Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

Corporate Decision #99-28
September 1999

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF AMCORE BANK NATIONAL ASSOCIATION, ROCKFORD, SOUTH BELOIT, ILLINOIS, AND ITS AFFILIATES

September 13, 1999

I. INTRODUCTION

AMCORE Bank National Association, Rockford, South Beloit, Illinois, ("AMCORE"), its bank affiliates, and its holding company, AMCORE Financial, Inc. ("Holding Company") filed a group of applications with the Office of the Comptroller of the Currency ("OCC") to combine the Holding Company's five national banks, three state banks, and one federal savings bank in Illinois and Wisconsin into one national bank and to engage in certain related transactions. The transactions will occur in the order set out below. Following the transactions, AMCORE will become an interstate national bank with its main office in Rockford, Illinois, and branches in Illinois and Wisconsin.

First, AMCORE Bank, Montello, Wisconsin, ("Montello") and AMCORE Bank, Clinton, Wisconsin, ("Clinton"), will merge into AMCORE Bank, National Association, South Central, Monroe, Wisconsin ("South Central") under 12 U.S.C. §§ 215a and 1828(c) (the "Wisconsin In-State Merger"). Montello and Clinton are state banks. The three banks have branches only in Wisconsin. In the Wisconsin In-State Merger, OCC approval is also requested for the resulting bank to retain South Central's main office and branches and to retain the main offices and branches of Montello and Clinton as branches after the merger under 12 U.S.C. § 36(b).

Second, South Central will establish an operating subsidiary, CBSC Merger Corp, ("Merger Subsidiary") to facilitate the elimination of South Central's immediate holding company, Country Bank Shares Corporation ("CBSC"). CBSC is an intermediate holding company between Holding Company and South Central, Montello, and Clinton. In this transaction, CBSC will merge into the Merger Subsidiary, and then the Merger Subsidiary will be dissolved, with the result that Holding Company will own South Central directly.

Third, South Central will merge into AMCORE under AMCORE's charter (the "Resulting Bank") pursuant to 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) (the "Interstate Merger"). In the Interstate Merger, OCC approval is also requested for the resulting bank to retain AMCORE's main office in South Beloit, Illinois, as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain AMCORE's branches in Illinois and South Central's main office and branches in Wisconsin as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Fourth, at the same time as the Interstate Merger, AMCORE Bank, National Association, NorthWest, Woodstock, Illinois ("Northwest"), AMCORE Bank, National Association, Rock River Valley, Dixon, Illinois ("Rock River Valley"), AMCORE Bank, National Association, North Central, Mendota, Illinois ("North Central"), and AMCORE Bank, Aledo, Illinois ("Aledo"), a state bank, (together referred to the "Merging Banks") also will merge into AMCORE under AMCORE's charter pursuant to 12 U.S.C. §§ 215a & 1828(c) (the "Illinois In-State Merger"). In the Illinois In-State Merger, OCC approval is also requested for the resulting bank to retain AMCORE's main office and branches and to retain the Merging Banks' main offices and branches as branches after the merger under 12 U.S.C. §§ 36(b). In addition, the resulting bank (AMCORE) will change its name to "AMCORE Bank, National Association"

Fifth, AMCORE will relocate its main office from South Beloit, Illinois, to Rockford, Illinois, under 12 U.S.C. § 30, and will establish a branch at the South Beloit location under 12 U.S.C. § 36(c).

Sixth, AMCORE Bank, Central Wisconsin, Baraboo, Wisconsin ("Thrift"), a federal savings bank, will merge into AMCORE pursuant to 12 U.S.C. §§ 215c, 1815(d)(3), & 1828(c) (the "Thrift Merger"). In the Thrift Merger, OCC approval is also requested for the resulting bank (AMCORE) to retain AMCORE's main office and branches and to retain the Thrift's main office and branches as branches after the merger under 12 U.S.C. § 36(c). The Thrift is a member of the Savings Association Insurance Fund. Its main office and branches are in Wisconsin.

Finally, a mortgage company subsidiary of the Holding Company, AMCORE Mortgage, Inc., ("Mortgage Subsidiary"), will be transferred to become an operating subsidiary of AMCORE.

II. LEGAL AUTHORITY FOR THE TRANSACTIONS

A. The Wisconsin In-State Merger is authorized, and the resulting bank may retain the offices of the banks, under 12 U.S.C. § § 215a and 36(b)(2).

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 Wisconsin In-state Merger, Clinton, Montello, and South Central have their main offices and branches in Wisconsin; and so

they are all located in the same state. Thus, the Wisconsin In-State Merger is authorized under section 215a.[1]

South Central, as the resulting bank in this merger, may retain the branches of the three participating banks under 12 U.S.C. § 36(b)(2). Retention of the branches of the target banks 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 banks (here, Clinton and Montello) if the resulting bank could establish them as new branches of the resulting bank under section 36(c). For branching purposes under section 36(c), a national bank may establish branches in the state in which it is "situated" to the same extent as state banks, and 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.[2] Here, the resulting bank, South Central, is situated in Wisconsin. Wisconsin law allows state banks in the state to establish or acquire branches without geographic limitation, *see* Wisc. Stat. Ann. § 221.0302, and so a national bank situated in that state could establish branches at all the locations of the main offices and branches of Clinton and Montello under section 36(c). Therefore, South Central may retain and operate the main offices and branches of Clinton and Montello under section 36(b)(2)(A).

Second, under section 36(b)(2)(C), resulting bank may retain and operate as a branch any branch of the lead bank (*i.e.*, the bank under whose charter the merger is effected) 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. Here, at the conclusion of the Wisconsin In-state Merger, South Central will have its main office and all branches in Wisconsin. There are no provisions in the law of Wisconsin that would prohibit a state-chartered bank, following a merger with another state bank in Wisconsin, from retaining its own similarly situated branches in Wisconsin if such offices were branches of the state-chartered bank. Therefore, South Central, as the resulting bank in the Wisconsin In-state Merger, may retain its branches under section 36(b)(2)(C).

---

[1] Neither of the target state banks has non-conforming assets. Each of the banks has an operating subsidiary that holds and manages its investment securities portfolio and that will become a subsidary of South Central in the merger. South Central has a similar subsidiary. This is a permissible activity for a national bank operating subsidiary. Eventually, these subsidiaries will be merged. All three banks have fiduciary powers, and South Central will succeed to the fiduciary appointments of Clinton and Montello under the express provisions of section 215a(e).

[2] *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974) ("*Seattle Trust*") (an interstate national bank is "situated" in each state in which it has offices for purposes of establishing additional branches under section 36(c)). *See also Ghiglieri v. Sun World, N.A.*, 117 F.3d 309, 315-16 (5th Cir. 1997) ("*Sun World*") (same, agreeing with *Seattle Trust*).

B. South Central may establish an operating subsidiary to facilitate elimination of its holding company.

In the next transaction, South Central proposes to establish Merger Subsidiary as an operating subsidiary under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 and use Merger Subsidiary to facilitate elimination of its intermediate holding company, CBSC. CBSC will merge into Merger Subsidiary, and then Merger Subsidiary will be liquidated and dissolved under applicable state law, with the result that Holding Company will own the shares of South Central directly. These transactions will occur in immediate sequence.

It is permissible for a national bank to use an operating subsidiary to facilitate the bank's corporate activities, both internal reorganizations (as here) and acquisitions of other banks. The OCC has previously approved operating subsidiaries used to facilitate the elimination of a holding company in transactions such as the one here and operating subsidiaries used to acquire a bank or bank holding company (where the subsidiary acquired the bank or bank holding company and then the target bank immediately merged into the acquiring bank).[3] In these transactions, the subsidiary owns the shares of a bank or bank holding company for only a moment-in-time and only as an adjunct to the ultimate corporate transaction.

Accordingly, South Central's establishment of Merger Subsidiary for this purpose is permissible under section 5.34.

C. The Interstate Merger is authorized, and the resulting bank may retain the offices of the banks.

1. The Interstate Merger is authorized under 12 U.S.C. §§ 215a-1 & 1831u(a).

In the next transaction, South Central will merge into AMCORE. This is a merger between insured banks with different home states (Wisconsin and Illinois). Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

> (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.

---

[3] *See, e.g.*, Letter from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs (May 2, 1991) (unpublished) (approval for establishment of operating subsidiary to merge into a one-bank holding company to facilitate a corporate reorganization designed to ultimately eliminate the holding company); Letter from Charles F. Byrd, Assistant Director, Legal Advisory Services Division (October 1, 1987) (unpublished) (permissible for bank subsidiary to merge into unaffiliated holding company with bank becoming owner of target holding company which is subsequently dissolved, leaving holding company's subsidiary bank to be either merged with acquiring national bank or liquidated and its assets and liabilities distributed to the acquiring bank); Letter from Peter C. Liebesman, Acting Director, Legal Advisory Services Division (July 24, 1981) (unpublished) (national bank's temporary holding of stock of another bank permissible as incidental to corporate reorganization). *See also* Comptroller's Corporate Manual, Investment in Subsidiaries and Equities (April 1998) (at page 20).

12 U.S.C. § 1831u(a)(1).[4]

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). These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-Neal 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. This application satisfies all these conditions to the extent applicable.

First, the application 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). But the maximum age requirement a state is permitted to impose is five years. 12 U.S.C. § 1831u(a)(5)(B). In this Interstate Merger, AMCORE is acquiring a bank, South Central, in Wisconsin. South Central has been in existence and in operation in Wisconsin for more than five years. The Riegle-Neal Act's age requirement is met.

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.

---

[4] Section 44 was added by section 102(a) of the 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 also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. *See* Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). The Act permitted a state to elect to prohibit such interstate merger transactions under section 44 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 the proposed Interstate Merger, the home states of the banks are Wisconsin and Illinois; neither state opted out.

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

12 U.S.C. § 1831u(b)(1).[5] Wisconsin requires that notice be given to the commissioner of banking not later than the day on which the applicant files an application with the federal bank supervisory agency. *See* Wisc. Stat. Ann. § 221.0901(3)(c). AMCORE provided a copy of its OCC Interstate Merger Application to the Wisconsin state bank supervisor. Thus, the Riegle-Neal Act's filing requirement is met.

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. 12 U.S.C. § 1831u(b)(2)(E). South Central and AMCORE are affiliates; thus section 1831u(b)(2) is not applicable to this interstate 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 bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks.[6] In this application, South Central and AMCORE are affiliates, and so this Riegle-Neal Act provision does not apply. However, the CRA itself is applicable, as discussed below in Part III-B.

Fifth, the proposed Interstate Merger 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. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, both banks (South Central on a *pro forma* basis, taking into account the Wisconsin In-State Merger) 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, AMCORE will

---

[5] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. 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).

[6] It does not apply to mergers between affiliated banks because 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).

continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

2. The Resulting Bank may retain both banks' main offices and branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

The applicants have requested that, upon the completion of the Merger, AMCORE (as the resulting bank in the Interstate Merger) be permitted to retain and continue to operate AMCORE's main office in South Beloit, Illinois, as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain and continue to operate as branches (1) AMCORE's branches in Illinois and (2) the main office and branches of South Central in Wisconsin, under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

In interstate merger transactions 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).[7]

Therefore, AMCORE, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of the two banks participating in the merger, under 12 U.S.C. §§ 36(d) & 1831u(d)(1). Moreover, AMCORE will succeed to the fiduciary appointments of South Central as a result of the Interstate Merger, and it is authorized

---

[7] 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)). 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). 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).

to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in both states in which it operates.[8]

D. The Illinois In-State Merger is authorized and the resulting bank may retain the offices of the banks, under 12 U.S.C. § § 215a and 36(b)(2).

Along with the Interstate Merger with South Central, AMCORE also applied to merge with four other affiliated banks located in Illinois. As discussed in Part II-A, 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 Illinois In-State Merger, the target banks -- Northwest, Rock River Valley, Aledo, and North Central -- have their main offices and branches in Illinois; AMCORE also has its main office and branches in Illinois; and so the banks are located in the same state. Thus, the Illinois In-State Merger is authorized under section 215a, and AMCORE will succeed to the fiduciary appointments of the target banks under the express provisions of section 215a(e).

In the Illinois In-State Merger, AMCORE (as the resulting bank in that merger) may retain the branches of the merging banks under 12 U.S.C. § 36(b)(2). First, under section 36(b)(2)(A), the resulting bank may retain the main office or branches of the target banks if the resulting bank could establish them as new branches of the resulting bank under section 36(c). Here, the resulting bank is situated in Illinois. Illinois law allows state banks in the state to establish or acquire branches without geographic limitation, 205 Ill. Comp. Stat. Ann. § 5/5(15)(a), and so a national bank situated in that state could establish branches at the locations of the main offices and branches of Northwest, Rock River Valley, Aledo, and North Central, under section 36(c). Therefore, AMCORE, may retain and operate the main offices and branches of the four target banks under section 36(b)(2)(A).

Second, in the Illinois In-State Merger, AMCORE, is the acquiring or lead bank, *i.e.*, the bank under whose charter the merger is effected. 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.[9] There are

---

[8] *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); Decision on the Application to Merge Bank of America N.T. & S. A. and NationsBank, N.A. (OCC CRA Decision No. 94, May 20, 1999) (at page 6 n. 4). *See also* Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states); OCC Interpretive Letter No. 695 (December 8, 1995) (same). *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).

[9] Just as with subsections 36(b)(2)(A) and 36(c), when a bank is situated in more than one state, the state bank parity comparison used in applying subsection 36(b)(2)(C) is a comparison, within each state, to the state law for that state's banks. 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 in-state bank mergers. *See, e.g.*, Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (*OCC Texas Merger Decision)* (Part II-A-2-b) (pages 9-10); 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.

no provisions in the laws of Illinois or Wisconsin that would prohibit a state-chartered bank, following a merger with another state bank within each state, from retaining its own similarly situated branches in that state if such offices were branches of the state-chartered bank. Therefore, AMCORE may retain its branches under section 36(b)(2)(C).

E. AMCORE may relocate its main office from South Beloit to Rockford under 12 U.S.C. § 30 and may establish a branch in South Beloit under 12 U.S.C. § 36(c).

In the next step, AMCORE has requested OCC approval to relocate its main office from South Beloit, Illinois, to Rockford, Illinois, a distance of approximately 18 miles, to a location that is currently a branch of AMCORE. Under 12 U.S.C. § 30(b), a national bank may, *inter alia*, change the location of its main office to any location within 30 miles of the city limits in which it is located. Thus AMCORE's proposed main office relocation is permissible.[10]

AMCORE also applied to establish a branch at the former main office location in South Beloit. A national bank may establish branches in the state in which it is situated at the locations that the state permits for its state banks. 12 U.S.C. § 36(c). As discussed earlier, AMCORE is situated in Illinois (and, after the Interstate Merger, in Wisconsin) for section 36 purposes. Illinois law allows its state banks to establish branches without geographic limitation. 205 Ill. Comp. Stat. § 5/5(15)(a). An Illinois state bank with its main office in Rockford could establish a branch in South Beloit. Thus, AMCORE is authorized to establish a branch at the proposed location under section 36(c).

F. The Thrift Merger is authorized, and the resulting bank may retain the offices of both institutions, under 12 U.S.C. § § 215c and 36(c).

1. The Thrift Merger is authorized under section 215c.

In the next transaction, an insured federal savings bank located in Wisconsin will merge into AMCORE. National banks may merge with insured federal thrifts under 12 U.S.C. § 215c and section 5(s) of the Home Owners' Loan Act, 12 U.S.C. § 1467a(s). Thus, the merger of the Thrift into AMCORE is authorized.[11]

Banking L. Rep. (CCH) ¶ 90,474 ("*OCC Bank Midwest Decision*") (Part II-C-2-a).

[10] AMCORE also proposes to change its name to "AMCORE Bank, National Association." This is permissibe under 12 U.S.C. § 30(a).

[11] The Thrift does not have any non-conforming assets. The Thrift has an operating subsidiary that holds and manages its investment securities portfolio and that will become a subsidiary of AMCORE in the merger. This is a permissible activity for a national bank operating subsidiary. Eventually, this Thrift subsidiary, and the similar subsidiaries of the banks in the earlier mergers, will be merged. The Thrift has an inactive stock brokerage subsidiary with no material assets that will be dissolved before December 31, 1999. The Thrift has fiduciary powers, and AMCORE will succeed to its fiduciary appointments in the merger. In addition, because the Thrift, now a stock institution, was formerly a mutual savings association, following the merger, AMCORE must continue to maintain its liquidation account established as a result of its conversion from mutual to a stock form of organization.

The merger of the Thrift into AMCORE also complies with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). The Thrift is a member of the Savings Association Insurance Fund ("SAIF"), and AMCORE 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).[12]

The Thrift Merger meets the provisions of the Oakar Amendment. First, AMCORE will meet all applicable capital requirements upon consummation of the transaction. Second, the Thrift is more than five years old, and so applicable age requirements are met. Third, the Holding Company's deposits in Wisconsin are less than 2% of the total deposits held by commercial banks in Wisconsin; and so the proposed merger is consistent with the deposit concentration limits. Similarly, there are no antitrust issues raised by this transaction. Fourth, the Holding Company's performance with respect to federal and state community reinvestment laws is consistent with approval.[13] Finally, the condition of the Holding Company and AMCORE, including their capital and management, are consistent with approval of this transaction.

2. AMCORE may retain the Thrift's main office and branches under 12 U.S.C. § 36(c).

AMCORE may retain the Thrift's main office and branches and operate them as branches under 12 U.S.C. § 36(c). While retention of branches by national banks following mergers or consolidations is generally governed by 12 U.S.C. § 36(b)(2), that provision covers transactions where the target is a national bank or a state bank; by its terms it does not cover federal savings banks. Since no other provision in section 36 applies to branches acquired from a federal savings bank, retention of branches acquired from a federal thrift is governed by 12 U.S.C. § 36(c). It is well settled that section 36(c) applies to branches established by a bank through acquisition from another institution, as well as to branches established by a bank by *de novo* formation. *See, e.g.*, *State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

For branching purposes under section 36(c), a national bank may establish branches in the state in which it is "situated" to the same extent as state banks, and 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

---

[12] The Thrift Merger here would be considered an Oakar transaction involving an out-of-state holding company because the Thrift is located in Wisconsin and the acquiring bank's Holding Company is an Illinois holding company. For such transactions, the Oakar Amendment incorporates conditions from the Bank Holding Company Act, 12 U.S.C. § 1842(d). *See* 12 U.S.C. § 1815(d)(3)(F).

[13] Holding company compliance with the Federal Community Reinvestment Act is evaluated by looking to the Federal Community Reinvestment Act record of its subsidiaries that are subject to the law. *See* 12 C.F.R. § 228.29(a)(2). In this case, based on the most recent examinations, all of the subsidiaries of the Holding Company have satisfactory ratings with respect to Federal Community Reinvestment Act performance. Moreover, no issues arise under state community reinvestment standards. Illinois has no state community reinvestment requirements, and Wisconsin's state community reinvestment law incorporates the Federal Community Reinvestment Act. *See* Wisc. Stat. Ann. § 221.0901. No public comments were received by the OCC relating to community reinvestment compliance or issues under state law, and the OCC has no other basis to question the Holding Company's performance. *See also* Part III-B below.

in the same manner as in-state national banks.[14] At the time of the Thrift Merger, AMCORE will be situated in Wisconsin for section 36 purposes by virtue of its branches there acquired in the preceding Interstate Merger. Wisconsin law allows state banks in the state to establish or acquire branches without geographic limitation, *see* Wisc. Stat. Ann. § 221.0302, and so a national bank situated in that state could establish branches at all the locations of the main office and branches of the Thrift under section 36(c). Therefore, AMCORE may acquire the main office and branches of the Thrift in Wisconsin in the Thrift Merger and operate them as branches of AMCORE under section 36(c).

G. AMCORE may own the Mortgage Subsidiary as an operating subsidiary.

In the final transaction, the Holding Company will contribute the shares of the Mortgage Subsidiary to AMCORE. The Mortgage Subsidiary will then be a wholly-owned subsidiary of AMCORE. At the time of the transfer, the Mortgage Subsidiary will have no low quality or non-performing loans, and it will have no debt. The Mortgage Subsidiary services and sells mortgages.

A national bank may establish or acquire an operating subsidiary to conduct activities that are part of or incidental to the business of banking under 12 U.S.C. § 24(Seventh) and activities permissible for national banks or their operating subsidiaries under other statutory authority. 12 C.F.R. § 5.34(d). Based on the information and representations provided by the Holding Company, the Mortgage Subsidiary will engage in lending related and servicing activities that are permissible for a national bank. Therefore, AMCORE may acquire the proposed subsidiary.[15]

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 mergers between insured institutions where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the mergers involved in these applications may be approved under section 1828(c).

1. Competitive Analysis.

---

[14] *See Seattle Trust*, 492 F.2d at 51; *Sun World*, 117 F.3d at 315-16. The OCC has applied this principle in prior decisions involving national banks with operations in more than one state both before and after the Riegle-Neal Act. *See, e.g., OCC Texas Merger Decision; OCC Bank Midwest Decision;* other decisions cited therein.

[15] As noted earlier, at the end of the series of transactions, AMCORE will also merge the investment securities subsidiaries that it acquired in the preceding mergers into one subsidiary.

Since all the institutions involved in these transactions are already owned by the same bank holding company, the mergers will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of AMCORE and the affiliated institutions are presently satisfactory. The applicants expect to achieve administrative efficiencies by operating all the offices as branches of one bank. The future prospects of the institutions, individually and combined, are favorable. We find the financial and managerial resources factor is consistent with approval of the mergers.

3. Convenience and Needs.

The mergers will not have an adverse impact on the convenience and needs of the communities to be served. AMCORE will continue to serve the same areas that it and the affiliated institutions now serve. There will be no reductions in products or services as a result of the mergers. The combined bank will continue to offer a full line of banking products and services. No branches will be closed as a result of the mergers. The combination of the separate institutions in Wisconsin and Illinois into one bank with branches in both states will particularly benefit business customers with operations in both states states and retail customers who travel between the states. Accordingly, we believe the impact of the mergers on the convenience and needs of the communities to be served is consistent with approval of the applications.

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 the community, including low- and moderate-income neighborhoods when evaluating certain applications. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, the OCC evaluates performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

A review of the record of these applications and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. We further note that AMCORE and its affiliated depository institutions involved in these transactions all received Satisfactory CRA ratings as of their most recent examinations. No public comments were received by the OCC relating to these applications, and the OCC has no other basis to question the banks' performance in complying with the Community Reinvestment Act.

The transactions are not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that the merging

institutions currently serve. AMCORE will continue its current CRA programs and policies, and add those of the merging institutions. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as the parties have today as separate institutions. The transactions and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in both of the states it serves. We find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that (1) the Wisconsin In-State Merger and South Central's retention of the offices, (2) South Central's formation of Merger Subsidiary, (3) the Interstate Merger and AMCORE's retention of the offices, (4) the Illinois In-State Merger and AMCORE's retention of the offices, (5) AMCORE's relocation of its main office and establishment of a branch at the former main office location, (6) the Thrift Merger and AMCORE's retention of the offices, and (7) AMCORE's acquisition of the Mortgage Subsidiary are all legally authorized. The transactions also meet other statutory and regulatory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 09-13-99

Alan Herlands Date
Acting Deputy Comptroller
Bank Organization and Structure

Application Control Numbers:
99-CE-02-0027
99-CE-05-0178
99-CE-07-0019
99-CE-08-0025
99-CE-08-0026