Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-60

Published in Interpretations and Actions November 1996

October 31, 1996

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE CHEMICAL BANK FSB, PALM BEACH, FLORIDA, WITH AND INTO THE CHASE MANHATTAN PRIVATE BANK (FLORIDA) NATIONAL ASSOCIATION, TAMPA, FLORIDA AND OPERATE BRANCHES OF CHEMICAL BANK FSB AS BRANCHES OF THE CHASE MANHATTAN PRIVATE BANK (FLORIDA)

I. Introduction

On August 9, 1996, an application was filed with the Office of the Comptroller of the Currency for approval to merge Chemical Bank FSB (the Federal Savings Bank) into The Chase Manhattan Private Bank (Florida) National Association (the National Bank), retaining the charter and title of the latter, under 12 U.S.C. §§ 215c, 1467a(s) and 1828(c)(2) and consistent with section 1815(d)(3) (the Oakar Amendment). (**NOTE:** We note that the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-298, § 2201, 110 Stat. 3009 (September 30, 1996) (the 1996 Act) made certain changes to the language of sections 215c, 1467a(s) and 1815(d)(3). These revisions, however, made no substantive change to those provisions and are not relevant to the permissibility of the proposed transaction.) The Federal Savings Bank has its home office and branches in Florida and a branch in California. The National Bank has its main office and branches in Florida. The Application also requests OCC approval for the National Bank to operate, following the merger, branches of the Federal Savings Bank in Florida and California consistent with the above provisions and 12 U.S.C. § 36(c).

As of June 30, 1996, the National Bank had approximately $206 million in assets, $37 million in deposits and two branches in Florida. As of the same date, the Federal Savings Bank had approximately $139 million in assets, $126 million in deposits, and operated its main office and three branches in Florida and one branch in California. Following consummation of the transaction, the National Bank has sought permission to operate as branches three of the offices acquired from the Federal Savings Bank in Florida (**NOTE:** One branch office of the Federal Savings Bank in Florida that shares its site with a branch of the National Bank will not be retained.) and the office acquired from the Federal Savings Bank in California. (**NOTE:** The National Bank has represented that because of the continued consolidation of its various banking units, it expects that this California branch will operate as a branch of the National Bank for no longer than 14 months after which its activities will be conducted by a California-headquartered affiliate rather than a Florida headquartered affiliate. See Letter to Robert B. Norris, National Bank Examiner, Bank Organization and Structure, by Patricia S. Skigen, counsel for the applicant (September 11, 1996).)

The National Bank is a BIF member and is a wholly-owned subsidiary of Chase Manhattan National Holding Company (CMNHC), a direct subsidiary of Chase Manhattan Corporation, New York City, New York (CMC). The National Bank was originally organized as a retail-oriented national bank but in recent years its primary activities have consisted of fiduciary and investment management services. The

National Bank also engages in deposit taking and in marketing the products and services of affiliates. As of June 30, 1996, the National Bank manages about 460 trust and other fiduciary accounts with an aggregate fair market value of about $1.1 billion.

The Federal Savings Bank is a SAIF-insured subsidiary of Chemical Thrift Holdings, Inc., a unitary savings and loan holding company which is directly owned by Chemical Holding Delaware, Inc., a wholly-owned subsidiary of CMC. (**NOTE:** The acquisition by Chemical Banking Corporation of The Chase Manhattan Corporation, including its various subsidiaries, was approved by the Federal Reserve Board (the Board) on January 5, 1996. See 82 Federal Reserve Bulletin 239 (March 1996) (the Board Order).) The Federal Savings Bank primarily operates as a trust company and offers certain banking products and services to its clients principally as a convenience or as an incident to its fiduciary and investment management services. It currently manages about 830 trust and other fiduciary accounts with a fair market value of about $1 billion. As a result of the proposed merger between the two institutions, the existing operations of the Federal Savings Bank and the National Bank will be combined into the National Bank which, as a result, will acquire additional branches in Florida and one in California. During the thirty-day comment period no protests were filed with the OCC but subsequent to the close of the comment period, the State of California on September 13, 1996, filed a letter of objection to the proposed retention by the National Bank of the branch in California. A second protest was filed on September 18, 1996, by Inner City Press/Community on the Move (ICP), supplemented by letters dated October 7, 1996, and October 25, 1996, raising various issues about the performance of the institutions involved and several bank or lending affiliates. (**NOTE:** Florida banking regulators orally advised the OCC that they had no comment on this application.)

II. Summary

A. Under the authority of 12 U.S.C. §§ 215c and 1467a(s) (section 5(s) of the Home Owners' Loan Act (HOLA)), on the basis of the facts presented, the National Bank may acquire through a merger the Federal Savings Bank where the two institutions have their main offices and branches in the same state and the Federal Savings Bank also has a branch in another state;

B. The merger is consistent with the provision of the Oakar Amendment, 12 U.S.C. § 1815(d)(3)(F), that applies 12 U.S.C. § 1842(d) (hereinafter referred to as section 1842(d) or as the Douglas Amendment), a provision of the Bank Holding Company Act, to mergers in which a BIF-insured institution owned by a bank holding company acquires a SAIF-insured institution;

C. Following the transaction, the National Bank may retain and operate the offices of the Federal Savings Bank in the National Bank's main office state and in the other state consistent with 12 U.S.C. § 36(c), relevant case law and OCC precedents; and

D. The proposed transaction may be approved by the OCC consistent with the Bank Merger Act and the OCC's responsibilities under the Community Reinvestment Act (Federal CRA). In addition, as required by 12 U.S.C. § 215c, the transaction is consistent with all applicable laws pertaining to merger transactions involving national banks.

III. Analysis

A. Merger authority under section 215c

Section 215c, and its counterpart section 5(s) of the HOLA, were enacted in 1991 as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2302 (enacted

December 19, 1991) (FDICIA), in order to provide the corporate authorization for national banks and Federal savings associations to engage in the combinations between BIF members and SAIF members made possible by amendments made at the same time to the Oakar Amendment. (**NOTE:** Section 215c was added as section 502(b) of FDICIA. At the same time, in section 501(a) of FDICIA, parallel provisions addressing the authority of Federal savings associations to combine with any insured depository institution were added at section 5(s) of the HOLA and codified at 12 U.S.C. § 1467a(s)(1), (3).) The purpose of the new sections was to *facilitate* the broader range of Oakar transactions being permitted, subject to preservation of the standards in the Oakar Amendment and adherence to other statutory standards (such as those under the Bank Merger Act), that would otherwise apply to the transaction. Neither section 215c, nor section 5(s), were intended to deprive a national bank (or Federal thrift) of existing authority otherwise available in connection with a combination authorized under those sections, provided, of course, that the standards referenced in section 215c were satisfied. (**NOTE:** That section 215c authorizes various types of combinations, but makes them subject to applicable Oakar Amendment standards, the Bank Merger Act and other existing authorities, is clear from section 215c(c) which provides: No provision of this section shall be construed as authorizing a national bank or a subsidiary of a national bank to engage in any activity not otherwise authorized under this chapter or any other law governing the powers of national banks. A similar provision is included at section 5(s)(5) of the HOLA.)

Title 12 U.S.C. § 215c provides:

(a) In general

Subject to section 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.

* * * * *

(d) Acquire defined

For purposes of this section, the term ‘acquire' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

The Oakar Amendment, section 1815(d)(3), which section 215c(a) expressly incorporates, permits mergers, consolidations and purchase and assumption transactions between BIF- and SAIF-insured institutions provided that the deposits of the resulting institution are proportionally insured by both BIF and SAIF. Section 1815(d)(3)(F) also seeks to prevent evasions of the existing Douglas Amendment standards for interstate acquisitions by bank holding companies:

(F) Certain interstate transaction

A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A), unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire. (**NOTE:** Section 1815(d)(3), including the provision now codified at subparagraph (F), was originally adopted as Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 195 (August 9, 1989).)

The California Banking Department, in its letter of objection, sets forth several arguments, which will be addressed in this Decision Statement, for the proposition that this merger cannot be undertaken as proposed because of the existence of the Federal Savings Bank's branch in California.

Under the plain language of section 215c and the corresponding provision of the HOLA, however, a merger between a national bank and a Federal savings association is authorized if it comports with the Oakar Amendment, the Bank Merger Act and other applicable laws. These statutes provide no basis to reject the proposed merger simply because the target institution has branches in more than one state nor does the language of these statutes require a multi-state Federal savings bank to divest its offices in all but one state prior to engaging in a transaction under these statutes. The statutory scheme places specific limitations on interstate acquisitions, but it does not prohibit them. (**NOTE:** The courts have long counseled that the meaning of a statute must, in the first instance, be determined based on the language that is used. *See, e.g., Caminetti v. United States,* 242 U.S. 470, 485 (1917). Parties who argue against the plain meaning of a statute face the "daunting standard" of showing "clear evidence that reading the statute literally would thwart the obvious purposes of the statute." *Mansell v. Mansell,* 490 U.S. 581, 592 (1989). In authorizing mergers between national banks and Federal savings associations, the language of section 215c could not be plainer -- if the merger is consistent with the Bank Merger Act, the Oakar Amendment including, where applicable, section 1842(d) governing interstate acquisitions, and other applicable law, then a national bank and a Federal savings association may merge.) To the contrary, the standards of the Oakar Amendment, which incorporate the standards from the Douglas Amendment, expressly accommodate interstate transactions and set criteria for them. Whether this proposed transaction comports with those statutory limitations is analyzed in Part III. B. of this Decision Statement.

The legislative history of sections 215c and 1467a(s)(1) provides no hint of the existence of interstate limitations beyond those that already existed in law. Rep. Oakar, the sponsor of the amendment, on several occasions characterized its impact in the broadest possible way. For instance, she stated:

> Finally, title V of H.R. 3768 contains the provisions of an amendment I offered at full committee. Simply stated, this title will permit any bank insurance fund [BIF] institution to combine its operations with any savings association insurance fund [SAIF] institution, and vice versa. I offered this legislation in order to encourage the injection of private sector funds into the banking and thrift systems. Title V of the bill will permit a bank to combine with a thrift -- or vice versa -- which permits them to combine their strengths and avoid the potential problem of being placed in conservatorship where the taxpayer's money must be used. 137 Cong. Rec. H 10,762-763 (daily ed. November 21, 1991) (Statement of Rep. Oakar). *See also* 137 Cong. Rec. H 8936 (November 1, 1991) (Statement of Rep. Oakar); House Banking Committee Mark-up (July 23, 1991) (Statement of Reps. Oakar and LaFalce). (**NOTE:** As the sponsor of the amendment, courts have long recognized that Rep. Oakar's views may provide a "weighty gloss" on the meaning of legislation. *See, e.g., Galvin v. U.L. Press,* 347 U.S. 522, 527 (1954).)

The House report on the legislation contains similar sweeping language. It states:

> [T]he Committee voted to allow any BIF or SAIF-insured depository institutions to combine with each other. This amendment was adopted because the Committee is concerned about the growing cost of thrift and bank resolutions and the increased cost to the taxpayers of these resolutions. H.R. Rep. No. 330, 102d Cong, 1st Sess., 113 (1991); H.R. Rep. 157, 102d Cong. 1st Sess. 139 (July 23, 1991). *See also* 137 Cong. Rec. H 9105-9106 (Nov. 4, 1991) (House section-by-section analysis). (**NOTE:** Likewise, courts have recognized that "Committee Reports represent the most persuasive indicia of congressional intent" and are "powerful evidence of legislative purpose." See 2A Sutherland, Statutes and Statutory Construction, § 48.06 (5th ed. 1992 & Supp. 1996).)

In sum, if the transaction comports with the Oakar Amendment, including its interstate limitations, the Bank Merger Act, and other applicable law, (**NOTE:** The permissibility of the proposed transaction under these statutes is addressed in III. B. and C. of this Decision Statement.) the *merger* is authorized under section 215c and

section 1467a(s). (**NOTE:** This analysis of the merger authority provided by section 215c is consistent with that set forth by the OCC in Decision of the Office of the Comptroller of the Currency on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, With and Into Union Planters National Bank, Memphis, Tennessee, and Operate Branches of Leader Federal Bank for Savings as Branches of Union Planters National Bank (September 30, 1996) (the Union Planters Decision). *See also* Decision of the Office of the Comptroller of the Currency on the Application to Merge Washington Federal Savings Bank, Herndon, Virginia, With and Into The First National Bank of Maryland, Baltimore, Maryland, and Operate Branches of Washington Federal Savings Bank in Virginia, the District of Columbia and Maryland as Branches of The First National Bank of Maryland (OCC Corporate Decision 96-39, July 25, 1996) (the FNB-Md. Decision).) The issue then becomes whether, following such a merger between a national bank situated in Florida, where it has its main office and branches, and a Federal savings bank situated in Florida, where it has its main office and branches, and in California, where it has a branch, the national bank is authorized to operate the offices of the Federal savings bank in Florida and California. As discussed below, the ability of the acquiring National Bank to continue to operate the acquired branches is subject to the McFadden Act, 12 U.S.C. § 36(c), and the state statutory restrictions on intrastate branching incorporated into federal law by the McFadden Act and applied to national banks.

B. The interstate merger and branch retention are consistent with the Oakar Amendment and the McFadden Act

1. The transaction is consistent with the Oakar Amendment

As stated, section 215c authorizes a merger between a national bank and a Federal savings association provided the transaction is consistent with the Oakar Amendment, including its interstate limitations, as described above. (**NOTE:**With respect to capital, the Oakar Amendment provides that an Oakar transaction "shall not be approved under [the Bank Merger Act] unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction." 12 U.S.C. § 1815(d)(3)(E)(iii). (A similar provision had previously been codified at paragraph (d)(3)(E)(iv) but was reworded and redesignated as part of the 1996 Act.) The OCC has determined that the National Bank meets all applicable capital requirements. In fact, both before and after the merger, the National Bank at least meets all of the tests to be considered a well-capitalized institution. *See* 12 C.F.R. § 6.4(b)(1).) The interstate limitations incorporate the requirements set forth at 12 U.S.C. § 1842(d) as if the target savings association were a state bank that the acquiring bank's holding company was seeking to acquire. 12 U.S.C. § 1815(d)(3)(F).

Thus, to determine whether the proposed merger is consistent with this provision, we must postulate that the Federal Savings Bank is a state bank, with a main office and branches in Florida and a branch in California, being acquired by CMC. The question that arises is whether this acquisition would be permissible under section 1842(d) as amended by the Riegle-Neal Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994 and effective September 29, 1995) (Riegle-Neal). That section provides, in pertinent part:

> (A) Acquisition of Banks.--The Board may approve an application under this section by a bank holding company that is adequately capitalized and adequately managed to *acquire control of . . . a bank located in a State other than the home state of such bank holding company,* without regard to whether such transaction is prohibited under the law of any State. 12 U.S.C. § 1842(d)(1) (emphasis added). Consequently, whether section 1842(d) is applicable to this hypothetical transaction depends on whether the transaction would constitute acquisition of "control of . . . a bank located in a state other than the home state of such bank holding company." If the hypothetical transaction would constitute the acquisition of control of a bank located in a state other than the holding company's home state, section 1842(d) imposes certain Federal law requirements pertaining to community reinvestment, concentration limits, and the capitalization and management of the holding company, and potentially imposes certain state law requirements,

incorporated into Federal law, pertaining to the age of the target bank, compliance with certain state laws requiring banks to hold a portion of their assets for call by a state-sponsored housing entity, compliance with applicable state community reinvestment laws, and compliance with applicable state anti-trust laws.

a. Location of the Federal Savings Bank for purposes of § 1842(d)

It is clear that the "home state" of CMC is New York for purposes of this provision. (**NOTE:** For purposes of 1842(d)(1), the "home state" of a bank holding company is the state in which the total deposits of all of its banking subsidiaries were the largest on the later of July 1, 1966 or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C). In this case, it is clear that the home state of CMC is New York -- the state in which the total deposits of the banking subsidiaries of it and each of its predecessor corporations was the largest upon becoming a bank holding company. Because the home state of the parent holding company differs from the state where the target entity is located for purposes of section 1842(d) analysis, the factors set forth in that section must be analyzed. Because section 1842(d) is triggered, the site of the home state of CMNHC, the corporate entity that directly owns the National Bank, is irrelevant in analyzing the section 1842(d) factors.) The next question, for purposes of section 1842(d)(1)(A), is where the hypothetical state bank with its main office and three branches in Florida and one branch in California is "located."

The key statutory phraseology to be analyzed in resolving this issue is virtually identical to phraseology employed in section 1842(d) prior to September 29, 1995, when the current version of section 1842(d) took effect, and which was in effect at the time that the geographical language of the Oakar Amendment was originally adopted in 1989. Under this prior version of the Douglas Amendment, the language addressed the authority of "any bank holding company . . . to acquire . . . any additional bank *located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted* on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, *unless the acquisition . . . of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located . . . .*" (Emphasis added.)

Thus, if this hypothetical acquisition of a state bank had been postulated before September 29, 1995, the same issue would have arisen: where would the target "state bank" be considered to be "located" for purposes of section 1842(d)? The OCC's analysis of Federal Reserve Board precedent in applying the pre-September 29, 1995, language indicates that in applying the "located" language contained in the section 1842(d) to a multistate target institution, the Board consistently determined that the institution is "located" in one state -- the state in which the institution is "predominantly located" -- for purposes of section 1842(d) analysis and analyzed the applicability of section 1842(d) to a particular transaction based only on the target institution's location in that state. (**NOTE**)

In determining the state in which a target bank is located for purposes of applying section 1842(d), the Board has taken into account a variety of factors all of which underscore that a state bank meeting the description of the hypothetical target in this situation would be considered to be located only in Florida for purposes of section 1842(d)(1) and, thus, the limitations of Florida law, as incorporated into section 1842(d) are those that are applicable to this transaction. *See* 70 Federal Reserve Bulletin 518 (June 1984) (approving the acquisition by Mitsubishi Bank, Limited, a bank holding company with its home state in California, of BanCal Tri-State Corp., a bank holding company which operated Bank of California, N.A.). The Board, after noting that Bank of California had 16 offices in California, three in Washington and one in Oregon and that about 75% of its deposits were controlled by California offices concluded:

Based on all of the facts or record in this case, the Board concludes that, for purposes of the

Douglas Amendment, the Bank of California is located in California, where it is chartered and principally conducts its banking operations. The Board believes that the acquisition of Bank of California by a California bank holding company is consistent with the purposes of the Douglas Amendment, provided the acquisition is not used to allow the acquiring bank holding company to expand its operation outside the state of its principal operations in a manner inconsistent with the Douglas Amendment. (**NOTE:**The Board added that: In this regard, Applicant has advised the Board that it has no present plans to expand Bank of California's banking operations in the States of Washington and Oregon, where the Bank of California currently maintains branches. Applicant has committed that it will not expand in those states by merger or acquisition of banks without state authorization and has indicated it will request the Board to approve any branch office in those states should present circumstances change. *Id.* at 518-19. While the Board's concern in 1984 was that the acquisition not constitute an end-run around state laws, incorporated into the Douglas Amendment, limiting interstate banking, these concerns now would appear unfounded. While in 1984, state laws controlled interstate banking, and interstate branching was virtually unheard of, Congress, in adopting Riegle-Neal, adopted a Federal framework that placed substantial limitations on the role of state law with respect to interstate banking and branching. Moreover, the facts underscore that CMC, through this transaction, is not planning an end-run around section 1842(d). As mentioned, following this transaction, the National Bank expects to operate the branch in California for a period of no more than 14 months after which the branch would be operated by a California-headquartered affiliate.)*Id.* Thus, the Board concluded that:

> [U]nder these circumstances . . . the Board concludes that the Bank of California is not ‘located outside' of California for purposes of the Douglas Amendment . . . *Id.* at 519. *See also* 71 Federal Reserve Board 458 (June 1985) (permitting Midlantic Banks Inc., a New Jersey bank holding company, to acquire Heritage Bank, N.A., a national bank with 90 branches in New Jersey and one in Pennsylvania).

Given the similarity in the relevant language of section 1842(d) as it existed in 1984 and as it exists now, we conclude that, under all of the facts and circumstances in the present case, the Federal Savings Bank, if it were a state bank, should be considered, for Douglas Amendment purposes, to be a bank located only in Florida and not a state bank located in California. If it were a state bank, the Federal Savings Bank's structure would present as compelling a case that it be treated as being located in Florida as the facts in *Bank of California* supported a determination that that bank was located in California. In the case at issue, 75% of the Federal Savings Bank's offices that will survive the transaction are located in Florida and about 82% of the deposit liabilities, as of June 30, 1996, are associated with the Florida offices. (**NOTE:**The applicant represents that at the time of the consummation of the proposed merger, about 77% of the Federal Savings Bank's deposit liabilities would be attributed to Florida offices. This level of deposits is still consistent with the Board's determination in the *Bank of California* case.)

Thus, while this hypothetical state bank does have one branch in California, it is clear under this test, employed consistently by the Board, that it would be considered to be "located" in Florida for purposes of section 1842(d).

In addition, the Board has had occasion to look at the issue of the location of an interstate bank for purposes of section 1842(d) in the context of the opposite set of facts. 70 Federal Reserve Bulletin 441 (May 1984) (the Mellon case). In that situation, Mellon National Corporation, a Pennsylvania bank holding company, applied to acquire Heritage Bank, N.A., and argued that the transaction was not barred by section 1842(d) because the bank was, as a result of its one branch in Philadelphia, "located" in Pennsylvania for section 1842(d) purposes. The Board, analyzing the transaction from multiple perspectives, concluded that the target bank was located in New Jersey for purposes of the Douglas Amendment and, thus, the transaction was prohibited. In reaching its conclusion, the Board utilized three tests, each of which led to the conclusion that the target was located in New Jersey. *Id.* at 443-444. First,

the Board noted that the bank was chartered in New Jersey, and had 90 branches in New Jersey in contrast to only one in Pennsylvania. *Id.* at 443.

Secondly, the Board noted that:

> The Douglas Amendment states explicitly that the location of the acquiring bank holding company . . . is determined by the state in which the total deposits of its subsidiary banks are the largest (**NOTE:** As discussed, this test is unchanged by the revisions to the Douglas Amendment contained in Riegle-Neal as codified at 12 U.S.C. § 1841(o)(4)(C).) . . . . It is evident that Congress had in mind some level of appropriate contacts as a basis for determining location, which in turn would serve as a basis for applying the policies contained in the Amendment.

In the absence of specific Congressional direction on this issue, the Board believes it would be reasonable to apply the Douglas Amendment standard for location of bank holding companies to determine the state in which [the target bank] is located. By this criteria, [the target bank] is located in New Jersey . . . . *Id.* at 443-444. Finally, the Board looked to the views of the attorney general and banking commissioner of the state in which the out-of-state bank holding company sought to make the acquisition and noted that "seen from the point of view of the state in which all but one of its branches are situated, [the target bank] is located in New Jersey."*Id.*

The Board in the Mellon case concluded that it was unnecessary to make a specific choice of standards, since by any "rational criterion," the bank was located in New Jersey. (**NOTE:** The Board's decision was judicially upheld. *See Girard Bank v. Board of Governors of the Federal Reserve System,* 748 F.2d 838 (3d Cir. 1984).)

The logic of the Board's decision would similarly apply to locate the hypothetical target state bank in Florida for section 1842(d) purposes. The bank would be chartered in Florida, have its main office in Florida, and the majority of its offices and deposits would be attributable to Florida.

Moreover, by statute, California would not consider the hypothetical state bank to be a California bank for purposes of section 1842(d). (**NOTE**) The provisions of California law pertaining to interstate acquisitions of banks do not specifically define what is meant by a California bank. *See* Cal. Financial Code §§ 3750 through 3754 (West 1989 & Supp. 1996). However, they specifically do not apply to the "acquisition or control of a California state bank which requires approval of the superintendent under Article 7." Cal. Financial Code § 3750(a) (1989 & Supp. 1996). Article 7, in turn, applies only to banks organized under California law. *Id.* at § 700(a). Thus, for purposes of California's interstate acquisition provisions, the Federal savings bank involved in the present transaction, if it were a state bank with its main office in Florida, would not be considered to be a California state bank for determining the applicability of sections 3750-3754. Thus, it would appear that California, for purposes of applying its interstate acquisition provisions under section 1842(d) to the acquisition of the hypothetical state bank standing in the shoes of the Federal Savings Bank, would not consider that state bank to be located in California. (**NOTE:** It is further worth noting that treatment of the hypothetical state bank as a Florida bank is consistent with Florida law implementing the interstate banking provisions of Riegle-Neal. The interstate banking provisions of Florida law provide that a "Florida bank" is a state bank that is chartered by Florida. *Id.* at § 658.295 (2)(n), (2)(p)(1).)

b. The transaction complies with section 1842(d)

Having determined that the hypothetical state bank is located in Florida for purposes of section 1842(d)(1), we must apply the standards of that section on that basis. That section imposes, or permits the following limitations to be imposed on acquisitions by out-of-state bank holding companies:

(1) Age requirements

First, the host state -- that is the state in which an out-of-state bank holding company seeks to control a bank subsidiary -- may prohibit acquisitions if the target bank is less than five years old. 12 U.S.C. § 1842(d)(1)(B). Florida imposes a three-year aging requirement. 1996 Fla. Laws ch. 96-168, § 658.295(8)(a). This requirement is satisfied. (**NOTE:** The Federal Savings Bank has been in continuous corporate existence since 1987 operating under either a bank or thrift charter. It became a SAIF-insured state-chartered thrift almost five years ago in March 1992. It subsequently converted to a Federal savings bank charter in 1994. We note, too, that California imposes no age requirement with respect to acquisition of in-state banks by out of state holding companies. *See* Cal. Financial Code §§ 700 through 711 and 3750-3753 (West 1989 & Supp. 1996). *See also* State Banking Department, Summary of Caldera, Weggeland, and Killea California Interstate Banking and Branching Act of 1995, p. 3 (October 12, 1995) (referencing elimination of restrictions on establishment of de novo banks by out-of-state bank holding companies).)

(2) Concentration limits

Second, the acquisition could not occur if the National Bank and all of its insured depository institution affiliates would control more than 10% of the total amount of insured deposits in the United States or more than 30% of the insured deposits in the state of the bank to be acquired or a state in which it has branches if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state or states. These limits are not violated by this transaction. (**NOTE:** Total United States deposits of all of the CMC's domestic offices accounted for significantly less than 5% of total United States deposits as of June 30, 1996. Moreover, as of June 30, 1996, total Florida deposits of CMC's insured institutions was approximately $96 million -- .05% of total Florida deposits as of that date which, for commercial banks alone, amounted to $126 billion. Total California deposits of CMC's insured depository institutions in California as of June 30, 1996, were about $23 million whereas total deposits for all California commercial banks as of that date exceeded $300 billion. We further note that section 1842(d)(2)(C) states that "no provision of this subsection shall be construed as affecting the authority of any State to limit . . . the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company. . . ." Florida, like Riegle-Neal, imposes a 30% limitation and California state law incorporates the federal 30% limitation. See Fla. Stats. § § 658.295(8)(b) and 658.2953(7)(b), Ch. 96-168, § § 8(b) and 7(b); Cal. Financial Code § 3753(b) (West 1989 & Supp. 1996).)

(3) Federal CRA

Third, section 1842(d)(3)(A) requires consideration of the bank holding company's compliance with the Community Reinvestment Act of 1977. That section requires the Board (and, thus, the OCC in this instance), in determining whether to approve an application by a bank holding company to acquire an out-of-state bank, to consider bank holding company compliance with Federal CRA under section 804. Section 804 requires the "appropriate Federal financial supervisory agency" to take into account an institution's CRA record in its evaluation of an "application for a deposit facility." 12 U.S.C. § 2903(a). The Board is the "appropriate Federal financial supervisory agency" for bank holding companies. 12 U.S.C. § 2901(1)(B). Moreover, an "application for a deposit facility" includes the acquisition of shares of an insured bank requiring approval under section 1842. 12 U.S.C. §§ 1813(a) and (c)(2); 2902 and (3)(F). Bank holding company compliance with Federal CRA is evaluated by looking to the CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). This regulation provides:

> (a) *CRA performance.* [T]he Board takes into account the record of performance under the CRA of:
>
> * * * * *
>
> > (2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an

applicant:

* * * * *

> (ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank [or] to cause a bank to become a subsidiary of a bank holding company . . . . (**NOTE:** The legislative history underlying section 1842(d)(3)(A) explicitly states that the Board, in passing on interstate bank acquisitions, would continue to review these applications in accordance with existing regulations such as 12 C.F.R. § 228, known as Regulation BB. *See* H.R. Rep. 103-651, 103d Cong., 2d Sess., 48 (1994). This Report also explicitly mentioned the Board's Regulation Y, 12 C.F.R. 225. *Id.* That regulation, however, with respect to bank acquisitions by holding companies, merely states the Board's need to take into account CRA and Regulation BB. 12 C.F.R. § 225.13(b)(3).)

In fulfilling its responsibilities under section 1815(d)(3)(F) and 1842(d)(3)(A), the OCC has investigated and thoroughly considered the comments submitted by ICP. Based on this investigation and analysis the OCC has found that the comments do not raise issues that would warrant denial of this application. The OCC reached this conclusion based upon the following: a review of the most recent Home Mortgage Disclosure Act (HMDA) data for the appropriate assessment areas, including areas in Florida and California, of the National Bank and the Federal Savings Bank and its former subsidiary, Chemical Residential Mortgage Corporation; a review of the most recent HMDA data pertaining to lending by Chase Manhattan Mortgage Corporation, an affiliate of the National Bank and the Federal Savings Bank; the record of performance of the merging institutions' affiliated bank in New York, Chase Manhattan Bank, with respect to the opening and closing of branches; the results of recently completed Federal CRA performance evaluations of the merging institutions' affiliated banks in Wilmington, Delaware, and Jericho, Long Island, New York; the most recent Federal CRA performance evaluation by the Office of Thrift Supervision of the Federal Savings Bank, by the OCC of the National Bank and the former Chase Manhattan Bank, N.A., and by the Board of the former Chemical Bank; the Board order of January 5, 1996 and other Board orders dated September 30, 1996 (the September 30th Board order) and October 28, 1996 (the October 28th order), (**NOTE:** See Order Approving Notice to Acquire Certain Trust-Related Assets (September 30, 1996) and Order Approving the Merger of Banks and Establishment of Bank Branches (October 28, 1996).) each of which addresses allegations pertaining to Federal CRA posed by ICP with respect to CMC and/or its predecessors; and a review of the Federal CRA ratings of each of CMC's subsidiaries that are subject to Federal CRA, each of which was found to be at least satisfactory; and analysis of information submitted by CMC, including information provided in response to comments submitted by ICP. The OCC has addressed in detail the specific issues raised by ICP in separate correspondence to ICP, a copy of which is attached as Appendix A to this Decision.

(4) State CRA

Fourth, section 1842(d)(3)(B) requires consideration of the bank holding company's record of compliance with applicable state community reinvestment laws. No issues arise under state community reinvestment laws that would require a rejection of the pending application. Moreover, neither protestant has raised concerns under state community reinvestment laws in their letters to the OCC. (**NOTE:** We note that neither Florida nor California, the two states immediately involved in this transaction, has state community reinvestment laws. Florida does have statutes that permit various types of depository institutions, among others, to invest in obligations issued by a community redevelopment agency vested with community redevelopment powers. *See* Fla. Stat. Ann. § 163.390 (West 1990 & Supp. 1996) and § 658.67(4)(d) (West 1984 & Supp. 1996). These provisions, however, do not purport to impose any obligation on any institution to make these investments.

New York, the home state of CMC, does have its own substantive CRA laws. N.Y. [Banking Law] § 28-b (McKinney

1990 & Supp. 1996). These, however, do not purport to apply to bank holding companies. *Id.* at subd. 4. In any event, CMC's state-chartered bank has consistently received "outstanding" ratings from the state under this CRA law. Other states in which CMC has depository institution affiliates, including New Jersey, Texas and Connecticut have CRA laws that either incorporate or are substantially similar to the Federal CRA laws. *See* 1996 N.J. Laws Ch. 17, § 88 (to be codified at § 17:12B-24(c)(4); Tex. Rev. Civ. Stat. Ann. art. 342-8.301(b)(2) (West 1973 & Supp. 1996); Conn. Gen. Stat. Ann. §§ 36a-30 through 36a-32 (West 1987 & Supp. 1996). Moreover, no issues have been raised under those laws. Delaware does not have state CRA laws.)

(5) Capital and management

Finally, we note the condition of the CMC, including its capital position and management, is consistent with approval of the acquisition of this hypothetical state bank under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment. (**NOTE:** Title 12 U.S.C. § 1842(d)(4) provides that no provision of this section shall be construed as affecting the applicability of Federal or state antitrust laws. We note that the Board recently considered the impact of the Federal antitrust laws on the combination of the two holding companies and found that the acquisition was consistent with relevant statutory factors. *See* the Board Order at p. 242-43. In considering such transactions, the Board considers the impact of the transaction on competition in relevant banking markets. Moreover, since the two entities involved in the merger at issue already are affiliated, the transaction would have no impact on competition under Federal antitrust laws. State antitrust laws, even assuming their applicability to a merger between a national bank and a Federal savings bank, appear to pose no obstacle to the proposed transaction. While both California and Florida have extensive state antitrust laws, neither the state of California, in its letter of objection, or the other protestant raised any issue citing state antitrust laws. Moreover, Florida's antitrust laws, by their own terms would not appear to be applicable to the transaction. *See* Fla. Stat. Ann. § 501.212(4) (providing that certain provisions of state antitrust laws do not apply to banks or savings associations regulated by federal agencies); and §§ 542.16, 542.20 (stating that certain provisions are intended to complement federal antitrust law and that any activity exempt under federal antitrust law is exempt under state antitrust law).) *See also* the Board Order at p. 243-244 and the September 30th Board order at p. 4, n. 7. (**NOTE:** We note that ICP makes several allegations regarding the management of an affiliate of the merging institutions. The September 30th and October 28th Board orders reviewed identical allegations and concluded that they did no warrant rejection of the new activities proposed by that application. Moreover, the present application involves no new activities but, rather, the merger of existing subsidiaries of CMC.)

Consequently, we conclude that the transaction comports with the standards set forth in section 1842(d) as incorporated into the Oakar Amendment at 12 U.S.C. § 1815(d)(3)(F). (**NOTE:** In light of the above analysis under 12 U.S.C. §§ 1815(d)(3)(F) and 1842(d), it is unnecessary to address the applicant's argument that because CMC already owns the Federal Savings Bank, this transaction does not constitute the acquisition or obtaining control of the institution by CMC and, thus, it is unnecessary to analyze the transaction under the standards set forth in section 1842(d).)

Go to: More of Corporate Decision 96-60