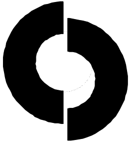

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-103
December 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE WHITNEY BANK OF ALABAMA, MOBILE, ALABAMA WHITNEY NATIONAL BANK OF FLORIDA, PENSACOLA, FLORIDA, AND WHITNEY NATIONAL BANK OF MISSISSIPPI, GULFPORT, MISSISSIPPI WITH AND INTO WHITNEY NATIONAL BANK, NEW ORLEANS, LOUISIANA

December 2, 1997

I. INTRODUCTION

On October 20, 1997, Whitney National Bank, New Orleans, Louisiana ("Whitney") filed an Application ("Merger Application") with the Office of the Comptroller of the Currency ("OCC") for approval to merge three affiliated banks located in other states with and into Whitney under Whitney's charter and title, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Interstate Merger").[1] All banks in the merger transactions are members of the Bank Insurance Fund. Whitney has its main office in New Orleans, and operates branches only in Louisiana. Each of the other banks currently operates branches only in its home state. In the Merger Application, OCC approval is requested for Whitney, as the resulting bank, to retain Whitney's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain Whitney's branches and the main offices and branches of the other merging banks, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

All of the banks are wholly-owned subsidiaries of Whitney Holding Corporation, a multi- state bank holding company headquartered in New Orleans, Louisiana. In the proposed mergers, Whitney Holding Corporation's existing bank subsidiaries will be combined into one bank with branches in four states.

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[1] The affiliated banks in other states participating in the Interstate Merger are: Whitney Bank of Alabama, Mobile, Alabama ("WB-Alabama"), Whitney National Bank of Florida, Pensacola, FL ("WNB-Florida"), and Whitney National Bank of Mississippi, Gulfport, MS ("WNB-Mississippi").

II. LEGAL AUTHORITY

A. The Interstate Merger is authorized under 12 U.S.C. §§ 215a-1 and 1831u.

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, 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 this Merger Application, the home states of the banks are Louisiana, Alabama, Florida, and Mississippi. None of these states has opted out. Accordingly, the Interstate Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1)

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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).

compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

The Interstate Merger satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In the proposed Interstate Merger, Whitney is acquiring by merger banks in the host states of Alabama, Florida, and Mississippi. Florida requires that, in an interstate merger in which an out-of-state bank is the surviving bank, the Florida bank must have been in existence for three years. See Fla. Stat. Ann. § 658.2953(7)(c). Alabama and Mississippi have a five-year age requirement. See Ala. Code § 5-13B-23(c); and Miss. Code Ann. § 81-23-9(2)(c). WNB-Alabama, and WNB-Mississippi (and their predecessors) have been in existence and operation for more than five years. WNB-Florida (and its predecessor) has been in existence and operation for more than three years. Thus, the Interstate Merger satisfies the Riegle-Neal Act's requirement of compliance with state age laws.

Second, the proposed Interstate Merger satisfies the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).[3] The Florida interstate bank merger statute requires an out-of-state bank that results from an interstate merger with a Florida bank to notify the state banking department within 15 days

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[3] 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).

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). Whitney has notified the state banking department and provided the state banking department with a copy of its OCC Merger Application.

The Alabama interstate merger statute requires that on or before the date on which the out-of-state bank which will be the resulting bank in an interstate merger transaction with an Alabama state bank files a merger application with the proper Federal bank supervisory agency, the out-of-state bank is required (1) to notify the Alabama Superintendent of Banks of the proposed merger, (2) to pay the required filing fee and (3) to provide the Alabama Superintendent of Banks a copy of the federal merger application. Ala. Code § 5-13B-24. Additionally, the Alabama state bank must comply with Chapter 7A, Title 5, Code of Alabama (specifying corporate formalities associated with mergers, including shareholders votes, resolutions, meeting notes, etc.) and any other laws generally applicable to merger transactions. *Id.* In addition, the out-of-state bank must provided evidence of compliance with or exemption from Article 10, Chapter 2B, Code of Alabama (Alabama's general rules regarding qualification of foreign corporations to conduct business in Alabama). *Id.* Whitney and WB-Alabama have complied with all Alabama state filing requirements.

The Mississippi interstate bank merger statute does not contain any filing requirements for an interstate merger transaction involving an out-of-state national bank as the resulting bank.[4] Whitney has notified the Mississippi Commissioner of the interstate merger and has provided a copy of its OCC Merger Application to the Mississippi Commissioner.

Whitney has provided a copy of its OCC Merger Application to the state bank supervisor of each host state and has complied with the applicable state filing requirements under section 1831u(b)(A)(1)(i). Thus, the Interstate Merger satisfies the Riegle-Neal Act's requirement of compliance with state filing requirements.[5]

Third, the proposed interstate merger transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are

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[4] The notice, filing, and application requirements in the Mississippi statute apply only when a Mississippi state bank is the acquiring bank or when an out-of-state state bank is the acquiring bank. See Miss. Code Ann. §§ 81-23-11 & 81-23-13.

[5] WB-Alabama is a state bank; thus, its merger into Whitney is a merger of a state bank into a national bank. The basic merger provision in federal law governing national bank mergers (12 U.S.C. § 215a, incorporated for Riegle-Neal mergers by section 215a-1) provides that, in a merger of a state bank into a national bank, the merger shall not "be in contravention of the law of the State under which such bank is incorporated." The state bank merger here does not contravene state law; indeed, Alabama law permits such mergers. See Ala. Code § 5-13B-23(a).

specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). Whitney and all the merging banks are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 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 this interstate merger transaction, Whitney (the bank submitting the application as the acquiring bank) has a bank affiliate in Alabama, Florida, and Mississippi (i.e., the merging banks), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the Interstate Merger. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, Whitney and each of 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 the merger, Whitney 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.

B. Following the merger, the resulting bank may retain all the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicant has requested that, upon the completion of the merger, Whitney (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in New Orleans as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main offices and branches of the

merging affiliate banks in Alabama, Florida, and Mississippi.[6] 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, Whitney, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of Whitney and the merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[7]

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[6] WB-Alabama and WNB-Florida have received approval to open branches in Alabama and Florida, respectively, which will not open prior to the merger. Both Alabama and Florida law permit state-wide branching. *See* Ala. Code § 5-5A-20 and Fla. Stat. Ann. § 658.26. We note that after the merger, Whitney, by virtue of its branches in Alabama and Florida, would be authorized to establish and operate these branches under 12 U.S.C. § 36(c). As a result, the unopened branches will continue to be approved by the OCC after the merger.

[7] By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of

Moreover, at its branches in its host states, as well as those in Louisiana, Whitney 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). 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).

C. Conclusion

The Interstate Merger may be approved as an interstate merger transaction under 12 U.S.C. §§ 215a-1 &1831u(a). Whitney, as the resulting bank after the Interstate Merger, may retain all the offices of the banks in Louisiana, Alabama, Florida, and Mississippi under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Accordingly, the Interstate Merger is legally authorized.

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).

1. Competitive Analysis

Since all of the banks involved in this transaction are owned directly or indirectly by the same bank holding company, their merger will have no anti-competitive effects.

2. Financial and Managerial Resources

The financial and managerial resources of all banks which are participating in these merger transactions are considered satisfactory. Whitney will realize certain efficiencies

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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).

through the combination of all operating systems and the centralization of most policy-making decisions. 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

The resulting bank will be able to help to meet the convenience and needs of the communities to be served. Whitney will continue to serve the same areas in Alabama, Florida, and Mississippi that are currently being served by the affiliate banks separately. Whitney will continue to receive advice on meeting the needs of local communities through local advisory boards and local area presidents. There will be no changes or diminution of service in any markets. All banks currently offer a full line of banking services, and there will be no reductions in products or services as a result of the merger.

Upon completion of the mergers, customers will have access to a significantly greater number of branches, spanning several states in the southern United States. 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. Customers who conduct interstate business will benefit from being able to conduct business with Whitney as one bank in different states, thereby facilitating greater convenience and a better relationship with the bank. The merger should permit the resulting bank to better serve its customers at a lower cost.

No branch closings are contemplated as a result of this merger since most of the banks serve different areas. However, as part of its ongoing business plans, Whitney 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. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and consideration of the community affected.

Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger Application.

B. The Community Reinvestment Act

The Community Reinvestment Act 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. Whitney has a satisfactory rating with respect to CRA performance, and all the other banks involved in this transaction have at least a satisfactory rating with regard to CRA performance. No public comments were received by the OCC relating to this

application, and the OCC has no other basis to question the banks' performance in complying with CRA.

The mergers are not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue its current CRA programs and policies in Louisiana and other states where it will have branches. All offices of the banks will remain open. Whitney will carry forward the same CRA programs and policies that the banks have today. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all communities it serves as well as the communities served by the separate banks. The merger and operation of the interstate branches do not alter the resulting bank's obligation to help meet the credit needs of the communities in all the states it serves. We find that approval of the proposed merger is consistent with the CRA.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of Whitney and WB-Alabama, WNB-Florida, and WNB-Mississippi is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of all the banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1); and that the mergers meet the criteria for approval under other statutory factors.

Accordingly, this Merger Application is hereby approved.

/s/ 12-02-97

Julie L. Williams Date

Chief Counsel

Application Control Number: 97-SW-02-0087