Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-41
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE SOUTHTRUST BANK OF RUSSELL COUNTY, PHENIX CITY, ALABAMA, SOUTHTRUST BANK OF FLORIDA, N.A., ST. PETERSBURG, FLORIDA, SOUTHTRUST BANK OF NORTHWEST FLORIDA, MARIANNA, FLORIDA, SOUTHTRUST BANK OF COLUMBUS, N.A., COLUMBUS, GEORGIA, SOUTHTRUST BANK OF GEORGIA, N.A., ATLANTA, GEORGIA, SOUTHTRUST BANK OF SOUTH MISSISSIPPI, BILOXI, MISSISSIPPI, SOUTHTRUST BANK OF NORTH CAROLINA, CHARLOTTE, NORTH CAROLINA, SOUTHTRUST BANK OF SOUTH CAROLINA, N.A., CHARLESTON, SOUTH CAROLINA, AND SOUTHTRUST BANK OF TENNESSEE, N.A., NASHVILLE, TENNESSEE, WITH AND INTO SOUTHTRUST BANK OF ALABAMA, N.A., BIRMINGHAM, ALABAMA

June 1, 1997

I. INTRODUCTION

On April 23, 1997, SouthTrust Bank of Alabama, National Association, Birmingham, Alabama ("SouthTrust") filed an Application ("Merger Application") with the Office of the Comptroller of the Currency ("OCC") for approval to merge eight affiliated banks located in other states with and into SouthTrust under SouthTrust's charter and title, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Interstate Merger").[1] In the April 23, 1997, Merger

[1] The affiliated banks in other states participating in the Interstate Merger are: SouthTrust Bank of Florida, National Association, St. Petersburg, Florida ("ST-Florida"), SouthTrust Bank of Northwest Florida, Marianna, Florida ("ST-NW Florida"), SouthTrust Bank of Georgia, National Association, Atlanta, Georgia ("ST-Georgia"), SouthTrust Bank of Columbus, National Association, Columbus, Georgia ("ST-Columbus"), SouthTrust Bank of South Mississippi, Biloxi, Mississippi ("ST-Mississippi"), SouthTrust Bank of North Carolina, Charlotte, North Carolina ("ST-North Carolina"), SouthTrust Bank of South Carolina, National Association, Charleston, South Carolina ("ST-South Carolina"), and SouthTrust Bank of Tennessee, National Association, Nashville, Tennessee

Application, SouthTrust also filed for approval to merge SouthTrust Bank of Russell County, Phenix City, Alabama ("ST-Russell County"), with and into SouthTrust under SouthTrust's charter and title, pursuant to 12 U.S.C. §§ 215a & 1828(c) ("the In-state Merger"). All banks in the merger transactions are members of the Bank Insurance Fund except ST-North Carolina which is a member of the Savings Association Insurance Fund. SouthTrust has its main office in Birmingham and operates branches only in Alabama. Each of the other banks currently operates branches only in its home state. In the Merger Application, OCC approval is requested for SouthTrust, as the resulting bank, to retain SouthTrust's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain SouthTrust's branches and the main offices and branches of the other merging banks, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1) (in the case of the Interstate Merger) and under 12 U.S.C. § 36(b)(2) (in the case of the In-state Merger).

All of the banks are direct or indirect subsidiaries of SouthTrust Corporation, a multistate bank holding company headquartered in Birmingham, Alabama. In the proposed mergers, SouthTrust Corporation's existing bank subsidiaries will be combined into one bank with branches in seven states.

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized and the Resulting Bank may Retain the Offices of the Banks, under 12 U.S.C. §§ 215a-1, 1831u & 36(d) (the Riegle-Neal Act).

1. The Interstate Merger is authorized.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("the Riegle-Neal Act"). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

> (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank

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("ST-Tennessee").

> Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).[2] The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In this Merger Application, the home states of the banks are Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. None of these states has opted out. Accordingly, the Interstate Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

The Interstate Merger satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In the proposed Interstate Merger, SouthTrust is acquiring by merger banks in the host states of Florida,[3] Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. Florida requires that, in an interstate merger in which an out-of-state bank is the surviving bank, the Florida bank must have been in existence for three years. See Fla. Stat. Ann. § 658.2953(7)(c). Georgia, Mississippi, South Carolina, and Tennessee have a five-year age requirement. See Ga. Code Ann. § 7-1-628.3(b); Miss. Code Ann. § 81-23-9(2)(c); S.C. Code Ann. § 34-25-240(c); Tenn. Code Ann. § 45-2-1403(a)(2). North Carolina law does not have any state age requirement applicable to North

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[2] For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

[3] The merger of the two Florida banks, ST-Florida and ST-NW Florida, into SouthTrust, and the merger of the two Georgia banks, ST-Georgia and ST-Columbus, into SouthTrust are structured as simultaneous parts of one interstate merger transaction. Thus, while the two banks within each state first could have merged into one bank in an in-state merger, here we treat each merger as an interstate merger transaction under the Riegle-Neal Act.

Carolina banks engaging in interstate merger transactions. ST-Florida, ST-NW Florida, ST-Georgia, ST-Columbus, ST-Mississippi, ST-South Carolina, and ST-Tennessee all have been in existence and operation for more than five years. Thus, the Interstate Merger satisfies the Riegle-Neal Act's requirement of compliance with state age laws.

Second, the proposed Interstate Merger satisfies the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. See 12 U.S.C. § 1831u(b)(1).[4] The Florida interstate bank merger statute requires an out-of-state bank that results from an interstate merger with a Florida bank to notify the state banking department within 15 days after it has filed its merger application with the appropriate federal regulatory agency and to submit a copy of the application to the department. See Fla. Stat. Ann. § 658.2953(8).[5] SouthTrust notified the state banking department and provided a copy of its OCC Merger Application. SouthTrust also confirmed with the department that no other filings are required by the department.

The Georgia interstate bank merger statute contains a number of filing, notification, and certification requirements for an out-of-state bank resulting from an interstate merger with a Georgia bank that, by their terms, purport to include mergers between national banks. See Ga. Code Ann. § 7-1-628.5(a). Some of these requirements appear to go beyond the filing requirements permitted in section 1831u(b)(1), and so are not applicable to national banks for the reasons discussed in note 4.[6] SouthTrust provided a copy of its OCC Merger Application to the

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[4] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. However, where a state bank is involved, a state may continue to have authority to impose greater requirements on its own state-chartered banks, because of the reservation of authority in section 1831u(c)(3). Moreover, as a general matter, national banks are formed and incorporated under, and governed by, federal law. Their authority to enter mergers, to establish branches, or to undergo other changes in their corporate existence is determined by federal law, not state law; and any requisite approval is by the OCC, not state authorities. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

[5] The Florida statute currently also requires the out-of-state bank to comply with the general foreign corporation filing requirements of Fla. Stat. Ann. §§ 607.1501 - 607.1532. However, recent legislation in Florida amended the statute to delete that requirement. While the amendment is not effective until October, SouthTrust was advised by the Florida authorities that no filing was required.

[6] Of the five requirements that section 7-1-628.5(a) purports to apply to national banks, only the filing requirement in paragraph (a)(4) appears to be the type of state filing requirement contemplated in section 1831u(b)(1). Others may be independently applicable to the parent holding company.

Georgia state bank supervisor and is complying with the notice and filing requirements of section 7-1-628.5(a)(3)&(4).

The North Carolina interstate bank merger statute requires an out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a North Carolina bank to notify the Commissioner of Banks for the State of North Carolina of the proposed merger not later than the date on which the applicant files an application with the federal bank supervisory agency, submit a copy of the application to the Commissioner, and pay the filing fee. N.C. Gen. Stat. § 53-224.20. All banks that are parties to the interstate merger transaction also shall comply with N.C. Gen. Stat. § 53-12 and other applicable state and federal laws.[7] An out-of-state bank that is the resulting bank in the interstate merger transaction must comply with Article 15 of Chapter 55 of the North Carolina General Statutes, the state's statute governing the conduct of business in North Carolina by foreign corporations. SouthTrust has advised that the North Carolina Attorney General's Office (NCAG) has opined that SouthTrust need comply only with the notice provisions of section 53-12 and the requirements of N.C. Gen. Stat. § 53-16, which governs the merger of North Carolina state banks with national banks (since ST-North Carolina is a state bank). SouthTrust notified the North Carolina Commissioner and provided a copy of its OCC Merger Application. It also represents that it will comply with the notice requirements of section 53-12 and the standard doing business requirements of Article 15 of Chapter 55 that apply to foreign corporations doing business in North Carolina.

The Mississippi interstate bank merger statute does not contain any filing requirements for an interstate merger transaction involving an out-of-state national bank as the resulting bank.[8] SouthTrust advises that the Mississippi Commissioner confirmed there are no other requirements other than those found in section 81-23-13. SouthTrust notified the Mississippi Commissioner and provided a copy of its OCC Merger Application. The South Carolina interstate bank merger statute also does not contain any filing requirements for an interstate merger transaction involving only national banks.[9] SouthTrust provided a copy of its Merger Application to the South Carolina state bank supervisor, as required by section 1831u(b)(1)(ii). SouthTrust advises that the supervisor confirmed this is the only filing required in South Carolina. The Tennessee interstate

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[7] Section 53-12 governs the merger or consolidation of North Carolina state banks generally and sets forth various notice, filing and approval requirements, some of which appear to go beyond the Riegle-Neal Act's filing requirements in 12 U.S.C. § 1831u(b)(1). While section 53-12 is incorporated into the North Carolina interstate merger statute, it is not clear whether this is intended only to apply to mergers in which a North Carolina state bank is the surviving bank in the merger or also to national banks, since North Carolina General Statutes § 53-16 contains other corporate law requirements governing the merger of a North Carolina state bank into a national bank. Here, SouthTrust has stated it will comply with all the requirements of section 53-16 and the notice requirements of section 53-12, as advised by the North Carolina Attorney General's Office.

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

[9] The notice, application, and other filing requirements in S.C. Code Ann. § 34-25-250 apply only where an out-of-state bank is the resulting bank in an interstate merger transaction involving a South Carolina state bank. Thus, these requirements are not applicable to SouthTrust's merger with ST-South Carolina, a national bank.

bank merger statute also does not contain any filing requirements for an interstate merger involving only national banks.[10] SouthTrust advises that representatives of the Tennessee Department of Financial Institutions confirmed there were no notice or filing requirements applicable to its merger.

SouthTrust has provided a copy of its OCC Merger Application to the state bank supervisor of each host state and has complied with the applicable state filing requirements under section 1831u(b)(1)(i). Thus, the Interstate Merger satisfies the Riegle-Neal Act's requirement of compliance with state filing requirements.[11]

Third, the proposed interstate merger transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). SouthTrust and all the merging banks are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this interstate merger transaction, SouthTrust (the bank submitting the application as the acquiring bank) has a bank affiliate in Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee before the transaction (i.e., the merging banks), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is

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[10] The notice and filing requirements in the Tennessee statute apply only where an out-of-state bank is the resulting bank in an interstate merger transaction involving a Tennessee state bank. See Tenn. Code Ann. § 45-2-1409. Thus, these requirements are not applicable to SouthTrust's merger with ST-Tennessee, a national bank.

[11] ST-NW Florida, ST-Mississippi, and ST-North Carolina are state banks; thus, their mergers into SouthTrust are mergers of state banks into a national bank. The basic merger provision in federal law governing national bank mergers (12 U.S.C. § 215a, incorporated for Riegle-Neal mergers by section 215a-1) provides that, in a merger of a state bank into a national bank, the merger shall not "be in contravention of the law of the State under which such bank is incorporated." The three state bank mergers here do not contravene state law; indeed, the three states permit such mergers. See Fla. Stat. Ann. § 658.2953(7)(a), Miss. Code Ann. § 81-23-7(2), and N.C. Gen. Stat. § 53-224.19.

not applicable to the Interstate Merger. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, SouthTrust and each of the merging banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, SouthTrust will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are, therefore, satisfied.

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

The applicant has requested that, upon the completion of the merger, SouthTrust (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Birmingham as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main offices and branches of the merging affiliate banks in Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

> (1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act [12 U.S.C. § 1831u].

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, SouthTrust, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of SouthTrust and the merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[12]

Moreover, at its branches in its host states, as well as those in Alabama, SouthTrust is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises, and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

3. The merger of ST-North Carolina into SouthTrust complies with 12 U.S.C. § 1815(d).

The merger of ST-North Carolina into SouthTrust also complies with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). ST-North Carolina is a member of the Savings Association Insurance Fund ("SAIF"), and SouthTrust is a member of the Bank Insurance Fund ("BIF"). The merger of a SAIF member into a BIF member is a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(ii). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above in section II-A-1, the OCC has determined the acquiring and resulting banks meet all applicable capital requirements.

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[12] By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

In addition, in the case of a merger of a SAIF member into a BIF member that is a subsidiary of a bank holding company, as here, the Oakar Amendment also incorporates the standards for an interstate bank acquisition from section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), and applies them to the transaction, with the target SAIF member being treated as a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F).[13] In the case of the merger of ST-North Carolina into SouthTrust, this analysis is self-evident because ST-North Carolina, while a SAIF member, is in fact a *state bank* already owned by the bank holding company. Thus, this transaction is unlike the usual Oakar transaction which involves the acquisition of a SAIF-insured *thrift*. Nevertheless, we will briefly set out the analysis.

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal Community Reinvestment Act requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution. All of these are met with respect to ST-North Carolina. First, the age limit is met, since North Carolina permits out-of-state bank holding companies to acquire in-state banks without any age limitation.

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, SouthTrust and all of its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). They controlled about $ 17.64 billion in domestic deposits as of December 31, 1996, less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). If this transaction is not considered an initial entry in the Oakar analysis and so paragraph (d)(2)(B) is applicable to this transaction, this limit is met. SouthTrust Corporation's total North Carolina deposits of its insured depository institutions was about $744 million, less than one percent of the total North Carolina deposits, as of December 31, 1996. The statewide concentration limit is satisfied.

Third, the bank holding company's compliance with the federal Community Reinvestment Act and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). In this regard, we note that the applicant bank has an "outstanding" federal CRA rating. SouthTrust Corporation's other depository

[13] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank located in a state other than the holding company's home state. The home state of SouthTrust Corporation is Alabama, and ST-North Carolina is located in North Carolina; and so it is necessary to undertake the analysis.

institution subsidiaries -- the affiliated banks here -- all have either outstanding or satisfactory ratings with respect to CRA performance. With respect to compliance with applicable state community reinvestment laws, none of the states directly implicated in this transaction (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee) have state community reinvestment laws that place requirements on banks.[14] No public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance, and the OCC has no other basis to question the bank holding company's CRA performance. Thus, no issues arise under the federal CRA or state community reinvestment laws that would require rejection of this application.

Finally, we note that the condition of the bank holding company, including its capital position and management, is consistent with approval of this transaction under the standards set forth in section 1842(d)(1) as incorporated into the Oakar Amendment. Accordingly, the merger of ST-North Carolina into SouthTrust complies with the Oakar Amendment.

4. Conclusion

The Interstate Merger may be approved as an interstate merger transaction under 12 U.S.C. §§ 215a-1 &1831u(a). The merger of ST-North Carolina into SouthTrust meets the requirements of the 12 U.S.C. § 1815(d)(3). SouthTrust, as the resulting bank after the Interstate Merger, may retain all the offices of the banks in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Accordingly, the Interstate Merger is legally authorized.[15]

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[14] Mississippi requires the Banking Commissioner to publish an annual newspaper notice that the public section of the bank's federal CRA evaluation is maintained by the Commissioner and is available for inspection upon request. The statute places no requirement on the bank. See Miss. Code Ann. § 81-1-100.

[15] SouthTrust and the merging banks have a number of subsidiaries, as listed in the application. By operation of the merger, the subsidiaries will become subsidiaries of the resulting bank, see 12 U.S.C. § 215a(e). Most of the subsidiaries, including two national banks limited to fiduciary activities, are currently subsidiaries of national banks, engaging in activities permissible for national banks, and the resulting bank is authorized to acquire them. The state banks also have subsidiaries. ST-NW Florida owns Holmes Capital Corporation, which holds OREO properties on behalf of ST-NW Florida. This is a permissible activity for a national bank subsidiary. ST-Mississippi owned two subsidiaries, but they became inactive and are being dissolved. ST-North Carolina owns First State Service Corporation, which conducts business as a trustee for deeds of trust, and SouthTrust Asset Management Company of the Carolinas, Inc., a state-chartered trust company. Both these subsidiaries are permissible for national banks, and the resulting bank is authorized to acquire them. ST-North Carolina also owns SouthTrust Capital Management, Inc., a North Carolina insurance agency. Because this insurance agency is located in or about Charlotte, North Carolina, a city with a population of more than 5,000 for purposes of 12 U.S.C. § 92, SouthTrust has requested permission to retain the insurance agency for a period of two years in which it will wind down the operations of the insurance agency such that it ceases to conduct nonconforming activities, will restructure its activities in order to comply with section 92 (including the relocation of its office to a place of less than 5,000), or will otherwise bring the subsidiary into conformity with national bank requirements. OCC policy allows acquiring banks in mergers a reasonable time to divest or conform nonconforming assets or activities. See 61 Fed. Reg. 60342, 60373 (effective December 31, 1996) (to be codified at 12 C.F.R. § 5.33(e)(5). Based on SouthTrust's representations and the reasonableness of the possibility that the subsidiary can be brought into conformance with applicable standards relative to insurance sales, a two-year divestiture period is reasonable. Accordingly, the resulting bank, SouthTrust,

B. The In-State Merger in Alabama is Authorized, and the Resulting Bank May Retain the Offices of the Banks, under 12 U.S.C. §§ 215a and 36(b)(2).

SouthTrust also has applied for approval to merge an affiliated bank in Alabama, ST-Russell County, into SouthTrust. While SouthTrust applied for this transaction along with the Interstate Merger, these banks have the same home state (Alabama). Thus, this merger remains an in-state merger, authorized by, and subject to, the statutes governing such mergers, even though SouthTrust also will have become an interstate bank operating in other states. This in-state merger is authorized under 12 U.S.C. § 215a, and the resulting bank may retain the offices of the merging banks under 12 U.S.C. § 36(b)(2).[16] This merger does not raise new issues, but only the application of established precedent for applying sections 215a and 36(b) to in-state mergers involving interstate national banks.

Mergers of national banks or state banks into a national bank "located within the same State" are authorized under 12 U.S.C. § 215a. In the proposed In-state Merger, both SouthTrust and ST-Russell County have their main offices, and have branches, in Alabama; and so they are located in the same state. The In-state Merger is authorized under section 215a.

After the merger, SouthTrust (as the resulting bank in that merger) may retain the branches of both merging banks under 12 U.S.C. § 36(b)(2).[17] Retention of the branches of the target bank and of the lead bank in a merger are addressed in different paragraphs of section 36(b)(2). First, under section 36(b)(2)(A), the resulting bank may retain the main office or branches of the target bank (here, ST-Russell County) if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under 36(c), a national bank is "situated" in any state in which it has a branch or main office and may establish branches in each such state in the same manner as in-state national banks. See Seattle

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is authorized to acquire SouthTrust Capital Management, Inc., in the merger, subject to the requirement that it be divested or conformed within two years. In addition, on April 24, 1997, SouthTrust received OCC approval to acquire Wind Creek Insurance Agency, Inc., from its affiliate, ST-Russell County. In connection with that acquisition, SouthTrust changed the subsidiary's name to "SouthTrust Insurance, Inc." and undertook to conduct its operations in a manner consistent with section 92 and OCC guidelines. SouthTrust, as the resulting bank in this merger, is authorized to own and operate SouthTrust Insurance, Inc., subject to the same undertakings.

[16] The scope of the Riegle-Neal Act and the continuing authority of 12 U.S.C. §§ 36(b), 36(c), and 215a with respect to subsequent mergers with an interstate national bank in one of the states in which it already has its main office or a branch are discussed in earlier OCC decisions. See, e.g., Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank N.A. (OCC Corporate Decision No. 96-20, April 12, 1996) (Part II-C); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) (Part II-C). See also Decision on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision") (Part II-D) (general discussion of relationship of Riegle-Neal Act and prior law). Here, where the bank to be acquired has the same home state, the in-state nature of the merger is even more self-evident.

[17] Section 36(b)(2) governs branch retention by national banks in mergers generally, while section 36(d) covers branch retention in an interstate merger transaction done under the Riegle-Neal Act.

Trust & Savings Bank v. Bank of California, N.A., 492 F.2d. 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974). Here, the resulting bank is situated in Alabama. Alabama law allows state banks in the state to establish or acquire branches without limitation within the state, see Ala. Code § 5-5A-20, and so a national bank situated in that state could establish branches without limit in the state, including at the locations of the main office and branches of ST-Russell County, under section 36(c). Therefore, SouthTrust may retain and operate the main office and branches of ST-Russell County under section 36(b)(2)(A).

Second, in the In-state Merger, SouthTrust is the acquiring or lead bank, i.e., the bank under whose charter the merger is effected. Section 36(b)(2)(C) of the McFadden Act authorizes the national bank resulting from a merger to retain and operate as a branch any branch of the lead bank that existed prior to the merger, unless a state bank resulting from a merger would be "prohibited" by state law from retaining as a branch an identically situated office of a state bank. Section 36(b)(2) differentiates between branches of target banks and branches of the lead bank. State law on the establishment of new branches applies to the resulting bank's retention of the branches of the target bank under paragraph (A); but it does not apply to the resulting bank's retention of the branches of the lead bank under paragraph (C). Instead, a different rule applies: The branches may be retained unless the state has expressly prohibited it.

Thus, under section 36(b)(2)(C), the resulting bank may retain the branches of the lead bank unless the state has expressly prohibited branch retention for identically situated offices in a merger in which a state bank is the resulting bank. With respect to SouthTrust's branches in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, there are no provisions in the laws of these states that would prohibit a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state if such offices were branches of the state-chartered bank.[18] Therefore, SouthTrust, as the resulting bank in the In-state Merger, may retain its branches under section 36(b)(2)(C).

In summary, the in-state merger with ST-Russell County is authorized under 12 U.S.C. § 215a, and the resulting bank may retain and operate the branches under 12 U.S.C. § 36(b)(2). Accordingly, the In-state Merger is legally authorized.

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[18] In prior merger decisions involving interstate national banks, the OCC has addressed the interpretation of section 36(b)(2)(C) with respect to lead banks that have offices in more than one state. We determined that section 36(b)(2)(C) should be applied in the same manner as sections 36(c) and 36(b)(2)(A), so that the resulting national bank is treated as situated in each state in which it operates in applying section 36(b)(2)(C). Thus, the power of the resulting bank to retain the lead bank's branches in each state is determined by reference to that state's laws for that state's banks for mergers in the state. We reached this conclusion in decisions both before and after the Riegle-Neal Act. See, e.g., OCC Bank Midwest Decision (Part II-C-2); other OCC decisions cited in note 16.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

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

1. Competitive Analysis

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

2. Financial and Managerial Resources

The financial and managerial resources of all banks which are participating in these merger transactions is considered satisfactory. SouthTrust will realize certain efficiencies through the combination of all operating systems and the centralization of most policy-making decisions. The geographic diversification of its operations will also strengthen the combined bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and Needs

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

Upon completion of the mergers, customers will have access to a significantly greater number of branches, spanning all states in the southern United States. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Customers who conduct interstate business will benefit from being able to conduct business with SouthTrust as one bank in different states, thereby facilitating greater convenience and a better relationship with the bank. The merger should permit the resulting bank to better serve its customers at a lower cost.

No branch closings are contemplated as a result of this merger since most of the banks serve different areas. However, as part of its ongoing business plans, SouthTrust evaluates its branch system, including branches acquired in transactions, and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and consideration of the community affected.

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

B. The Community Reinvestment Act

The Community Reinvestment Act requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. SouthTrust has an outstanding rating with respect to CRA performance, and all the other banks involved in this transaction have a satisfactory or better rating with regard to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the banks' performance in complying with CRA.

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

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of SouthTrust and ST-Florida, ST-NW Florida, ST-Georgia, ST-Columbus, ST-North Carolina, ST-South Carolina, and ST-Tennessee is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), and the resulting bank is authorized to retain and operate the offices of all the banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1); that the merger of SouthTrust and ST-Russell County is legally authorized as an in-state merger transaction under 12 U.S.C. §§ 215a, and the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. § 36(b)(2); and that the mergers meet the criteria for approval under other statutory factors.

SouthTrust may retain and hold the subsidiaries of the banks participating in the mergers, including SouthTrust Capital Management, Inc., the operating subsidiary held as an insurance agency by ST-North Carolina. Within two years of the date of consummation of the merger of ST-North Carolina with and into SouthTrust, SouthTrust must divest itself of the insurance subsidiary or conduct its activities in conformance with applicable national banking law.

Accordingly, this Merger Application is hereby approved.

/s/ 06-01-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-SE-02-0019