its criteria for business combinations that clearly have no or minimal

adverse competitive effects. The resulting bank in the Family Bank Merger will become the third largest depository institution of thirty-six institutions in the Worcester County, Massachusetts, market and expand into the Essex County, Massachusetts, market as the seventh largest depository institution of forty-eight institutions. The resulting bank in the BNH Merger will become the second largest depository institution of six institutions in the Strafford County, New Hampshire, market and expand into the Hillsborough, New Hampshire, market as the second largest depository institution of fourteen institutions. The GSB Merger represents a merger of affiliates in the Washington County, Vermont, market. The resulting bank of this merger will become the second largest depository institution of six institutions in the market. In connection with the Parent Merger the Federal Reserve System will consider the competitive effects of that transaction as it relates to the resulting parent holding company. The Department of Justice has also concluded that the bank mergers discussed in this proposal clearly have no or minimal adverse competitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of the banks involved in the Family Bank Merger, the BNH Merger and the GSB Merger are presently satisfactory. PHFG expects the proposed transactions will result in substantial cost savings through the elimination of duplicative corporate overheads and administrative functions. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger applications.

3. Convenience and Needs.

Family Bank Merger, the BNH Merger, and the GSB Merger will not have an adverse impact on the convenience and needs of the communities to be served. The resulting bank in each merger will continue to serve the same areas that it and the bank being acquired now serve. There will be no reductions in products or services as a result of the mergers. The Parent Merger will broaden the range of products and services available to customers of the Banknorth subsidiary banks, including those in these mergers. Customers of Family Bank will become customers of a full-service commercial bank. In the Family Bank Merger and the BNH Merger, because the combining banks have overlapping branch systems, the resulting bank in each merger plans to close or consolidate several branches. The required notices were provided, and the OCC received no comments. Accordingly, we believe the impact of the transactions on the convenience and needs of the communities to be served is consistent with approval of these applications.

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 their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including conversions and mergers. See 12 U.S.C. ' 2903; 12 C.F.R. ' 25.29. The OCC considers the CRA performance evaluation of each depository institution involved in the transaction. Under the CRA regulation, the OCC evaluates performance of most large banks using criteria relative to the bank's

lending, investments, and services. 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 these applications and other information available to the OCC as a result of 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 all of the institutions involved in these transactions, except First Massachusetts, received Satisfactory or Outstanding CRA ratings as of their most recent examinations. (First Massachusetts does not yet have a CRA rating.) No public comments were received by the OCC relating to these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The transactions are not expected to have an adverse effect on the CRA performance of the resulting bank in each transaction. Each resulting bank will continue to serve the same communities that its predecessor institutions served. In the mergers, the assessment area of the target bank will be added to that of the resulting bank. As a general matter, the resulting bank in each transaction will have the same commitment to helping meet the credit needs of all the communities it serves as the parties have today as separate institutions. With respect to the Family Bank Merger, the resulting bank's operation of interstate branches does not alter its obligation to help meet the credit needs of its communities in both of the states it serves. We find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the Family Bank Conversion, the Family Bank Merger, the BNH Merger, the GSB Merger, the Franklin Conversion, and the First Vermont Conversion are legally authorized, the resulting bank in each transaction may retain and operate branches as described in the analysis above, each transaction meets the other statutory criteria for approval, and there are no supervisory or policy concerns. Accordingly, these applications are hereby approved.

/s/

03-08-00

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

Date

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