Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-90
October 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF THE STEPHENSON NATIONAL BANK AND TRUST, MARINETTE, WISCONSIN AND STEPHENSON NATIONAL BANK, MENOMINEE, MICHIGAN

October 3, 1997

I. INTRODUCTION

On August 22, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to establish a de novo national bank, Stephenson National Bank ("SNB") under 12 U.S.C. §§ 21 et. seq. and, immediately following, to merge SNB with and into The Stephenson National Bank and Trust, Marinette, Wisconsin ("SNB&T") under the charter of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a). SNB&T is an insured national bank. SNB will be an insured institution upon the issuance of its charter.[1] SNB&T has its main office in Marinette, Wisconsin and has no branch offices. SNB will have its main office located in Menominee, Michigan. In the merger application, OCC approval is also requested for the resulting bank to retain as its main office the main office of SNB&T, and to retain and operate as a branch the main office of SNB under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

At the time of the proposed merger, both banks will be subsidiaries of Stephenson National Bancorp, Inc. ("Holding Company"), a bank holding company headquartered in Marinette, Wisconsin. In the proposed merger, both of the holding company's bank subsidiaries will be combined into one bank with offices in Wisconsin and Michigan. As of March 31, 1997, SNB&T had approximately $111.4 million in assets and $97.3 million in deposits.

[1] The FDIC has determined that SNB will be FDIC-insured upon issuance of the institution's charter by the OCC, pursuant to 12 U.S.C. § 1815(a)(2). See Letter from Daryl P. Strum, Regional Director, FDIC (July 15, 1997).

II. LEGAL AUTHORITY

A. The Chartering of SNB is Authorized under 12 U.S.C. §§ 21 et seq., and 12 C.F.R. § 5.20.

The Holding Company has proposed to charter a de novo bank in Michigan. The standards for chartering a national bank are set forth in 12 U.S.C. §§ 21 et seq. and 12 C.F.R. § 5.20. The OCC has conducted a thorough review of this application in the light of the factors set forth in these statutory and regulatory provisions regarding the chartering of de novo banks and has determined that the results of this review are consistent with approval.[2]

B. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

> (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).[3] 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

---

[2] Section 3(a)(3) of the Bank Holding Company Act, 12 U.S.C. § 1842(a), requires an application to the Board of Governors of the Federal Reserve System ("Board") before a bank holding company may acquire direct or indirect ownership or control over the shares of another bank. Pursuant to a written waiver from the Federal Reserve Bank of Chicago, no prior Board approval is necessary for the Holding Company's acquisition of SNB. See Letter from Philip G. Jackson, Director of Applications, Federal Reserve Bank of Chicago (June 30, 1997).

[3] 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).

banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In this merger application, the home states of the banks are Wisconsin and Michigan; neither of these states has opted out. Accordingly, this merger application 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 merger application satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In this merger application, SNB&T is acquiring by merger a bank in, and will operate a branch in, the host state of Michigan. The laws of Michigan do not contain a requirement that a bank must be in existence for a minimum period of time prior to a merger with an out-of-state bank. Thus, the SNB&T/SNB merger satisfies the requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing 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] Wisconsin has not yet enacted legislation with respect to the interstate bank mergers and branching provisions of the Riegle-Neal Act, and so it presently does not have filing requirements for interstate mergers between banks. Michigan law requires that the out-of-state bank notify the

[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 § 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 § 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).

state bank commissioner by filing a copy of its federal merger application.[5] See Mich. Comp. Laws § 487.425a (Mich. Stat. Ann. § 23.710(125a)). SNB&T submitted a copy of its OCC Merger application to the Wisconsin and Michigan state bank supervisors. Thus, the SNB&T/SNB merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

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). At the time of the proposed merger, SNB&T and SNB will be 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 merger application, SBN&T (the bank submitting the application as the acquiring bank) will have a bank affiliate in Michigan immediately before the transaction (i.e., SNB), and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the merger application. 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, SNB&T satisfied all regulatory and supervisory requirements relating to adequate capitalization. At the time the application was filed, SNB was not in existence. However,

---

[5] The Commissioner of the Michigan Financial Institutions Bureau ("MFIB") had earlier informed the Holding Company that, based on the language of the Riegle-Neal Act and the Michigan Code, it could form a new bank in Michigan, merge that bank into the Holding Company's Wisconsin bank subsidiary, operate the Michigan office as a branch of the Wisconsin bank, and proceed to establish additional branches in Michigan. See Letter of Patrick M. McQueen, Commissioner, MFIB (May 16, 1997). Representatives of the MFIB orally informed the bank again, after reviewing the copy of the OCC charter and merger application that SNB&T had filed with the MFIB, that in its opinion the proposed transaction was permissible under Michigan law.

upon issuance of its national charter, SNB will also meet all regulatory and supervisory requirements relating to adequate capitalization. Currently, SNB&T is at least satisfactorily managed. The OCC has also determined that, following the merger, SNB&T will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the proposed interstate merger transaction between SNB&T and SNB is legally permissible under section 1831u.

C. Following the Merger, the Resulting Bank may Retain SNB&T's and SNB's Main Office and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The Applicant has requested that, upon the completion of the merger, SNB&T (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Marinette, Wisconsin as the main office of the resulting bank and to retain and continue to operate as a branch the main office of SNB in Menominee, Michigan. 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. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, SNB&T, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[6]

---

[6] 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

Moreover, at its branch in Michigan, as well as its main office in Wisconsin, SNB&T 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).

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 both banks will be owned by the same bank holding company, their merger would have no anticompetitive effects.[7]

2. Financial and managerial resources

---

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).

[7] The OCC received one letter protesting the proposed SNB&T/SNB interstate merger transaction. The protestor claims that approval of the application will result in increased costs for all competitors without any substantial benefit to the public. The OCC has long held that the marketplace is normally the best regulator of economic activity, and competition within the marketplace promotes efficiency and better customer service. 12 C.F.R. § 5.20(f)(1). Thus, it is not the OCC's policy to protect existing institutions from healthy competition from a new bank or branch. Id.; 12 C.F.R. § 5.30(e)(4). Accordingly, the OCC determined that the protest does not serve as a basis for denial or conditioning the approval of the application.

The financial and managerial resources of SNB&T are presently satisfactory. The future prospects of the resulting institution 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 help to meet the convenience and needs of the communities to be served. SNB&T will continue to serve the same areas in Wisconsin and Michigan, and it will add SNB's office in Michigan. SNB&T currently offers a full line of banking services, and there will be no reductions in the products or services as a result of the merger. The combined bank will continue to offer a full line of banking products and services.

Upon completion of the merger, customers of the bank will have available to them another office at which to bank. 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. Following the merger, customers would be able to readily access their accounts with greater convenience. Especially benefitting will be those customers who live in one state and work in another, particularly in the Marinette-Menominee area. No branch closings are contemplated as a result of this merger.

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 ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. SNB&T has a satisfactory rating. No public comments regarding CRA performance were received by the OCC relating to this application during the public comment period. The OCC has no other basis to question the bank's performance in complying with the CRA.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. SNB&T and SNB have each delineated as its local community the same geographic areas, and the resulting bank will continue to serve that same local community. SNB&T will continue its current CRA programs and policies in Wisconsin and Michigan. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it currently serves. The merger and operation of an interstate branch does not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of the proposed merger is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicant, we find that the chartering of SNB is authorized by 12 U.S.C. §§ 21 et seq. and 12 C.F.R. 5.20, the merger of SNB&T and SNB is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a), the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the merger meets the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 10-13-97

Julie L. Williams Date
Chief Counsel

Application Control Numbers: 97-CE-01-0030 and 97-CE-02-0067