



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

CRA Decision #109

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE MERGER APPLICATIONS OF
FIRSTAR BANK, NATIONAL ASSOCIATION, CINCINNATI, OHIO;
U.S. BANK NATIONAL ASSOCIATION, MINNEAPOLIS, MINNESOTA;
U.S. BANK NATIONAL ASSOCIATION, CANBY, OREGON;
AND
U.S. BANK NATIONAL ASSOCIATION MT, BILLINGS, MONTANA**

July 18, 2001

I. INTRODUCTION

On June 4, 2001, Firstar Bank, National Association, Cincinnati, Ohio (“FB”) applied to the Office of the Comptroller of the Currency (“OCC”) for approval to merge U.S. Bank National Association, Minneapolis, Minnesota (“USB”) into FB under the charter of FB, but with the title of USB, pursuant to 12 U.S.C. §§ 215a & 1828(c) (the “USB/FB Merger”). FB is an interstate bank with its main office in Cincinnati, Ohio, and branches in several states, including Minnesota.¹ USB is an interstate bank with its main office in Minneapolis and branches in several states.² FB also requested approval for the resulting bank to retain USB’s main office and branches, as well as FB’s branches, as branches after the merger under 12 U.S.C. § 36(b)(2).

On June 4, 2001, FB applied to the OCC for approval to merge U.S. Bank National Association, Canby, Oregon, (“USBOR”) into the resulting bank of the USB/FB Merger (“USB I”) under the charter and title of USB I pursuant to 12 U.S.C. §§ 215a & 1828(c) (the “Oregon Merger”). USBOR’s main office is in Canby, Oregon; it has no branch offices. OCC approval is requested for the resulting bank to retain USB I’s main office and branches after the merger under 12 U.S.C. § 36(b)(2).³

¹ FB has branch offices in Arkansas, Arizona, Florida, Iowa, Illinois, Indiana, Kentucky, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin.

² USB has branch offices in California, Colorado, Iowa, Idaho, Illinois, Minnesota, North Dakota, Nebraska, Nevada, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

³ USBOR’s main office is located at the same location as USB’s branch in Canby, Oregon. Thus, approval is not requested to retain USBOR’s main office after the Oregon Merger transaction.

Also on June 4, 2001, FB applied to the OCC for approval to merge U.S. Bank National Association MT, Billings, Montana, (“USBMT”) into the resulting bank of the Oregon Merger (“USB II”), pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u, under the charter and title of USB II (the “Interstate Merger”). USBMT has its main office in Billings, Montana, and its branch offices are all in Montana. OCC approval is also requested for the resulting bank (“USB III”) to retain USBMT’s main office and branches, as well as USB II’s branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d).

FB, USB, USBOR, and USBMT are wholly owned subsidiaries of U.S. Bancorp. All of the banks are members of the Bank Insurance Fund.

II. LEGAL AUTHORITY

A. The FB/USB Merger

This transaction is a merger between two interstate national banks in which the acquiring bank has branches in the state in which the other bank has its main office. The OCC previously considered such applications under sections 215a and 36(b). This merger does not raise new issues, but requires only the application of established precedent for applying sections 215a and 36(b) to an interstate national bank.⁴

1. The Merger of USB into FB is Authorized under 12 U.S.C. § 215a.

Mergers of national banks, and of state banks into national banks, are authorized under 12 U.S.C. § 215a. Section 215a authorizes a national bank to merge with other national banks or state banks “located within the same State.” 12 U.S.C. § 215a(a). In many prior decisions, both before and after the Riegle-Neal Act, the OCC has interpreted and applied section 215a in the context of a merger involving an existing interstate national bank and concluded that a national bank with its main office and branch offices in more than one state is “located” in each such state, for the purpose of mergers with other banks in that state under section 215a.⁵ Here, FB has branches in Minnesota, and USB has its main office and branches in Minnesota. Accordingly, both FB and USB are located in Minnesota for purposes of section 215a, and so the FB/USB Merger is authorized under section 215a.

⁴ Since this transaction involves a merger between banks with different home states, it could also have been authorized under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (“the Riegle-Neal Act”). However, the present application was made under section 215a.

⁵ See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (“*OCC Texas Merger Decision*”); Decision on the Applications of Bank Midwest of Kansas, N.A., and 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*”); other OCC decisions cited in the *OCC Texas Merger Decision*. In litigation challenging the *OCC Texas Merger Decision*, the federal district court agreed with the OCC’s position that the merger was authorized under 12 U.S.C. § 215a and that such mergers continue to be authorized after the Riegle-Neal Act and independently of that Act. See *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction).

2. The Resulting Bank may Retain the Offices of Both Banks after the Merger.

FB has also requested OCC approval for the bank resulting from the merger (referred to in this subsection as “USB I” or “the Resulting Bank” to distinguish it from FB prior to the merger) to retain and operate the main office and branches of USB and the branches of FB as branches of the Resulting Bank after the merger. Branch retention in a merger under section 215a is covered by 12 U.S.C. § 36(b)(2). Section 36(b)(2)(A) permits the resulting bank (here USB I) to retain the main office and branches of the target bank (here USB) if the resulting bank, under section 36 and relevant state law incorporated into section 36, could establish them as *de novo* branches or continue to operate them as branches following a merger with a state bank.⁶ Under section 36(b)(2)(A) and relevant state law regarding establishment of branches or acquisition of branches by merger,⁷ USB I may retain, as branches, USB’s main office and branches in California, Colorado, Idaho, Illinois, Iowa, Minnesota, North Dakota, Nebraska, Nevada, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

With regard to FB’s branches, section 36(b)(2)(C) authorizes a national bank resulting from a merger to retain and operate as a branch any branch the acquiring bank had prior to the merger, unless a state bank resulting from a merger in the state would be prohibited by state law from retaining as a branch an identically situated office of a state bank. Here, the acquiring bank’s branches (*i.e.*, FB’s branches) are situated in Arkansas, Arizona, Florida, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. None of these states have laws that would prohibit a bank chartered by that state, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Therefore, USB I may retain the branches of FB under section 36(b)(2)(C).

⁶ See *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974) (an interstate national bank is “situated” in each state in which it has offices for purposes of establishing additional branches under section 36(c)); *Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) (“*Sun World*”) (same, agreeing with *Seattle Trust*). See also Decision on the Application to Merge First Bank N.A., Minneapolis, Minnesota, and First National Bank of East Grand Forks, East Grand Forks, Minnesota (OCC Corporate Decision No. 97-68, July 10, 1997); Decision on the Applications Involving Family Bank, FSB, Haverhill, Massachusetts, First Massachusetts Bank, N.A., Worcester, Massachusetts, and six other affiliated banks (OCC Corporate Decision No. 2000-03, March 8, 2000); other decisions cited in Corporate Decisions Nos. 97-68 and 2000-03.

⁷ See Cal. Fin. Code § 500(b) (*de novo*) & Cal. Fin. Code § 4888 (retention after merger or consolidation); Colo. Rev. Stat. § 11-25-103(8) (*de novo*) & Colo. Rev. Stat. § 11-25-103(3) (retention after merger or consolidation); Idaho Code § 26-301 (*de novo*); 205 Ill. Comp. Stat. Ann. 5/5(15) (*de novo*); Iowa Code § 524.1213(3) (retention after merger or consolidation); Minn. Stat. § 49.34 (retention after merger or consolidation); Neb. Rev. Stat. § 8-157(3) (retention after merger or consolidation); Nev. Rev. Stat. Ann. § 660.015 (*de novo*); N.D. Cent. Code § 6-03-13.1 (*de novo*); Or. Rev. Stat. § 714.025 (*de novo*); S.D. Codified Laws § 51A-7-4 (retention after merger or consolidation); Utah Code Ann. § 7-1-708 (*de novo*); Wash. Rev. Code § 30.04.285 (*de novo*); Wis. Stat. § 221.0302 (*de novo* and retention after merger or consolidation); Wyo. Stat. § 13-2-702(a) (*de novo*) & Wyo. Stat. § 13-4-104(b) (retention after merger or consolidation).

Accordingly, the USB/FB Merger is authorized, and after the merger, USB I may retain and operate as branches the main office and branches of USB and the branches of FB.⁸

B. The Oregon Merger is Authorized under 12 U.S.C. § 215a, and the Resulting Bank may Retain the Offices of Both Banks after the Merger.

FB applied for approval to merge USBOR into USB I, the resulting bank of the USB/FB Merger. Both banks are located in Oregon. USBOR's main and only office is located in Oregon, and USB I (and USB prior to the USB/FB Merger) has branch offices in Oregon. Since the two banks are located in the same state, their merger is authorized under section 215a.

FB also requested OCC approval for the bank resulting from the Oregon Merger (referred to in this subsection as "USB II" to distinguish it from USB I prior to the merger) to retain and operate the branches of USB I (the acquiring bank) as branches of USB II after the merger. Here, the acquiring bank's branches (*i.e.*, USB I's branches) will be located in Arkansas, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming. None of these states have laws that would prohibit a bank chartered by that state, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Therefore, USB II may retain the branches of USB I under section 36(b)(2)(C).

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

1. The Merger of USBMT into USB II is authorized under the Riegle-Neal Act.

FB applied for approval to merge USBMT into USB II, the resulting bank of the Oregon Merger. USBMT's main office is in Montana. USB II will be an interstate bank with its main office in Ohio. In this transaction national banks with different home states will merge.⁹ Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

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]

⁸ Both FB and USB exercise fiduciary powers. After the merger, USB I will continue to be authorized to exercise fiduciary powers under 12 U.S.C. § 92a, it will succeed to the fiduciary appointments of both FB and USB as a result of the merger, and it will be authorized to engage in all activities permissible for national banks, including fiduciary activities. *See, e.g.*, 12 U.S.C. § 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks); Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states).

⁹ USB II does not have branches in Montana, and so USBMT and USB II are not located within the same state for the purposes of section 215a. Thus, the two banks may not merge under the authority of section 215a.

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).¹⁰ The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state (*i.e.*, “opt-out”) 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). In the Interstate Merger, the home states of the banks are Montana and Ohio. Ohio did not opt out. On March 20, 1997 Montana enacted law that prohibited mergers with out-of-state banks until October 1, 2001.¹¹ Thus, Montana’s opt-out law expires on September 30, 2001, and interstate merger transactions that will become effective on October 1, 2001, and thereafter, will not be subject to it.¹² Here, the applicants represent that the Interstate Merger transaction will not be consummated until on or after October 1, 2001. Accordingly, the Interstate Merger transaction may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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 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 Interstate 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

¹⁰ Congress also enacted a conforming amendment authorizing national banks to engage in interstate merger transactions under section 1831u. 12 U.S.C. § 215a-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).

¹¹ Mont. Code Ann. § 32-1-370 provides that:

(1) (a) A bank located in this state may not enter into a merger transaction with a bank not located within this state if the merger transaction would be effective on or before September 30, 2001.

.....
(2) This section implements 12 U.S.C.1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state.

¹² Mont. Code Ann. § 32-1-370(1)(b) expressly authorizes a bank located within Montana that has been in existence for at least 5 years to enter into a merger transaction with an out-of-state bank beginning on October 1, 2001.

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 the proposed merger USB II is acquiring a bank in the host state of Montana. Montana requires that in a merger with an out-of-state bank that will be effective after September 30, 2001, the bank located in Montana must have been in existence for five years. Mont. Code. Ann. § 32-1-370(1)(b). Here, USBMT has been in existence since 1923. Thus, the Interstate Merger application satisfies the age requirements of the Riegle-Neal Act.

Second, the proposed merger satisfies 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. 12 U.S.C. § 1831u(b)(1).¹³ The Montana interstate bank merger statute does not contain filing requirements for an interstate merger transaction. The applicant provided a copy of its OCC merger application to the Montana Division of Banking and Financial Institutions. Thus, the Interstate Merger application satisfies the Riegle-Neal Act’s filing requirements.

Third, the proposed 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. 12 U.S.C. § 1831u(b)(2)(E). At the time of the merger, USBMT and USB II will be 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”), (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank’s record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, these provisions do not apply to mergers between affiliated banks. USB II and USBMT are affiliates. Thus, this Riegle-Neal Act provision is not applicable. However, the Community Reinvestment Act itself is applicable, as discussed below in Part III-B.

¹³ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, see, *e.g.*, Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, each of the banks that will ultimately be involved in the Interstate Merger (*i.e.*, FB, USB, USBOR, and USBMT) satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, all of the banks are at least satisfactorily managed. The OCC has also determined that, following the merger, the resulting bank will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are, therefore, satisfied.

2. The Resulting Bank may retain the main offices and branches of USB II and USBMT under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicant has requested that, upon the completion of the merger, the resulting bank in the merger (referred to as “USB III”) be permitted to retain and continue to operate USB II’s main office in Cincinnati, Ohio, as the main office of the resulting bank and to retain and continue to operate as branches (1) USB II’s branches and (2) the main office and branches of USBMT in Montana. 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:

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). *See* 12 U.S.C. § 36(d).

Therefore, USB III, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of USB II and USBMT under 12 U.S.C. §§ 36(d) & 1831u(d)(1).¹⁴ Moreover, at its branches in Montana, as well as those in Arkansas, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Minnesota,

¹⁴ 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) refers to section 36(b)(2). 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).

Missouri, North Dakota, Nebraska, Nevada, Ohio, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming, USB III is authorized to engage in all activities permissible for national banks, including fiduciary activities.¹⁵

3. Conclusion

Accordingly, the Interstate Merger is authorized, provided the merger transaction is not consummated before October 1, 2001, and USB III may retain as branches USB II's branch offices and the main office and branches of USBMT.

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 when the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. 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 applications may be approved under section 1828(c).

1. Competitive Analysis.

Since FB, USB, USBOR, and USBMT are wholly owned by the same bank holding company, the merger transactions will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of all four banks are presently satisfactory. The proposed transactions are expected to result in substantial cost savings through the elimination of duplicative corporate overheads and administrative functions. 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 merger applications.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. The resulting bank of this series of mergers, U.S. Bank N.A., Cincinnati, Ohio, will continue to serve the same areas that FB served in Arkansas, Arizona, Florida, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, and through the merger

¹⁵ 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).

transactions it will add the offices of USB and USBMT in California, Colorado, Idaho, Illinois, Iowa, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. FB, USB, and USBMT currently offer a full line of banking services and USBOR offers cash management services; there will be no reductions in the products or services as a result of the merger transactions. Accordingly, we believe the impact of the merger transactions on the convenience and needs of the communities to be served is consistent with approval of the merger applications.

B. The Community Reinvestment Act.

The CRA requires the OCC to take into account each applicant bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications. 12 U.S.C. § 2903. The types of applications that are subject to review under the CRA include mergers between insured depository institutions. 12 C.F.R. § 25.29(a)(3). The OCC considers the CRA performance of each depository institution involved in the transaction. Under the CRA regulations, effective July 1, 1997, the OCC evaluates the performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

USB received an "Outstanding" CRA rating in its most recent Performance Evaluation dated March 31, 2000. The three component ratings for the lending, investments and services tests were rated "Outstanding," "Outstanding," and "High Satisfactory," respectively. USB received "Needs to Improve" ratings in Iowa and North Dakota, two of the twenty state and multistate areas evaluated, due to low levels of investments in those states. US Bancorp represented to the OCC that its affiliates are already taking and will continue to take specific measures to improve the current investment test ratings in Iowa and North Dakota. These measures include a thorough review and analysis of current investments, the implementation of specific strategies designed to increase those levels, and active oversight by individuals familiar with the current investment strategies.¹⁶

FB's most recent CRA Performance Evaluation, dated July 6, 1998, assigned a "Satisfactory" CRA rating. USBMT's most recent CRA Performance Evaluation, dated March 31, 2000, assigned a "Satisfactory" CRA rating.¹⁷

The OCC did not receive any comments in connection with the USB/FB Merger application. However, in connection with the holding company merger application involving Firststar

¹⁶ When arriving at an overall rating for each test for an interstate bank, performance in each state and/or multistate MSA is weighted based on the level of the bank's activity in that state and/or multistate MSA. One method for weighting considers the percentage of the bank's deposits in a state and/or multistate MSA relative to the bank's total deposits. In this instance, the bank's deposits in Iowa and North Dakota represented about 2% of the bank's total deposits.

¹⁷ USBOR is a limited purpose national bank that provides only cash management services. It is exempt from the provisions of the CRA pursuant to 12 C.F.R. § 25.11(c)(3) because of its status as a special purpose bank.

Corporation and U.S. Bancorp, the Board of Governors of the Federal Reserve System considered comments from approximately 16 commenters. The Board concluded that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant banks, was consistent with approval of the merger.¹⁸ The OCC has considered those comments and the Board's analysis in reaching this decision.

The mergers are not expected to have any adverse effect on the CRA performance of the resulting bank. Following the merger transactions, the resulting bank will continue to serve the same communities that FB, USB, USBOR, and USBMT currently serve. USB will carry forward its existing CRA programs and policies. The merger transactions will not alter USB's obligation to help meet the credit needs of its communities in all the states it serves. Accordingly, 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 each of the three mergers is legally authorized, the merger transactions meet the relevant statutory criteria for approval, and the resulting bank in each merger may retain and operate the branches of the participating banks. The Interstate Merger may not be consummated until after September 30, 2001. Accordingly, subject to the foregoing, these merger applications are approved.

Signed

7-18-01

Julie L. Williams
First Senior Deputy Comptroller
And Chief Counsel

Date

Application Control Numbers: 01-CE-02-0022
01-CE-02-0023
01-CE-02-0024

¹⁸ See the Federal Reserve System's Order Approving Merger of Bank Holding Companies involving Firststar Corporation and U.S. Bancorp dated February 12, 2001.