Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-87
October 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF VERMONT NATIONAL BANK, BRATTLEBORO, VERMONT

September 13, 1997

I. INTRODUCTION

These Applications are part of a multi-step transaction by which Vermont National Bank, Brattleboro, Vermont, ("VNB") will combine with its affiliate, Vermont Federal Bank, Federal Savings Bank ("VFB-FSB"). Both VNB and VFB-FSB are subsidiaries of Vermont Financial Services Corporation ("VFSC"), a registered bank holding company. VFB-FSB currently has its home office in Williston, Vermont, and operate branches in Vermont and New Hampshire. In the first step in the transaction, taken by VFB-FSB under the statutes and regulations governing federal savings associations, VFB-FSB will change its home office from Williston, Vermont, to Exeter, New Hampshire.

The remaining steps, taken by VNB, are the subject of these Applications. On July 16, 1997, VNB filed Applications with the Office of the Comptroller of the Currency ("OCC") for approval for the following transactions: (1) VFB-FSB, after changing its home office to New Hampshire, will transfer all of its Vermont banking operations, including without limitation, all of its Vermont branch offices to VNB, under 12 U.S.C. §§ 24(7), 36(c), 1815(d)(3), and 1828(c) (the "Vermont P&A Application"); (2) VFB-FSB will convert from a federal savings bank in stock form into a national banking association,Vermont Federal National Bank ("VFNB") under 12 C.F.R. § 5.24 ("the Conversion Application"); and (3) VFNB (a national bank with its main office and branches located exclusively in New Hampshire) will merge with and into VNB under VNB's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). In the Merger Application, OCC approval is also requested for VNB, as the resulting bank, to retain VNB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain VNB's branches and the main office and branches of VFNB as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1). VNB also submitted an application to establish an additional, new branch, after the merger, in Portsmouth, Stafford County, New Hampshire, pursuant to 12 U.S.C. § 36(c). The location is currently operated by VFB-FSB as a loan production office.

II. LEGAL AUTHORITY

A. The Vermont P&A Application is Authorized.

VNB applied to purchase certain assets from, and assume certain liabilities of, its affiliate, VFB-FSB, after VFB-FSB changes its home office to Exeter, New Hampshire. These assets and liabilities consist of the VFB-FSB's business at its branches throughout Vermont. Presently, VFB-FSB operates fifteen branches in Vermont. As a result of the purchase & assumption transaction, VNB will control deposits that are insured by the Savings Association Insurance Fund ("SAIF").[1]

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. § 24(Seventh). 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). Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, VNB may purchase the assets, and assume the liabilities, of VFB-FSB's Vermont branches.[2]

If VNB did not also plan to acquire and operate the Vermont branches as branches of VNB, no further authority would be needed. Additional authority is required to operate the branches. VNB may establish these branches through acquisition in the purchase and assumption under 12 U.S.C. § 36(c). Under Vermont law, Vermont state-chartered banks may establish branches within Vermont without geographic limitation. See Vt. Stat. Ann. tit. 8, § 651(a). Thus, national banks situated in Vermont may establish branches within Vermont without geographic limitation under section 36(c). Thus, VNB may establish branches at the locations of the Vermont branches of VFB-FSB under section 36(c).

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[1] Analysis for compliance with the Oakar Amendment, 12 U.S.C. § 1815(d)(3), will be addressed in Section II-E below.

[2] As part of this transaction, VFB-FSB will also transfer to VNB all of the issued and outstanding stock of Eastern Real Estate Corporation ("EREC"), a subsidiary that is engaged in the liquidation of OREO properties, and I.A. Financial Services Corporation, a currently inactive subsidiary. Both will become operating subsidiaries of VNB. A national bank may acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking. See 12 C.F.R. § 5.34(d). The OCC generally requires a national bank or its subsidiary to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following a business combination. See 12 C.F.R. § 5.33(e)(5). Counsel for VNB represents that EREC does not currently hold any impermissible real estate investments. Nevertheless, after the conversion of VFB-FSB into a national bank and its merger into VNB, VNB plans to liquidate EREC within two years. Thus, VNB may acquire both operating subsidiaries.

B. The Conversion Application is Authorized.

VFB-FSB may convert into a national bank. See 12 C.F.R. § 5.24. Regulations of both the OCC and the Office of Thrift Supervision ("OTS") permit the direct conversion of a Federal savings association to a national bank.[3] In approving a conversion application, the OCC regulations provide that conversions will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. A review of the Conversion Application 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. Review of the record discloses nothing that indicates these factors provide a basis for denial of the Conversion Application.[4]

After the conversion, VFB-FSB, now VFNB, may continue to operate VFNB's branches in New Hampshire. Although 12 U.S.C. § 36, governing branching by national banks, does not expressly address the retention of branches by a national bank resulting from the conversion of a Federal savings bank,[5] the continued operation of the branches may be permitted under section 36(c). Section 36(c) would permit a national bank resulting from the conversion of a Federal savings bank to continue to operate the branches of the Federal savings bank if a state bank resulting from the conversion of a Federal savings bank could continue to operate the branches. This could occur if state law permitted state banks to establish a branch at the site de novo, or if state law permitted a state bank, following its conversion from a Federal savings association to operate a branch at the site. See Decision on the Applications of TCF Financial Corp. (OCC Corporate Decision No. 97-13, February 24, 1997) (pages 6-7) (for further discussion of this issue).

New Hampshire expressly permits branching without geographic limitations within New Hampshire. See N.H. R.S.A. § 384-B:2 (1996 supp.). The statute provides that "any bank with its principal office within the state of New Hampshire may establish and operate one or more branch offices in any town within the state." N.H. R.S.A. 384-B:2 (1996 supp.). A New Hampshire state bank with its principal office in New Hampshire could establish branches at all

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[3] See 12 C.F.R. § 5.24 (OCC regulations providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing that application); 12 C.F.R. § 552.2-7 (providing that a Federal stock association may convert to a national charter after filing a notification or application with the OTS). See also 12 C.F.R. § 563.22(b)(1)(ii) and (h)(1) and 12 C.F.R. § 516.3(a) (OTS standards and procedures for conversion to bank charters). VFB-FSB has complied with the OTS procedures.

[4] In addition, a conversion application must be reviewed in light of the Community Reinvestment Act ("CRA"), 12 U.S.C. § 2901 *et seq.*, which is discussed in Part III-B below.

[5] Section 36(b)(1), relating to branch retention following conversion, specifically addresses conversions only of state banks.

of the locations of VFB-FSB in New Hampshire that VFNB proposes to continue after the conversion. Accordingly, VFNB may operate branches at those locations under section 36(c).

C. The Merger is Authorized, and the Resulting Bank may Retain the Banking Offices of Both Banks under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

1. The VNB-VFNB Merger is authorized under sections 215a-1 & 1831u(a).

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. 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 added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 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 section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

> (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).[6] The Act permits a state to elect to prohibit such interstate merger transactions 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 mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In the Merger Application, the home states of the banks are Vermont and New Hampshire; neither state has opted out. Accordingly, the proposed Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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

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[6] 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 "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." 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).

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.

The Merger 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). In this Merger Application, VNB is acquiring by merger a bank (VFNB) in the host state of New Hampshire. New Hampshire law requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the New Hampshire bank must have been in existence for at least five years.[7] In this case, VFNB and its predecessor, VFB-FSB, has been in existence for more than five years. Thus, the merger satisfies the Riegle-Neal Act's age requirement.

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).[8] The New Hampshire interstate bank merger statute

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[7] The New Hampshire statute provides:

> Unless otherwise provided in this paragraph, a New Hampshire bank or a national bank having its principal place of business in New Hampshire may merge with any out-of-state bank in accordance with applicable laws and regulations of New Hampshire and any other applicable state and federal authority. If the resulting bank is an out-of-state bank, the New Hampshire bank or national bank having its principal place of business in New Hampshire shall be required to be in existence for at least 5 years in order to be eligible to merge. . . .

N.H. R.S.A. § 384:59(I)(1996 supp.). Out-of-state bank means: (a) a national bank or a federal savings association having its main office located in a state other than New Hampshire; or (b) a bank chartered by a state other than New Hampshire. See N.H. R.S.A. § 384:57 (1996 supp).

[8] 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. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo

requires that "the merging banks to file a copy of each application or notice filed with federal or other state regulatory authorities relating to the merger at the same time such application or notice is filed with such federal or other state regulatory authorities." N.H. R.S.A. § 384:59(III) (1996 supp.). VNB submitted a copy of its OCC application for the merger to the New Hampshire state bank supervisor, as required by section 1831u(b)(1)(A)(ii). Thus, the merger satisfies the Riegle-Neal Act's filing requirements.

Third, the proposed interstate merger 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. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). VNB and VFNB are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to 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 banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, VNB (the bank submitting the application as the acquiring bank) and VFNB are affiliates. Thus, this Riegle-Neal Act provision is not applicable to the Merger. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

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. See 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, both VNB and VFNB satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, VNB will

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other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. 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).

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, the proposed interstate merger transaction between VFNB and VNB is legally permissible under section 1831u.

2. The resulting bank may retain the banking offices of both banks under sections 36(d) & 1831u(d)(1).

VNB (as the resulting bank in the merger) has requested approval to retain and continue to operate its main office in Brattleboro, Vermont, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own branches and (2) the main office and branches of VFNB. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

> (1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) 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)). Therefore, VNB, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the banking offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[9]

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[9] By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then

Moreover, at its branches in New Hampshire, as well as those in Vermont, VNB is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). 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).

D. VNB may Establish an Additional Branch in New Hampshire under 12 U.S.C. § 36(c).

After the merger is completed, VNB will be an interstate national bank with its main office in Vermont and branches in Vermont and New Hampshire. VNB has applied to establish another branch in Portsmouth, New Hampshire. If approved, the branch will be located at a loan production office that is currently operated by VFB-FSB. The Branch Application, therefore, is an application by an interstate national bank for an additional branch in one of the states in which it already has branches.

Under the Riegle-Neal Act, once a national bank has obtained interstate branches in a host state by an interstate merger transaction under 12 U.S.C. § 1831u or has established an interstate *de novo* branch in a host state under 12 U.S.C. § 36(g), then the national bank's later acquisition or establishment of additional branches in that state is not another interstate branch application, but is subject to the same branching authority governing branching by other national banks in that state. See 12 U.S.C. § 1831u(d)(2) (additional branches by interstate banks formed by Riegle-Neal interstate merger transactions) & 12 U.S.C. § 36(g)(2)(B) (incorporating section 1831u(d)(2) to apply to additional branches by interstate banks formed by a Riegle-Neal *de novo* branch).[10]

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incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

[10] Section 1831u(d)(2) provides:

> (2) Additional Branches. -- Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

12 U.S.C. § 1831u(d)(2). Thus, in any host state, a national bank resulting from an interstate merger among national banks in different states may establish or acquire additional branches in the host state under the federal law applicable to branching by national banks in the host state (e.g., section 36(b)(2) with respect to branches acquired through merger, and section 36(c) with respect to branches acquired by purchase or established *de novo*).

The legislative history of the *de novo* branching provisions of the Riegle-Neal Act reaffirms this. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 56 (August 2, 1994) (Report on H.R. 3841, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994). See also Decision on the Applications of Community National Bank (OCC Corporate Decision No. 96-22, April 19, 1996) (further discussion of this issue).

These provisions codify, for Riegle-Neal interstate national banks, the interpretation of section 36(c) adopted by the courts and the OCC in the context of interstate national banks formed under other, prior law. In section 36(c), the McFadden Act authorizes a national bank to establish new branches "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question … ." 12 U.S.C. § 36(c)(2). The interpretation of the statute adopted since at least 1974 has been that, for the purpose of establishing additional branches under section 36(c), an interstate national bank is "situated" in each state in which it has its main office or a branch: The bank can establish other branches within each state to the same extent as other national banks situated in that state, i.e., to the same extent that state allows its state banks to have branches within the state. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48 (9th Cir.), cert. denied, 419 U.S. 844 (1974). See also Ghiglieri v. Sun World, National Association, 117 F.3d 309 (5th Cir. 1997). The OCC has applied this principle from Seattle Trust in prior decisions involving national banks with operations in more than one state both before and after the Riegle-Neal Act. See, e.g., Decision of the Office of the Comptroller of the Currency on the Applications of 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") (Part II-B) (and other OCC decisions cited therein). See also OCC Bank Midwest Decision (Part II-C-2) (applying similar analysis in section 36(b)(2)).

Thus, both by operation of 12 U.S.C. § 1831u(d)(2) and by existing construction of 12 U.S.C. § 36(c), VNB's establishment of the additional branch in New Hampshire is subject to section 36(c), not section 36(g). For purposes of applying section 36(c) to VNB's later branching within New Hampshire after the merger, VNB is treated as a national bank situated in New Hampshire. Under New Hampshire law, New Hampshire state-chartered banks are permitted to establish branches throughout New Hampshire without geographic limitation. See N.H. R.S.A. § 384-B:2(I) (1996 supp.). A New Hampshire state bank could establish a branch in Portsmouth. Thus, a national bank situated in New Hampshire could establish a branch in Portsmouth under 12 U.S.C. § 36(c). Therefore, VNB may establish the proposed branch in Portsmouth under section 36(c).[11]

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[11] Another provision also added to 12 U.S.C. § 36 in the Riegle-Neal Act further supports this result. Congress added section 36(f) to address the law applicable to interstate branching operations at branches in a host state of an interstate national bank. Among other provisions, section 36(f)(1)(A) provides that "the laws of the host State regarding . . . establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except -- (i) when Federal law preempts the application of such State laws to a national bank . . . ." 12 U.S.C. § 36(f)(1)(A). Thus, under this provision, but for the preemption exception, it is clear that the subsequent establishment of branches within a host state is treated like the establishment of intrastate branches within the host state by the host state's state banks. Since there

E. The Vermont P&A and the Merger Comply with 12 U.S.C. § 1815(d)(3).

The Vermont P&A and the Merger also comply with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). VFB-FSB is, and VFNB will be, a member of the Savings Association Insurance Fund ("SAIF"). VNB is a member of the Bank Insurance Fund ("BIF"). The merger of a SAIF member into a BIF member, and the assumption of any liability by a BIF member to pay any deposits of a SAIF member, are conversion transactions under 12 U.S.C. § 1815(d)(2)(B)(ii), (B)(iii)(I) & (B)(iv)(II). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). The OCC has determined the acquiring and resulting bank (VNB) meets all applicable capital requirements. Since the Vermont P&A transaction need only satisfy applicable capital requirements, see note 12, it complies with the Oakar Amendment.

In addition, a BIF member which is a subsidiary of a bank holding company may not be the acquiring and resulting bank in an Oakar transaction unless the transaction would comply with the requirements for an interstate bank acquisition of section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), if the SAIF member involved in the transaction was a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F).[12]

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal Community Reinvestment Act requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution.

All of these are met with respect to the Merger. First, the age limit is met. New Hampshire law provides that out-of-state bank holding companies may not acquire a New Hampshire bank that has been in existence less than five years. See N.H. R.S.A.

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are federal laws specifically governing in-state branching by national banks (i.e., 12 U.S.C. §§ 36(b), 36(c), 36(g)(2)(B), & 1831u(d)(2)), those laws would preempt this provision under the preemption exception. However, since those laws also incorporate, and make applicable to national banks, state law for in-state branching by state banks, the outcome is generally the same.

[12] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank located in a state other than the holding company's home state. The home state of VFSC is Vermont. VNB is located in Vermont. VFNB, and the assets and liabilities being acquired in the interstate merger transaction, are located in New Hampshire. And so it is necessary to undertake the analysis for the Merger. However, because VFSC, VNB, and the assets and liabilities being acquired by VNB in the Vermont P&A (i.e., VFB-FSB's Vermont branches) all are located in Vermont, VNB need only satisfy the capital requirements of 12 U.S.C. § 1815(d)(3)(E)(iii) to consummate the Vermont P&A transaction.

§ 384:58(II)(1996 supp.). VFNB and its predecessor, VFB-FSB, has been in existence for more than five years.

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, VFSC and all of its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). They controlled about $853.4 million in domestic deposits as of December 31, 1996, less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). If the transaction is not considered to be an initial entry in the Oakar analysis and so paragraph (d)(2)(B) is applicable to it, this limit is met. In this transaction, deposits are merely moving among VFSC's existing insured depository institution subsidiaries. Therefore, the total amount of deposits held in New Hampshire by the applicant and all of its insured depository institution affiliates will not change. The total New Hampshire deposits of VFSC and VNB was approximately $233,689,881, less than 30 percent of the total New Hampshire deposits, as of December 31, 1996. The statewide concentration limit is satisfied.

Third, the bank holding company's compliance with the federal Community Reinvestment Act ("CRA") and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). In this regard, we note that the applicant bank has at least a satisfactory federal CRA rating. New Hampshire has no applicable state community reinvestment laws. No CRA-related public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance, and the OCC has no other basis to question the bank holding company's CRA performance. Thus, no issues arise under the federal CRA or state community reinvestment laws that would require denial of this application.

Finally, we note that the condition of the bank holding company, including its capital position and management, is consistent with approval of this transaction under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment. Accordingly, the Merger complies with the Oakar Amendment.

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 transactions 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 the Vermont P&A Application and the Merger Application may be approved under section 1828(c).

1. Competitive Analysis.

Since VNB and VFB-FSB are already owned by the same bank holding company, their combination in the Vermont P&A and the Merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of VNB and VFB-FSB are presently satisfactory. VFSC and VNB expect to achieve efficiencies by operating the former offices of VFB-FSB/VFNB in Vermont and New Hampshire as branches of VNB rather than as a separate corporate entity. The geographic diversification of its operations will also strengthen the combined bank. 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 Vermont P&A and the Merger.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. VNB's New Hampshire branches will continue to serve the same areas as they did when they were operated by VFNB, formerly VFB-FSB. VNB's Vermont branches will continue to serve its existing market area. Both VNB and VFB-FSB currently offer a full line of banking services, and there will be no reduction in the products or services as a result of the merger. Nevertheless, certain modifications in VFB-FSB's product features will be changed to match the products supplied by VNB, such as certain features of checking, savings accounts and Certificates of Deposit. The combined bank will continue to offer a full line of banking products and services. The branches in New Hampshire will continue to engage in the same business and serve the same communities that VFB-FSB currently serves.

Upon completion of the transactions, customers of the predecessor institutions will have available to them a greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Prior to the merger VNB will have no branches in New Hampshire. Following the transactions, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. Especially benefitting will be those customers who live in one state and work in another, particularly in Southeastern Vermont. The merger will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

VNB will close certain branches in Vermont. However, the services provided to current customers of such offices will not be materially reduced as a result of the closings of such offices because the communities served by each such office, including low and moderate-income communities, will continue to be fully served by an office formerly operated by VFB-FSB or currently operated by VNB that is in close proximity to the present location of each such branch. While certain branches will be closed as a result of the merger, the Bank's objective in identifying branches for closing was to eliminate overlapping locations without vacating any market currently served by either institution. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches being closed, and will consider the needs of the community affected.

Accordingly, we believe the impact of the Vermont P&A and the Merger on the convenience and needs of the communities to be served is consistent with approval of the 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. See 12 U.S.C. § 2903. Both VNB and VFB-FSB have at least satisfactory ratings, with respect to CRA performance. No CRA-related 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.[13]

The Vermont P&A, the Conversion, and the Merger are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging banks currently serve. VNB will continue its current CRA programs and policies in Vermont. After VFB-FSB converts into VFNB and is merged into VNB, its New Hampshire offices will remain open as branches of VNB. Moreover, when the branch is opened in Portsmouth, New Hampshire, that area will be added to VNB's assessment area. VNB will carry forward the same CRA programs and policies that the Bank and VFB-FSB have today and add other programs as they are developed. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities VNB and VFB-FSB serve today as separate banks. The merger and operation of interstate branches and the P&A do 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 these applications is consistent with the Community Reinvestment Act.

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[13] The OCC did receive an objection alleging certain violations of the Americans with Disabilities Act by Vermont National Bank. We determined that the objection did not fall within the scope of the Bank Merger Act or CRA, and that jurisdiction for enforcement rests with the U.S. Department of Justice. OCC referred the objection to the Department of Justice and informed the commenter of our action and reasons.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Vermont P&A is authorized under 12 U.S.C. §§ 24(Seventh), 36(c), and 1815(d)(3); the Conversion is authorized under 12 C.F.R. § 5.24; the Merger is authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1); VNB is authorized to establish the additional branch under 12 U.S.C. § 36(c); and that the applications meet the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 09-13-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers:
97-NE-02-0031 (Vermont P&A Application)
97-NE-01-0015 (Conversion Application)
97-NE-02-0032 (Merger Application)
97-NE-05-0132 (Branch Application)