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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

**Corporate Decision #98-42  
October 1998**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATION BY  
NARA BANK, NATIONAL ASSOCIATION, LOS ANGELES, CALIFORNIA  
TO ACQUIRE A BRANCH IN NEW YORK**

**September 4, 1998**

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**I. INTRODUCTION**

Nara Bank, National Association, Los Angeles, California, ("Nara Bank") has applied to the Office of the Comptroller of the Currency ("OCC") for approval to acquire an insured branch (including the purchase of certain assets, and assumption of the deposit liabilities, of the branch) in Flushing, Queens County, New York, (the "Flushing Branch") from Korea Exchange Bank, Seoul, Republic of Korea, under 12 U.S.C. §§ 24(Seventh), 36(d), 1828(c) & 1831u (the "Interstate Branch Acquisition"). The Flushing Branch is a New York state-licensed branch of a foreign bank; its deposits are insured by the Federal Deposit Insurance Corporation.<sup>1</sup> The banks are not affiliated. As of May 31, 1998, Nara Bank had approximately \$177 million in deposits. It will assume approximately \$22 million in deposit liabilities in its acquisition of the Flushing Branch. It will also acquire certain loans and physical assets associated with the branch. The Flushing Branch will be Nara Bank's first branch in the State of New York.

**II. LEGAL AUTHORITY**

First, the purchase and assumption transaction is authorized under 12 U.S.C. § 24(Seventh). National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C.

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<sup>1</sup> Korea Exchange Bank also has two other state-licensed branches in New York. They are not involved in this transaction. It also has branches and other offices in other states.

§ 24(Seventh).<sup>2</sup> Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, Nara Bank may purchase the assets, and assume the liabilities, of the Flushing Branch from Korea Exchange Bank. If Nara Bank did not also plan thereafter to operate the Flushing Branch as a branch of Nara Bank, no further authority would be needed. Additional authority is required to operate it as a branch.

Second, Nara Bank's acquisition and operation of the branch in New York is authorized under 12 U.S.C. §§ 36(d) & 1831u. In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks.<sup>3</sup> The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions:

(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) (added by the Riegle-Neal Act § 102(a)).<sup>4</sup> Under the Riegle-Neal Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions.<sup>5</sup> In addition, the term "insured bank" includes a foreign bank with an insured branch.<sup>6</sup> The Riegle-Neal Act permits a state to elect to prohibit interstate merger transactions

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<sup>2</sup> See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

<sup>3</sup> See 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"). The Riegle-Neal Act also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with the Riegle-Neal Act. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

<sup>4</sup> For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

<sup>5</sup> An "interstate merger transaction" is defined as a "merger transaction" approved under section 1831u(a); a "merger transaction" is defined by reference to 12 U.S.C. § 1828(c); and section 1828(c) includes purchase and assumption transactions in which deposit liabilities are assumed. See 12 U.S.C. §§ 1831u(f)(6)-(7) & 1828(c)(3).

<sup>6</sup> See 12 U.S.C. §§ 1813(h) (definition of "insured bank" for the Federal Deposit Insurance Act includes foreign bank having an insured branch), 1813(a)(1) (the term "bank" includes an insured branch) & 1813(s)(3) ("insured branch" means any branch of a foreign bank any deposits in which are insured).

involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all interstate merger transactions with all out-of-state banks. 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In this application, the home states are California and New York; neither state opted out.

As noted, an "interstate merger transaction" under section 1831u(a) includes a purchase and assumption transaction. A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and assumption of only a part of bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

12 U.S.C. § 1831u(a)(4)(A). In this application, the branch to be acquired is located in New York. New York law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in New York through the acquisition of a branch.<sup>7</sup> Finally, the Riegle-Neal Act also provides that a national bank may maintain and operate a branch in a state other than its home state as a result of an interstate merger transaction under section 1831u(a).<sup>8</sup> Accordingly, this application may be approved under 12 U.S.C. §§ 36(d) and 1831u.<sup>9</sup>

In addition, an application to engage in an interstate merger transaction, including an interstate branch acquisition, under 12 U.S.C. § 1831u is also subject to certain requirements and

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<sup>7</sup> Under New York law, an out-of-state bank that does not operate a branch in New York may maintain one or more branches in New York acquired by means of an "acquisition transaction." N.Y. Banking Law §§ 223 & 225. An "acquisition transaction" means "any merger, consolidation or purchase of assets and assumption of liabilities of all or part of a banking institution. N.Y. Banking Law § 222(7) (emphasis added).

<sup>8</sup> See 12 U.S.C. §§ 36(d) & 1831u(d)(1). Section 36(d) provides:

Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Section 36(d), rather than other subsections of section 36, is the authority for the Flushing Branch in this application because the acquisition of a branch in a purchase and assumption transaction under section 1831u(a)(4) is an "interstate merger transaction" under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u.

<sup>9</sup> It is not clear whether Congress intended the interstate acquisition of an insured branch of a foreign bank to be treated as the acquisition of a bank or of a branch for Riegle-Neal Act purposes. Since Nara Bank's acquisition would be authorized under section 1831u(a)(4) in any event, we need not address this question further in this application.

conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

Nara Bank's application satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). New York does not appear to have an age requirement applicable to Nara Bank's proposed transaction.<sup>10</sup>

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).<sup>11</sup> New York requires the out-of-state bank to file with the New York state banking superintendent a copy of the application filed with the appropriate federal banking agency. N.Y. Banking Law § 225(2). Nara Bank submitted a copy of its OCC application to the New York state banking authorities. Thus, this application satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. Under section 1831u(b)(2)(A), the OCC may not approve an interstate merger transaction if the resulting bank (including all affiliated insured depository institutions) would control more than 10 percent

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<sup>10</sup> New York requires that, in an acquisition transaction in which the resulting institution is an out-of-state bank, the New York bank must have been in existence for at least five years, unless the New York bank to be acquired was not chartered directly or indirectly by the out-of-state bank. N.Y. Banking Law § 223-a. Here, the Flushing Branch and Korea Exchange Bank are independent of Nara Bank, and so the five-year requirement would not apply. In addition, the Flushing Branch has been in existence since 1985; thus, the age requirement, even if applicable, would be met.

<sup>11</sup> Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

of the total amount of deposits in the United States. Under section 1831u(b)(2)(B), the OCC may not approve an interstate merger transaction (1) if any bank involved in the transaction (including all affiliated insured depository institutions) has a branch in any state in which any other bank involved in the transaction has a branch and (2) if the resulting bank (including all affiliated insured depository institutions) would control 30 percent or more of the total deposits in any such state. After the Interstate Branch Acquisition, Nara Bank will control less than 10 percent of total deposits in the United States and less than 30 percent of the deposits New York and California. This application meets the Riegle-Neal Act's deposit concentration limits.

Fourth, the proposed Interstate Branch Acquisition meets the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). Nara Bank has a satisfactory rating with respect to CRA performance. Nara Bank has no bank affiliates. CRA considerations are discussed further in Part III-B below.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4). The applicable capital standards are met in this application. The OCC has also determined that, following the Interstate Branch Acquisition, Nara Bank will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, Nara Bank's proposed acquisition and operation of the Flushing Branch in New York is legally permissible under 12 U.S.C. §§ 36(d) & 1831u.

### **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 transaction, including purchase and assumption transactions, between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger transaction 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 the application may be approved under section 1828(c).

### **1. Competitive Analysis.**

The Flushing Branch is outside Nara Bank's current competitive market area. Accordingly, Nara Bank's acquisition of the branch will have no anticompetitive effects. In addition, the OCC reviewed the competitive effects of this proposal using its standard procedures for determining whether a proposed transaction clearly has minimal or no adverse competitive effects and found that this transaction met that standard.

### **2. Financial and Managerial Resources.**

The financial and managerial resources of both Nara Bank and the Flushing Branch do not raise concerns that would warrant denial of the application. Nara Bank is in satisfactory condition, and its future prospects are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the application.

### **3. Convenience and Needs.**

The resulting bank will help to meet the convenience and needs of the communities to be served. Nara Bank will continue to serve the same areas in California, and it will add the Flushing Branch in New York. There will be no reduction in products or services offered in California or at the Flushing Branch. No branch closings are contemplated as a result of this transaction. Accordingly, we believe the impact of the interstate branch acquisition on the convenience and needs of the communities to be served is consistent with approval of the application.

## **B. The Community Reinvestment Act.**

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a)(3). Both Nara Bank and the Flushing Branch have satisfactory ratings with respect to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the bank's performance in complying with the CRA.

The Interstate Branch Acquisition is not expected to have any adverse effect on the resulting bank's CRA performance. Nara Bank will continue to serve the same communities that it currently serves and will continue its current CRA programs and policies. After the Interstate Branch Acquisition, it will add the community around the Flushing Branch to its assessment areas. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as Nara Bank and the Flushing Branch have today separately. The acquisition and operation of an interstate branch does not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We

find that approval of the proposed Interstate Branch Acquisition is consistent with the Community Reinvestment Act.

**IV. CONCLUSION AND APPROVAL**

For the reasons set forth above, including the representations and commitments made by the applicant, we find that Nara Bank's acquisition and operation of the Flushing Branch in New York is legally authorized under 12 U.S.C. §§ 24(Seventh), 36(d) & 1831u, and that the Interstate Branch Acquisition meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

\_\_\_\_\_/s/  
Raymond Natter  
Acting Chief Counsel

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09-04-98  
Date

Application Control Number: 98-WE-02-0020