# Office of the Comptroller of the Currency

## Interpretations - Corporate Decision #96-28

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**ON THE APPLICATION TO MERGE**

**REPUBLIC BANK CALIFORNIA, NATIONAL ASSOCIATION,**

**BEVERLY HILLS, CALIFORNIA, WITH AND INTO**

**REPUBLIC NATIONAL BANK OF NEW YORK, NEW YORK, NEW YORK**

**May 20, 1996**

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### I. INTRODUCTION

On April 8, 1996, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Republic Bank California, National Association, Beverly Hills, California ("RBC") with and into Republic National Bank of New York, New York, New York ("RNB") under the charter and title of the latter, under 12 U.S.C. § 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). Both banks are national banks. RNB has its main office in New York City and operates branches in New York and Florida. <**NOTE:**RNB obtained the branches in Florida when an affiliated New York state-chartered savings bank that had branches in both New York and Florida (under provisions of New York and Florida law) converted into a national bank and then merged into RNB. *See* Decision on the Application of Republic Bank for Savings, New York, New York, to Convert into a National Banking Association (OCC Corporate Decision No. 95-32, July 25, 1995) (conversion); Decision on the Application to Merge Republic Bank for Savings, N.A., into Republic National Bank of New York (OCC Corporate Decision No. 95-51, October 25, 1995) (merger).> RBC has its main office in Beverly Hills, California, and operates one branch in Encino, California. In the Merger Application, OCC approval is also requested for the resulting bank to retain RNB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain the branches of both merging banks, and the main office of RBC, as branches after the merger under 12 U.S.C. § 36(d) & 1831u(d)(1).

RNB and RBC are both wholly-owned subsidiaries of Republic New York Corporation ("RNYC"), a multistate bank holding company with its headquarters in New York, New York. In the proposed merger, two of the holding company's existing bank subsidiaries will be combined into one bank with branches. As of December 31, 1995, RNB had approximately $44 billion in assets and $29 billion in deposits and operated 87 branch offices in New York and 10 branch offices in Florida. As of the same date, RBC had approximately $508 million in assets and $366 million in deposits and operated one branch office in

California.

## II. LEGAL AUTHORITY

### A. The statutory framework: During the early opt-in period, national banks with different home states may merge under 12 U.S.C. § 215a-1 & 1831u(a) if each home state has a law that meets the provisions of section 1831u(a)(3)(A) and the banks meet the relevant conditions of section 1831u(a) & (b).

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. *See* Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. *See* Riegle-Neal Act 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. *See* Riegle-Neal Act 102(b)(4) (adding a new section 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, creating an interstate bank:

> (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). <**NOTE:** 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).> 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 addition, the 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 enabling legislation:

> (3) State Election to Permit Early Interstate Merger Transactions. --
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> > (A) In General. -- A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that --
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> > > (i) applies equally to all out-of-State banks; and
> > >
> > > (ii) expressly permits interstate merger transactions with all out-of-State banks.

> (B) Certain Conditions Allowed. -- A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if --
>
> > (i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);
> >
> > (ii) the imposition of the conditions is not preempted by Federal law; and
> >
> > (iii) the conditions do not apply or require performance after May 31, 1997.

12 U.S.C. § 1831u(a)(3).

The availability of the authority for an interstate merger transaction under section 1831u(a) during the early opt-in period, therefore, is triggered by the existence of the requisite state law in the home states of the merging banks. The federal merger authority in section 1831u(a) is available only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). However, section 1831u appears to structure the relationship between federal authority and state law differently than some other federal banking statutes that refer to state law. The Riegle-Neal Act's interstate merger transaction provisions do not make federal law completely supplant state law. But they also do not defer entirely to each state's law, or entirely incorporate each state's law, regarding the extent and manner in which interstate merger transactions can occur in that state.

On the one hand, the federal authority in section 1831u(a) is triggered, during the early opt-in period, only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). But section 1831u does not expressly prohibit states from having other features in their interstate merger laws beyond those needed to meet the provisions of section 1831u(a)(3)(A). In fact, the Act expressly reserves to each state the right to determine branching by that state's state-chartered banks. <**NOTE:** Section 1831u(c)(3) provides:

> (3) Reservation of Certain Rights to States. -- No provision of this section shall be construed as limiting in any way the right of a State to --
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> > (A) determine the authority of State banks chartered by that State to establish and maintain branches; or
> >
> > (B) supervise, regulate, and examine State banks chartered by that State.

12 U.S.C. § 1831u(c)(3). While the Act thus preserves for the states their rights with respect to interstate mergers and branching by the state's own state-chartered banks, the Riegle-Neal Act did not give the states any additional powers with respect to national banks (or state banks chartered by other states), other than in the areas specifically set out in section 1831u. > Nor does section 1831u(a) provide that the federal merger authority is ineffective if the state adds other features. That is, the state may add other features to its interstate merger law, and, as long as those features do not cause the state law to fail to meet the provisions of section 1831u(a)(3)(A), the federal merger authority in section 1831u(a) continues to be available.

But, on the other hand, section 1831u, once triggered during the early opt-in period, singles out and specifically incorporates into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. Similarly, after June 1, 1997 (when subsection 1831u(a)(3) will no longer be relevant), section 1831u continues to single out and specifically incorporate into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. In addition to the state law features that are included in section 1831u on that permanent basis, Congress permitted host states, during the early opt-in period, to impose conditions on branches within the host

state, as long as the conditions met the requirements of section 1831u(a)(3)(B) -- namely, that they do not discriminate against out-of-state banks, that they are not preempted by federal law, and they do not continue beyond May 31, 1997. Indeed, the inclusion of section 1831u(a)(3)(B) allowing host states to impose other conditions during the early opt-in period (subject to the limits in the section) indicates Congress believed that, without such permission (and therefore also in the period after June 1, 1997), host states would not have the authority to impose any conditions or requirements beyond those included in the specific provisions of section 1831u that refer to state law (including the reserved authority of a state to regulate its own state-chartered banks in section 1831u(c)(3)). <**NOTE:** If the states otherwise had the power to impose additional conditions and requirements, there would have been no need for section 1831u(a)(3)(B)'s permission for certain conditions during the early opt-in period and section 1831u(c)(3)'s reservation of rights to states with respect to their own state-chartered banks. > This would follow from the fact that in the Riegle-Neal Act Congress has created the comprehensive federal framework governing interstate merger transactions.

Thus, in summary, the Riegle-Neal Act's provisions for interstate merger transactions sets forth a federal framework for mergers of banks with different home states that includes state law in specified ways in certain specific areas, but only in those areas. Those areas include the basic determination whether to participate or to opt-out. But the opt-out provision is carefully crafted by Congress to be only the single decision to be in or out of the congressionally set framework. There is no provision for a partial opt-out, a conditional opt-out, partial participation, or modification of the terms of the framework by each state (other than in the specific areas set out in section 1831u). <**NOTE:** The relationship of the federal framework and state law in the interstate merger transaction provisions in the Riegle-Neal Act is similar to the relationship of the federal framework and state law in the interstate bank acquisition provisions of the Riegle-Neal Act: in both, a comprehensive federal framework is established, and it provides for state authority only in certain specified areas. *See* Riegle-Neal Act 101(a) (amending section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d)). One difference is that until June 1, 1997, states are permitted to opt-out of the interstate merger transaction framework, but that difference does not affect the underlying relationship between federal and state law in the framework. Thus, even apart from considerations relating to preemption and state authority over national banks generally, under the provisions of the Riegle-Neal Act, after May 31, 1997, host states have no more authority to approve, or place other conditions on, interstate merger transactions that do not involve a state bank chartered by the host state than they do to approve, or place conditions on, an interstate bank acquisition of a bank in the host state by an out-of-state bank holding company. And until May 31, 1997, the conditions a host state may impose are limited by section 1831u(a)(3)(B).>

Therefore, in evaluating an application for an interstate merger transaction under section 1831u during the early opt-in period, the OCC must determine, first, whether each of the home states of the merging banks (here, New York and California) has a law that meets the provisions of subsection 1831u(a)(3)(A), and second, whether the applicant banks meet the requirements and conditions for approval in section 1831u, including state provisions to the extent applicable in section 1831u. We now address these requirements in turn.

**B. Both New York and California have laws that meet the provisions of 12 U.S.C. § 1831u(a)(3)(A).**

In this Merger Application, New York is RNB's home state, and California is RBC's home state. Since RNB and RBC are applying to merge in an interstate merger transaction under section 1831u(a) during the early opt-in period, the merger may be approved only if each home state (New York and California) has the requisite law "opting-in" to interstate mergers, *i.e.*, "a law that -- (i) applies equally to all out-of-State banks; and (ii) expressly permits interstate merger transactions with all out-of-State banks." 12 U.S.C. § 1831u(a)(3)(A). Both New York and California have such laws, and therefore, the merger authority of section 1831u is triggered. <**NOTE:** Under the Riegle-Neal Act, even though RNB also has branches in Florida, its home state is New York where its main office is located, and the early effectiveness of the interstate merger authority clearly depends only upon home state law. Thus, it is New York law, not Florida law, that is relevant to the

availability of the merger authority under section 1831u(a)(3).>

New York recently enacted legislation, effective February 8, 1996, expressly permitting mergers with out-of-state banks and branch acquisitions by out-of-state banks:

An out-of-state bank may engage in an acquisition transaction with a New York bank and may maintain as a branch or branches the place or places of business of any such New York bank which it has received into itself as a result of such transaction, subject to the requirements of this article.

N.Y. Banking Law 225 (as added by 1995 New York A.B. 8229 14). <**NOTE:** In the New York law, the term "out-of-state bank" includes both out-of-state state banks and out-of-state national banks, the term "out-of-state national bank" means a national bank whose main office is located outside of New York, and the term "acquisition transaction" means "any merger, consolidation or purchase or assets and assumption of liabilities of all or part of a banking institution." *See* N.Y. Banking law 222(1), (3) & (7). New

York has imposed a nationwide reciprocal treatment condition on acquisition transactions by out-of-state banks until May 31, 1997:

> An out-of-state bank that does not operate a branch in this state may maintain one or more branches located in this state acquired by means of an acquisition transaction if the superintendent finds that the laws of the out-of-state bank's home state would authorize a New York bank to open, occupy or maintain a branch or branches in that state *under comparable circumstances*.

N.Y. Banking Law 223 (emphasis added) (the conditional clause is removed after May 31, 1997). In reviewing similar reciprocity conditions in state statutes with regard to the establishment of *de novo* interstate branches under 12 U.S.C. § 36(g), the OCC concluded the presence of a nationwide reciprocal treatment condition did not cause the state law to fail to meet the provisions of section 36(g)(1)(A), which are substantially similar to the provisions of section 1831u(a)(3)(A). *See* Decision on the Application of Patrick Henry National Bank, Bassett, Virginia, to Establish a Branch in Eden, North Carolina (OCC Corporate Decision No. 96-04, January 19, 1996). The same analysis applies here, and so the presence of a nationwide reciprocal treatment condition does not mean the New York law fails to trigger the early interstate merger authority of section 1831u(a)(3). *See also* Decision on the Application of NationsBank, N.A., Richmond, Virginia, and NationsBank, N.A. (Carolinas), Charlotte, North Carolina (OCC Corporate Decision No. 95-47, September 27, 1995) (at pages 5-6) (Riegle-Neal merger).>