**Comptroller of the Currency**
**Administrator of National Banks**

Washington, DC 20219

**Corporate Decision #97-13**
**March 1997**

**DECISION OF THE COMPTROLLER OF THE CURRENCY TO APPROVE APPLICATIONS BY TCF FINANCIAL CORP., MINNEAPOLIS, MINNESOTA, TO CONVERT FEDERAL SAVINGS BANKS LOCATED IN MINNESOTA, MICHIGAN, ILLINOIS, AND WISCONSIN AND TO ESTABLISH DE NOVO BANKS IN OHIO AND COLORADO AND TO ENGAGE IN CERTAIN RELATED TRANSACTIONS**

**February 24, 1997**

## I. Introduction

On November 18, 1996, TCF Financial Corp., a thrift holding company (the holding company or applicant), filed applications with the Office of the Comptroller of the Currency to convert each of its four Federal savings banks (the FSBs) to national bank charters. The FSBs are TCF Bank Minnesota fsb, Minneapolis, Minnesota (Minnesota); Great Lakes Bancorp, A Federal Savings Bank, Ann Arbor, Michigan (Michigan); TCF Bank Illinois fsb, Oak Brook, Illinois (Illinois); and TCF Bank Wisconsin fsb, Milwaukee, Wisconsin (Wisconsin).[1] The FSBs are SAIF-insured and plan to remain SAIF-insured following the conversions.

As of June 30, 1996, Minnesota, which is a wholly-owned subsidiary of the holding company, had assets of approximately $3.5 billion and deposits of approximately $2.4 billion. It has 72 branches in Minnesota and six additional sites which have been approved as branches by the Office of Thrift Supervision (OTS) but which have not yet opened. As of that same date, Michigan, which is a wholly-owned subsidiary of the holding company, had assets of approximately $2.3 billion and deposits of approximately $1.5 billion. It has 57 branches in Michigan and one additional site which has been approved as a branch by the OTS but not yet

[1] Following the conversions, the institutions will be known, respectively, as TCF National Bank Minnesota, Great Lakes National Bank Michigan, TCF National Bank Illinois, and TCF National Bank Wisconsin.

opened.[2] Illinois, which is a wholly-owned subsidiary of Minnesota, has assets of approximately $685 million and deposits of approximately $575 million. It has 32 branches in Illinois and one additional site that has been approved as a branch by the OTS but which has not opened. Wisconsin, which is a wholly-owned subsidiary of Minnesota, has assets of approximately $599 million and deposits of approximately $501 million. It has 26 branches in Wisconsin. Except as stated, the converting banks seek approval to operate all of the branches of the FSBs.

In addition, on December 6, 1996, the holding company filed applications to charter a de novo BIF-insured national bank with its main office in Englewood, Colorado, to be owned directly by the holding company, and a de novo BIF-insured national bank with its main office in Hamilton, Ohio, initially to be owned by Michigan following its conversion.[3] On that same date, the holding company filed an application to permit the proposed Ohio bank to acquire, through a purchase and assumption transaction, all of the Ohio sites at which Michigan operates branches as well as certain assets and liabilities associated with these branches. Finally, on December 24, 1996, the holding company filed an application to permit Illinois, following its conversion, to acquire, through merger, Bank of Chicago, s.b., Oak Brook, Illinois, (the state savings bank) and to retain the state savings bank's main office and three branch offices as branch offices of Illinois.[4] The state savings bank has assets of approximately $189 million and deposits of approximately $172 million. The applications for the de novo charters, the Ohio purchase and assumption transaction and the Illinois merger were subject to public notice and comment procedures. No public comments were filed with respect to any of these applications.

As will be more thoroughly discussed below, the various entities also have requested approval to hold various subsidiaries following conversion or formation and Illinois and Michigan have requested approval to exercise fiduciary powers following their conversions.

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[2] In addition, Michigan has eight branch sites in Ohio but, as will be discussed, the converted institution will not retain these branches.

[3] These banks will be known, respectively, as TCF National Bank Colorado and Great Lakes National Bank Ohio.

[4] In its conversion application, Illinois has stated that the site of one of the state savings bank's offices would become the main office of Illinois and the other three offices of the state savings bank would become branches. Designation in a conversion application of a main office site other than that of the converting institution's main office is permissible. Cf. Decision of the Office of the Comptroller of the Currency on the Applications of Society Bank, Michigan, Ann Arbor, Michigan, and Society National Bank, Indiana, South Bend, Indiana, pp. 4-18 (OCC Corporate Decision 96-01, January 5, 1996). Moreover, we note that the proposed main office of Illinois, following conversion, and the current main office of the Illinois FSB are within 30 miles of each other. Consequently, the transaction could be accomplished in any event following the conversion under the provisions of 12 U.S.C. § 30(b). For a brief period following the conversion, but prior to the merger, Illinois and the state savings bank will share offices. See 61 Fed. Reg. 4849, 4868 (February 9, 1996) (to be codified at 12 C.F.R. § 7.3001).

Following OCC approval of these applications, and following the receipt of all other appropriate regulatory approvals from the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the OTS, and the receipt of any necessary state approvals, the holding company would undertake a series of virtually simultaneous transactions: (1) all of the FSBs would convert to a national charter simultaneously retaining, except as discussed, their existing branch networks; (2) the de novo banks in Ohio and Colorado would be established and Ohio would consummate the purchase and assumption transaction with Michigan; (3) Illinois would consummate the merger transaction with the state savings bank; (4) Minnesota would dividend the shares of Illinois and Wisconsin to the holding company and Michigan would dividend the shares of Ohio to the holding company[5]; and (5) Illinois, Wisconsin and Ohio would establish their branches and begin operations as national banks. As is discussed in this and accompanying correspondence, several of the various banks will also retain or acquire from the holding company various subsidiaries for purposes of continued operation where permissible for a national bank. Other subsidiaries engaged in impermissible activities will be divested as discussed in this Decision Statement and accompanying correspondence.

## II. Summary

For the following reasons, we conclude that, subject to other appropriate regulatory approvals:

- Each of the four existing Federal savings banks may convert to SAIF-insured national banks under 12 C.F.R. § 5.24;
- The applicant may establish national banks in Ohio and Colorado in accordance with the National Bank Act and 12 C.F.R. § 5.20;
- Ohio may acquire certain assets and liabilities through a purchase and assumption transaction with Michigan under 12 U.S.C. 24(Seventh); 12 U.S.C. § 1828(c) (the Bank Merger Act or BMA) and 12 U.S.C. § 1815(d)(3) (the Oakar Amendment);
- Illinois may acquire, through merger, the state savings bank under 12 U.S.C. § 215, the Bank Merger Act, the Oakar Amendment, and applicable state law;
- After the conversions, under 12 U.S.C. § 36(c), Minnesota and Michigan may operate the branches for which they have sought approval and following the Michigan bank's dividend to the holding company of the Ohio bank and the Minnesota bank's dividend to the holding company of the Illinois and

[5] In this regard, both Minnesota and Michigan have asked the OCC for approval to make these dividends and for prior approval of future dividend payments subject to 12 U.S.C. § 60. These requests are addressed in separate correspondence accompanying this Decision Statement.

Wisconsin banks, Wisconsin and Ohio may operate the branches for which they have sought approval;

- Under section 36(c), Colorado may operate the branches for which it has sought approval;

- Each bank may continue to own the subsidiaries for which it has sought approval either on a permanent basis or, in the event the subsidiary engages in activities impermissible for national banks, for purposes of divestiture during a period of up to two years; and

- Following conversion, Michigan and Illinois may exercise fiduciary powers as requested under 12 U.S.C. § 92a.

## III. Analysis

### A. Permissibility of the conversion of the Federal savings banks in Minnesota, Michigan, Illinois and Wisconsin to national bank charters

Regulations of both the OCC and the OTS permit the direct conversion of a Federal savings association to a national bank. See 61 Fed. Reg. 60342, 60368 (November 27, 1996) (effective December 31, 1996) to be codified at 12 C.F.R. § 5.24 (OCC regulations providing that a Federal savings association seeking to convert to a national bank charter must submit an application and obtain prior approval from the OCC and describing the procedures and standards governing that application); 12 C.F.R. § 552.2-7 (providing that a Federal stock association may convert to a national charter after filing a notification or application with the OTS[6]).

In approving a conversion application, OCC regulations provide that conversions will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws, regulations, and policies. See 61 Fed. Reg. 60342, 60369 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.24(d)). A review of the applications demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory, Community Reinvestment Act (CRA) or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator. Id. at pp. 60366, 60369 (to be codified at 12

[6] Regulations at 12 C.F.R. § 563.22(b)(1)(ii) and (h)(1) and 12 C.F.R. § 516.3(a) set forth the standards and procedures governing conversion to bank charters. The FSBs have complied with these procedures and the OTS has voiced no objection pursuant to section 516.3(a)(2). See OTS Letters dated December 16, 1996 by Bruce E. Benson (Regional Deputy Director, OTS Midwest Region) (addressing the conversions by Minnesota, Michigan, Illinois and Wisconsin).

C.F.R. §§ 5.13(b) and 5.24(d)). A review of the record discloses nothing that indicates that these factors provide a basis for denial of any of the four conversion applications.[7]

**1. CRA and proposed conversions**

The CRA requires the OCC to take into account each converting institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. 12 U.S.C. §§ 2902(3)(A) and 2903; 12 C.F.R. § 25.29(a)(4). The conversions of Minnesota, Michigan, Illinois and Wisconsin to national banks will have no adverse effect on the converting institutions' CRA performance. In their most recent CRA performance evaluations, the Minnesota and Illinois FSBs each received a CRA rating of "outstanding" and the Michigan and Wisconsin FSBs each received a CRA rating of "satisfactory" from the OTS. The converted banks plan to carry forward and continue to

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[7] In connection with the approval of these four conversions, we note that because each of the FSBs, now currently stock institutions, were formerly mutual savings associations, following their charter conversions each must continue to maintain its liquidation account established as a result of its conversion from a mutual to a stock form of organization.

Also, in connection with the conversion of Michigan, we note that the applicant has requested the OCC's approval to treat $6.2 million of Senior Debentures and $7.1 million of Convertible Debentures as tier 2 capital. The OCC has concluded that these two subordinated debentures will qualify as tier 2 capital in calculating Michigan's total risk based capital requirement. This treatment is in accordance with that afforded by the OTS. See OTS Letter by David L. Hostetler, Applications Manager, Indianapolis District (February 22, 1991); OTS Letter by Jill Ann Drake, Regional Deputy Director, Indianapolis District (December 10, 1990); Federal Home Loan Bank Board Letter by Ronald R. Morphew, Principal Supervisory Agent, Sixth District (March 5, 1986).

We also understand that, following the conversions, each of the Federal savings banks plans to remain SAIF-insured. It is clear that, even after the passage of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-298, § 2201, 110 Stat. 3009 (September 30, 1996) (EGRPRA) ending the insurance conversion moratorium, statutes governing the transfer of SAIF deposits to banks permit those deposits to remain SAIF-insured. Thus, under of the provisions of 12 U.S.C. § 1815(d)(3) (as amended by EGRPRA at sections 2704(c) and (d)(14)(D)), 12 U.S.C. §§ 215c and 1467a(s), banks may continue to acquire deposits insured by SAIF, through merger, consolidation or purchase and assumption transactions, without converting them to BIF deposits. We also note that 12 U.S.C. 1814(c) provides that, subject to section 1815(d), a state depository institution can result from the conversion of a Federal depository institution, including Federal savings banks, and a Federal depository institution, including a national bank, can result from the conversion of a state depository institution and continue as an insured depository institution. See 12 U.S.C. §§ 1813(b(2), (c)(4), (d)(5), and 1814(c). Thus, retention of insurance is automatic and nothing in section 1815(d) requires that the converting institution change its insurance.

In addition, the FDIC historically has not required institutions that convert directly from one form of national charter to another or from one form of state charter to another to reapply for insurance. Moreover, the FDIC has advised that a national bank resulting from the conversion of a SAIF-member savings association during the insurance conversion moratorium would remain a SAIF member even after the expiration of the moratorium. See FDIC Interpretive Letter 89-38 (November 8, 1989). Cf. FDIC Interpretive Letter 91-25 (April 4, 1991), reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,403 (Oakar banks created during moratorium need not convert SAIF deposits to BIF deposits following end of moratorium).

serve the same communities. In addition, the applicant has represented that following their conversions from Federal savings banks, each of the national banks will assume and continue to honor all CRA commitments and agreements in effect at the Federal savings banks as of the date of the conversions in accordance with the terms of the commitments and agreements. Moreover, the banks will continue to use the same policies, programs, and personnel that they have today. The converted banks' commitment and ability to help meet the credit needs of all the communities they serve should be no different after the conversions. No public comments were received by the OCC with respect to any of the related applications that were subject to public notice and comment and the OCC has no other basis to question the CRA performance of the four institutions.

### 2. Permissibility of branch retention following the conversions

Title 12 U.S.C. § 36, governing branching by national banks, does not expressly address the retention of branches of a Federal savings bank following its conversion to a national bank. Section 36(b)(1), relating to branch retention following conversion, specifically addresses conversions only of state banks. Nevertheless, 12 U.S.C. § 36(c) would permit a national bank resulting from the conversion of a Federal savings bank to continue to operate the branches of the Federal savings bank if a state bank resulting from the conversion of a Federal savings bank could continue to operate the branches. This could occur if state law permitted state banks to establish a branch at the site de novo or if state law permitted a state bank, following its conversion from a Federal savings association to operate a branch at the site. See, e.g., OCC Letter by Vernon G. Fasbender, Director for Analysis, Southeastern District (March 18, 1991) (certifying as a branch of a national bank, converting from a Federal savings bank charter, a branch that had been operated by the institution prior to its conversion). Cf. The Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A. and Related Purchase and Assumption Applications, p.3 n. 3 (Conditional Approval 69, November 12, 1992) (national bank acquiring Federal savings association can continue to operate its branches under 12 U.S.C. § 36(c) if state bank following such an acquisition could continue to operate its branches); Decision of the Office of the Comptroller of the Currency on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, with and into Union Planters National Bank, Memphis, Tennessee and Operate Branches of Leader Federal Bank for Savings as Branches of Union Planters National Bank, pp. 5-6 (OCC Corporate Decision 96-56, September 30, 1996).

In this regard, it is important to note that section 36(c) is not limited to the establishment of de novo branches but also applies, for instance, to branches obtained through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980). Similarly, if a state bank can operate a branch at a particular site following a branch relocation, so can a national bank under section 36(c). See Decision of the Office of the Comptroller of the Currency on the Application of Boatmen's National Bank of Oklahoma, Tulsa, Oklahoma, to Relocate a Branch to 2100 South Utica, City of Tulsa, Tulsa County, Oklahoma, p. 3 (OCC Corporate

Decision 96-62, November 12, 1996). Cf. First National Bank of Logan v. Walker Bank and Trust Co., 385 U.S. 252 (1966) (where state law restricts one method of branching but provides alternative methods of branching, for example by restricting de novo branches but permitting branching by acquisition, national banks are limited to branching by the same method).

The following discusses the continued operation of the branches of the converting institutions in the various states:

**a. Minnesota**

Minnesota branching law, applicable to national banks through 12 U.S.C. § 36(c), limits the permissible locations of branches (referred to in state law as "detached facilities"[8]). The state law provides:

> With the prior approval of the commissioner, any bank doing business in this state may establish and maintain detached facilities provided the facilities are located within:
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> > (1) the municipality in which the principal office of the applicant bank is located; or
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> > (2) 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or
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> > (3) a municipality in which no bank is located at the time of application; or
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> > (4) a municipality having a population of more than 10,000; or
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> > (5) a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

Minn. Stat. Ann. § 47.52 (West 1988 & Supp. 1997).

Minnesota proposes to operate all of its currently operating branches and its six approved but unopened branches after it converts to a national bank. The currently operating branches are

[8] See Minn. Stat. Ann. §§ 47.51, 47.53 (West 1988 & Supp. 1997).

all located within Minnesota in the municipalities of Anoka, Apple Valley, Arden Hills, Austin, Blaine, Bloomington, Brooklyn Center, Brooklyn Park, Burnsville, Cloquet, Coon Rapids, Cottage Grove, Crystal, Duluth, Eagen, Eden Prairie, Edina, Elk River, Excelsior, Forest Lake, Fridley, Mankato, Maple Grove, Maplewood, Minneapolis, Minnetonka, New Ulm, Pipestone, Plymouth, Robbinsdale, Rochester, St. Anthony, St. Cloud, St. Louis Park, St. Paul, Stillwater, White Bear Lake, White Bear Township, and Woodbury. The approved but unopened branches are in Edina, Elk River, Blaine, Maple Grove, Minneapolis, and St. Anthony, which are all municipalities within Minnesota. Some of these branches may, in fact, be opened prior to the charter conversion.

All of the municipalities listed above, except for Arden Hills, Excelsior, Forest Lake, Pipestone, and St. Anthony, have populations in excess of 10,000. According to the Minnesota Demography Office, the estimated population of Pipestone as of 1995 was 4,553. The Minnesota Metropolitan Counsel estimates the 1995 populations of the other municipalities as follows: Arden Hills - 9,560; Excelsior - 2,357; Forest Lake - 6,538; and St. Anthony - 8,362.

As noted above, under Minnesota law, any bank may establish a detached facility in any "municipality having a population of more than 10,000." Id. at. § 47.52(a)(4). Therefore, a state bank situated in Minnesota could establish branches at all of the proposed branch locations,[9] except for Arden Hills, Excelsior, Forest Lake, Pipestone, and St. Anthony, under the authority of section 47.52(a). Accordingly, following conversion, Minnesota may operate branches at those locations under section 36(c).

Minnesota law permits state banks to establish branches in municipalities with populations of 10,000 or less only if "all the banks having a principal office in the municipality have consented in writing to the establishment of the facility." Id. at § 47.52(a)(5). It also permits state banks to establish branches in municipalities "in which no bank is located." Id. at §

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[9] State law also requires the regulator to review several factors in determining whether to approve a branch of a state bank. These relate to capital adequacy, management quality, asset condition, whether the proposed facility will improve the quality or increase the availability of banking services in the community and whether the proposed facility will have an undue effect upon the solvency of existing financial institutions in the community. Minn. Stat. Ann. § 47.54 Subd.2 (West 1988 & Supp. 1997). Assuming the applicability of these standards in the situation where a national bank, following its conversion from a Federal savings bank, is continuing to operate branches operated by the Federal savings bank, we find that these standards are satisfied. Minnesota's management, capital and asset quality are all satisfactory. Upon converting, if Minnesota could not continue to operate the branches, the localities in which all of the branches are located would lose significant access to banking services. In contrast, continued operation assures access to all of the services which Minnesota could make available as a national bank. In addition, because these branches represent the continuation of operations of existing branches they will not have an undue effect upon the solvency of existing financial institutions in these communities.

Finally, branches may not be within 50 feet of branches of other banks or 100 feet of the main office of other banks. Id. at § 47.52(b). Assuming the applicability of these restrictions in this context, the applicant has represented that it has confirmed that the branches satisfy these proximity limitations.

47.52(a)(3). For purposes of section 47.52, "bank" is defined as "any savings bank or bank of discount or deposit or trust company organized under the laws of this state." Id. at. §§ 47.51 and 46.046 Subd. 2.

Although there are several financial institution branches in both Excelsior and St. Anthony, there are no financial institutions with a principal office in either location. The Minnesota law only requires consent from "banks having a principal office in the municipality." Municipalities without a principal office of any bank are considered under Minnesota law to be municipalities "in which no bank is located" for purpose of section 47.52.[10] Therefore, a state bank located in Minneapolis could establish branches in Excelsior and St. Anthony pursuant to section 47.52(a)(3). Accordingly, following its conversion, Minnesota may operate branches at those locations under section 36(c).[11]

While the principal office of a federally-chartered credit union is located in Arden Hills, no other financial institution has its principal office in that locale, although a national bank branch is located there. The definition of "bank" for purposes of section 47.52, found at section 46.046 Subd. 2, as discussed above, does not include credit unions. Therefore, as Arden Hills does not have a principal office of any bank, it must be considered to be a municipality "in which no bank is located" for purposes of section 47.52. Consequently, a state bank located in Minneapolis could establish branches in Arden Hills pursuant to section 47.52(a)(3). Accordingly, Minnesota, following its conversion, may operate a branch in Arden Hills under section 36(c).[12]

The remaining two towns -- Forest Lake and Pipestone -- do have principal offices of other banks. Forest Lake has the principal office of a state bank and Pipestone has the principal office of a national bank. Pursuant to section 47.52, a state bank could establish de novo branches in those municipalities only with the written consent of each of tho competitor banks in the towns. For the following reasons, however, the consent requirement of this provision does not apply in the current situation.

As discussed, the incorporation by 12 U.S.C. § 36(c) of state branching law is not limited to state law permitting the establishment of de novo branches. In other words, it does not require that state law permit establishment *de novo*, it merely requires that state law permit

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[10] This position is in accordance with that expressed by James G. Miller, Deputy Commissioner, Minnesota Department of Commerce, Financial Examinations Divisions in a conversation with OCC staff on January 29, 1997.

[11] For the reasons discussed in footnote 9, supra, we conclude that the standards set forth in that footnote, even if applicable to the continued operation of branches following a conversion, also are satisfied with respect to the Excelsior and St. Anthony branches.

[12] For the reasons discussed in footnote 9, supra, we conclude that the factors set forth in that footnote, even if applicable to the continued operation of branches following a conversion, are satisfied as to the Arden Hills branch.

establishment in some manner. The United States Supreme Court has determined that the purpose of the McFadden Act is "to place national and state banks on a basis of 'competitive equality' insofar as branch banking" within a state is concerned. First National Bank of Logan v. Walker Bank and Trust Co., 385 U.S. 252, 261 (1966). Thus, if there are circumstances in which state banks could operate a branch at a given location, section 36(c) would permit a national bank to operate a branch at that site under the same circumstances.

While no specific provision in Minnesota law addresses the conversion of a Federal or state-chartered savings bank or association to a state commercial bank or national bank or the issue of branch retention in such a transaction, state law does authorize a Federal savings association to convert to a state-chartered savings bank. Minn. Stat. Ann. § 47.31 (West 1988 & Supp. 1997). The provisions of section 47.32 state that upon conversion, the branches of a Federal savings bank "shall become detached facilities of the savings bank, notwithstanding the limitations on the number of facilities, distance limitations, geographic limitation, notice requirements, and consent requirements contained in sections 47.51 to 47.57." Minn. Stat. Ann. § 47.32 (West 1988 & Supp. 1997). Thus, a Federal savings bank may convert to a Minnesota savings bank and retain and continue to operate the branches of the Federal savings bank.

The McFadden Act, including section 36(c), which grants to national banks the branching rights afforded to "State banks" by State law, defines the term "State bank" as including "trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws." 12 U.S.C. § 36(l). Thus, for purposes of section 36(c), the definition of "State bank" includes Minnesota savings banks.[13] Consequently,

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[13] Even if the inclusion of the term "savings bank" in the definition of "state bank" in section 36(l) depends on whether "it is a corporation carrying on the banking business under the authority of State laws," Minnesota savings banks would meet that test.

In Department of Banking and Consumer Finance v. Clarke, 809 F.2d 266 (5th Cir.), cert. denied, 483 U.S. 1010 (1987) (hereinafter referred to as "Deposit Guaranty"), the Fifth Circuit Court of Appeals upheld the Comptroller's approval of Deposit Guaranty National Bank's establishment of an in-state branch beyond the intrastate territorial limitations imposed on state-chartered commercial banks by state law. Although state-chartered saving associations could branch statewide, Mississippi law permitted state-chartered commercial banks to branch only within a 100-mile radius of the bank's main office. The Fifth Circuit held, however, that because state-chartered savings and loan associations were carrying on the banking business, the Comptroller was correct in determining them to be "State banks" for purposes of the federal branching statute. Therefore, the Fifth Circuit concluded that national banks could branch with the same freedom as state-chartered savings associations. See also, e.g., Volunteer State Bank v. National Bank of Commerce, 684 F. Supp. 964 (M.D. Tenn. 1988); Texas v. Clarke, 690 R. Supp. 573 (W.D. Texas 1988).

While the term "banking business" is not specifically defined in the National Bank Act, as noted in the Deposit Guaranty decision, it includes the traditional powers and functions outlined in 12 U.S.C. § 24(Seventh), and the court specifically noted the deposit taking, withdrawals and loan making functions which the OCC and the courts have identified as the core banking functions. See e.g. Clarke v. Securities Industry Association, 479 U.S. 388 (1987).

national banks in Minnesota enjoy the same branching rights as Minnesota savings banks. As noted, Minnesota law permits a state-chartered savings bank resulting from the conversion of a Federal savings bank to retain and continue to operate its branches notwithstanding, among other limitations, any consent requirements. Because a state-chartered savings bank is a "State bank" for purposes of section 36(c), a national bank located in Minnesota, resulting from the conversion of a Federal savings bank, is authorized to retain its branches upon conversion and may do so without regard to the requirements of section 47.52.

Moreover, we note that Minnesota statutory provisions, by providing state commercial banks parity with state savings banks also permit state banks, resulting from the conversion of a Federal or state savings association, to continue to operate branches of the savings association following conversion. See § 48.15 Subd. 2a (authorizing commissioner to permit state banks to undertake any activities and exercise any powers authorized to savings banks). This analysis further buttresses our conclusion that national banks, following conversion from a Federal or state savings bank charter, may continue to operate the branches of the former Federal savings bank.

Finally, we note that the provisions of section 47.52(a), containing the consent requirement, address the authority of a state bank to "establish and maintain" branches and not the continued operation of existing branches. The statutory consent requirement in Minnesota reflects an intent to protect banks located in towns of 10,000 or less from increased competition resulting from new competitors which may threaten the existence of such small town institutions. Various provisions of Minnesota law do not apply the consent requirement

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A Minnesota-chartered savings bank resulting from the conversion of a Federal savings association would be empowered by state law to engage in those activities. Minnesota law defines "savings bank" as a "corporation authorized to do business under chapter 50." Minn. Stat. Ann. § 47.01, Subd. 3 (West 1988 & Supp. 1997). The powers of a Minnesota savings bank are broad and include the authority to take deposits, make loans, engage in credit exchange functions and act in a fiduciary capacity, as well to engage in powers incidental to those necessary to accomplish the objectives and purposes of the savings bank. Id. at § 50.085.

Further, under Minnesota's "parity laws," codified at section 50.085, Subd. 19(a), the Minnesota Commissioner of Commerce may authorize a state savings bank to "undertake any activities, exercise any powers, or make any investments that any state bank or national bank located or doing business in this state may undertake, exercise, or make as of August 1, 1995." Id. at. § 50.085, Subd. 19(a). See also § 50.085 Subd. 19(b) (authorizing commissioner to similarly approve of any such activities which become authorized for state or national banks after August 1, 1995). These parity provisions provide additional support for finding that state-chartered savings banks are authorized to engage in the "banking business."

Thus, with their broad grant of authority, Minnesota savings banks are authorized to carry on the "banking business." Moreover, if Minnesota were converting to a state savings bank, its operating plan clearly shows that it would be engaging, following the conversion, in the banking business as described above. Thus, because Minnesota, if it were converting to a state savings bank could operate the branches in Pipestone and Forest Lake, following the conversion, without the consent of the banks located in those towns, the newly converted national bank also may continue to operate those branches. (As discussed in footnote 9, supra, the other standards relating to branching in Minnesota, even if applicable to branches operated following a conversion, also are met with respect to these branches.)

to merger, consolidation, and purchase and assumption transactions; that is, transactions that do not involve new the introduction of new competitors or new banking sites.[14] Likewise, such protection from new competitors is not at issue in a conversion. No new competitor enters the municipality, no additional sites are established, and the playing field remains the same albeit with one competitor operating under a different charter. That this application involves the conversion of a Federal savings bank to a national bank, and not the introduction of a new competitor or a new banking site into a town 10,000 or less, further supports our conclusion that Minnesota's statutory scheme would not require a converting bank to obtain the consent of other banks with principal offices in the small town community to operate its branches in that community.

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[14] Minnesota law provides that in purchase and assumption transactions involving savings banks, the consent required by section 47.52 need not be obtained if savings bank branches, located in municipalities of 10,000 or less, are acquired. Section 47.55, Subd. 2. states:

> The purchase of assets and assumption of liabilities of an existing detached facility of another bank or branch of a savings association or savings bank must follow the notice and approval procedures in section 47.54 to establish and maintain a new detached facility of the acquiring bank at that location but need not obtain the consent of other banks as required by section 47.52.

Minn. Stat. Ann. § 47.55, Subd. 2. (West 1988 & Supp. 1997).

Further, section 49.34, Subd. 2.(a) permits the merger, consolidation or purchase of assets and assumption of liabilities of a state bank and operation of its branches without regard to the consent requirements of section 47.52. For purposes of section 49.34, the term " state bank" is defined to include savings banks. See Minn. Stat. Ann. § 49.01 (West 1988 & Supp. 1997). Section 49.34, Subd. 2.(a) states:

> Notwithstanding the geographic limitations of subdivision 1 and the limitations on number of facilities, distance limitations, and consent requirements contained in section 47.52, a state bank may apply to the commissioner, pursuant to the procedures contained in sections 47.51 to 47.56 and 49.35 to 49.41, to acquire another state bank or national banking association and its detached facilities through merger, consolidation, or purchase of assets and assumption of liabilities and operate them as detached facilities of the successor bank.

Minn. Stat. Ann. § 49.34, Subd. 2.(a) (West 1988 & Supp. 1997). See also Western State Bank of St. Paul v. Marquette Bank Minneapolis, N.A., 734 F. Supp. 889, 893 (D. Minn. 1990) (upholding OCC treatment of section 47.52 as a limitation on de novo branching, not on branching through a merger, consolidation, or purchase and assumption transaction).

We note, however, that the applicant has advised the OCC that state banking regulators have reservations as to whether Minnesota, following its conversion, can operate the branches in Pipestone and Forest Lake, both towns of 10,000 or less in which other banks have their principal offices, without the consent of the banks that have their principal offices in those places.[15] In any event, we note that in light of the state's concerns about these two branches, Minnesota has represented to the state that by July 1, 1998 it will resolve any issue existing at that time with respect to its authority to operate these branches by obtaining the consent of the relevant depository institution, divesting ownership of the branch or branches, or, if permitted by applicable law, causing the branch or branches to be acquired by another depository charter or charters held by the holding company.

**b. Michigan**

Michigan proposes to retain all of its currently operating branches and its approved but unopened branch, all located in Michigan, after it converts to a national bank. Under Michigan law, "a bank may establish and operate a branch or branches within any state, the District of Columbia, or a territory or protectorate of the United States. . . ." See Mich. Stat. Ann. § 23.710(171)(1) (Callaghan 1991 & Supp. 1996-97). A Michigan state bank with its principal office in Michigan could establish branches at all of the locations proposed to be operated as branches by Michigan after it converts to a national bank. Accordingly, Michigan may operate branches at those locations under section 36(c).[16]

**c. Illinois**

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[15] We note that courts have long held that if the OCC's interpretation of state branching law may be upheld on the basis of the language of the statute; the fact that a state agency or state administrator reads it differently is not controlling. See, First National Bank of Fairbanks v. Camp, 465 F.2d 586, 597 (D.C. Cir. 1972), cert. denied, 409 U.S. 1124 (1973) (stating that "neither the state nor federal administrator be empowered to veto branch authorizations of the other. The state supervisors apply their state statute in evaluating bank branch applications wholly independently of any federal supervision and we hold that the Comptroller may similarly apply those same state statutes in evaluating national bank branch applications independently of control by the opinions of the state supervisor"). See also, e.g., State of South Dakota v. National Bank of South Dakota, 219 F. Supp. 842, 845, 851 (D. S.D. 1963), aff'd 335 F.2d 444 (8th Cir. 1964), cert. denied, 379 U.S. 970 (1965) (national banks were not bound by state rule prohibiting establishment of branch offices or branch banks more than fifty miles away from the establishing bank's domicile where such geographic limitation was not included in state statutory geographic limitations on establishment of branches). Cf. Western State Bank of St. Paul v. Marquette Bank Minneapolis, N.A., 734 F. Supp. 889, 893 (D. Minn. 1990) (court will defer to reasonable interpretations of state branching law by OCC).

[16] Michigan statutes also require that the regulator consider the sufficiency of the capital and surplus of the bank and its prospects of successful operation. Id. The OCC has determined that Michigan has the financial and managerial resources to successfully operate the bank and its current branch network. The institution is in satisfactory condition and there is no reason to believe that Michigan, following its conversion, will not continue to operate in a satisfactory manner in the future. Michigan is, and following conversion will continue to be, well capitalized and its future prospects are considered favorable.

Illinois proposes to retain all of its currently operating branches and its approved but unopened branch, all located in Illinois, after it converts to a national bank. Under Illinois law, Illinois banks are permitted to establish branches without numerical or geographical limitations. See 205 Ill. Ann. Stat. § 5/5(15)(a) (Smith-Hurd 1993 & Supp. 1996). An Illinois state bank with its principal office in Illinois could establish branches at all of the locations proposed to be operated as branches by Illinois after it converts to a national bank. Accordingly, Illinois may operate branches at those locations under section 36(c).

#### d. Wisconsin

Wisconsin proposes to operate all of its currently operating branches, all of which are located in Wisconsin, after it converts to a national bank. Under Wisconsin law, banks are permitted to establish branches without numerical or geographical limitations. See Wis. Stat. Ann. § 221.0302(1), (6) (West 1994 & Supp. 1996). A Wisconsin state bank with its principal office in Wisconsin could establish branches at all of the locations proposed to be operated as branches by Wisconsin after it converts to a national bank. Accordingly, Wisconsin may operate branches at those locations under section 36(c).[17]

### B. Chartering of de novo banks in Ohio and Colorado

#### 1. Chartering authority

As stated, the holding company also has proposed to charter a de novo bank in Colorado[18] and, through Michigan, a de novo bank in Ohio.[19] The standards for chartering a national bank are set forth in 12 U.S.C. §§ 26 and 27 and 12 C.F.R. § 5.20 (as revised at 61 Fed. Reg. 60342, 60367-369 (November 27, 1996) (effective December 31, 1996)). The OCC has conducted a thorough review of these applications in the light of the factors set forth in these

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[17] In approving a branch, Wisconsin requires the regulator to consider the financial and managerial resources and future prospects of the bank. Id. The OCC has determined that Wisconsin has the financial and managerial resources to continue to operate as a successful institution following conversion and to operate the current branch network. The institution is in satisfactory condition and there is no reason to believe that the bank will not continue to operate in a satisfactory manner in the future. The bank's future prospects are considered to be favorable.

[18] This bank would be a wholly-owned-subsidiary of a second tier holding company which, in turn, would be a wholly-owned subsidiary of the holding company.

[19] The Ohio bank would be a wholly-owned subsidiary of the Michigan bank but for only a moment in time prior to being dividended to the holding company.

statutory and regulatory provisions regarding the chartering of de novo banks and has determined that the results of this review are consistent with approval.[20]

### 2. Consistency with the Community Reinvestment Act

In considering chartering a national bank, the OCC must take into account CRA considerations. See 12 U.S.C. §§ 2903(2), 2902(3)(A). The proposed Ohio and Colorado banks' CRA plans indicate that they will help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The CRA programs for the proposed banks are substantially similar to those currently in practice at the holding company's Federal savings bank subsidiaries. These Federal savings banks each have an outstanding or satisfactory record of performance under the CRA, and nothing has come to the attention of the OCC as part of these applications that would indicate that this level of performance will not be continued at the proposed Banks.

## C. Purchase of assets and assumption of liabilities by Ohio from Michigan and acquisition of the state savings bank through merger by Illinois

### 1. Authority

#### a. The Ohio purchase and assumption transaction

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[20] The applicant notes that because the establishment of the Colorado bank constitutes the first entry of the holding company into Colorado, it will initially have no Colorado-based directors; rather the directors will be individuals currently serving as directors of the Minnesota. Under these circumstances, the applicant has submitted a written request that director residency requirements, as set forth in 12 U.S.C. § 72, be waived for one year. Section 72, as amended by section 2241 of the EGRPRA, provides in pertinent part that:

> [A]t least a majority of the directors must have resided in the State . . . in which the association is located, or within 100 miles of the location of the office of the association, for at least one year immediately preceding their election and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency.

Under the circumstances presented, and with the understanding that the Colorado bank will meet the requirements of section 72 within one year after the bank is opened, the Comptroller has determined to waive the residency requirement for one year from the date the Colorado bank is chartered.

Colorado also has submitted applications to establish seven branches in Colorado. Under Colorado law, as of January 1, 1997, Colorado banks are permitted to establish branches within the state without numerical or geographical limitations. See Colo. Rev. Stat. Ann. § 11-25-103(8)(b) (1987 & Supp. 1995). A Colorado state bank with its principal office in Colorado could establish branches at all of the locations proposed by TCF National Bank Colorado. Accordingly, TCF National Bank Colorado may establish branches at those locations under section 36(c).

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d. 870, 872 (8th Cir. 1931). As will be discussed, where insured deposits are being acquired by a national bank, the transaction must be reviewed for compliance with the BMA,[21] 12 U.S.C. § 1828(c), and in the context of the requirements of the CRA, 12 U.S.C. § 2901 through 2907 (CRA).[22]

### b. The Illinois merger transaction

Explicit statutory authority provides for the direct merger of state stock savings banks into national banks as long as the merger is not in contravention of state law. See 12 U.S.C. §§ 215a, 215a(d), 215b(1). Illinois law affirmatively permits mergers of state savings banks into national banks. Ill. Ann. Stat. ch. 205, ¶ 205/8004 (Smith-Hurd 1993 & Supp. 1996).[23] As with a purchase and assumption transaction, the transaction must be reviewed in the context of the requirements of the BMA and CRA.[24]

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[21] Because this transaction between affiliated banks is subject to the Comptroller's review under the BMA, section 23A of the Federal Reserve Act does not apply. See 12 C.F.R. § 250.241 (1996). Section 23B of the Federal Reserve Act does not apply because the parties to the transaction are affiliated banks. See 12 U.S.C. § 371c-1(d)(1).

[22] We note that the purchase and assumption transaction includes the purchase of sites currently used by Michigan as branches. The Ohio bank plans to use one of these sites as its main office and following the transfer of the ownership of the bank to the holding company it plans to use the other sites as branches. With respect to the sites planned to be used as branches by the Ohio bank, we note that a national bank is permitted to acquire real estate for its future use. See 61 Fed. Reg. 4849, 4862 (February 9, 1996) (to be codified at 12 C.F.R. § 7.1000(a)(2)(ii)).

Under Ohio law, Ohio banks are permitted to establish branches without numerical or geographical limitations. See Ohio Rev. Code Ann. § 1117.01(B)(1) (Anderson 1988 & Supp. 1996). The Ohio statute does, however, direct the regulator to consider the adequacy of the bank's management, the adequacy of its capital and paid-in capital, the effect of the establishment of the branch on the interests of the bank's depositors and shareholders, and the bank's CRA record. Id. at 1117.02(D)(1)-(4). The primary purpose for chartering the proposed bank in Ohio is to maintain the holding company's existing banking presence in Ohio and to provide Michigan's customers in Ohio with continued and uninterrupted banking service after Michigan converts to a national charter. Consequently, granting of the proposed charter serves the interests of both the holding company and its Ohio customers. Moreover, the OCC has concluded that the proposed bank will be adequately capitalized and managed. Thus, we conclude that Ohio can operate branches, under section 36(c), at all of the proposed locations.

[23] The state statute requires approval of the merger by the state banking commissioner. Id. at § 205/8004(c), (d). The applicant has sought this approval and the OCC's approval of this merger is contingent on receipt of appropriate state approval.

[24] Following the merger, Illinois may retain all of its branches and the branches of the state savings bank. See 12 U.S.C. §§ 36(b)(2)(A) and (C) and Ill. Ann. Stat. ch. 205, ¶ 5/5(15)(a) (Smith-Hurd 1993 & Supp. 1996) (incorporating state branching law which permits statewide branching in Illinois).

### 2. Compliance with the Bank Merger Act

The BMA at section 1828(c) requires the OCC's approval for any merger and for any purchase of assets and transfer of deposit liabilities between insured depository institutions where the resulting bank will be a national bank. The OCC generally may not approve a transaction that would substantially lessen competition. Additionally, the banking factors, which include 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, must also be considered. For the reasons stated below, we find that the transactions may be approved under the BMA.

#### a. Competition

Because the transactions between Michigan and Ohio and between the state savings bank and Illinois each constitute transactions between affiliated institutions owned by the same bank holding company, the transactions do not have anticompetitive effects.[25]

#### b. Financial and managerial resources

##### (1) The Ohio purchase and assumption transaction

Michigan currently operates a branching network in both Ohio and Michigan. Thus, the purchase and assumption by the Ohio bank will place no additional burdens on the holding company's existing financial and managerial resources. The managerial and financial resources of Michigan are considered to be satisfactory and the OCC has concluded, as part of its review of the Ohio charter proposal, that Ohio will have satisfactory financial and managerial resources. Even though the purchase and assumption will create two separate and distinct banking operations, the holding company has the experience to operate both banks in a cost effective manner while continuing to provide full service banking to its customers in Ohio and Michigan. The future prospects of the institutions, individually and combined, are considered favorable.

##### (2) The Illinois merger transaction

The two institutions are currently managed in a coordinated manner. Thus, the merger will place no additional burdens on existing resources. The financial and managerial resources of the two institutions are satisfactory. As a result of the merger, the combined bank is expected to improve its management and control systems through the organizational efficiencies that come with running a unified bank. In addition, future earnings will benefit from the cost savings that will result from the merger. Thus, the merger has the potential to enhance the resulting financial and managerial resources and future prospects of Illinois. The financial

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[25] The holding company acquired the state savings bank on January 16, 1997.

and managerial resources of Illinois do not raise any concern that would cause the application to be disapproved. The future prospects of the institutions, individually and combined, are considered favorable.

**c. Convenience and needs**

**(1) The Ohio purchase and assumption transaction**

The proposed purchase and assumption transaction serves the convenience and needs of the communities to be served by enabling the holding company, through its depository institution subsidiaries, to continue to provide banking services to its Ohio customers. Currently, the holding company serves these customers through its Michigan Federal savings bank subsidiary which has branches in Ohio as well as Michigan. Upon converting from a Federal savings bank charter to a national bank charter, however, the Michigan institution is relinquishing its Ohio branches because, under current law governing national bank branching, a Michigan national bank may have no authority to operate branches in Ohio. The chartering of a new national bank in Ohio, the proposed purchase and assumption transaction, and the authorization of the branches permit the holding company to serve its Ohio customers in the same locations and in the same manner that it currently serves them rather than eliminating services. The impact of this transaction on the convenience and needs of the communities to be served is consistent with approval of the proposed purchase and assumption transaction.

**(2) The Illinois merger**

The proposed merger will serve the convenience and needs of the communities to be served. Following the merger, Illinois will continue to serve the same areas now served by the merging institutions and it will continue to offer a full line of banking products and services. Upon completion of the merger, customers of each of the banks will have available to them a greater number of branches at which to bank. The impact of this transaction on the convenience and needs of the communities to be served is consistent with approval of the proposed merger transaction.

**3. Compliance with Oakar requirements**

We further note that both the Ohio and Illinois transactions are Oakar transactions governed by the provisions of 12 U.S.C. § 1815(d)(3) because the acquiring institution in Ohio is a BIF-member institution acquiring deposits insured by the SAIF and the acquiring institution in Illinois is a SAIF-insured institution acquiring deposits insured by BIF. Oakar transactions are subject to certain conditions for approval.

**a. Compliance with capital requirements**

First, an Oakar transaction may not be approved unless the resulting depository institution will meet all applicable capital requirements upon consummation of the transaction. 12 U.S.C. § 1815(d)(3)(E)(iii). (A similar provision had previously been codified at paragraph (d)(3)(E)(iv) but was reworded and redesignated as part of the EGRPRA.) The OCC has determined that Ohio and Illinois, upon conversion, will meet all applicable capital requirements. In fact, following these transactions, Ohio and Illinois will at least meet all of the tests to be considered well-capitalized institutions. See 12 C.F.R. § 6.4(b)(1).

**b. Compliance with section 1815(d)(3)(F)**

Further, section 1815(d)(3)(F) provides that:

> A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in [an Oakar transaction] unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

Section 1842(d) governs acquisitions by bank holding companies of banks located in other states. Consequently, if applicable in this situation, which in Ohio involves the acquisition by a BIF member that is a subsidiary of a bank holding company located in Minnesota,[26] for purposes of section 1842(d), of a portion of a SAIF-insured institution located in Ohio, section 1815(d)(3)(F) provides that the requirements of section 1842(d) would apply to this transaction. Section 1842(d) either imposes or permits states to impose age requirements, concentration limits, CRA requirements and requirements as to management and capital.[27]

**(1) Age requirements**

First, section 1842(d) permits the host state -- that is, the state in which the acquisition is being made -- to prohibit acquisitions if the target is less than five years old. 12 U.S.C. §

[26] The home state of a bank holding company, for purposes of section 1842(d)(1)(A), is the state in which the total deposits of all of its banking subsidiaries is the largest on the later of July 1, 1966 or the date on which it first becomes a bank holding company. 12 U.S.C. § 1841(o)(4)C). In the present case, the holding company will become a bank holding company as a result of the conversion of the four FSBs. As described, because the FSB in Minnesota has the most deposits at that time, the home state of the holding company will be Minnesota.

[27] As stated, the Illinois merger is also an Oakar transaction governed by 12 U.S.C. § 1815(d)(3) because it involves the acquisition by a SAIF-member bank of a BIF-member institution. Consequently, while the capital requirements, are applicable, the other standards for approval, as discussed in connection with the Ohio transaction, are inapplicable in this situation because the acquiring institution is not a BIF member.

1842(d)(1)(B). In permitting out-of-state bank holding companies to acquire an in-state bank, Ohio imposes no age threshold. Ohio Rev. Code Ann. § 1115.05(B) (Anderson 1996).

### (2) Deposit concentration limits

Second, an acquisition could not occur if the national bank and all of its insured depository institution affiliates would control more than 10% of the total amount of insured deposits in the United States or more than 30% of the insured deposits in the state of the bank to be acquired. These requirements are met. Total United States deposits of all of the holding company's domestic offices account for significantly less than 1% of total United States deposits. Moreover, the Ohio deposits to be transferred are approximately $133 million. Total deposits in Ohio as of September 30, 1996, exceed $100 billion. Consequently, the 30% limitation imposes no obstacle. We further note that section 1842(d)(2)(C) may permit states to impose their own deposit concentration limits. However, even if this limit is applicable to this transaction, the state imposes the same 30% limit as is imposed by section 1842(d) and, thus, poses no obstacle to this transaction. Ohio Rev. Code Ann. § 1115.05(B)(1) (Anderson 1996).

### (3) CRA requirements

Third, section 1842(d)(3)(A) requires consideration of the bank holding company's compliance with the Community Reinvestment Act of 1977 (Federal CRA). That section requires the Federal Reserve Board (and, thus, the OCC in this instance), to consider bank holding company compliance with Federal CRA under section 804. Bank holding company compliance with Federal CRA is evaluated by looking to the CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). Each of the holding company's subsidiaries have CRA ratings of outstanding or satisfactory. Moreover, no public comments have been filed in connection with this series of applications on CRA (or any other) grounds and the OCC has no other basis to question the holding company's performance in complying with CRA.

In addition, section 1842(d)(3)(B) requires consideration of the bank holding company's record of compliance with applicable state community reinvestment laws. We are aware of no law in any of the states -- Minnesota, Michigan, Illinois, Wisconsin, and Ohio -- where the FSBs have branches that imposes CRA requirements other than those imposed by Federal CRA and none has been brought to our attention. Consequently, even if applicable to this transaction, this standard provides no basis to reject this proposed purchase and assumption transaction.[28]

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[28] In fact, only two of the states appear to have state CRA laws that arguably could apply to this transaction but both simply require compliance with Federal CRA. <u>See</u> Wis. Stat. Ann. § 221.0901(6)(d) (West 1994 & Supp. 1996) and Minn. Stat. Ann. § 48.93. Subd. 4.(5) (West 1988 & Supp. 1997).

**(4) Capital and management**

Fourth, we note that the condition of the holding company, including its capital position and management, is consistent with approval of the acquisition under the standards set forth in section 1842(d)(1) as incorporated into section 1815(d)(3)(F).[29]

**4. The Community Reinvestment Act**

In approving a transaction under the BMA, the CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903.

**a. The Ohio purchase and assumption transaction**

Michigan has received a satisfactory rating with respect to its CRA performance. It is expected that Ohio will achieve a CRA rating of satisfactory or better upon commencing its banking operations. Ohio's CRA program will be similar to Michigan's and the holding company's other banking subsidiaries, which all have satisfactory ratings. The purchase and assumption should have no adverse effect on the two resulting banks' CRA performance. The two banks will carry forward and continue to serve the same communities that Michigan served prior to the purchase and assumption. No public comments were received by the OCC relating to this application and the OCC has no other basis to question the banks' performance or prospects for performance in complying with CRA.

**b. The Illinois merger transaction**

Illinois has an outstanding rating and the state savings bank has received a satisfactory rating with respect to CRA performance. The merger into one bank should have no adverse effect on the combined bank's CRA performance. The combined bank will carry forward and continue to serve the same communities as the merging banks. It will be using a composite of the CRA policies, programs and personnel that the two banks have today. The combined bank's commitment and ability to help meet the credit needs of all the communities it serves should be no different then prior to the merger. The merger does not alter the resulting bank's obligation to help meet the credit needs of its communities in Illinois. No public comments were received by the OCC relating to this application (or any of the related applications) and the OCC has no other basis to question the banks' performance in complying with the CRA.

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[29] In addition, we note that section 1842(d)(4) provides that no provision of this section shall be construed as affecting the applicability of Federal or state antitrust laws. As discussed, the purchase and assumption transaction between affiliates has no competitive impact under Federal antitrust laws. Nor have we found any provisions of Ohio antitrust law that this transaction may contravene, particularly since it constitutes the transfer of assets and liabilities between two entities wholly-owned by the same company. Finally, we note that no comments were received about this transaction based on state antitrust grounds or any other grounds.

### D. Other issues

#### 1. Momentary ownership of national banks by other national banks

Following the conversions of each of the FSBs to national charters, the holding company contemplates that Minnesota will own Illinois and Wisconsin for a moment in time and, following the chartering of the bank in Ohio, Michigan will own Ohio for a moment in time prior to dividending the shares of the three subsidiary banks to the holding company.[30] In addition, Illinois, following its conversion, will own the state savings bank for a moment in time prior to the merger of the state savings bank into Illinois.[31] The authority of a national bank to hold the stock of another depository institution for a moment in time, subject to other appropriate regulatory approvals, to facilitate a permissible corporate restructuring has long been recognized by the OCC. See, e.g., Opinion Letter by Charles F. Byrd, Assistant Director, Legal Advisory Services Division (October 1, 1987); Opinion Letter by Peter C. Liebesman, Assistant Director, Legal Advisory Services Division (July 24, 1981). Consequently, we pose no objection to the proposed holding by Minnesota and Michigan of the shares of Illinois, Wisconsin, Ohio for a moment in time following the conversions of the four FSBs and the establishment of the de novo bank in Ohio and prior to the distribution of those shares to the holding company following which those entities will commence operations as national banks.[32] We also pose no objection to the proposed holding by Illinois of the shares of the state savings bank for a moment in time following the conversion of Illinois and prior to the merger of the state savings bank into Illinois.

#### 2. Subsidiaries

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[30] In this respect, Minnesota and Michigan have asked for approval for a dividend in kind to the holding company and have asked the OCC for a determination of the impact of these dividends on the future dividend paying capacity of Minnesota and Michigan. These requests are addressed in separate correspondence to the applicant accompanying this Decision Statement.

[31] The state savings bank is currently owned indirectly by Illinois. Illinois owns BOC Financial Corporation (BOC) which, in turn, owns Bancs of Chicago Bancorp, Inc. (Bancs) which, in turn, owns the state savings bank. Immediately following the conversion of Illinois, BOC and Bancs will be dissolved and the state savings bank will merge into Illinois.

[32] We further note that for the moment in time that Minnesota owns Illinois and Wisconsin, and Michigan owns Ohio, no branching issues arise and no offices of the three subsidiaries will constitute branches of the parent banks. First, with respect to the branches of Illinois, Wisconsin, and Ohio discussed above, authorization for these offices is not effective unless and until their respective banks are dividended to the holding company. Consequently, they will not and cannot constitute branches of either Michigan or Minnesota. Secondly, while Illinois, Wisconsin, and Ohio will, as required by statute, have a main office under 12 U.S.C. §§ 22 (Second) and 81, those offices will not during that time period be engaged in functions that constitute branching under 12 U.S.C. § 36(j). As the courts have recognized, the concept of a main office is primarily a legal one not dependent on the amount of business that is done at the site. Ramapo v. Camp, 425 F.2d 333, 341-42 (3d Cir.), cert. denied, 400 U.S. 828 (1970).

The applicant has asked approval for the various converting institutions to retain or acquire from the holding company various subsidiaries for purposes of continued operation where permissible for a national bank. Other subsidiaries engaged in impermissible activities will be divested as discussed below and in accompanying correspondence. See 61 Fed. Reg. 60,342, 60,369 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.24(d)(2)(ii)(G), (H). The holding company also proposes to transfer other subsidiaries to particular converting banks. In addition, Colorado has proposed to establish a new operating subsidiary. The following addresses the various subsidiaries.

**a. Lending subsidiaries**

**(1) Wholly-owned subsidiaries**

1. TCF Management Corporation is wholly owned by Minnesota. Its activities are limited to holding residential real estate loans and serving as the holding company for corporations formed to hold real estate acquired in satisfaction of debts previously contracted. It holds legal title to the vendor's interest under land contracts or contracts for deed originated under a lending program discontinued approximately five years ago. That lending program consisted primarily of the purchase of land contracts or contracts for deed. This company is expected to be dissolved by the year 2001 when the land contracts are fully amortized.

A land contract and a contract for deed are recognized as legitimate methods of land sale. The seller/vendor agrees to give up all its present and future rights of possession to the real estate and to transfer title at a fixed date. The seller/vendor retains title during the contract term only in order to protect itself against loss in case of default by the buyer.

The National Bank Act expressly provides that national banks may lend money on personal security and may negotiate "other evidences of debt." See 12 U.S.C. § 24(Seventh). Further, pursuant to 12 U.S.C. § 371 and 12 C.F.R. § 34.1, national banks "may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate." See also 61 Fed. Reg. 60,342, 60,375 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.34(e)(2)(ii)(L) (powers of operating subsidiaries subject to notice requirement with respect to lending). Acquiring title to real estate in conjunction with extensions of credit associated with land contracts and contracts for deed is incidental to a national bank's authority to make real estate loans. Accordingly, a national bank may hold title to real estate sold under land contracts or contracts for deed.

The acquisition, management and sale of real property conveyed to a bank as security for or in satisfaction of debts previously contracted, either directly or through an operating subsidiary, is an activity which is part of or incidental to the business of banking under 12 U.S.C. § 24(Seventh). See Interpretive Letter No. 735 (July 15, 1996), reprinted in [1995-1996] Fed. Banking L. Rep. (CCH) ¶ 81-040. See also 61 Fed. Reg. 60, 342, 60,375 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. §

5.34(e)(2)(ii)(A) (powers of operating subsidiaries subject to notice requirements with respect to holding of property acquired through foreclosure and similar circumstances). As the ownership of an operating subsidiary which engages in the acquisition, management and sale of real property conveyed to a bank as security for or in satisfaction of debts previously contracted is permissible, a bank's business decision to form an operating subsidiary as a holding company for second-tier subsidiaries which engage in those functions is also permissible under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 (1996).

Property conveyed to a national bank in settlement of debts previously contracted must be disposed of at the earliest time that prudent judgment dictates, but no later than five years from the date of the bank's acquisition of the real estate. See 12 U.S.C. § 29. See also 61 Fed. Reg. 11,294, 11,30212 (March 20, 1996) (to be codified at 12 C.F.R.. § 34.82(a)[33]). This holding period starts from the date that the FSB converts to a national charter. Id. at § 34.82(b)(1).[34]

Consequently, we conclude that Minnesota's ownership of TCF Management Corporation is permissible.[35]

2. Michigan owns a 100% interest in GLB Service Corporation II, Inc. (GLB II), which owns GLB Properties, Inc. This subsidiary holds, manages and sells properties acquired from borrowers who have defaulted on their loans. This activity is permissible under 12 U.S.C. § 29 and other authorities cited above, subject to divestiture requirements as discussed in connection with TCF Management Corporation.[36] Consequently, and subject to the restrictions imposed by 12 U.S.C. § 29 and 12 C.F.R. § 34.82, Michigan may continue to own GLB II and GLB Properties, Inc. following the conversion to a national bank charter.[37]

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[33] This holding period can be extended by the OCC, under certain circumstances, to ten years.

[34] See also Interpretive Letter by Wallace Nathan, Director, Bank Operations and Assets Division (September 20, 1993).

[35] TCF Management Corporation also wholly owns two other corporations, MKP Inc. and NUM, Inc., which had been formed to hold commercial real estate acquired through foreclosure. As noted above, holding real estate acquired through foreclosure is permissible for national banks and their subsidiaries for a limited period of time under 12 U.S.C. § 29. In any event, the applicant has represented that these companies have no assets or liabilities and it plans to dissolve these companies by April 30, 1997.

[36] GLB II also owns two inactive subsidiaries -- GLB Management Company and Great Lakes Mortgage Company which are planned to be dissolved by January 1998.

[37] Similarly, Wisconsin owns Great Lakes Financial, Inc. which had been formed to hold and dispose of real property acquired in satisfaction of a previously contracted debt. As discussed in connection with TCF Management Corporation, this is a permissible activity for national banks subject to certain requirements regarding the disposition of the property. In any event, the subsidiary is currently inactive and the applicant plans to dissolve it by April 30, 1997.

3. TCF National Properties, Inc., (TNPI) and a series of second and third tier subsidiaries are owned directly and indirectly by Minnesota.[38] While TNPI directly or through its various subsidiaries was once engaged in holding and managing real property, including the managing and marketing of cooperative apartments and the sponsoring of cooperative apartment conversion plans, these entities now only hold loans made to finance the sale of individual cooperative units and which are secured by the units. In addition, one of the entities holds a small amount of commercial loans. As discussed, the holding of loans clearly is a permissible activity for a national bank and its operating subsidiaries. See, e.g., 12 U.S.C. §§ 24(Seventh) and 371 and other authorities previously cited. Consequently, TNPI and its operating subsidiaries and interests may continue to be held by Minnesota.

4. Minnesota also owns three finance company subsidiaries. First, TCF Consumer Financial Services, Inc. makes secured and unsecured direct consumer loans and purchases indirect paper from dealers. It operates on a multi-state basis.[39] Second, TCF Financial Services, Inc. is licensed as an industrial loan thrift company by the state of Minnesota and makes secured and unsecured direct consumer loans, and purchases indirect paper from dealers.[40] As discussed, these activities are clearly permissible for national banks under 12 U.S.C. § 24(Seventh) (discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; loaning money on personal security and all such incidental powers as shall be necessary to carry on the business of banking) and other authorities cited above. Third, TCF Real Estate Financial Services, Inc. makes loans secured by real estate. As discussed, this activity is clearly a permissible activity under 12 U.S.C. § 371 and other authorities cited above.[41]

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[38] The direct subsidiaries of TCF National Properties, Inc. are TCF New York Investment, Inc., TCF Qwik, Inc., TCF Wisk, Inc., TCF Sped, Inc., TCF Jump, Inc. and TCF Bolt, Inc. These latter five companies each own the general partnership interest in one of five different limited partnerships. The other partner in all five cases is New York Investment Inc. The OCC has long recognized that national bank operating subsidiaries may be general or limited partners in partnerships. See, e.g., Interpretive Letter No. 617 (March 4, 1993), reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,457; Interpretive Letter No. 435 (June 30, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,659 (limited partnerships engaged solely in activities in which the national bank itself could engage); Interpretive Letter No. 423 (April 11, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,647 (national bank operating subsidiary may act as sole managing general partner in a limited partnership engaged solely in activities in which the national bank itself could engage).

[39] The states are Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Tennessee and Wisconsin.

[40] The applicant has represented that this entity will not take deposits.

[41] Minnesota has represented that these subsidiaries (referred to in this footnote as "the finance companies") will conduct their operations in a manner not to implicate the branching restrictions applicable to national banks and codified at 12 U.S.C. § 36. As provided in section 36, one function that makes a bank site a branch is that "money [is] lent" at the site. 12 U.S.C. § 36(j). In interpreting this statute, the OCC has provided at 61 Fed. Reg. 4849, 4863 (February 9, 1996) (to be codified at 12 C.F.R. § 7.1003(a) that:

5. Minnesota also owns TCF Mortgage Corporation which engages primarily in the origination of residential mortgages and the servicing of mortgages for third parties and affiliates. These activities are clearly permissible for a national bank. See, e.g., 12 U.S.C. § 371; 61 Fed. Reg. 4849, 4860 (February 9, 1996) (in explaining the deletion of 12 U.S.C. § 7.7379 (1996) which had expressly permitted servicing of loans, stated that the ability of a national bank to engage in this activity is "well established" and a specific interpretive ruling is not needed).[42]

**(2) Noncontrolling interest in a joint venture**

TCF Mortgage Corporation also owns TCFMC Holding Company which owns a 50% interest in Burnet Home Loans, a joint venture with Burnet Mortgage Corporation. Based on the following analysis, this interest is permissible and may be retained. Minnesota, therefore,

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> For purposes of what constitutes a branch within the meaning of 12 U.S.C. 36(j) and 12 C.F.R. 5.30, "money" is deemed to be "lent" only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds . . . .

Minnesota has represented that, for a variety of business reasons, funds of an unaffiliated third party drawn on an account of that party at an unaffiliated bank, rather than funds of Minnesota or its operating subsidiary, will be disbursed to borrowers at operating subsidiary sites. The finance companies will provide funds to the unaffiliated third party on a daily basis to allow the unaffiliated party to maintain sufficient funds at the unaffiliated bank. An employee, acting as agent for the unaffiliated third party will sign the checks and the checks may indicate the name of the creditor. Among the business reasons cited for the use of the third party are reductions in operating costs because the third party, rather than the finance companies, will bear the cost of check printing, stop payment processing, escheat processing, check inventory management and control and applicable associated personnel expenses. Moreover, Minnesota notes that the third party, rather, than the finance companies, will be liable for external fraud, such as check alteration, if a return deadline is missed. This procedure is in accordance with section 7.1003 and the OCC would not consider finance company or loan production office sites, established by a national bank or its operating subsidiary, operating in this manner to be bank branches. See OCC Interpretive Letter No. 721 (March 6, 1996), reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-036 (applying section 7.1003 and citing Interpretive Letters by Christopher Manthey, Senior Attorney, Bank Activities and Structure (December 22, 1994, and August 22, 1995), which formed the basis for the adoption of section 7.1003 and determined that checks drawn by a third party escrow agent on his or her own account are the funds of the escrow holder, not the lender; since bank funds are not delivered to the borrower at the closing, the loan is not "made" for branching purposes at that time).

With respect to the finance companies, we also note that we agree with the applicant's assertions that the companies are subject to the exception from Home Mortgage Disclosure Act reporting requirements set forth in 12 C.F.R. part 203, Appendix A, I.D., to the extent that a particular finance company satisfies the loan origination volume percentage threshold limitation in that provision and that the OCC's regulations implementing the CRA do not require lending by a finance company to be taken into account for any purpose under the CRA regulations. See 12 C.F.R §§ 25.12(a), 25.22(c) (1996).

[42] To the extent loans made by TCF Mortgage Corporation are closed on bank premises other than the bank's main office or a branch, the bank represents that the procedures set forth in footnote 41, supra, will be followed.

through its subsidiaries, TCF Mortgage Corporation and TCFMC Holding Company, indirectly owns 50% of Burnet Home Loans, a Minnesota joint venture. Burnet Home Loans conducts a residential mortgage origination business with customers of Burnet Realty, Inc., an affiliate of Burnet Mortgage Corporation. It offers these customers residential mortgage loan products, which it then sells to TCF Mortgage Corporation.[43] Under the joint venture's operating agreement, both TCFMC Holding Company and Burnet Mortgage Corporation have two representatives on the joint venture's Operating Committee and unanimous approval of the members of the Operating Committee is required for major decisions regarding the joint venture, including decisions regarding new business ventures and new business strategies.

As part of its conversion application, Minnesota, following conversion, seeks approval to retain its 50% non-controlling ownership of Burnet Home Loans through its subsidiaries -- TCF Mortgage Corporation and TCFMC Holding Company.

The application raises questions about the authority of a national bank to hold -- directly, or indirectly through an operating subsidiary -- a non-controlling interest in an enterprise. As proposed, Minnesota, following conversion, will have a 50% non-controlling ownership of Burnet Home Loans through its subsidiaries, TCF Mortgage Corporation and TCFMC Holding Company.[44] In a variety of circumstances the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a non-controlling interest in an enterprise. The enterprise might be a limited partnership, a corporation, or in more recent examples, a limited liability company ("LLC"). The OCC has concluded that national banks are legally permitted to make a non-controlling investment in an enterprise provided four criteria or standards are met. See OCC Interpretive Letters No. 692 (November 1, 1995), reprinted in [1995-1996] Fed. Banking L. Rep. (CCH) ¶ 81-007 and No. 694 (December 13, 1995), reprinted in [1995-1996] Fed. Banking L. Rep. (CCH) ¶ 81-009 (national bank's non-controlling investment in a Texas LLC that is an operating subsidiary of a Federal thrift).[45] In two other recent letters, the OCC has permitted national banks to make a non-controlling investment in an enterprise other than an LLC, provided the investment satisfies the four

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[43] The applicant has represented that customers of Burnet Realty, Inc. are not required to obtain mortgage financing from TCF Mortgage Corporation.

[44] The OCC recently revised its rules governing national bank corporate activities and transactions in 12 C.F.R. Part 5. Under a final rule published in the Federal Register on November 27, 1996, effective December 31, 1996, operating subsidiaries may be organized as traditional corporations, limited liability companies, or similar entities. A national bank must have a controlling investment in the subsidiary, usually more than 50% of the voting (or similar type of controlling) interest. A national bank may own less than 50% of the voting interest in the subsidiary, so long as the national bank "controls" the subsidiary, and no other party controls more than 50%. See 61 Fed Reg. 60,342, 60,374 (to be codified at 12 C.F.R. § 5.34(d)(2)). Here, the parent bank would not own more than 50% of the voting interest in the entity, and therefore, this investment is treated as a non-controlling investment.

[45] See also 12 C.F.R. § 5.36(b) (national banks permitted to make various types of equity investments pursuant to 12 U.S.C. § 24(Seventh) and other statutes.

standards. See OCC Interpretive Letter No. 697 *(*November 15, 1995*)*, reprinted in [1995-1996] Fed. Banking L. Rep. (CCH) ¶ 81-012; OCC Interpretive Letter No. 705 (October 25, 1995), reprinted in [1995-1996] Fed. Banking L. Rep. ¶ 81-020. These standards, which have been distilled from our previous decisions in the area of permissible minority investments for national banks and their subsidiaries are: (a) The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking; (b) The bank must be able to prevent the entity or enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment; (c) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and (d) the investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business. For the reasons discussed, we conclude that the proposed investment by Minnesota satisfies these four standards.

- *The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.*

Our precedents in minority stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of or incidental to the business of banking. See, e.g., OCC Interpretive Letter No. 380, n. 8 (December 29, 1986), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services); Letter of Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (since the operation of an ATM network is a "fundamental part of the basic business of banking," an equity investment in a corporation operating such a network is permissible.)

It is clear that the origination of residential mortgage loans is a permissible activity for national banks under 12 U.S.C. § 24(Seventh). The OCC previously approved national bank participation in entities which would engage in origination, acquisition, servicing, and reselling of loans secured by real estate mortgages. See OCC Interpretive Letter No. 669 (October 14, 1994). See also Conditional Approval No. 189 (December 15, 1995) (bank may establish an operating subsidiary that would own 50% of a limited liability company to provide residential mortgage services to customers of the bank).

Moreover, Minnesota represents that the activities of Burnet Home Loans will be limited so as not to constitute an impermissible branch of Minnesota. Loans will not be disbursed at offices of Burnet Home Loans but rather through a third party title company.[46] See 12 C.F.R.§ 7.1003.

- *The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw from its investment.*

It is not sufficient that the enterprise's activities are permissible at the time the bank first acquires the stock; they must remain permissible for as long as the bank has an ownership interest. However, minority shareholders in a corporation do not possess a veto power over the activities of the corporation as a matter of corporate law. One way to address this problem is for the corporation's articles of incorporation or bylaws to limit its activities to those that are permissible for national banks. See, e.g., Letters of Peter Liebesman, Assistant Director, Legal Advisory Services Division (January 26, 1981 and January 4, 1983).

Contractual solutions are also feasible. In the present case, the activities of Burnet Home Loans will be limited by contract through the Joint Venture Agreement ("Agreement") between TCFMC Holding Company and Burnet Mortgage Corporation. Under the Agreement, management and control of the business and affairs of Burnet Home Loans is vested in an Operating Committee consisting of four members, two of which are appointed by TCFMC Holding Company and two of which are appointed by Burnet Mortgage Corporation. Decisions regarding new business ventures and significant or new or revised business policies and strategies must be approved by the Operating Committee. The Agreement also provides that all decisions of the Operating Committee be unanimous, and all four members of the Operating Committee must vote on each decision relating the venture. In addition, the Agreement provides that in the event Burnet Mortgage Corporation and TCFMC Holding Company mutually agree in writing that the business of Burnet Home Loans is no longer permissible under applicable laws or regulations, the joint venture shall automatically terminate. Therefore, TCFMC Holding Company has the power to veto any proposal that Burnet Home Loans engage in any activity which is not part of or incidental to the business of banking.

- *The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.*

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability. Normally, this is not a concern when investing in a corporation, for it is generally

[46] Minnesota also has represented that Burnet Home Loans will not have loan closings at locations of North Star Title, Inc., another operating subsidiary of Minnesota, which, as will be described, will be engaged in various activities including loan closings.

accepted that a corporation is an entity distinct from its shareholders or members, with its own separate rights and liabilities. 1 W. Fletcher, Cyclopedia of the Law of Private Corporations § 25 (rev. perm. Ed. 1990). Although national banks are not permitted to be partners in general partnerships because general partners have potentially unlimited liability for the acts of other partners in the partnership,[47] the OCC has permitted operating subsidiaries of national banks to enter into general partnerships because "the corporate veil of the subsidiary corporation protects the bank from the potentially open-ended exposure associated with a direct partnership investment." See OCC Interpretive Letter No. 697 (Nov. 15, 1995) citing OCC Interpretive Letter No. 289 (May 15, 1984) [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453. Here, Minnesota's operating subsidiary, TCF Mortgage Corporation, owns TCFMC Holding Company, which in turn owns the general partnership interest in Burnet Home Loans. Thus, following its conversion, Minnesota would not be subject to unlimited liability as a result of the activities of Burnet Home Loans provided that its subsidiaries, TCF Mortgage Corporation and TCFMC Holding Company, are operated with appropriate corporate separateness. In that event, Minnesota would enjoy the legal attribute of limited liability with respect to its noncontrolling investment in Burnet Home Loans.

From an accounting standpoint, the loss exposure of Minnesota also will be limited. In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's 20-50% ownership share is to report it as an unconsolidated entity under the equity method of accounting. Under this method, unless the bank has extended a loan to the entity, guaranteed any of its liabilities or has other financial obligations to the entity, losses are generally limited to the amount of the investment shown on the investor's books. See generally, Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting in common stock). Interpretive Letter No. 692, supra. Under these circumstances, the Minnesota's loss exposure should be within its control. Minnesota's Counsel and accountants have agreed that this investment will be reported under the equity method of accounting. Therefore, this standard is satisfied.

- *The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.*

Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful." Arnold Tours, Inc. v. Camp, 472 F. 2d 427, 432 (1st Cir. 1972). The provision in section 24(Seventh) relating to the purchase of stock, derived from section 16 of the Glass-Steagall Act, was intended only to make it clear that section 16 did not authorize speculative investments in stock. See Interpretive Letter No. 697, supra. Therefore, a requirement of our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting *that bank's* banking business. The investment must benefit

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[47] See Merchants National Bank v. Wehrman, 202 U.S. 295 (1906).

or facilitate that business, and cannot be a mere passive or speculative investment. See, e.g., OCC Interpretive Letter No. 543 (February 13, 1991), reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,225; OCC Interpretive Letter No. 427 (May 9, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651; OCC Interpretive Letter No. 421 (March 14, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645.

Minnesota's investment is neither passive nor speculative. The investment in Burnet Home Loans benefits Minnesota's business because a subsidiary of Minnesota purchases the residential mortgage loans originated by Burnet Home Loans. As a correspondent lender for Minnesota, Burnet Home Loans provides Minnesota with mortgage loans it can sell in the secondary market or maintain in its portfolio. The investment is part of Minnesota's real estate loan business and is convenient and useful to the bank in conducting its business.

Consequently, Minnesota is legally permitted, through its operating subsidiary, to purchase a noncontrolling interest in the joint venture in the manner and as described above, provided:

- the joint venture will engage only in activities that are part of, or incidental to, the business of banking;

- Minnesota will have veto power over any activities and major decisions of the joint venture that are inconsistent with condition number one, or will withdraw from the joint venture in the event it engages in an activity that is inconsistent with condition number one;

- Minnesota will account for the investment in the joint venture under the equity method of accounting; and

- the joint venture will be subject to OCC supervision, regulation, and examination.

Please be advised that the conditions of this approval of the investment in the joint venture are deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818.

**b. Insurance subsidiaries**

The applicant proposes that several subsidiaries of Minnesota, following conversion, will engage in various forms of insurance agency activities. These include North Star Title, Inc., TCF Consumer Financial Services, Inc., TCF Financial Services, Inc., TCF Real Estate Financial Services, Inc., TCF Agency Minnesota, Inc., TCF Agency Mississippi, Inc., TCF

Insurance Services Inc. and TCF Financial Insurance Agency II.[48] Minnesota has made the following representations that it, either directly or through its operating subsidiaries, will engage only in the following insurance activities:[49]

- sell as agent and underwrite, credit life, disability, and involuntary unemployment insurance, in connection with loans originated by each operating subsidiary's parent bank or other operating subsidiaries under that parent bank;[50]

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[48] The latter two entities are to be newly-created and the names listed for them are tentative.

[49] The following subsidiaries of the converting institutions and of the Colorado bank, as well as the Ohio bank directly, also are engaged in the sale of insurance and have made the same representations: Michigan (Lakeland Group Insurance Agency, Inc.); Illinois (TCF Agency Illinois, Inc.); Wisconsin (TCF Agency Wisconsin, Inc.); Colorado (TCF Agency Colorado, Inc.). We note that, following the conversions, certain insurance lines of business currently undertaken by TCF Agency Wisconsin, Inc., and TCF Agency Illinois, Inc., and rights to receive income from those lines of business are to be transferred to TCF Agency Insurance Services, Inc. These transfers, between operating subsidiaries of affiliated banks, are generally exempt from the requirements of 12 U.S.C. §§ 371c and 371c-1 except for the provisions of section 371c prohibiting the transfer of low quality assets and requiring that the transactions be consistent with safe and sound banking practices. See 12 U.S.C. § 371c(d) and (a)(3) and (a)(4). No low-quality assets are involved in the transfer and we have determined that the transfer comports with safe and sound banking practices.

We also note that Lakeland Group Insurance Agency, Inc., owns a 2.9% interest in an insurance company, MIMLIC. A life insurance company owns a 79% stake in MIMLIC and the remaining shares are owned by service corporations of Federal savings associations. MIMLIC reinsures credit-related insurance in conjunction with loans that are originated by all lenders that have an ownership interest in MIMLIC. As discussed on page 28, supra, in connection with the ownership of Burnet Home Loans, a national bank may own a minority or noncontrolling interest in an enterprise only if, among other things, the activities that the enterprise engages in are part of or incidental to banking. While the OCC has permitted national banks to underwrite or reinsure credit-related insurance in connection with loans made by the bank or, in certain circumstances, its affiliates, it has not, to date, permitted these activities with respect to loans made by unrelated parties. See OCC Interpretive Letter No. 277 (December 21, 1983), reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,441 (underwriting credit-related insurance in connection with loans originated by the bank); OCC Interpretive Letter by Julie L. Williams (January 22, 1997) (in a case where the bank and its affiliates used comparable underwriting standards, permitting a bank to reinsure private mortgage insurance on loans originated or purchased by the bank and its affiliates). See also OCC Interpretive Letter No. 743 (October 17, 1996), reprinted in, [Current] Fed Banking L. Rep. (CCH) ¶ 81-108. Because MIMLIC reinsures loans made by unrelated third parties, an activity that has not been ruled on by the OCC, the applicant must divest its interest in MIMLIC within two years of the consummation of the conversion unless, within that time period, the OCC determines that the investment is permissible.

[50] These activities are permitted under 61 Fed. Reg. 51,777 (October 4, 1996) (to be codified at 12 C.F.R. pt. 2). See also, e.g., OCC Interpretive Letter No. 640 (January 7, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,527 (permitting credit related unemployment insurance); OCC Interpretive Letter No. 277 (December 21, 1983), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,441 (permitting national banks to underwrite credit-related insurance in connection with loans originated by the bank ). In addition, we note that national banks and their operating subsidiaries may reinsure credit-related insurance in connection with loans originated or purchased by the parent bank, operating subsidiaries or affiliates. Cf. OCC Approval Letter (January 22, 1997) (approving an operating subsidiary to

- sell other insurance, including life insurance, other personal lines of insurance and title insurance, pursuant to 12 U.S.C. § 92 and consistent with OCC Interpretive Letter No. 753 (November 4, 1996), reprinted in [Current] Fed. Banking L. Rep. (CCH) ¶ 81-107**;** and

- sell and market insurance under arrangements with unrelated third parties consistent with the OCC's Interpretive Ruling at 61 Fed. Reg. 4849, 4868-69 (February 9, 1996) (to be codified at 12 C.F.R. § 7.3001), and OCC Advisory Letter 96-8 (October 8, 1996).

Based on compliance with these representations, the above subsidiaries are approved.[51]

**c. Annuities subsidiaries and sales of securities**

Minnesota also owns TCF Financial Insurance Agency Inc. (TCF Financial Insurance), which will sell fixed annuity contracts for third party issuers through dual employees primarily at segregated areas in lobbies of Minnesota branches. These activities are permissible under 12 U.S.C. § 24(Seventh). See NationsBank of North Carolina, N.A., v. Variable Annuity Life Insurance Co., 513 U.S. 251 (1995) (VALIC). Consequently, the activities of this subsidiary are approved.[52]

In addition, the applicant represents that TCF Financial Insurance intends to acquire the nonvoting stock interest, which will be transferred to Minnesota, in an annuities sales agency incorporated in Ohio. The voting stock interest in the company, which will be known as GLB

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reinsure private mortgage insurance on loans originated or purchased by the bank and its affiliates.) See also OCC Interpretive Letter No. 743 (October 17, 1996), reprinted in [Current] Fed. Banking L. Rep. (CCH) ¶ 81-108.

[51] In its representations, the applicant also reserves the right to engage in additional insurance activities in the future to the extent that such activities are permissible under applicable law, regulation or OCC policy.

[52] This approval also applies to the identical activities of operating subsidiaries of the other banks to be created de novo or through conversion. These are Michigan (TCF Financial Insurance Agency Michigan Inc.); Illinois (TCF Financial Insurance Agency Illinois Inc.); Wisconsin (TCF Financial Insurance Agency Wisconsin Inc.); Colorado (TCF Financial Insurance Agency Colorado Inc.).

In addition, we note that even if the donation of four of these subsidiaries from the holding company to, respectively, Minnesota, Michigan, Illinois and Wisconsin are subject to the requirements of 12 U.S.C. §§ 371c and 371c-1 (sections 23A and 23B of the Federal Reserve Act), the requirements of these statutes are satisfied. In every case, the value of the transfer of these subsidiaries to the banks represents less than one percent of the acquiring bank's capital stock and surplus account and there are no other interaffiliate transfers with which they are to be aggregated for purposes of section 371c; the transfers will not involve the transfer of any low quality assets within the meaning of section 371c; the OCC, based on a review of each of the transfers, concludes that the transfers do not represent an unsafe or unsound banking practice; and the terms of the transfers are on terms at least as favorable to the banks as would be offered to nonaffiliated acquirers.

Financial Insurance Agency Ohio, Inc. (GLB Financial Insurance), will be owned by an officer of the Ohio bank. The officer and GLB Financial Insurance will enter into an agreement concerning the management and operation of GLB Financial Insurance and the transfer of the officer's shares.[53] GLB Financial Insurance will sell fixed annuities for third party issuers at the banking locations of the Ohio bank through dual employees of the bank and GLB Financial Insurance and variable annuities for third party issuers at those locations through dual employees of GLB Financial Insurance and TCF Securities, Inc., a subsidiary of the holding company. Like fixed annuities, national banks may also engage in the sale of variable annuities. See VALIC, supra.

We emphasize that the sales of annuities and securities are subject to, and must be operated within, the constraints of all national banking laws, rulings, and regulations. In particular, the banks and their subsidiaries should be mindful of the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994), which provides guidance to banks and their operating subsidiaries on the sale of nondeposit investment products. The OCC expects that the banks and their operating subsidiaries will comply with the Statement, as well as all applicable national banking laws, rulings and regulations.[54] The OCC's approval of the bank's investment products sales activities, either directly or through an operating subsidiary, does not constitute an endorsement or approval of any particular aspect of the bank's investment products sales program.

**d. Other subsidiaries**

1. Minnesota owns North Star Real Estate Services, Inc., which performs real estate appraisals for first mortgage loans and for second mortgage home equity loans both in regard to loans originated by affiliates and by third parties and for the general public. It operates from locations in Minnesota, Illinois, Wisconsin and Indiana and provides services in those states as well as in Missouri, Michigan, Kentucky and Ohio.

The OCC previously has taken the position that a national bank may offer real estate appraisal services in connection with real estate loans made by the bank and to other financial

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[53] This ownership structure has been designed to comply with state law and has been previously approved by the OCC. See, e.g., OCC Interpretive Letter No. 650 (May 18, 1994), reprinted in [1994 Transfer Binder] Fed. Banking L. Rep. ¶ 83,559; OCC Conditional Approval No. 175 (July 19, 1995). We note, that as required by these letters, the agreement between GLB Financial Insurance and the officer must be executed and continue in existence; the bank must notify the OCC promptly if the agreement is materially changed, canceled, or becomes invalid for any reason.

[54] We note, too, that to the extent that sales, as proposed, are to be undertaken by persons who are dual employees of the bank or its operating subsidiary and another entity, and/or sales activities are conducted by another entity, whether affiliated with the bank or not, on premises shared with the bank or its operating subsidiary, the bank and its operating subsidiary need also comply with OCC regulations governing the sharing of space and employees. See Fed. Reg. 4849, 4868-69 (February 9, 1996) (to be codified at 12 C.F.R. § 7.3001).

institutions as an incident to their power to engage in the business of banking. Interpretive Letter No. 467 (January 24, 1989) reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,691. See also 61 Fed. Reg. 60,342, 60,376 (November 27, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.34(e)(3)(ii)(G) (providing expedited review of operating subsidiaries engaged in these activities). The OCC has not, to date, concluded that a national bank may establish an operating subsidiary to provide real estate appraisal services for the general public. Consequently, to the extent that this subsidiary provides services beyond those currently permitted for national bank operating subsidiaries those services must be terminated within two years of the consummation of the conversion unless, within that time period, the OCC determines that those services are permissible.[55]

2. Minnesota also owns North Star Title, Inc. which issues title insurance policies as agent for third party title insurance companies.[56] In addition, it performs abstracting, escrow and closing services for first mortgage residential loans originated by affiliates and third parties and issues title reports for second mortgage loans originated by affiliates and third parties.[57] It operates from locations in Minnesota, Illinois, Wisconsin, and Indiana and provides services in those states as well as in Michigan and Missouri. The OCC has taken the position that national banks may perform surveys and title searches, and arrive at legal title opinions in connection with their real estate mortgage business. See OCC Interpretive Letter No. 450, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,674. In addition, the OCC has permitted national banks to prepare and sell abstracts of title, the handling of escrow accounts and the closing of real estate transactions at least in connection with its own real estate loans. See OCC Interpretive Letter by John E. Shockey, Deputy Chief Counsel (September 20, 1976). To the extent that this subsidiary provides services beyond those currently permitted for national bank operating subsidiaries, those services must be terminated within two years of the consummation of the conversion unless, within that time period, the OCC determines that those services are permissible.[58]

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[55] The applicant has requested a determination on the permissibility of a national bank operating subsidiary providing appraisal services to the general public. Consequently, the OCC is in the process of considering this issue.

[56] With respect to this activity, this subsidiary is subject to the insurance representations set forth above on pages 32-33 of this Decision Statement. Thus, because the activity of acting as an agent in the sale of title insurance will be conducted in accordance with 12 U.S.C. § 92, and consistent with OCC Interpretive Letter No. 753 (November 4, 1996), reprinted in [Current] Fed. Banking L. Rep. ¶ 81-107, the holding of the Court of Appeals for the Second Circuit that this activity is impermissible for national banks under 12 U.S.C. § 24(Seventh) is inapplicable. See American Land Title Association v. Clarke, 968 F.2d 150 (2d Cir. 1992), cert. denied, 508 U.S. 971 (1993) (ALTA).

[57] To the extent that North Star Title will close loans made by its parent or other affiliates it will use the disbursement approach discussed in footnote 41, supra.

[58] The bank has requested a determination on the permissibility of a national bank operating subsidiary providing abstracting, closing and escrow services to affiliates and third parties. The court in ALTA, supra at n. 56, did not address these activities in connection with its discussion of the sale of title insurance.

3. Michigan also owns 401 Service Corp. which holds holds title to the unsold lots of a residential subdivision subject to an option contract with a third party under which the company receives certain consideration including payment of 50% of the "net development profit" as earned by the third party in developing the subdivision. The holding of real estate for investment purposes is not a power granted to national banks. See 12 U.S.C. § 29; Union National Bank v. Matthews, 98 U.S. 621, 626 (1897). This company also owns a condominium acquired through foreclosure. As discussed in connection with respect to TCF Management Corporation, this latter holding, subject to limitations, is permissible for a national bank. The applicant has represented that its interests in both the condominium and residential subdivision will be sold within two years of consummation of the conversion. Based on this representation, the OCC concludes that Michigan may continue to hold its interest in 401 Service Corp. for a period not to exceed the time limits imposed by 12 U.S.C. § 29 and 12 C.F.R. § 34.82 with respect to the condominium project and for a period not to exceed the two year divesture period, following consummation of the conversion, with respect to the residential subdivision.

### 3. Agreements entered into by the FSBs and other FSB holdings

#### a. Interest rate exchange contract and interest rate cap agreements

Wisconsin, prior to its acquisition by the holding company, entered into an interest rate exchange contract which matures in March 1997. Under this contract, Wisconsin pays a fixed rate of interest and receives a floating rate of interest based on the six-month LIBOR rate. Also, prior to its acquisition by the holding company, Michigan entered into four interest rate cap agreements which expire no later than August 1999. Under the interest rate cap agreements, Michigan receives payments if the three-month LIBOR rate exceeds a certain percentage on any designated interest rate set dates. These activities are legally permissible for a national bank. See, e.g., OCC Interpretive Letter No. 462 (December 19, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,686.

#### b. Asset backed securities

Wisconsin owns Republic Capital Funding Corp. I which issued a collateralized mortgage obligation in 1988. Two classes of the issuance remain outstanding. Likewise, Michigan has issued Eurodollar bonds collateralized by residential mortgage loans and mortgage-backed securities. These activities are legally permissible for a national bank. See, e.g., Securities Industry Association v. Clarke, 885 F.2d 1034 (2d Cir. 1988), cert. denied, 493 U.S. 1070 (1990) (national banks may issue securities backed by assets held by the bank).

#### c. Equity holdings

Illinois holds, and proposes to continue to hold, stock in Cash Station, Inc., a Delaware corporation that operates as an electronic funds transfer system. The stock holding amounts to less than one percent of outstanding stock of Cash Station. The OCC has previously determined that this is a permissible holding for a national bank. See Interpretive Letter by Robert B. Serino, Deputy Chief Counsel (November 9, 1992). Illinois will also hold, following its acquisition of the state savings bank, a small amount of shares in Minbanc, a community development corporation. This, too, has been determined to be a permissible national bank holding. See Comptroller's Handbook for National Bank Examiners § 220.1 (Other Assets (And Other Liabilities) -- Introduction).

**d. Secured deposits, letters of credit and financial guarantees**

Minnesota currently holds four deposits with respect to which it has entered into agreements under which it holds funds awaiting disbursement to certain parties specified under court approved settlement agreements. The deposit agreements call for Minnesota to provide collateral for the uninsured amounts of each deposit. The applicant has represented that while the timing of the account withdrawals is dependent on future court actions and is therefore difficult to predict, it is anticipated that funds deposited under these agreements will be fully disbursed within the next two years. The applicant states that its continued participation in these arrangements is required because locating a successor depository institution would require the consent of numerous parties to complex multi-party litigation and court approval and could subject Minnesota to expense and possible liability resulting from its resignation as the depository.[59]

In addition, Wisconsin, prior to its acquisition by the holding company, issued financial obligations pursuant to which it pledged mortgage-back securities as collateral for three issuances of housing revenue bonds and industrial development revenue bonds which were issued by municipalities to finance commercial and multi-family real estate owned by third parties. In the event that the third party borrowers default on principal or interest payments on the bonds, Wisconsin is required to either pay the amount in default, acquire the then-outstanding bonds, or relinquish its pledged collateral.

Finally, Minnesota has issued a letter of credit in connection with bond financing for an apartment complex. The repayment of any payments made by Minnesota under the letter of credit is secured by the apartment complex. Minnesota's payment obligation under the letter of credit is collateralized by a pledge of Minnesota's mortgage-backed securities.

Though the legal authority for a national bank to collateralize deposits in the circumstances described and to issue a collateralized letter of credit has not been definitively clarified, and the financial guarantees do not appear to come within the authority of a national bank to issue

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[59] Minnesota asks only that it be allowed to continue to serve as depository under these agreements and not does not at this time seek a determination that it may enter into similar new agreements.

guarantees,[60] the OCC recognizes that courts have long held that rights and obligations with respect to and benefiting third parties pass to national banks following a conversion from or consolidation with, for instance, a state bank even where such rights or obligations could not have been undertaken by the national bank itself. Thus, in Miles v. Bank of America National Trust & Savings Association, 62 P.2d 177 (Cal. Dist. Ct. App. 1936), the court held that a national bank, following its conversion from a state bank, retained the state bank's obligation to repurchase certain bonds even though such repurchase was prohibited under 12 U.S.C. § 24. Cf. also Frank v. Giesy, 117 F.2d 122 (9th Cir. 1941) (despite the limitations of 12 U.S.C. § 29 regarding the holding of real estate, the court ruled that national bank that survived a consolidation was obligated under a lease entered into by the target bank even though the survivor had no intention of using the property as banking quarters); Commonwealth v. Merchants National Bank of Allentown, 185 A. 823 (Pa. 1936) (even where court held that consolidation between a state and national bank was impermissible under the existing federal and state statutory scheme, the court held that the surviving national bank was liable for the target state bank's obligations under a surety bond). Thus, the OCC has no legal objection to Minnesota continuing the four secured deposit relationships and the collateralized letter of credit and Wisconsin continuing to honor the three outstanding financial guarantees until their maturity.

**e. Holding of private mortgage-related securities**

The applicant also has stated that Michigan holds five issuances of unrated private mortgage-related securities. Whether these holdings are permissible for a national bank under 61 Fed. Reg. 63,972 (December 2, 1996) (effective December 31, 1996) (to be codified at 12 C.F.R. pt. 1) will be determined during an examination following Michigan's conversion. In the event that these assets are determined to be impermissible, Michigan will have up to two years to divest the assets.

**f. Impact on safety and soundness**

We note that even if each of the agreements and holdings described in III.C.3.d. and e. of this Decision Statement are impermissible or ultimately determined to be impermissible for national banks, because of the limited extent of these agreements and holdings, their impact on the safety and soundness of the converting institutions, including the impact on the liquidity of the institutions by the use of assets to collateralize various forms of obligations, does not provide a basis for rejecting any or all of the conversion applications on supervisory or other grounds.

**4. Fiduciary powers**

**a. Michigan**

[60] See 61 Fed. Reg. 4849, 4865 (February 9, 1996) (to be codified at 12 C.F.R. § 7.1017).

Michigan has requested approval to continue, following conversion, to engage in the fiduciary activities within Michigan in which the FSB was authorized to engage. Michigan was authorized by the OTS to exercise limited trust powers which permitted it to hold loan documents relating to mortgage loans which the bank had sold to the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and other secondary market organizations. Michigan also requests approval to hold loan documents relating to loans sold by an affiliate to FHLMC, FNMA, GNMA and other secondary market organizations.

Under 12 U.S.C. § 92a, national banks are authorized to exercise the fiduciary powers that state banks, trust companies, or other corporations are permitted to exercise under the laws of "the State in which the national bank is located." 12 U.S.C. § 92a(a). Michigan law permits Michigan state banks, upon application, to engage in a broad array of fiduciary activities which would encompass the activities in which Michigan, following conversion, wishes to engage.

Accordingly, under section 92a, Michigan, following conversion, may exercise the fiduciary powers it has requested.

**b. Illinois**

Illinois requests approval, following conversion, to continue to engage in the fiduciary activities within Illinois in which it was authorized to engage as a Federal savings bank. TCF Illinois was authorized by the OTS to exercise limited trust powers which permitted the bank to act as trustee under land trusts and to hold title to real property as trustee on behalf of the beneficiaries of such trusts. The institution acts only at the direction of the beneficiaries.

Under 12 U.S.C. § 92a, national banks are authorized to exercise the fiduciary powers that state banks, trust companies, or other corporations are permitted to exercise under the laws of "the State in which the national bank is located." 12 U.S.C. § 92a(a). Illinois law permits Illinois state banks, upon application, to engage in a broad array of fiduciary activities which would encompass the activities in which Illinois wishes to engage following conversion. See Ill. Ann. Stat. ch. 205, ¶ 620/1-6 (Smith-Hurd 1993 & Supp. 1996).

Accordingly, under section 92a, Illinois, following conversion, may exercise the fiduciary powers it has requested.

## IV. Conclusion and approval

For the reasons set forth above, we find that TCF Bank Minnesota fsb, Minneapolis, Minnesota; Great Lakes Bancorp, a Federal Savings Bank, Ann Arbor, Michigan; TCF Bank Illinois fsb, Oak Brook, Illinois; and TCF Bank Wisconsin fsb, Milwaukee, Wisconsin, may convert to national bank charters under the authority of 12 C.F.R. § 5.24 to operate under the names, respectively, of TCF National Bank Minnesota, Great Lakes National Bank Michigan, TCF National Bank Illinois and TCF National Bank Wisconsin. In addition, we find, for the reasons set forth above, that TCF National Bank Minnesota and Great Lakes National Bank Michigan are permitted to operate all of their existing and approved but unopened branches in, respectively, Minnesota and Michigan under the authority of 12 U.S.C. § 36(c). We also find, for the reasons set forth above, that TCF National Bank Illinois, under the authority of 12 U.S.C. § 35, may designate as its main office 5353 W. 55th Street, Chicago, Illinois, and, under the authority of 12 U.S.C. § 36(c), it and TCF Bank Wisconsin, following the transfer of their stock from TCF National Bank Minnesota to TCF Financial Corp., may operate each of its existing branches and TCF National Bank Illinois may operate its approved but unopened branch.

We also find that, subject to other appropriate regulatory approvals, and under the authority of 12 U.S.C. §§ 26 and 27 and 12 C.F.R. § 5.20, TCF Financial Corporation may establish a de novo bank with its main office in Englewood, Colorado, to be known as TCF National Bank Colorado and, under the authority of 12 U.S.C. § 36(c), operate its proposed branches, and, through Great Lakes National Bank Michigan, it may establish a de novo bank with its main office in Hamilton, Ohio, to be known as Great Lakes National Bank Ohio. With respect to TCF National Bank Colorado, we grant the request, under 12 U.S.C. § 72, to waive the director residency requirements for one year. With respect to Great Lakes National Bank Ohio, we find that under the authority of 12 U.S.C. 24(Seventh), and in accordance with Bank Merger Act, 12 U.S.C. § 1828(c), and the Oakar Amendment to the Federal Deposit Insurance Act, 12 U.S.C. § 1815(d)(3), Great Lakes National Bank Ohio may acquire certain assets and liabilities, including deposit liabilities, from Great Lakes National Bank Michigan and that, under the authority of 12 U.S.C. § 36(c), following the transfer of ownership of Great Lakes National Bank Ohio to TCF Financial Corp., Great Lakes National Bank Ohio may operate its proposed branches in Ohio.

We also find, under the authority of 12 U.S.C. § 215a, including applicable state law, and consistent with the approval standards of the Bank Merger Act, 12 U.S.C. § 1828(c), and the Oakar Amendment to the Federal Deposit Insurance Corporation Act, 12 U.S.C. § 1815(d)(3), that TCF Bank Illinois may acquire Bank of Chicago, s.b., and, under the authority of 12 U.S.C. § 36(b), continue to operate its branches.

We also find, for the reasons discussed and subject to the various conditions, limitations, representations and commitments set forth in this Decision Statement, that the various banks are permitted to operate the proposed subsidiaries either, as appropriate, on a permanent basis or for purposes of divestiture, and retain the other obligations and holdings discussed in this Decision Statement. Finally, for the reasons discussed, under the authority of 12 U.S.C. § 92a, we find that Great Lakes Bank Michigan and TCF National Bank Illinois may exercise fiduciary powers as proposed.

Accordingly, these applications are approved subject to the conditions, limitations, representations and commitments to the OCC described above.

/s/
Julie L. Williams
Chief Counsel

02-24-97
Date

Application Control Numbers: 96-MW-01-0033; 96-MW-01-0034; 96-MW-01-0035; 96-MW-01-0036; 96-MW-01-0037; 96-MW-01-0038; 96-MW-05-0107; 96-MW-05-0108; 96-MW-05-0109; 96-MW-05-0110; 96-MW-05-0111; 96-MW-05-0112; 96-MW-05-0113; 96-MW-05-0114; 96-MW-05-0115; 96-MW-05-0116; 96-MW-05-0117; 96-MW-05-0118; 96-MW-05-0119; 96-MW-05-0120; 96-MW-02-0049; 96-MW-02-0050; 97-MW-12-0005; 97-MW-12-0006; 97-MW-12-0016; 97-MW-12-0017.