Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-38
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE MERGER APPLICATIONS OF KEYBANK NATIONAL ASSOCIATION, ANCHORAGE, ALASKA, KEYBANK NATIONAL ASSOCIATION, FORT COLLINS, COLORADO, KEY TRUST COMPANY OF FLORIDA, N.A., NAPLES, FLORIDA, KEYBANK NATIONAL ASSOCIATION, BOISE, IDAHO, KEYBANK NATIONAL ASSOCIATION, PORTLAND, MAINE, KEYBANK NATIONAL ASSOCIATION, BEDFORD, NEW HAMPSHIRE, KEYBANK NATIONAL ASSOCIATION, ALBANY, NEW YORK, KEYBANK NATIONAL ASSOCIATION, PORTLAND, OREGON, KEYBANK NATIONAL ASSOCIATION, BURLINGTON, VERMONT, KEYBANK NATIONAL ASSOCIATION, TACOMA, WASHINGTON (FORMERLY KEY BANK OF WASHINGTON), KEYBANK NATIONAL ASSOCIATION, TACOMA, WASHINGTON (FORMERLY KEY SAVINGS BANK), KEYBANK NATIONAL ASSOCIATION, SALT LAKE CITY, UTAH, AND KEYBANK NATIONAL ASSOCIATION, CLEVELAND, OHIO

June 1, 1997

I. INTRODUCTION

On April 8, 1997, three merger applications were filed with the Office of the Comptroller of the Currency ("OCC") for approval of three mergers involving direct or indirect national bank subsidiaries of KeyCorp, a multibank holding company headquartered in Cleveland, Ohio. The transaction is structured as three mergers in three steps for business reasons, but overall it is a single plan in which thirteen of KeyCorp's existing bank subsidiaries will be combined into one bank with branches in fourteen states.

The first application sought approval to merge Key Trust Company of Florida, National Association, Naples, Florida ("KBFL") with and into KeyBank National Association, Cleveland, Ohio ("KB-Ohio") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Florida Merger"). OCC approval is also requested for the resulting bank in the

Florida Merger to retain KB-Ohio's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain KB-Ohio's branches[1] and KBFL's main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The second application sought approval to merge KeyBank National Association, Anchorage, Alaska ("KBAK"), KeyBank National Association, Fort Collins, Colorado ("KBCO"), KeyBank National Association, Boise, Idaho ("KBID"), KeyBank National Association, Portland, Maine ("KBME"), KeyBank National Association, Bedford, New Hampshire ("KBNH"), KeyBank National Association, Albany, New York ("KBNY"), KeyBank National Association, Portland, Oregon ("KBOR"), KeyBank, National Association, Burlington, Vermont ("KBVT"), KeyBank National Association, Tacoma, Washington (formerly known as Key Bank of Washington) ("KBW"), KeyBank National Association, Tacoma, Washington (formerly known as Key Savings Bank) ("KSB") (collectively, the "Merging Banks") with and into KeyBank National Association, Salt Lake City, Utah ("KB-Utah") under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Utah Merger"). OCC approval is also requested for the resulting bank in the Utah Merger ("KB-Utah-Resulting"), to retain KB-Utah's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain KB-Utah's branches and the Merging Banks' main offices and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The third application sought approval to merge KB-Utah-Resulting (the resulting bank of the Utah Merger) with and into KB-Ohio under the charter and title of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Ohio Merger"). In the Ohio Merger, OCC approval is also requested for the resulting bank to retain KB-Ohio's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain KB-Ohio's branches and KB-Utah-Resulting's main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

II. LEGAL AUTHORITY

A. The Interstate Mergers are Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

1. The proposed mergers may be approved under section 1831u(a).

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

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[1] KB-Ohio has branches in Michigan and Indiana, as well as in Ohio, as a result of earlier transactions. See Decision on the Applications of Society Bank, Michigan and Society National Bank, Indiana (OCC Corporate Decision No. 96-01, January 5, 1996); Decision on the Applications of KeyBank, N.A., and Society National Bank (OCC Corporate Decision No. 96-32, June 14, 1996). The Michigan Commissioner of Financial Institutions filed a lawsuit challenging the transaction in Decision No. 96-01. The suit is pending. McQueen v. Ludwig, No. 5:96-CV-36 (W.D. Mich. filed Feb. 27, 1996). The issues raised in that litigation do not affect the authority of KB-Ohio to engage in the present interstate mergers under 12 U.S.C. § 215a-1 & 1831u as the acquiring bank.

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).[2] 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 the Florida Merger, the home states of the banks are Ohio and Florida; in the Utah Merger, the home states of the banks are Utah, Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington; and in the Ohio Merger, the home states of the banks are Ohio and Utah. None of these states has opted out. Accordingly, each of the three merger applications may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

2. The proposed mergers meet the requirements in sections 1831u(a) & 1831u(b).

An application by a national bank 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.

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[2] 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).

a. Compliance with state age laws.

Each of the three mergers 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). First, in the Florida Merger, KB-Ohio is acquiring by merger a bank (KBFL) in the host state of Florida. Florida requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Florida bank must have been in existence for at least three years. See Fla. Stat. Ann. § 658.2953(7)(c). KBFL has been in existence for longer than three years. Thus, the Florida Merger satisfies the Riegle-Neal Act's age requirement.

Second, in the Utah Merger, KB-Utah is acquiring by merger banks (the Merging Banks) in the host states of Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington. The age requirement is met for each host state. Alaska requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Alaska bank must have been in existence for at least three years. See Alaska Stat. §§ 06.05.550(a) & 06.05.540(21). Oregon also has a three year age requirement. See Or. Rev. Stat. § 711.017(1)(a)(A). Colorado's statute on interstate bank acquisitions and interstate branching is unclear, but some provisions suggest the state intended to impose a five-year age requirement for an interstate merger of a Colorado bank with a resulting out-of-state bank.[3] New York requires that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the New York bank must have been in existence for at least five years, unless the New York bank to be acquired was not chartered directly or indirectly by the out-of-state bank. See N.Y. Banking Law § 223-a.[4] Idaho, New Hampshire, Vermont, and Washington also have a five year age requirement. See Idaho Code § 26-1605(1)(a); N.H. Rev. Stat. Ann. § 384:59(I); Vt. Stat. Ann. tit. 8, § 654(b); Wash. Rev. Code Ann. § 30.49.125(7). Maine's interstate bank merger statute does not have an age requirement. KBAK, KBCO, KBID, KBME, KBNY, KBOR, KBVT, KBW, and KSB have all been in existence for at least five years, and so each of them meets the applicable age requirement. KBNH was originally chartered as a state bank in September 1995. However, the applicants, relying on the position of the New Hampshire Banking Department,[5] believe the age requirement is not applicable to the merger of KBNH into

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[3] It is unclear whether the five year requirement is actually imposed in the case of interstate mergers, especially between affiliated banks. Since KBCO is more than five years old, however, and the five year requirement, if applicable, is met, it is not necessary to consider these issues further here.

[4] Because of the definition of "New York bank," see N.Y. Banking Law §§ (2)(1) & 222(4), the five-year age limit appears literally to apply only to the acquisition of a New York state-chartered bank. Since KBNY is more than five years old, we need not consider whether it should be read to apply also to national banks.

[5] KBNH was chartered as a New Hampshire state bank, and KeyCorp was approved to establish it, by New Hampshire, on September 25, 1995. That was before the effective date of the five-year age requirement for acquisitions by out-of-state bank holding companies (September 29, 1995) and also before the effective date of the five-year age requirement for a merger with an out-of-state resulting bank (June 1, 1997). In 1996, when KeyCorp's

KB-Utah, and so KBNH meets the Riegle-Neal Act's age requirement. Accordingly, the Utah Merger satisfies the Riegle-Neal Act requirement of compliance with state age laws.

Finally, in the Ohio Merger, KB-Ohio is acquiring by merger a bank (KB-Utah-Resulting) in the host state of Utah.[6] 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 affiliate depository institutions. See Utah Code Ann. § 7-1-703(7)(d). KB-Utah and KB-Ohio are affiliates, and so the age restriction does not apply. Moreover, KB-Utah has been in existence more than five years. Thus, the Ohio Merger satisfies the Riegle-Neal Act requirement of compliance with state age laws.

b. Compliance with state filing requirements.

Each proposed merger meets the applicable filing requirements of the host states involved in that merger. 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).[7] Copies of the OCC merger

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application to acquire KBNH under the federal Bank Holding Company Act was being considered by the Federal Reserve Bank of Cleveland, the question arose whether the five-year age limit in New Hampshire law applied. In a letter to the Reserve Bank, the New Hampshire Bank Commissioner advised that:

> Therefore, the acquisition [of KBNH] is not subject to the provisions contained in current NH RSA 384:57 et seq., effective September 29, 1995, regarding the acquisition of a New Hampshire bank by an out-of-state bank or bank holding company. Moreover, any merger of [KBNH] with and into an out-of-state bank shall be a merger which meets the "previously merged" requirement contained in RSA 384:59, V with respect to future de novo branching or acquisition of a branch from another bank in New Hampshire.

Letter from A. Roland Roberge, Bank Commissioner, to Andrew W. Watts, General Counsel, Federal Reserve Bank of Cleveland (June 18, 1996). The New Hampshire Banking Department has not raised objection to the present transaction.

[6] While KB-Utah-Resulting will also have branches in Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington at the time of the Ohio Merger, Utah -- the bank's home state -- is the only state in which KB-Ohio is "acquiring a bank" for purposes of section 1831u(a)(5)(A). Moreover, the age requirements of the other states, if they were applicable, would be met just as they were in the Utah Merger.

[7] 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,

applications were sent to the state bank supervisors of the various host states. As set forth below, the applicants also complied with the filing requirements, if any, of each host state, to the extent permitted under section 1831u(b)(1)(A)(i).

First, in the Florida merger, Florida is the host state. The Florida interstate merger statute requires an out-of-state bank that will be the resulting bank from an interstate merger with a Florida bank to notify the state banking department within 15 days after it has filed its merger application with the appropriate federal regulatory agency and to submit a copy of the application to the department. See Fla. Stat. Ann. § 658.2953(8).[8] KB-Ohio notified the state banking department and provided a copy of the merger applications. Thus, the Florida Merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements

Second, in the Utah Merger, the host states are Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington. The Alaska interstate bank merger statute requires an out-of-state bank, before acquiring an Alaska bank in a merger, to "file an application with the department [the Alaska Department of Commerce and Economic Development] for and receive a certificate of authority to operate a branch bank." Alaska Stat. § 06.05.555(a). Idaho requires the out-of-state bank to apply to, and receive approval from, the state bank superviser (which process may be done by sending a copy of the bank's federal application). See Idaho Code § 26-1604(3). The Oregon interstate bank merger statute requires that the out-of-state bank comply "with the applicable requirements of ORS 713.016, 713.020, 713.050, and 713.120 to 713.170." See Or. Rev. Stat. § 711.017(3)(b). See also Or. Rev. Stat. § 713.011. As implemented to date, these provisions impose filing requirements similar to, or no more than, those for out-of-state nonbanking corporations. The Alaska, Idaho, and Oregon filing requirements are discussed in more detail in the OCC Wells Fargo Decision (pages 12-14). Under Colorado's interstate banking statute, an out-of-state bank proposing to conduct interstate branching in Colorado must send a copy of its federal application to, and obtain a certificate from, the state banking board. See Colo. Rev. Stat. §§ 11-6.4-103(9) (copy of federal filing) & 11-6.4-103(10) (certificate). The Colorado filing requirement is discussed in more detail in the Decision on the Applications to Merge Eight Affiliated Banks into First Bank National Association (OCC Corporate Decision No. 97-__, June 1, 1997) (page 6).

The Maine interstate bank merger statute requires that, when the resulting bank of an interstate merger transaction is an out-of-state bank, the out-of-state bank must provide prior

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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) ("OCC Wells Fargo Decision") (at pages 4-5, 12-14 & note 11).

[8] The Florida statute currently also requires the out-of-state bank to comply with the general foreign corporation filing requirements of Fla. Stat. Ann. §§ 607.1501 - 607.1532. However, recent legislation in Florida amended the statute to delete that requirement. While the amendment is not effective until October, Florida authorities have advised banks that no filing was required.

notice to the state bank supervisor. See Me. Rev. Stat. Ann. tit. 9-B, § 373(3). The Maine statute also requires that the out-of-state bank comply with the filing requirements of the state's foreign corporation laws and also send copies of the documents used in that filing to the state bank supervisor. See Me. Rev. Stat. Ann. tit. 9-B, § 377. The New Hampshire interstate bank merger statute requires the merging banks in an interstate bank merger transaction to file with the state banking supervisor a copy of the merger application filed with the appropriate state or federal regulatory agency. See N.H. Rev. Stat. Ann. § 384:59(III).[9] New York also requires the out-of-state bank to file a copy of the merger application filed with the appropriate state or federal regulatory agency. See N.Y. Banking Law § 225(2). The Vermont interstate bank merger statute requires the out-of-state bank to provide the state banking commissioner with a copy of its merger application and to comply with the provisions for out-of-state nonbanking corporations to qualify to do business in Vermont. See Vt. Stat. Ann. tit. 8, §§ 654(b) & (e). The Washington interstate bank merger statute does not appear to contain a filing requirement applicable to an interstate merger between national banks. (The approval or notice requirement of Wash. Rev. Code Ann. § 30.49.125(5) applies only to transactions involving a Washington state bank.) Thus, there appears to be no state filing requirements applicable to the mergers of KBW and KSB into KB-Utah other than the requirement in section 1831u(b)(1)(A)(ii) to submit a copy of the merger application to the state bank supervisor.

The applicants submitted copies of the OCC merger applications to all the host states. They have obtained certificates of authority from Idaho, Oregon, Colorado, and Maine and are in the process of obtaining the certificates from Alaska and Vermont. Thus, the Utah Merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

Finally, in the Ohio Merger, the host states are Utah, Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington. With the exception of Utah, the filing requirements of each of these host states are discussed above and KB-Ohio has taken appropriate steps to comply with the applicable filing requirements of those states.[10] The Utah

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[9] In new legislation, New Hampshire is adding additional filing requirements, including filing an application on a New Hampshire form to the New Hampshire bank commissioner, paying a $1500 investigation fee, and obtaining the approval of the bank commissioner. See N.H. House Bill No. 190 (1997) (adding new provisions to be codified at N.H. Rev. Stat. § 384:60-c). These requirements, depending upon how they are administered, may go beyond the state filing requirements permitted in section 1831u(b)(1) for national banks, for the reasons discussed in note 7. KB-Utah and KB-Ohio have indicated they intend to follow the applicable new provisions.

[10] Copies of the applications were provided to all the host states. For those host states that require filings in addition to copies of the OCC merger applications, KeyCorp and KB-Ohio submitted the same types of filings that KeyCorp and KB-Utah submitted to those states for the Utah Merger. In addition, the filing requirements of section 1831u(b)(1) apply only with respect to the host states that will become host states as a result of the merger transaction under review in the application, not the host states in which the acquiring bank already operates branches. See Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 7, note 9). Thus, in the Ohio Merger, KB-Ohio must comply with the filing requirements of section 1831u(b)(1) for Utah, Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington, not for Florida, Indiana, Michigan or Ohio, states in which KB-Ohio has branches before this merger. KB-Ohio did comply with Florida's filing requirement in connection with the Florida Merger. And, although not required under the Riegle-Neal Act, KB-Ohio also sent copies

interstate bank merger statute provides that "an out-of-state depository institution that operates a branch in this state shall maintain a certificate of authority to transact business in this state and comply with all other applicable corporate filing requirements under Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the same extent as any nondepository corporation transacting business in this state." Utah Code Ann. § 7-1-702(12). The bank also must notify the state banking department of its certificate of authority. KB-Ohio provided a copy of the merger applications to the Utah state bank supervisor and has obtained a certificate of authority under the Utah filing requirement.[11] Thus, the Ohio Merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

c. Riegle-Neal Act deposit concentration limits.

The proposed interstate merger transactions do 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). KB-Ohio, KBFL, KB-Utah, and the Merging Banks are affiliates; thus section 1831u(b)(2) is not applicable to these mergers.

d. Riegle-Neal Act community reinvestment compliance provisions.

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 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 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 these merger applications, KB-Ohio, KB-Utah, and KB-Ohio (the banks submitting the applications as the acquiring banks in each merger) have bank affiliates in all the states involved before the transactions (i.e., the target banks in each merger), and are also

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of the merger applications to, and is complying with the filing requirements of, Indiana and Michigan.

[11] The Utah interstate branching statute also requires the approval of the Utah Commissioner of Financial Institutions prior to any merger with a depository institution or depository institution holding company "subject to the jurisdiction of the department [of Financial Institutions]." Utah Code Ann. § 7-1-703(1)(h). The statute does not define "subject to the jurisdiction of the department." If it were asserted to include national banks, then this approval requirement would exceed the filing requirement permitted under section 1831u(b)(1), and therefore would not be applicable to national banks. Although not clear, it appears the provision is intended for mergers with Utah state-chartered banks.

not otherwise obtaining a branch or bank affiliate in any state in which they did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to these merger applications. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

e. Riegle-Neal Act capital and management skills requirements.

The proposed interstate merger transactions satisfy 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 applications were filed, KB-Ohio, KBFL, KB-Utah, and the Merging 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 each merger, the resulting bank in that merger 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 Florida Merger, the Utah Merger, and the Ohio Merger are legally permissible under section 1831u.

B. Following Each Merger, the Resulting Banks may Retain the Existing Main Offices and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1) .

In the Florida Merger, the Applicants have requested that, upon completion of the merger, KB-Ohio (as the resulting bank in that merger) be permitted to retain and continue to operate its existing main office in Cleveland, Ohio, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches in Ohio, Indiana, and Michigan, and (2) the main office and branches of KBFL in Florida. In the Utah Merger, the Applicants have requested that, upon completion of the merger, KB-Utah-Resulting (as the resulting bank in that merger) be permitted to retain and continue to operate its existing main office in Salt Lake City, Utah, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches in Utah and (2) the main offices and branches of KBAK, KBCO, KBID, KBME, KBNH, KBNY, KBOR, KBVT, KBW, and KSB in Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Vermont, and Washington. Finally, in the Ohio Merger, the Applicants have requested that, upon completion of the merger, KB-Ohio (as the resulting bank in that merger) be permitted to retain and continue to operate its existing main office in Cleveland, Ohio, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches in Ohio, Florida, Indiana, and Michigan and (2) the main office and branches of KB-Utah-Resulting in Alaska, Colorado, Idaho, Maine, New Hampshire, New York, Oregon, Utah, Vermont, and Washington.

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, in each of these mergers, the resulting bank in each merger may retain and continue to operate all of the existing banking offices of the banks participating in that merger, as set out above, under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[12]

Moreover, at all its branches, both those in its home state and those in its host states, the resulting bank in each merger 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 fiduciary business at trust offices and branches in different states).

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[12] 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). 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).

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.

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 three merger applications may be approved under section 1828(c).

1. Competitive Analysis.

Since KB-Ohio, KBFL, KB-Utah, and the Merging Banks are already owned by the same bank holding company, their mergers will have no anticompetitive effects.

2. Financial and managerial resources.

The financial and managerial resources of each of the merging banks are presently satisfactory. KB-Ohio, at the completion of the three step process, expects to achieve efficiencies by operating the offices as branches rather than as separate corporate entities in different states. 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.

KB-Ohio, the resulting bank at the end of the three step process, will help to meet the convenience and needs of the communities to be served. KB-Ohio will continue to serve the same areas in Ohio, Indiana, and Michigan; and it will add KBFL's, KB-Utah's, and the Merging Banks' offices in Alaska, Colorado, Florida, Idaho, Maine, New Hampshire, New York, Oregon, Utah, Vermont, and Washington. All of the 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 all the states will continue to engage in the same business, serving the same communities, that the banks currently do separately.

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. Especially benefitting will be those customers who live in one state and work in another, particularly where the states are contiguous. 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.

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, KeyCorp and KB-Ohio evaluates its branch system, including branches acquired in transactions, and, as a part of the normal course of business, may close redundant or unprofitable branches. In particular, in November 1996 KeyCorp announced plans to close, consolidate, or sell to other banks 280 of its subsidiary banks' branches by the end of 1998 as part of a corporate-wide restructuring effort. Of that number, approximately 140 would be closed. At this time about 33 of those 140 branches remain. Any closures resulting from that process, as well as any other future 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 mergers 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 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. KB-Ohio, KB-Utah, KBAK, KBID, KBME, KBNY, KBOR, and KBVT all have outstanding ratings, and KBCO, KBWA, and KSB have satisfactory ratings, with respect to CRA performance. KB-Florida, originally chartered as a trust company, only recently expanded its powers to a full service bank; and KBNH began operations only in 1996. And so these two banks do not yet have CRA ratings. The OCC has no basis to question the banks' continuing 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. KB-Ohio will continue its current CRA programs and policies in Ohio and the other states where it has branches. After the merger transactions, the merging banks' offices will remain open as branches of KB-Ohio. KB-Ohio will carry forward the same CRA programs and policies that the merging banks have today and add other programs developed by KB-Ohio. Moreover, KB-Ohio has represented that it will honor all CRA-related commitments made by the merging 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 KB-Ohio, KBFL, KB-Utah, and the Merging 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.

KeyCorp's banking subsidiaries in Alaska, Colorado, Maine, Vermont and Washington, are presently members of the Federal Home Loan Banks (FHLB) in Boston, Seattle and Topeka. After the mergers, the resulting bank in Ohio, KB-Ohio, will not be able to retain membership in these FHLBs, because it is based in Ohio. Three community groups from three different states commented on the applications and voiced concern about the loss of the resulting bank's membership in the Seattle and Boston FHLBs.[13] Membership in these FHLBs enables the bank to access direct grants, interest write-downs, and long-term fixed rate loans. According to the groups, the loss of direct access to these FHLBs could be detrimental to low- and moderate-income communities.

In the applications and via written communications to the community groups, KeyCorp addressed the groups' concerns by making the following representations:

i) In order to preserve access to FHLB resources nationwide, KeyCorp plans for KeyBank USA, N.A., Cleveland, Ohio, its national consumer finance bank subsidiary, to become a member of the FHLB of Cincinnati. The FHLB of Cincinnati has informed KeyCorp that Community Investment Program (CIP) Advances and Affordable Housing Program (AHP) Subsidies are not subject to dollar limits on a per-member basis or geographical limits based on the location of the project.

ii) KeyCorp will establish an internally funded community investment loan program that will be available nationwide for affordable housing and community investment projects. This loan fund will be in addition to CIP Advances obtained through the FHLB of Cincinnati, as well as, the financial programs available through KeyCorp Community Development Corporation.

iii) KeyCorp has implemented a CRA Residential Mortgage Origination Strategy throughout its twenty-eight districts nationwide and plans to continue this program after the merger. The strategy includes the creation of salaried mortgage originators dedicated to the job of originating residential mortgages in low-to-moderate-income areas and/or low-to-moderate-income home buyers.

In addition, KeyCorp has entered into specific arrangements with the Vermont Community Loan Fund addressing the lending needs of the communities in Vermont. Also, KeyCorp has recently reinforced its previous commitments made with the Washington Reinvestment Alliance regarding membership in, and access to affordable housing and community investment programs available in Washington through FHLB system membership.

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[13] The three groups are: the Washington Reinvestment Alliance, Seattle, Washington, Granite State Community Reinvestment Association, Concord, New Hampshire, and Vermont Community Loan Fund, Montpelier, Vermont. A fourth community group, Rural Opportunities, Inc., Alliance, Ohio, voiced concern that KeyBank USA, because its affiliation with the interstate bank, may overwhelm the FHLB of Cincinnati and pull funding away from other projects that would benefit rural Ohio communities.

KeyCorp is also actively engaged in discussions with Rural Opportunities, Inc. and Granite State Community Reinvestment Association to address their specific concerns.

Accordingly, we find that approval of the proposed mergers 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 Florida Merger, the Utah Merger, and the Ohio Merger are legally authorized as interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), the resulting bank in each merger is authorized to retain and operate the offices of the merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the mergers meet the other statutory criteria for approval. Accordingly, these merger applications are hereby approved.

/s/ 06-01-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-CE-02-0018