



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

CRA Decision #82
January 1999

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS TO MERGE
FIRSTAR BANK MILWAUKEE, NATIONAL ASSOCIATION, MILWAUKEE, WISCONSIN,
FIRSTAR BANK WISCONSIN, MADISON, WISCONSIN,
FIRSTAR BANK WAUSAU, NATIONAL ASSOCIATION, WAUSAU, WISCONSIN,
FIRSTAR BANK IOWA, NATIONAL ASSOCIATION, DES MOINES, IOWA,
FIRSTAR BANK BURLINGTON, NATIONAL ASSOCIATION, BURLINGTON, IOWA,
FIRSTAR BANK OF MINNESOTA, NATIONAL ASSOCIATION, ST. PAUL, MINNESOTA,
FIRSTAR BANK ILLINOIS, CHICAGO, ILLINOIS, AND
FIRSTAR BANK FLORIDA, NATIONAL ASSOCIATION, WEST PALM BEACH, FLORIDA
WITH AND INTO STAR BANK, NATIONAL ASSOCIATION, CINCINNATI, OHIO**

December 23, 1998

I. INTRODUCTION.

On August 15, 1998, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval of eight mergers involving five existing national bank subsidiaries, two existing state bank subsidiaries and a proposed interim national bank subsidiary of Firststar Corporation, Milwaukee, Wisconsin ("Firststar"), with and into Star Bank, National Association, Cincinnati, Ohio ("Star") under its charter (the "Merger Application"). While Star and the eight Firststar-owned banks are not currently subsidiaries of the same holding company, at the time that Star proposes to consummate this merger, all the involved banks will be wholly-owned by Firststar.¹ All parties to the merger are members of the Bank Insurance Fund ("BIF").

The Merger Application seeks approval to merge Firststar Bank, Milwaukee, Wisconsin ("FB Milwaukee"), Firststar Bank Wisconsin, Madison, Wisconsin ("FB Wisconsin"), Firststar

¹ Star is a wholly-owned subsidiary of Star Banc Corporation, Cincinnati, Ohio ("Star Banc"), which has agreed to merge into Firststar. This merger has been approved by the Federal Reserve Board ("FRB"). See Firststar Corporation, Milwaukee, Wisconsin, FRB Order Approving the Merger of Bank Holding Companies (October 28, 1998). Star has represented to the OCC that consummation of the mergers of the subsidiary banks discussed herein is contingent upon consummation of the holding company merger.

Bank Wausau, National Association, Wausau, Wisconsin ("FB Wausau"), Firststar Bank Iowa, National Association, Des Moines, Iowa ("FB Iowa"), Firststar Bank Burlington, National Association, Burlington, Iowa ("FB Burlington"), Firststar Bank of Minnesota, National Association, St. Paul, Minnesota ("FB Minnesota"), Firststar Bank Illinois, Chicago, Illinois ("FB Illinois") and Firststar Bank Florida, National Association, West Palm Beach, Florida ("FB Interim") (collectively, the "Merging Banks") with and into Star under its charter (the "Resulting Bank") pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Interstate Mergers"). OCC approval is also requested for the Resulting Bank to retain Star's main office in Cincinnati, Ohio, as the main office of the Resulting Bank under 12 U.S.C. § 1831u(d)(1) and to retain Star'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).² Star will also rename the Resulting Bank "Firststar Bank, National Association" pursuant to 12 U.S.C. § 30. Star intends to individually consummate the Interstate Mergers in stages throughout 1999 in order to ensure a seamless conversion for affected customers of each of the Merging Banks.

By separate, supplemental application to the OCC received September 12, 1998, Star seeks approval to charter a Florida insured interim national bank, Firststar Bank Florida, National Association, West Palm Beach, Florida ("FB Interim"), and to merge Firststar Trust Company of Florida, National Association, West Palm Beach, Florida ("Firststar Trust"), with and into FB Interim under the charter and title of the latter, under 12 U.S.C. § 215a ("the Interim Merger").³ Firststar Trust is not insured and is limited to exercising fiduciary powers from its main office in West Palm Beach, Florida. After the Interim Merger, FB Interim will succeed to Firststar Trust's fiduciary appointments and activities, and it will also utilize Firststar Trust's office in West Palm Beach as its main office.

II. LEGAL AUTHORITY.

A. FB Interim may be Chartered, and Firststar Trust may Merge into it.

The National Bank Act authorizes the chartering of national banks, including those whose operations are limited to those of a trust company and activities related thereto.⁴ OCC regulations set out special requirements and procedures for chartering a national bank that is an "interim bank" -- *i.e.*, a national bank that does not operate independently but exists solely as a vehicle for a business combination.⁵ The transaction for which FB Interim is being

² In addition to its main office, Star operates branches in Ohio, Kentucky, Indiana and Tennessee.

³ The merger of Firststar Trust into FB Interim also requires the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. See 12 U.S.C. § 1828(c)(1)(A). That approval was sought on August 11, 1998, and a decision is expected soon.

⁴ See, *e.g.*, 12 U.S.C. §§ 21, 26 & 27.

⁵ See 12 C.F.R. § 5.33(e)(4). A "business combination" includes mergers between affiliated national banks. 12 C.F.R. §§ 5.33(d)(1) & (d)(2). In addition, interim federally-chartered depository institutions that are chartered by

established (the Interim Merger and the Interstate Mergers) constitutes a business combination. The requirements of section 5.33, with respect to interim banks, as well as those in 12 U.S.C. §§ 21, 26 and 27 for chartering a new bank, are satisfied. Accordingly, the formation of FB Interim is authorized.

Firstar Trust may merge into FB Interim pursuant to 12 U.S.C. § 215a. Under section 215a, a national bank may merge with another national bank “located within the same State.”⁶ Firstar Trust and FB Interim are both located in Florida; thus their merger is authorized under section 215a.⁷ FB Interim will succeed to the fiduciary appointments and activities of Firstar Trust through the merger by operation of the statute.⁸ FB Interim also will continue the main office of Firstar Trust in West Palm Beach, Florida.

B. 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.⁹ 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, 1997.¹⁰ 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.¹¹ It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44.¹²

Section 44 authorizes mergers between banks with different home states:

the appropriate federal banking agency and will not open for business, such as FB Interim, are FDIC-insured upon issuance of the institution’s charter by the agency. See 12 U.S.C. § 1815(a)(2). If the interim bank will be acquired by a bank holding company, the holding company also must meet applicable requirements.

⁶ 12 U.S.C. § 215a(a).

⁷ FB Interim is being chartered solely for the Interim Merger with Firstar Trust and will not open for business prior to that merger. Immediately after the Interim Merger, it will merge into Star via the Interstate Mergers. See 12 U.S.C. § 1831(u)(a)(6).

⁸ See 12 U.S.C. § 215a(e).

⁹ 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”).

¹⁰ *Id.* at § 102(a) (adding new section 44, 12 U.S.C. § 1831u).

¹¹ *Id.* at § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1).

¹² *Id.* at § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

(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.¹³

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.¹⁴ In this Merger Application, the home states of the banks are Ohio, Wisconsin, Iowa, Minnesota, Illinois and Florida. None of these states has opted out. Accordingly, each of the eight mergers 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.

a. Compliance with state age laws.

Each of the eight 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."¹⁵

In the proposed Interstate Mergers, Star is acquiring banks in Wisconsin, Iowa, Minnesota, Illinois and Florida. Iowa and Illinois each require that, in a merger with an out-of-state bank in which the out-of-state bank is the surviving bank, the Iowa or Illinois bank must have been in existence for at least five years.¹⁶ FB Iowa, FB Burlington and FB Illinois, or their predecessors, have been in existence and in operation in their respective states for more than five years. Wisconsin has not yet enacted legislation with respect to the interstate

¹³ 12 U.S.C. § 1831u(a)(1).

¹⁴ 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws).

¹⁵ 12 U.S.C. § 1831u(a)(5)(A).

¹⁶ Iowa Code Ann. § 524.1805(1) (West 1997) and 205 Ill. Comp. Stat. Ann. § 5/21.2(a) (Michie Supp. 1998).

bank merger and branching provisions of the Riegle-Neal Act, and so it presently does not have an age requirement for interstate mergers between banks.¹⁷ However, the Riegle-Neal Act limits the minimum age requirement that a state can impose to a maximum of five years.¹⁸ As FB Milwaukee, FB Wisconsin and FB Wausau have all been existence and operation in Wisconsin for more than five years, any Wisconsin age requirement, to the extent it did exist, would be met. The State of Minnesota has a five-year age requirement when the bank to be acquired is a Minnesota *state* bank.¹⁹ As FB Minnesota is a *national* bank, this requirement is inapplicable. Nonetheless, FB Minnesota has been in existence and operation in Minnesota for more than five years. Florida has a three-year age requirement.²⁰ Firststar Trust has been in existence since 1986, and under the Riegle-Neal Act, a “shell bank” such as FB Interim is deemed to have the age of its target (here, Firststar Trust).²¹ Thus, the Interstate Merger satisfies the Riegle-Neal Act requirement of compliance with all applicable 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.²² Copies of the Merger

¹⁷ Wisconsin did enact a statute responding to the interstate *banking* provisions of the Riegle-Neal Act, Riegle-Neal Act § 101 (amending section 3(d) of the Bank Holding Company Act). See Wisc. Stat. Ann. §. 221.0901 (West Supp. 1997).

¹⁸ 12 U.S.C. § 1831u(a)(5)(b).

¹⁹ Minn. Stat. § 49.411 Subd. 4(b) (1997).

²⁰ Fla. Stat. Ann § 658.2953(7)(c) (West 1997).

²¹ See *infra* p. 3 and note 7.

²² 12 U.S.C. § 1831u(b)(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).

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

The Iowa statutes require that the out-of-state bank provide the superintendent of banking with a copy of its OCC merger applications and obtain a certificate of authority to do business.²³ Star has submitted a copy of its application and will obtain the required certificate prior to the consummation of the Interstate Mergers. Illinois requires that notice be given to the commissioner of banking no less than 30 days prior to the merger.²⁴ Minnesota's statutes only apply to instances in which the resulting out-of-state bank in an interstate merger transaction acquires a Minnesota *state* bank.²⁵ Accordingly, this requirement is not applicable to Star's merger with FB Minnesota, a national bank. As noted above, Wisconsin does not have any Riegle-Neal provisions relating to filing or notice requirements for interstate mergers between banks. Nonetheless, Star has discussed its OCC merger application with representatives of the Wisconsin division of banking. Florida statutes require that an out-of-state bank resulting from an interstate merger with a Florida bank 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.²⁶

The applicant has provided copies of its Merger Application to the state bank supervisors of all five host states. Star is in the process of obtaining a certificate of authority from the state of Iowa. Therefore, the Interstate Mergers satisfy the Riegle-Neal Act's 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.²⁷ Star and the Merging Banks will be affiliates prior to any mergers; thus section 1831u(b)(2) is not applicable to these mergers.

²³ Iowa Code Ann. §§ 524.1805(5) and 490.1501 *et seq.*

²⁴ See 205 Ill. Comp. Stat. 5/20 (Michie Supp. 1998).

²⁵ Minn. Stat. § 49.411 Subd. 5.

²⁶ Fla. Stat. Ann. §658.2953(8).

²⁷ 12 U.S.C. § 1831u(b)(2)(E).

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"),²⁸ (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.²⁹ 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."³⁰ In this Merger Application, Star will have bank affiliates in all the states involved before the transactions (*i.e.*, the target banks in each merger), 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 these merger applications. However, the Community Reinvestment Act itself is applicable.³¹

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.³² As of the date the applications were filed, Star and the Merging Banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed and the senior management of the resulting bank will be comprised of current senior managers of Star and the Firststar Banks, all of whom have served in similar capacities prior to the proposed merger. 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.

²⁸ 12 U.S.C. § 2903.

²⁹ 12 U.S.C. § 1831u(b)(3).

³⁰ *Id.* See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

³¹ See Part III below for further discussion.

³² 12 U.S.C. § 1831u(b)(4).

Accordingly, the Interstate Mergers are legally permissible under section 1831u.

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

The Applicant has requested that, upon completion of the merger, Star be permitted to: (1) retain and continue to operate its existing main office in Cincinnati, Ohio, as the main office of the Resulting Bank; and (2) retain and continue to operate as branches of the Resulting Bank (i) its own existing branches in Ohio, Kentucky Indiana and Tennessee, and (ii) the main office and branches of FB Milwaukee, FB Wisconsin, FB Wausau, FB Iowa, FB Burlington, FB Minnesota, FB Illinois and FB Interim in the states of Wisconsin, Iowa, Illinois, Minnesota and Florida.³³

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.³⁴

The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]."³⁵ 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].³⁶

³³ The Resulting Bank will be renamed "Firststar Bank, National Association" pursuant to 12 U.S.C. § 30.

³⁴ 12 U.S.C. § 1831u(d)(1).

³⁵ 12 U.S.C. § 1831u(f)(11).

³⁶ 12 U.S.C. § 36(d).

Therefore, the Resulting Bank in these interstate merger transactions 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).³⁷

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.³⁸

III. ADDITIONAL STATUTORY AND POLICY REVIEWS.

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).³⁹

³⁷ 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).

³⁸ *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), and 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). *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).

³⁹ See *infra* p.2 and note 3. The merger of Firststar Trust and FB Interim requires the separate and prior approval of the FDIC under the Bank Merger Act.

1. Competitive analysis.

The merger transaction set out in this Merger Application constitutes a transaction between affiliated institutions that will be owned by the same bank holding company prior to consolidation. Therefore, the merger transaction involving Star and the Merging Banks will have no anticompetitive effects.

2. Financial and managerial resources.

The financial and managerial resources of each of the merging banks are presently satisfactory. Star 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 Application.

3. Convenience and needs.

Star will help to meet the convenience and needs of the communities to be served. It will continue to serve the same areas in Ohio, Kentucky, Indiana and Tennessee; and it will add the Merging Banks' offices in Wisconsin, Iowa, Minnesota, Illinois and Florida. All of the banks, with the exception of Firststar Trust/FB Interim, currently offer a full line of banking service, 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 will be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. Those customers who live in one state and work in another, will be especially benefited, 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.

Star Bank has entered into commitments with the City of Cleveland and the Ohio Community Reinvestment Project. Several Firststar banks have entered into commitments with the Minnesota Association of Community Organizations for Reform Now and the Racine Interfaith Council. In its application, Star Bank represented that it will assume all obligations associated with these Firststar commitments, and will continue to honor its own commitments.

No branch closings are contemplated as a result of this merger since there is no overlap in any of the markets currently served by branches of Star and the Merging Banks.

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 applicant's record of helping to meet the credit needs of the entire community, including low- and moderate-income ("LMI") neighborhoods, when evaluating certain applications.⁴⁰ The types of applications that are subject to review under CRA include merger applications.⁴¹ The OCC considers the CRA performance evaluation of each depository institution involved in the transaction. Under CRA, the OCC evaluates performance using criteria relative to the bank's lending, investments, and services. In these evaluations, the OCC considers the institution's capacity and constraints, including size and financial condition of the bank and its subsidiaries.

All Firststar subsidiary banks received "outstanding" or "satisfactory" ratings in the most recent examinations of their CRA performance. Firststar's lead subsidiary bank, FB Milwaukee received a "satisfactory" rating from the OCC as of November 1997. FB Wisconsin received an "outstanding" rating from the Federal Reserve Bank of Chicago ("Reserve Bank") as of April 1997. FB Illinois received a "satisfactory" rating from the Reserve Bank as of June 1998. Star Bank received an "outstanding" rating from the OCC as of December 1996.⁴²

Although the OCC did not receive directly any letters protesting the merger, the OCC investigated the concerns raised in three comment letters received by the Federal Reserve Board in connection with the holding company merger application.⁴³ The concerns expressed in those letters and the results of the OCC's investigation into those concerns are discussed below. OCC examiners who have not been involved in the most recent CRA evaluations performed an on-site investigation. In summary, our investigation and analysis of the issues raised indicated no basis for denying or conditioning the approval of this application.

⁴⁰ 12 U.S.C. § 2903.

⁴¹ 12 C.F.R. 25.29(a)(4).

⁴² The OCC is currently conducting a CRA examination of Star. One commenter was concerned that the "Outstanding" rating of Star would be the CRA rating of the surviving bank. In future applications, however, because the CRA ratings of Star would not be reflective of its configuration following these transactions, the OCC will consider, as appropriate, CRA activities of Star and the institutions merged into it.

⁴³ See *Firststar Corporation, Milwaukee, Wisconsin*, Federal Reserve Board Order Approving the Merger of Bank Holding Companies (October 28, 1998).

1. Firststar's record of lending to LMI borrowers in Wisconsin.

One commenter expressed concerns with respect to Firststar's level of originations to LMI conventional home buyers in Wisconsin. The commenter also noted a lack of participation in state and federal guaranteed programs designed to assist LMI first-time home buyers and small businesses. Our examiners analyzed Firststar's lending market share for each assessment area in Wisconsin using 1996 and 1997 Home Mortgage Disclosure Act ("HMDA") data.⁴⁴ They found that Firststar's market share of home-purchase loans to LMI individuals in each of the 16 assessment areas was comparable to its overall market share of home-purchase loans within each of the respective areas. Second, examiners assessed Firststar's performance in originating home purchase loans relative to the income demographics of the market. This was performed by comparing Firststar's proportion of lending to LMI individuals to the lending record of all HMDA reporting institutions in each area. For example, using 1997 HMDA data, the most recent data available, the examiners found that the level of home purchase lending to LMI individuals, as a percentage of the bank's total home purchase loans, when compared to other HMDA reporting institutions, was similar in eight assessment areas, greater in two, and slightly less in six. And third, our examiners reviewed Firststar's lending record of the eleven entire MSAs analyzed by the commenter using 1996 HMDA data for owner occupied conventional 1-4 family home purchase loans originated. The examiners found that in 9 of the 11 Wisconsin Metropolitan Statistical Areas ("MSA") discussed by the commenter, Firststar's percentage of lending to LMI individuals on a dollar volume basis was less than the percentage of all loans originated by HMDA reporting lenders. However, the percentages for Firststar calculated by the OCC were consistently greater than, and in some cases twice as large as, the percentages calculated by the commenter.⁴⁵ Based on the OCC's overall analysis, the examiners found that Firststar's level of home purchase lending (in terms of number of loans and aggregate volume) made to LMI borrowers in Wisconsin was reasonable.

Using 1997 data from the Federal Financial Institutions Examination Council, the examiners also assessed Firststar's small business and small farm lending record to LMI communities within each assessment area. The analysis reflected that Firststar's penetration into LMI areas of the community with respect to small business and small farm loans was reasonable. Specifically, Firststar's percentage of small business and small farm loans in LMI areas in the aggregate was higher than that of the market as whole, based on the volume and number of loans made.

⁴⁴ The analysis did not include 1995 data because the former Firststar affiliate banks in rural areas were not HMDA reporters at that time. The examiners combined data for Firststar Bank, Wisconsin (a state bank), Firststar Bank Milwaukee, NA, Firststar Bank USA, NA, and Firststar Home Mortgage Corporation.

⁴⁵ The examiners found the data used by the commenter to be inaccurate and inconsistent in many instances. For example, the analysis was inconsistent by including owner-occupied home purchase loans for Firststar but comparing Firststar's performance to the aggregate market by including both owner and non-owner occupied home purchase loans.

The examiners noted that Firststar has decreased its participation in state and federal guaranteed lending programs, including FHA, VA, and first-time home buyer products. However, the analyses discussed above indicate that Firststar's overall lending to LMI, small business and small farm borrowers is reasonable and is not inconsistent with approval of this application.

2. Firststar's record of agricultural lending and lending to rural areas in Wisconsin.

One commenter expressed concerns with respect to Firststar's decreasing level of agricultural lending and lending in rural areas in Wisconsin. The commenter contends that Firststar has reduced its participation in government-sponsored programs; discouraged applications; refused to renew, extend additional credit, or honor previous loan commitments; and, in some cases, threatened foreclosure.

In its response to the Reserve Bank, Firststar acknowledges a decline in the level of agricultural lending and in government-guaranteed programs for rural areas and agriculture, but does not acknowledge a lack of commitment to these areas of lending or programs. Although the data reviewed demonstrated a decline, based on the current volume of agriculture loans, the examiners concluded that Firststar continues to be an active agricultural lender and has the second largest agriculture loan portfolio (in terms of dollars) in the State of Wisconsin among financial institutions reporting under CRA. Firststar's year-end 1997 agriculture portfolio of \$162 million represented 6% of the aggregate commercial bank farm loan portfolio in Wisconsin.

The commenter also believes Firststar targets larger farm operations and excludes or discourages loans to small to median sized farms. The examiners were unable to substantiate any discrimination by Firststar toward small and medium sized farms. The examiners found that the average agriculture loan size had decreased from \$150,000 in 1995 to \$98,000 in 1998. The examiners also noted that while the bank's staff of agriculture-specific lenders in the state had decreased, the bank had approximately 40 relationship managers with the ability to make agricultural loans throughout the state.

The examiners also compared the volume of home purchase loans in rural areas (including non-MSA areas) to MSA areas. The analysis measured the number of loans in relation to local (branch or bank) deposits. The results indicated that Firststar's rate of home purchase lending in rural areas was more than twice its rate for MSA areas.

The commenter also alleged it had received many complaints regarding Firststar's handling of farm loans. The examiners reviewed Firststar's CRA public comment file and the OCC consumer complaint file. Neither file contained any comments or complaints relating to or supporting any of the allegations made by the commenter against Firststar. The examiners found no information which reflects that Firststar has refused to honor previous loan

commitments, extend additional credit, or renew existing loans when it was reasonable to do so.

3. Firststar's fair lending record in Wisconsin.

One commenter raised concerns with possible fair lending violations by citing that only a small percentage of conventional home mortgages by Firststar were originated to minorities in Wisconsin.⁴⁶ The examiners reviewed the percentage of Firststar's lending to minority segments of the population and determined that Firststar's lending percentage to minorities was reasonably consistent with the racial composition of the population. In addition, the examiners reviewed the OCC consumer complaint file and determined that no fair lending complaints had been received. The November 1997 CRA Performance Evaluation of Firststar Milwaukee (the national bank) also disclosed no violations of substantive provisions of the antidiscrimination laws and regulations (Equal Credit Opportunity Act and Fair Housing Act).

4. Firststar Bank Illinois' assessment area.

One commenter expressed concerns regarding FB Illinois' (a state-chartered institution) assessment area because it did not include the northern portion of Lake County, including the communities of Waukegan and North Chicago. The examiners reviewed the bank's last CRA Public Evaluation by the Reserve Bank and assessment area and concluded the bank's assessment area was reasonable since the bank has no branches in either of those communities.⁴⁷ Also, the most recent Firststar Bank Illinois CRA Performance Evaluation, issued as of June 1998 by the Reserve Bank, noted no concerns with its assessment area.

5. Resulting Bank's plans.

The Resulting Bank expects to implement Star's CRA policies and procedures, however, Firststar's CRA programs that have proven to be successful will be retained. The Resulting Bank does not plan to discontinue any government programs currently used at Firststar to aid agricultural, small business, or rural customers.⁴⁸ The applicant has represented that

⁴⁶ The commenter also raised concerns with Firststar's low level of reinvestment of deposits into the Menominee Indian Reservation, located in Menominee County. Since Menominee County was not included in Firststar's assessment area, our examiners reviewed Firststar's assessment area and concluded that Menominee County was not arbitrarily excluded since no branches were located in that county or any contiguous counties. The examiners also noted that none of the surrounding counties were included in Firststar's assessment areas.

⁴⁷ North Chicago and Waukegan are included in the assessment area of Firststar Bank USA, NA, a FB Illinois affiliate. Although Firststar USA, NA is a limited purpose credit card bank, its November 1997 CRA Public Evaluation, conducted by the OCC, found the bank had adequately addressed the credit needs of those communities consistent with its resources and business strategy.

⁴⁸ Those programs include Farm Service Agency guaranteed loans, WHEDA/CROP, SBA 504, SBA LoDoc, Farmer Mac secondary marketing, Interest Assist and Federal Home Loan Bank's Affordable Housing Program.

those programs possibly will be expanded. The Resulting Bank will incorporate Star's community banking approach to agricultural lending, which features locally-based loan officers who have direct contact with their customers in rural communities. Agricultural lending specialists will be deployed throughout the regions, six to eight of which will be maintained in Wisconsin and Iowa.

Based on the investigation, 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 applicant, and based on compliance with applicable regulatory requirements and receipt of all appropriate regulatory approvals, we find that the Charter Application and the Interim Merger are authorized under 12 U.S.C. §§ 21, 26, 27 and 215a, the Interstate Mergers are legally authorized as an interstate merger transactions under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1, 1828(c) and 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) and 1831u(d)(1), and that the mergers meet the other statutory criteria for approval.⁴⁹ Accordingly, this Merger Application is hereby approved.

_____/s/
Julie L. Williams
Chief Counsel

12-24-98
Date

Application Control Numbers: 98-CE-02-052
98-CE-02-059

⁴⁹ In addition, we note, because portions of the deposits of Star, FB Milwaukee and FB Iowa, though all BIF members, are currently insured by the Savings Association Insurance Fund ("SAIF") as a result of prior transactions, this transaction satisfies the requirements of 12 U.S.C. § 1815(d)(3). The Resulting Bank will meet all applicable capital requirements upon consummation of the transaction, 12 U.S.C. § 1815(d)(3)(E)(iii), and the requirements of paragraph (d)(3)(F) are inapplicable since no SAIF member is involved in this transaction.