



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-107
December 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF REPUBLIC NATIONAL BANK, PHOENIX, ARIZONA,
TO ACQUIRE BRANCHES OF BANK ONE, ARIZONA, N.A., PHOENIX, ARIZONA,
AND BANK ONE, UTAH, N.A., SALT LAKE CITY, UTAH**

December 5, 1997

I. INTRODUCTION

On October 7, 1997, Republic National Bank, Phoenix, Arizona, ("Republic") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to acquire and operate (including purchasing the assets and assumption of liabilities of) twenty-five branches of Bank One, Arizona, N.A., Phoenix, Arizona ("the Arizona Branches"), under 12 U.S.C. §§ 24(Seventh), 36(c), & 1828(c) ("the Arizona P&A"), and four branches of Bank One, Utah, N.A., Salt Lake City, Utah ("the Utah Branches"), under 12 U.S.C. §§ 24(7), 36(d), 1828(c) & 1831u ("the Utah P&A").¹

Republic is a subsidiary of Community First Bankshares, Inc. ("CFB"), a multistate bank holding company headquartered in Fargo, North Dakota.² Bank One, Utah and Bank One, Arizona are subsidiaries of Banc One Corporation, Columbus, Ohio. As of June 30, 1996, Republic had approximately \$53 million in assets and \$47 million in deposits. As of the same date, the Arizona Branches had approximately \$412 million in deposits, and the Utah Branches had approximately \$34 million in deposits. All banks are members of the Bank Insurance Fund.

¹ Republic operates its only office in Phoenix, Arizona. The Arizona Branches are located in Ajo, Bagdad, Black Canyon City, Coolidge, Duncan, Edgar, Gila Bend, Globe, Heber, Holbrook, Kearney, Mayer, Miami (2), Morenci, Page, Patagonia, St. Johns, Sacaton, San Manuel, Superior, Tolleson, Tucson, Winslow, and Yarnell, Arizona. The Utah Branches are in Neber, Latton, Nephi, and Richfield, Utah. After the merger, CFB will change the name of the bank to Community First National Bank.

² CFB also owns national bank subsidiaries in Colorado, Iowa, Minnesota, Nebraska, North Dakota, Wisconsin, and Wyoming, and a state bank subsidiary in South Dakota.

II. LEGAL AUTHORITY

A. The Purchase and Assumption Transactions are Authorized under 12 U.S.C. § 24(7).

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(7). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872-73 (8th Cir. 1931); In re Cleveland Savings Society, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c)(2) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act). Such purchase and assumption transactions are commonplace in the banking industry.

Accordingly, Republic may purchase the assets, and assume the liabilities, of the Arizona Branches from Bank One, Arizona and of the Utah Branches from Bank One, Utah. If Republic did not also plan to acquire and operate the Arizona Branches and Utah Branches as branches of Republic, no further authority would be needed. Additional authority is required to operate them as branches.

B. Republic may Acquire and Operate the Arizona Branches under 12 U.S.C. § 36(c).

The McFadden Act authorizes a national bank to establish new branches "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question" 12 U.S.C. § 36(c)(2). The interpretation of the statute adopted since at least 1974 has been that, for the purpose of establishing additional branches under section 36(c), an interstate national bank is "situated" in each state in which it has its main office or a branch. The bank can establish other branches within each state to the same extent as other national banks situated in that state, *i.e.*, to the same extent that state allows its state banks to have branches within the state. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48 (9th Cir.), cert. denied, 419 U.S. 844 (1974). See also Ghiglieri v. Sun World National Association, 117 F.3d 309 (5th Cir. 1997).

Republic is a national bank situated in Arizona, with its main office in Phoenix, Arizona. Under Arizona law, an Arizona state-chartered bank is permitted to establish branches throughout Arizona without geographic limitation. See Az. Rev. Stat. § 6-190(A) (West Supp. 1997). An Arizona state bank in Phoenix could establish branches in the twenty-five communities served by the Arizona Branches. Thus, a national bank situated in Arizona could establish branches in these locations under 12 U.S.C. § 36(c). Therefore, Republic may establish the proposed branches under section 36(c).

C. The Interstate Acquisition and Operation of the Utah Branches are Authorized under 12 U.S.C. §§ 36(d) & 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:

(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) (added by the Riegle-Neal Act § 102(a)).³ Under the Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions. See 12 U.S.C. §§ 1831u(f)(6)-(7) & 1828(c)(3). The Act permits a state to elect to prohibit 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 application, the home states of the banks are Arizona and Utah; neither state opted out.

An "interstate merger transaction" under section 1831u(a) includes a purchase and assumption transaction. A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and assumption of only a part of bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

³ The Riegle-Neal Act 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)).

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).

12 U.S.C. § 1831u(a)(4)(A). In this application, the branches to be acquired are located in Utah. Utah law permits an out-of-state bank that does not operate a branch in the state to establish and maintain a branch in Utah through the acquisition of a branch. See Utah Code Ann. § 7-1-702. Finally, Congress also provided that a national bank may maintain and operate a branch in a state other than its home state as a result of an interstate merger transaction under section 1831u(a). See 12 U.S.C. §§ 36(d) & 1831u(d)(1).⁴ Accordingly, this application may be approved under 12 U.S.C. §§ 36(d) and 1831u.

In addition, an application to engage in an interstate merger transaction, including an interstate branch acquisition, 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.

Republic's application 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 this Branch Acquisition, Republic is acquiring four branches in Utah. The Utah interstate bank merger and branching statute provides that "an out-of-state depository institution without a branch in Utah... may acquire ... a Utah branch of a depository institution only if the branch has been in existence for at least five years." Utah Code Ann. § 7-1-703(7)(a)(ii). Each of the Utah Branches has been in existence for more than five years. Thus, the Utah P&A satisfies the Riegle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets 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

⁴ Section 36(d) provides:

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

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Section 36(d), rather than other subsections of section 36, is the authority for the Utah Branches in this application because the acquisition of a branch in a purchase and assumption transaction under section 1831u(a)(4) is an "interstate merger transaction" under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u.

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).⁵

The Utah interstate bank merger and branching 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. The referenced provisions of the Business Corporation Act are the provisions for out-of-state nonbanking corporations to qualify to do business in Utah. See Utah Code Ann. §§ 16-10a-1501 et seq. The filing requirements of section 7-1-702(12) do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. Republic provided a copy of its OCC Merger Application to the Utah state bank supervisor. Republic is also obtaining a certificate of authority under the Utah filing requirement.⁶ Thus, this interstate merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

Third, the proposed Branch Acquisition 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. Under section 1831u(b)(2)(A), the OCC may not approve an interstate merger transaction if the resulting bank (including all affiliated insured depository institutions) would control more than 10 percent of the total amount of deposits in the United States. Under section 1831u(b)(2)(B), the OCC may

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

⁶ 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. See OCC Wells Fargo Decision (page 15).

not approve an interstate merger transaction (1) if any bank involved in the transaction (including all affiliated insured depository institutions) has a branch in any state in which any other bank involved in the transaction has a branch and (2) if the resulting bank (including all affiliated insured depository institutions) would control 30 percent or more of the total deposits in any such state. After both the Utah P&A and the Arizona P&A, Republic will control less than one percent of total deposits in the United States. The Utah P&A is Republic's initial entry into Utah. Moreover, after the Utah P&A, Republic will control less than two percent of the deposits in Utah. This application meets the Riegle-Neal Act's deposit concentration limits.

Fourth, the proposed Branch Acquisition meets 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 bank's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). Republic has a satisfactory rating with respect to CRA performance. CRA considerations are discussed further in Part III-B below. Republic's affiliates, the other subsidiaries of CFB, all have at least satisfactory ratings with respect to CRA performance. Utah has no community reinvestment laws applicable to Republic.

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, Republic and Bank One, Utah satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each is at least satisfactorily managed. The OCC has also determined that, following the Utah P&A, Republic 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, Republic's proposed acquisition and operation of the Utah Branches is legally permissible under 12 U.S.C. §§ 36(d) & 1831u.

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, including purchase and assumption transactions, between insured depository institutions 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 Arizona P&A may be approved under section 1828(c).

1. Competitive Analysis.

The Utah P&A represents Republic's initial entry into Utah, and the Utah Branches are outside Republic's current competitive market area. Moreover, there are no banking communities in common between Republic and Bank One, Arizona. Accordingly, Republic's acquisition of the Utah Branches and the Arizona Branches will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of Republic, the Utah Branches, and the Arizona Branches are presently satisfactory. The proposed branch acquisitions should place little additional burden on Republic. Its future prospects are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the application.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. Republic will continue to serve Phoenix, while adding new branch locations in Arizona and Utah. Upon completion of the acquisition, current customers will have the added convenience of being able to bank with the same bank both across state lines and throughout much of Arizona. No branch closings are anticipated as a result of this transaction; however, Republic will be able to recognize a greater scale of operations after the acquisitions. Accordingly, we believe the impact of the Utah P&A and the Arizona P&A on the convenience and needs of the communities to be served is consistent with approval of the application.

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. Republic, Bank One, Utah, and Bank One, Arizona have satisfactory ratings with respect to CRA performance. No comments concerning CRA performance were received by the OCC on this application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The Utah P&A and the Arizona P&A are not expected to have any adverse effect on Republic's CRA performance. Republic will continue to serve the same communities that it, the Utah Branches, and the Arizona Branches currently serve. All offices will remain in operation as offices of the Republic. It will continue the current CRA programs and policies of Republic and CFB in both Utah and Arizona. As a general matter, the Republic will have the same commitment to helping meet the credit needs of all the communities it, the Utah Branches, and

