



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-65
August 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
PROGRESSIVE BANK, NATIONAL ASSOCIATION - BELLAIRE, BELLAIRE, OHIO
WITH AND INTO
PROGRESSIVE BANK, NATIONAL ASSOCIATION, WHEELING, WEST VIRGINIA**

August 8, 1997

I. INTRODUCTION

On June 26, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Progressive Bank, National Association - Bellaire, Bellaire, Ohio ("Bellaire") with and into Progressive Bank, National Association, Wheeling, West Virginia ("Progressive") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Merger Application"). Progressive has its main office in Wheeling and operates branches in West Virginia. Bellaire has its main office in Bellaire and does not have any branches. In the Merger Application, OCC approval is also requested for the resulting bank to retain Progressive's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain Progressive's branches and Bellaire's main office as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Both Progressive and Bellaire are subsidiaries of First West Virginia Bancorp, Inc. ("Bancorp"), a multistate bank holding company headquartered in Wheeling, West Virginia. In the proposed merger, two of Bancorp's existing bank subsidiaries will be combined into one bank with branches.

II. LEGAL AUTHORITY

A. The Interstate Merger 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 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).¹ 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 Merger Application, the home states of the banks are West Virginia and Ohio; neither state has opted out. Thus, this Merger 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 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.

The Merger Application satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In this case, the statutory law of the host state, Ohio, does not contain any age requirement.

¹ 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).

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).² 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 Senate Bill No. 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. Progressive is filing with the Ohio Secretary of State and submitted a copy of its OCC application to the Ohio Superintendent of Banking. Thus, the Progressive/Bellaire merger satisfies the Riegle-Neal Act's filing requirement.

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). Progressive and Bellaire 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

² 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).

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, Progressive (the bank submitting the application as the acquiring bank) and Bellaire are affiliated. Thus, this Riegle-Neal Act provision is not applicable to the Merger 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 Progressive and Bellaire 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, Progressive 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 Progressive and Bellaire is legally permissible under section 1831u.

B. Following the Merger, the Resulting Bank may Retain Both Banks' Existing Offices under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Application requested that, upon the completion of the merger, Progressive (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Wheeling, West Virginia, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main office of Bellaire. 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. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, Progressive, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both Progressive and Bellaire under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Moreover, at its branch in Ohio, as well as its offices in West Virginia, Progressive is authorized to engage in all activities permissible for national banks.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis.

Since Progressive and Bellaire are already owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of both banks are presently satisfactory. Progressive expects to achieve efficiencies by operating the office in Ohio as a branch 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. We find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. Progressive will continue to serve the same areas in West Virginia where it has branches, and it will add Bellaire's office in Ohio. No services to the combining banks' customers will be discontinued or significantly reduced as a result of the merger. The combined bank will continue to offer a full line of banking products and services. The branch in Ohio will continue to engage in the same business, serving the same communities, that Bellaire does today. No branch closings

are contemplated as a result of this merger. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger 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. Both Progressive and Bellaire have satisfactory ratings with respect to CRA performance. No public comments were received by the OCC relating to this Application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The merger 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 merging banks currently serve. Progressive will continue its current CRA programs and policies in West Virginia. After Bellaire is merged into Progressive, its Ohio office will remain open as a branch of Progressive. Progressive will carry forward the same CRA programs and policies that the bank has today. 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 Progressive and Bellaire have today as separate banks. The merger 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 merger 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 merger of Progressive and Bellaire 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 merger meets the other statutory criteria for approval. Accordingly, this Merger Application is hereby approved.

_____/s/
Steven J. Weiss
Deputy Comptroller
Bank Organization and Structure

08-08-97
Date

Application Control Number: 97-NE-02-0029