Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-29
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE U.S. BANK OF CALIFORNIA, SACRAMENTO, CALIFORNIA, U.S. BANK OF IDAHO, BOISE, IDAHO, U.S. BANK OF NEVADA, LAS VEGAS, NEVADA, U.S. BANK OF UTAH, SALT LAKE CITY, UTAH, AND U.S. BANK OF WASHINGTON, N.A., SEATTLE, WASHINGTON, WITH AND INTO UNITED STATES NATIONAL BANK OF OREGON, PORTLAND, OREGON

May 19, 1997

A. The Application.

On April 1, 1997, United States National Bank of Oregon, Portland, Oregon ("USNBO") filed an Application with the Office of the Comptroller of the Currency ("OCC") for approval to merge a number of affiliated national and state banks located in other states with and into USNBO under USNBO's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c), & 1831u(a) (the "Merger Application"). The transaction is structured as a combined merger of each affiliated bank with and into USNBO. The affiliated banks are: U.S. Bank of California, Sacramento, California ("USB-California"); U.S. Bank of Idaho, Boise, Idaho ("USB-Idaho"); U.S. Bank of Nevada, Reno, Nevada ("USB-Nevada"); U.S. Bank of Utah, Salt Lake City, Utah ("USB-Utah"); and U.S. Bank of Washington, N.A., Seattle, Washington ("USB-Washington") (together, "Affiliated Banks"). Each bank currently has branches only in its home state. In the Merger Application, OCC approval is also requested for the resulting bank to retain USNBO's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain USNBO's branches and the Affiliated Banks' main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

All of the banks are wholly-owned subsidiaries of U.S. Bancorp, a multistate bank holding company headquartered in Portland, Oregon. In the proposed merger, six of the holding company's bank subsidiaries will be combined into one bank with operations in several states.

B. The Riegle-Neal Act.

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). The Riegle-Neal Act also provides that interstate merger transactions may be approved before June 1, 1997 (the "early opt-in period") if the home states of the merging banks have the requisite legislation. See 12 U.S.C. § 1831u(a)(3). In this Merger Application, the home states of all banks -- Oregon, California, Idaho, Nevada, Utah, and Washington -- have opted in. The OCC reviewed the interstate merger provisions of these states in earlier decisions under the Riegle-Neal Act. See Decision on the Application to Merge Six Affiliated Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (California, Idaho, Nevada, Oregon, and Washington); Decision on the Application to Merge First Security Bank of Idaho, N.A., into First Security Bank of Utah, N.A. (OCC Corporate Decision No. 96-31, June 12, 1996) (Idaho and Utah); Decision on the Application to Merge Republic Bank California, N.A., into Republic National Bank of New York (OCC Corporate Decision No. 96-28, May 20, 1996) (California).

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) & 1831u(b). These conditions are: (1) compliance with state-imposed age limits, if any; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

The proposed merger transaction 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 the proposed merger, USNBO is acquiring by merger a bank in each of the following host states: California, Idaho, Nevada, Utah, and Washington. California requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the California bank must have been in existence for at least five years. See Cal. Fin. Code § 3825(a)(1). USB-California and its predecessors have been in operation since 1910, meeting the five-year age requirement under California law. Idaho requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Idaho bank must have been in existence and engaged in the business of banking for at least five years. See Idaho Code § 26-1605(1)(a). USB-Idaho and its predecessors have been in operation since 1867, meeting the five-year age requirement under Idaho law.

Nevada requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Nevada bank must have been in existence for at least five years, if the Nevada institution is chartered after September 28, 1995. See Nev. Rev. Stat. § 666.405(1). However, this restriction does not apply to a merger between affiliated depository institutions. See Nev. Rev. Stat. § 666.405(3). USB-Nevada is an affiliate of USNBO, and so the age restriction does not apply. In addition, USB-Nevada and its predecessors have been in operation since 1983, and so the age restriction, if applicable, would be met. Utah requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Utah bank must have been in existence for at least five years. See Utah Code Ann. § 7-1-703(7)(a)(i). However, this restriction does not apply to a merger between affiliated depository institutions. See Utah Code Ann. § 7-1-703(7)(d). USB-Utah is an affiliate of USNBO, and so the age restriction does not apply. In addition, USB-Utah and its predecessors have been in operation since 1981, and so the age restriction, if applicable, would be met.

Finally, Washington requires that, in a merger "resulting in the acquisition, by an out-of-state bank that does not have branches in this state, of a bank organized under this title or the national bank act," the bank to be acquired or its predecessors must have been in continuous operation for at least five years. See Wash. Rev. Code § 30.49.125(7). USB-Washington and its predecessors have been in continuous operation since 1937. The age limits are met for each affiliated bank. Accordingly, the proposed merger satisfies the Riegle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements for each host state. 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). As set forth below, USNBO has complied with the filing requirements, if any, of each host state, to the extent permitted under section 1831u(b)(1)(A)(i) ("standard doing business requirements").[1]

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[1] 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).

The California interstate bank merger statute incorporates by reference the provisions of the California Corporations Code for out-of-state nonbanking corporations to qualify to do business in California. See Cal. Fin. Code § 3822. As implemented to date, the filing requirements of section 3822 do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. USNBO will obtain a certificate of qualification to transact business before the merger. The Idaho interstate bank merger statute does not appear to contain a "qualify to do business" filing requirement applicable to out-of-state banks with branches in Idaho. However, the Idaho statute purports to require the approval of the state bank supervisor prior to a merger that would result in an out-of-state bank obtaining branches in Idaho. See Idaho Code § 26-1604(3). It is not clear whether this approval requirement is intended to apply to all mergers, especially mergers between two national banks, or only to mergers involving an Idaho state-chartered bank. To the extent it is asserted to be applicable to mergers between national banks, then it goes beyond the filing requirements permitted to the states under the Riegle-Neal Act and would not be applicable, as discussed in note 1. However, USNBO indicated in its Merger Application that it would comply with this approval requirement, since USB-Idaho is a state-chartered bank.

The Nevada interstate bank merger statute also does not contain a "qualify to do business" filing requirement applicable to out-of-state banks with branches in Nevada. The Nevada statute requires an application to, and approval of, the Commissioner of Financial Institutions prior to the merger of a Nevada state-chartered bank with an out-of-state depository institution. See Nev. Rev. Stat. § 666.015(1). USNBO indicated in its Merger Application that it would comply with this approval requirement, since USB-Nevada is a state-chartered bank. The Utah interstate bank merger statute incorporates by reference the provisions of the Utah Revised Business Corporation Act for out-of-state nonbanking corporations to obtain a certificate of authority to qualify to do business in Utah. See Utah Code Ann. § 7-1-702(12). The bank also must notify the state banking department of its certificate of authority. And, the approval of the Utah Commissioner of the Utah Department of Financial Institutions must be obtained prior to a merger with any depository institution "subject to the jurisdiction of the department." Utah Code Ann. § 7-1-703(1)(h). This last requirement seems to apply only in mergers with a Utah state bank. USNBO indicated in its Merger Application that it would comply with this approval requirement, since USB-Utah is a state-chartered bank. USNBO also will obtain a certificate of qualification to transact business before the merger.

Finally, the Washington statute does not appear to contain any filing requirement for an interstate merger transaction between two national banks. The approval or notice requirement of section 30.49.125(3) applies only to transactions involving a Washington state bank. The notice requirement of section 30.38.070 applies to other interstate merger transactions where the resulting bank is an out-of-state state bank. The Washington interstate bank merger statute also does not contain any provision imposing a "qualify to do business" filing requirement on out-of-state banks with branches in Washington.

Thus, the merger of USNBO and its Affiliated Banks satisfies the Riegle-Neal Act requirement of compliance with state filing requirements. And USNBO submitted a copy of its

OCC Merger Application to the state bank supervisor of each host state of the Affiliated Banks, in compliance with 12 U.S.C. § 1831u(b)(1)(A)(ii).

Third, the proposed interstate merger transaction does not raise issues with respect to deposit concentration limits. 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). The Affiliated Banks are all affiliates of USNBO.

Fourth, the proposed interstate merger transactions also do 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 applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, USNBO (the bank submitting the application as the acquiring bank) has a bank affiliate in each host state before the transaction (i.e., the Affiliated Banks), 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 Merger Application. However, the CRA itself is applicable, as discussed below.

Fifth, the proposed merger satisfies the adequacy of capital and management skills requirements. 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 USNBO and the Affiliated Banks 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 mergers, USNBO 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.

C. USNBO may retain all the banking offices of the merging banks in the merger.

USNBO has requested that, upon the completion of the merger, USNBO (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Portland, Oregon, 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 and branches of the Affiliated Banks being acquired in the merger. In an interstate merger transaction under section 1831u, the

resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

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

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

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(d) (as added by the Riegle-Neal Act § 102(b)(1)(B)). Therefore, USNBO, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both USNBO and each merging bank under 12 U.S.C. §§ 36(d) and 1831u(d)(1).[2]

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

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[2] 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).

fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

D. 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 Bank Merger Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Bank Merger 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 USNBO and the Affiliated Banks 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 all banks are presently satisfactory. USNBO expects to achieve efficiencies by operating the offices in California, Idaho, Nevada, Utah, and Washington as branches rather than as separate corporate entities. 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 Application.[3]

3. Convenience and needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. USNBO will continue to serve the same areas in Oregon where it has branches, and it

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[3] The OCC received two letters protesting the merger of USB-Idaho into USNBO, on the basis of the qualification of management and the future prospects of the combined entity. The protests involve a private matter dealing with treatment of the protesters' business loans at an institution since merged into USB-Idaho. The underlying dispute with USB-Idaho dates from the late 1980s and has been the subject of several court cases, which is a more appropriate forum for individual business disputes between a bank and its borrowers. After closely reviewing the allegations and the financial and managerial qualifications of banks involved in the Merger Application, the OCC determined that the issues raised did not serve as a basis for denial or conditioning the approval of the Application.

The OCC also received several other letters protesting a proposed merger transaction between U.S. Bancorp and First Bank System, Inc. That merger, one between two bank holding companies, is not germane to this Merger Application. The substance of those letters is relevant to the application for the bank holding company merger, which is currently pending at the Federal Reserve Bank of Minneapolis.

will add the Affiliated Banks' offices in the host states -- California, Idaho, Nevada, Utah, and Washington. All 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 merger. The combined bank will continue to offer a full line of banking products and services. The branches in the host states will continue to engage in the same business, serving the same communities, that the Affiliated Banks are currently engaged in. The merger will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

Upon completion of the merger, customers of each bank will have available to them a significantly greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the merger, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. No branch closings are contemplated as a result of this merger since the banks serve different areas. However, as part of its ongoing business plans, USNBO and U.S. Bancorp continually evaluate its branch system, including branches acquired in transactions and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

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.

E. The Community Reinvestment Act.

The 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. USNBO, USB-Idaho, USB-Nevada, USB-Utah, and USB-Washington have outstanding ratings with respect to CRA performance; USB-California has a satisfactory rating. No public comments addressing CRA issues were received by the OCC relating to this Merger 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. USNBO will continue its current CRA programs and policies in Oregon. After the Affiliated Banks are merged into USNBO, its California, Idaho, Nevada, Utah, and Washington offices will remain open as branches of USNBO. USNBO will carry forward the same CRA programs and policies that the six banks have today. Moreover, USNBO has represented that it will honor all CRA-related commitments made by the Affiliated Banks. 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 USNBO and the Affiliated Banks 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 CRA.

F. Conclusion.

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of USNBO and the Affiliated Banks 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 all the 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/ 05-19-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-WE-02-0011