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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

**Corporate Decision #97-61  
August 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATION TO CONSOLIDATE  
COMMUNITY FIRST BANK, MAYSVILLE, KENTUCKY,  
WITH AND INTO  
COMMUNITY FIRST BANK, NATIONAL ASSOCIATION, RIPLEY, OHIO**

**June 19, 1997**

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**I. INTRODUCTION**

On May 6, 1997, Community First Bank, National Association, Ripley, Ohio ("CFB-Ohio") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to consolidate Community First Bank, Maysville, Kentucky ("CFB-Kentucky") with and into CFB-Ohio, under CFB-Ohio's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Application"). CFB-Ohio has its main office in Ripley and operates a branch in Ohio. CFB-Kentucky has its main office in Maysville and operates branches in Kentucky. In the Application, OCC approval is also requested for the resulting bank after the consolidation to retain CFB-Kentucky's main office in Maysville as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain CFB-Kentucky's branches and CFB-Ohio's main office and branch, as branches after the consolidation under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Both CFB-Ohio and CFB-Kentucky are subsidiaries of Community First Financial, Inc. ("CFF"), a multistate bank holding company headquartered in Maysville, Kentucky. In the proposed consolidation, two of CFF's existing bank subsidiaries will be combined into one bank with branches in two states. As of March 31, 1997, CFB-Ohio had approximately \$27 million in assets and \$23 million in deposits, and CFB-Kentucky had approximately \$44 million in assets and \$38 million in deposits.

**II. LEGAL AUTHORITY**

**A. The Interstate Merger Transaction is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.**

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 merger transactions 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).<sup>1</sup> 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 this Application, the home states of the banks are Kentucky and Ohio; neither state has opted out. Accordingly, this Application 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 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.

CFB-Ohio's and CFB-Kentucky'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 an interstate merger

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<sup>1</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 "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).

transaction 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). But the maximum age requirement permitted is five years. See 12 U.S.C. § 1831u(a)(5)(B). In this interstate merger transaction, while CFB-Ohio and CFB-Kentucky are combining under CFB-Ohio's charter, the resulting bank will have Maysville, Kentucky, as its main office under 12 U.S.C. § 1831u(d)(1), see Part II-B below. Thus, in the context of this transaction, it is not clear which state is the host state for purposes of section 1831u(a)(5), and so which bank is subject to the age limit. On the one hand, CFB-Ohio is acquiring a bank (CFB-Kentucky) in the state of Kentucky, and so Kentucky could be viewed as the host state for age limit purposes. On the other hand, after the consolidation, the resulting bank's main office will be in Kentucky, and so Kentucky is the resulting bank's home state, and Ohio is the host state for the resulting bank going forward; and so Ohio could be viewed as the host state for age limit purposes as well. The OCC believes that the first view is the better interpretation for applying section 1831u(a)(5). However, we need not resolve this question here, since the consolidation would satisfy the host-state imposed age limit under either view. First, neither Kentucky nor Ohio imposes an age requirement when a bank in that state merges with an out-of-state national bank.<sup>2</sup> Second, even if an age limit were imposed, both CFB-Kentucky and CFB-Ohio have been in existence for more than five years, and so the age requirement would be met. Thus, the Application satisfies the Riegle-Neal requirement of compliance with state age laws.

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

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<sup>2</sup> Ohio does not have an age requirement for the Ohio bank in an interstate merger transaction. The Kentucky interstate bank merger statute does impose a five-year age requirement for the Kentucky bank in an interstate merger transaction, but it appears to apply only when an out-of-state state bank is the surviving bank:

The bank to be acquired in an interstate merger transaction under the provisions of subsections (2) [when a Kentucky state bank is the resulting bank] or (3) [when an out-of-state state bank is the resulting bank] shall have been involved in operation for a period of five (5) years or more.

Ky. Rev. Stat. § 287.920(4). The reference to subsection (2) suggests that Kentucky also has imposed an age requirement for the target bank in another state in interstate merger transactions in which a Kentucky state bank is the resulting bank. In the proposed consolidation here, if Kentucky is viewed as the host state for age limit purposes, the acquiring and resulting bank (CFB-Ohio) is an out-of-state national bank; and so the Kentucky age restriction does not apply. Moreover, CFB-Kentucky and its predecessors have been in existence since 1907, and so the age restriction, if applicable, would be met.

state. See 12 U.S.C. § 1831u(b)(1).<sup>3</sup> In this interstate merger transaction, while the banks are combining under CFB-Ohio's charter, the resulting bank will have Maysville, Kentucky, as its main office. Thus, the main office of the resulting bank is in Kentucky, and Ohio will be the host state of the resulting bank going forward. Ohio law requires that a bank that transacts business in Ohio, the main office of which is located in a state other than Ohio, must file as a foreign corporation with the secretary of state. See Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Sen. Bill 40 (amending several sections in Ohio Rev. Code §§ 1703.01 *et seq.*). These amendments make out-of-state banks subject to the same foreign corporation filing requirements as out-of-state nonbanking corporations. On behalf of the resulting bank of the consolidation, CFB-Ohio filed with the Ohio secretary of state for a license to do business in Ohio as a foreign corporation. Furthermore, CFB-Ohio submitted a copy of its OCC Application to the Ohio and Kentucky state banking regulators and represents it was advised by the Kentucky bank supervisor's office that no other qualifications to do business filings are required. Thus, the Application 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). CFB-Ohio and CFB-Kentucky are affiliates; thus section 1831u(b)(2) is not applicable to this Application.

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 combinations 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

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<sup>3</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. 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 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).

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 Application, CFB-Ohio (the bank submitting the application as the acquiring bank) has a bank affiliate in Kentucky before the transaction (i.e., CFB-Kentucky), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the Application. 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 CFB-Ohio and CFB-Kentucky 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 consolidation, CFB-Ohio 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, the proposed interstate merger transaction between CFB-Ohio and CFB-Kentucky is legally permissible under section 1831u.<sup>4</sup>

**B. Following the Consolidation, the Resulting Bank may Retain CFB-Ohio's and CFB-Kentucky's Main Offices and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).**

CFB-Ohio and CFB-Kentucky have requested that upon the completion of the consolidation CFB-Ohio (as the resulting bank in the consolidation) be permitted to retain and continue to operate CFB-Kentucky's existing main office in Maysville, Kentucky, as the main office of the resulting bank and to retain and continue to operate as branches (1) CFB-Ohio's main office and branch and (2) CFB-Kentucky's branches. 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.

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<sup>4</sup> CFB-Kentucky is currently a Kentucky state-chartered bank. CFB-Kentucky has no non-conforming assets nor does it engage in any activities impermissible for national banks. Also, Kentucky law expressly permits the merger of a state bank with a national bank. See Ky. Rev. Stat. § 287.173. The consolidation between CFB-Ohio and CFB-Kentucky is not in contravention of state law.

12 U.S.C. § 1831u(d)(1) (emphasis added). 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. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, CFB-Ohio, the resulting bank in this interstate merger transaction, may retain and operate CFB-Kentucky's main office in Maysville as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate all of the other existing banking offices of both banks as branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).<sup>5</sup>

Moreover, at its branches in both states, CFB-Ohio is authorized to engage in all activities permissible for national banks. *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). *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).

### **III. ADDITIONAL STATUTORY AND POLICY REVIEWS**

#### **A. The Bank Merger Act.**

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<sup>5</sup> 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 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).

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger transaction between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a 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.**

Since CFB-Ohio and CFB-Kentucky are already owned by the same bank holding company, their consolidation will have no anticompetitive effects.

**2. Financial and Managerial Resources.**

The financial and managerial resources of both banks are presently satisfactory. CFB-Ohio expects to achieve efficiencies by operating the offices in the two states as branches rather than two separate corporate entities. 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 Application.

**3. Convenience and Needs.**

The resulting bank will help to meet the convenience and needs of the communities to be served. CFB-Ohio will continue to serve the same areas in Ohio, and it will add CFB-Kentucky's offices in Kentucky. Both banks currently offer a full line of banking services, and there will be no reductions in the products or services as a result of the consolidation. No branch closings are contemplated as a result of this consolidation since the two banks serve different areas. Upon completion of the consolidation, customers of each bank will have available to them more 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 Ohio and Kentucky. Following the consolidation, customers would be dealing with the same bank in both 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. The consolidation 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.

Accordingly, we believe the impact of the consolidation 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. See 12 U.S.C. § 2903. CFB-Ohio has a satisfactory rating, and CFB-Kentucky has an outstanding rating, 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 banks' performance in complying with the CRA.

The consolidation is 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 combining banks currently serve. 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 CFB-Ohio and CFB-Kentucky have today as separate banks. The consolidation and operation of interstate branches 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 the proposed consolidation 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 applicants, we find that the consolidation of CFB-Ohio and CFB-Kentucky is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the consolidation meets the other statutory criteria for approval. Accordingly, this Application is hereby approved.

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/s/  
Julie L. Williams  
Chief Counsel

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06-19-97  
Date

Application Control Number: 97-CE-02-0039