Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2001-17
July 2001

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF CREDITAMERICA SAVINGS COMPANY, BRAINERD, MINNESOTA TO CONVERT TO A NATIONAL BANK WITH THE TITLE "AMERICAN NATIONAL BANK OF MINNESOTA," AND RELATED APPLICATIONS

June 28, 2001

I. INTRODUCTION

On January 17, 2001, CreditAmerica Savings Company, Brainerd, Minnesota ("CAS"), a Minnesota state-chartered industrial loan and thrift company, filed an application with the Office of the Comptroller of the Currency ("OCC") to convert into a national banking association to be called "American National Bank of Minnesota" ("ANB-MN").

As of December 31, 2000, CAS had $247,502,000 in total assets. CAS deposits are insured by the Federal Deposit Insurance Corporation. It is a member of the Bank Insurance Fund ("BIF"). None of its deposits are insured by the Savings Association Insurance Fund ("SAIF"). CAS is wholly owned by CreditAmerica Holding Company ("Holding Company"), a Minnesota corporation located in Brainerd, Minnesota.[1] CAS has represented that, upon conversion, it will be in the "well capitalized" capital category for capital adequacy purposes.[2]

The CAS main office is in Brainerd, Minnesota. CAS operates ten separate offices in addition to its main office. Five of these offices are in towns with populations of 10,000 or less ("Small Town Offices").[3] The remaining five are in communities with populations of more than 10,000

[1] CreditAmerica Holding Company is not a "bank holding company" for purposes of the Bank Holding Company Act, 12 U.S.C. § 1841.

[2] *See* 12 C.F.R. § 6.4(b)(1)(2000).

[3] These communities are Alexandria, Detroit Lakes, Grand Rapids, Pequot Lakes, and Walker, Minnesota.

("Large Town Offices").[4] CAS wishes to retain and operate all ten offices as branches following its conversion. CAS and/or its principals also filed a series of other applications with the OCC on January 17, 2001, by which to accomplish this end. The multi-step process proposed is based on the requirements of Minnesota law regarding branching.

Specifically, CAS principals filed Business Combination applications to charter five interim national banks,[5] one at each of the Small Town Office locations (together, the "Interim Banks"). Each Interim Bank would then purchase certain assets and assume certain liabilities of the CAS Small Town Office where the respective Interim Bank is located. Finally, a Bank Merger application was filed for the merger of the Interim Banks into ANB-MN with ANB-MN retaining and operating as branches the Large Town Offices it held prior to the merger and the Small Town Offices which were the main offices of the Interim Banks prior to the merger.

Finally, the Holding Company will cease to exist upon completion of the merger. The shareholders of both the Holding Company and CAS will adopt necessary resolutions to permit the stock of ANB-MN to be issued directly to the Holding Company shareholders. ANB-MN will be directly owned by these individual shareholders.[6]

Representatives of competitor banks sent letters to the OCC protesting the series of transactions proposed by CAS. These individuals assert that CAS is circumventing a state law[7] that provides home office protection for banks with their principal offices in towns with populations of 10,000 or less. Under this state statute, competitor banks with their principal offices in such a small town must consent to the establishment of a branch by a bank that does not have its principal office in that town. Objections to the selection of the name "American National Bank of Minnesota" were also received by the OCC on the grounds that the public would be confused by the similarity of the chosen name to that of state banks in the area. As discussed in detail later in this Decision, these issues have been thoroughly considered and do not constitute impediments to approval of the proposed transactions.

Summary of the Transaction

The following steps are intended to occur within minutes of each other on the closing day.

[4] These communities are St. Cloud, Elk River, Fergus Falls, Moorhead, and Brainerd (CAS operates an office in Brainerd at a location separate from its main office).

[5] Interim national banks exist for only a moment in time.

[6] The Federal Reserve Bank of Minneapolis has advised CAS that it does not object to the consummation of the proposed reorganization without the filing of a formal application by the Holding Company. Letter from Federal Reserve Bank of Minneapolis Assistant Vice President Ron J. Feldman to CAS Chief Operating Officer/General Counsel Robert J. Sefkow (February 5, 2001).

[7] Minn. Stat. Ann. § 47.52 (West Supp. 1999-2000).

1. CAS principals will charter an interim national bank in each of the communities in which the Small Town Offices are located. Each Interim Bank's main office will be located at the CAS office in its respective town.

2. Each Interim Bank will purchase certain assets (including bank premises) and assume certain liabilities of the CAS office in the town where the Interim Bank is located, thereby divesting CAS of the Small Town Office locations ("Purchase and Assumption Transactions").

3. Following the Purchase and Assumption Transactions, CAS will convert to a national bank charter (ANB-MN) and retain and operate as branches the five Large Town Offices ("Conversion Transaction").

4. ANB-MN (the "acquiring" or "resulting" bank) will then merge with the five Interim Banks (the "target banks"). ANB-MN will retain and operate as branches the five branches it owned prior to the merger and a branch at each of the target bank locations ("Merger Transaction").

II. LEGAL AUTHORITY

A. The Formation of the Interim Banks is Authorized.

The National Bank Act authorizes the chartering of national banks. *See, e.g.,* 12 U.S.C. §§ 21, 26-27. OCC regulations set out special requirements and procedures for chartering a national bank that is an "interim bank"-- *i.e.*, a national bank that is formed to be used as a vehicle for a business combination.[8] The transactions for which the Interim Banks are being established (the purchase and assumption of assets and liabilities and the merger with ANB-MN) constitute business combinations. The requirements of 12 U.S.C. § 5.33, with respect to interim banks, as well as those in 12 U.S.C. §§ 21, 26, and 27 for chartering a new bank, are satisfied. Accordingly, the formation of the Interim Banks is authorized.

B. The Interim Banks May Purchase Certain Assets and Assume Certain Liabilities of the Small Town Offices.

Each Interim Bank will acquire certain assets and assume certain liabilities from the CAS office in the small town where the Interim Bank is located. The Purchase and Assumption Transactions are authorized under 12 U.S.C. § 24(Seventh). National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including

[8] *See* 12 C.F.R. § 5.33(e)(4)(2000). A "business combination" includes the assumption of deposit liabilities by a national bank and mergers between national banks. 12 C.F.R. § 5.33(d)(1) & (d)(2) (2000). In addition, interim federally-chartered depository institutions that are chartered by the appropriate federal banking agency and will not open for business, such as the Interim Banks, are FDIC-insured upon issuance of the institutions' charter by the agency. *See* 12 U.S.C. § 1815(a)(2). The FDIC has advised that no application to, nor approval from, the FDIC is required in order for the Interim Banks to become insured depository institutions upon the issuance of their charters. Letter from FDIC Senior Regional Counsel Joseph A. Genova, Jr., to CAS General Counsel Robert J. Sefkow (January 23, 2001); Letter from FDIC Senior Regional Counsel Joseph A. Genova, Jr., to OCC Senior Counsel Leslie G. Linville (May 22, 2001).

assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh).[9] Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, each Interim Bank may acquire the assets, and assume the liabilities, involved in the Purchase and Assumption Transactions.[10]

C. CAS May Convert into a National Bank and Retain and Operate as Branches Its Five Large Town Offices.

1. CAS May Convert into a National Bank under 12 U.S.C. § 35.

Upon completion of the Purchase and Assumption Transactions, CAS will convert its industrial loan and thrift charter to a national bank charter with its main office in Brainerd, Minnesota.

State banks may convert into national banks under 12 U.S.C. § 35, which provides in relevant part:

> Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word "national": *Provided, however*, That said conversion shall not be in contravention of the State law.

Two legal issues are presented in any conversion request: (1) Is the converting institution a "bank," and (2) would the conversion contravene state law?

a. CAS is a "State bank" for Purposes of 12 U.S.C. § 35.

The word "bank" is not defined in 12 U.S.C. § 35. In construing this term, the OCC looks to the definition of "State bank" applicable to the reciprocal situation, that of converting a national bank to a state bank. That definition is found in 12 U.S.C. § 214(a), which provides that "the term

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[9] *See, e.g., City National Bank of Huron v. Fuller,* 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society,* 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). *See also* 12 U.S.C. § 1828(c)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

[10] A majority of CAS directors constitute a majority of each Interim Bank's directors. CAS and the Interim Banks are therefore "affiliates" for 12 U.S.C. § 371c purposes. However, the Federal Reserve has issued an exemption indicating that 12 U.S.C. § 371c shall not apply to a transaction between insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act. 12 C.F.R. § 250.241 (2000). CAS and the Interim Banks are "insured depository institutions" and the OCC will approve the proposed Purchase and Assumption Transactions pursuant to the Bank Merger Act prior to when the transactions will occur. 12 U.S.C. § 1813(a)(1), (2), & (c)(2). Therefore, the Purchase and Assumption Transactions are not subject to the restrictions of 12 U.S.C. § 371c.

'State bank' means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State . . . . " Thus, to qualify for conversion to a national bank under 12 U.S.C. § 35, an industrial loan and thrift company must be a banking institution and it must receive deposits.

The legislative history of 12 U.S.C. § 214 explains that the definition of "State bank" is intended to be the same, except for mutual savings banks and unincorporated banks, as in the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1811 *et seq.*[11] The FDIA definition of "State bank" is found at 12 U.S.C. § 1813(a)(2).[12]

Section 1813(a)(2) was amended to include an "industrial bank (or similar depository institution which the Board of Directors[13] finds to be operating substantially in the same manner as an industrial bank)" by the Garn-St Germain Depository Institutions Act of 1982 (hereinafter "Garn-St Germain Act").[14] The legislative history of the amendment explains:

> Industrial banks, industrial loan companies, **industrial loan and thrift companies**, and industrial loan and investment companies are all names for state financial institutions which extend installment credit to consumers and accept some form of savings deposit from their customers. . . . The **purpose of these amendments is to permit this type of financial institution to be eligible for membership in the FDIC on the same basis as other state financial institutions** which offer the same or similar services to the public. [15]

As indicated above, CAS deposits are insured by the FDIC. Thus, it is apparent the FDIC has determined that Minnesota industrial loan and thrift companies are "operating substantially in the manner as an industrial bank." Accordingly, CAS is a banking institution included in the FDIA definition of "State bank."

Although 12 U.S.C. § 214(a) was not likewise amended to expressly include industrial loan and thrift companies within the definition of "State bank," that section was intended to be compatible with 12 U.S.C. § 1813(a). It is therefore appropriate to conclude that a state-chartered industrial

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[11] S. Rep. No. 1104, 81st Cong., 2d Sess., *reprinted in* 1950 U.S. Code Cong. & Ad. News 3012, 3013.

[12] Section 1813(a)(2) provides in pertinent part: "The term 'State bank' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which--(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and (B) is incorporated under the laws of any State. . . ."

[13] "Board of Directors" refers to the five-member board, which manages the FDIC. 12 U.S.C. § 1812(a)(1).

[14] Pub. L. No. 97-320, § 703(a), 96 Stat. 1469, 1538.

[15] S. Rep. No. 536, 97th Cong., 2d Sess. 43, *reprinted in* 1982 U.S. Code Cong. & Ad. News 3054, 3097 (emphasis supplied).

loan and thrift company is a "State bank" for purposes of 12 U.S.C. § 214(a), and thus for 12 U.S.C. § 35, provided it is "engaged in the business of receiving deposits."

Minnesota industrial loan and thrift companies meet this requirement. Under Minnesota state law, industrial loan and thrift companies have the power to: (1) sell and issue for investment certificates of indebtedness, under any descriptive name, which may bear interest and to receive savings accounts or savings deposits,[16] and (2) issue negotiable order of withdrawal accounts, with or without interest.[17] In addition, "deposits" are defined quite broadly under the FDIA[18] to include the deposit-like products offered by industrial loan and thrift companies, since they are the functional equivalent to bank deposits.[19]

Thus, because CAS is a state-chartered banking institution and it is "engaged in the business of receiving deposits," it is a "State bank"[20] for purposes of the FDIA and 12 U.S.C. § 214a.[21] Accordingly, for the reasons set forth above, we conclude that CAS is a "State bank" for purposes of 12 U.S.C. § 35 and is therefore eligible to convert to a national bank.[22]

b. The CAS Conversion to a National Bank is not in Contravention of State Law.

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[16] Minn. Stat. Ann. § 53.04, subd. 5 (West Supp. 1999-2000).

[17] Minn. Stat. Ann. § 53.04, subd. 5b (West Supp. 1999-2000).

[18] 12 U.S.C. § 1813(l).

[19] S. Rep. No. 536 at 3097.

[20] Under Minnesota law, an industrial loan and thrift company is not a "State Bank." Minn. Stat. Ann § 49.01, subd. 7 (West Supp. 1999-2000). However, the interpretation of terms such as "State bank" in federal statutes is a matter of federal, not state, law. *Department of Banking and Consumer Finance v. Clarke*, 809 F.2d 266 (5th Cir.) *cert. denied*, 483 U.S. 1010 (1987).

[21] CAS is not only "engaged in the business of receiving deposits," but in the banking business generally. Industrial loan and thrift companies in Minnesota are authorized by state law to engage in numerous other banking functions. Specific powers granted by statute to industrial loan and thrift companies, in addition to the ability to receive deposits, include the ability to make secured or unsecured loans; discount or purchase choses in action; enter into credit sale or service contracts for sale; and exercise all other general and usual powers incidental to ordinary corporations in Minnesota. Minn. Stat. Ann. § 53.04 (West Supp. 1999-2000). And, in fact, CAS is actually engaged in offering these types of banking services. The CAS Federal Financial Institutions Examination Council Consolidated Report of Condition for the period ending December 31, 2000 (hereinafter "CAS December 31, 2000 Call Report"), demonstrates that CAS offers NOW accounts, money market accounts, certificates of deposit, savings accounts, IRAs, and official checks. Total deposits were $206,690,000. The CAS December 31, 2000 Call Report also indicates CAS had real estate loans of $173,469,000; commercial loans of $18,195,000; and consumer loans of $10,222,000. Other information available to the OCC shows that CAS further provides ACH, wire transfer, and safe deposit box services, as well as night depository and drive-through facilities.

[22] The OCC has determined that a Colorado state-chartered industrial bank is a "State bank" for purposes of 12 U.S.C. § 35. Letter from OCC Senior Attorney Christopher C. Manthey (July 10, 1989) (LEXIS, Bankng library, ALLOCC file) ("Manthey Letter").

A further requirement of 12 U.S.C. § 35 is that a conversion must "not be in contravention of the State law." Minnesota law is silent on the question of whether a state-chartered industrial loan and thrift company may convert to a national bank. However, the OCC has taken the position that section 35 gives states the option to prohibit such conversions. Therefore, a specific state statutory prohibition is required to bring about that result. Silence in the state law does not prohibit conversions that are otherwise permissible under the federal law.[23] In *Amoskeag National Bank v. Manchester Morris Plan Bank*,[24] the court approved the conversion of a New Hampshire industrial bank to a national bank. Like Minnesota, New Hampshire law was silent about such a conversion.

Based on the above, we conclude the CAS conversion to a national bank charter is permissible. First, CAS is a "State bank" for purposes of 12 U.S.C. § 35. Second, its conversion does not contravene Minnesota law.

2. Following the Conversion, ANB-MN may Retain and Operate as Branches the Five Large Town Offices.

Immediately following the conversion, ANB-MN will operate the former CAS main office in Brainerd, Minnesota, as its main office. It will also retain and operate as branches the Five Large Town Offices CAS owned prior to the conversion.

When a state bank converts to a national bank, the authority of the resulting bank to retain the branches of the state bank is contained in 12 U.S.C. § 36(b)(1), which states:

> (b) Converted State banks
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> (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office--
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> (A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;
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> (B) was a branch of any bank on February 26, 1927; or
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> (C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

[23] Decision of the Office of the Comptroller of the Currency on the Application of Republic Bank for Savings, New York, New York, to Convert to a National Banking Association (July 25, 1995) (LEXIS, Bankng library, ALLOCC file); Manthey Letter.

[24] 106 N.H. 428, 213 A.2d 521 (1965).

> The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

Sections 36(b)(1)(A) and (b)(1)(C) require OCC approval and compliance with applicable state law. Section 36(b)(1)(A) permits a national bank resulting from the conversion of a State bank to retain any office which was a branch of the State bank immediately prior to the conversion if, under section 36(c), it might be established as a new branch of the resulting bank. Section 36(c)[25] permits approval of a new branch:

> (2) [A]t any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

Authorization for Minnesota state banks to operate branches[26] is contained in section 47.52 of the Minnesota Statutes,[27] which provides in part:

> (a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain detached facilities provided the facilities are located within:
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> > (1) the municipality in which the principal office of the applicant bank is located; or
> >
> > (2) 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or
> >
> > (3) a municipality in which no bank is located at the time of application; or
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> > (4) a municipality having a population of more than 10,000; or

[25] 12 U.S.C. § 36(c).

[26] Minnesota statutes refer to branches as "detached facilities."

[27] Minn. Stat. Ann. § 47.52 (West Supp. 1999-2000).

> (5) a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.
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> (b) A detached facility shall not be closer than 50 feet to a detached facility operated by any other bank and shall not be closer than 100 feet to the principal office of any other bank, the measurement to be made in the same manner as provided above.

The five locations which ANB-MN proposes to retain and operate meet the relevant criteria of section 47.52: (1) all five are located in a municipality having a population of more than 10,000; and (2) each proposed branch is not closer than 50 feet to a detached facility operated any by other bank and is not closer than 100 feet to the principal office of any other bank.

Therefore, ANB-MN is authorized to retain and operate branches at the five locations. Pursuant to 12 U.S.C. § 36(b)(1)(A), ANB-MN may operate these branches because a state bank could establish a new branch at these locations. Retention would also be permissible under section 36(b)(1)(C) since state law would not prohibit a state bank resulting from the conversion of a national bank from retaining and operating identically situated branches that were branches of the national bank prior to conversion.

D. The Interim Banks May Merge into ANB-MN and ANB-MN May Thereafter Retain and Operate as Branches the Five Branches It Owned Prior to the Merger and the Five Offices Owned by the Interim Banks.

Following its conversion, ANB-MN proposes to acquire the Interim Banks through merger and retain as branches its own branches and the five main offices of the Interim Banks. These steps are authorized under 12 U.S.C. § 215a, providing authority for the merger, and 12 U.S.C. § 36(b)(2),[28] and state law incorporated therein, providing authority for the retention of the offices as branches. The Minnesota Department of Commerce concurs that, under similar

[28] Section 36(b)(2) provides:

> (2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "national bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as -
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> (A) a main office or branch of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of a resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;
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> (B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

circumstances, branches may be acquired and retained by state banks and indicates that it has permitted at least one resulting state bank to retain a target interim bank's main office as a branch following its merger with the interim bank.[29]

As mentioned, the merger between ANB-MN and the Interim Banks, all located solely in Minnesota, is authorized by 12 U.S.C. § 215a, which permits mergers between national banks located in the same state.

1. Following the Merger, ANB-MN May, Pursuant to 12 U.S.C. § 36(b)(2), Retain and Operate as Branches the Five Branches It Owned Prior to the Merger and the Five Main Offices of the Interim Banks.

With respect to branch retention, section 36(b)(2)(C) authorizes an acquiring bank to retain its own branches following a merger provided that a state bank, identically situated, would not be prohibited from retaining its identically situated branches following a merger. Thus, ANB-MN may retain the five branches it operated prior to the merger. As discussed above, these branches are located in towns with populations of more than 10,000 and comply with the distance limitations of section 47.52(b). Consequently, Minnesota law would not prohibit a Minnesota state bank from retaining and operating these branches. To the contrary, state banks could establish new branches in these communities pursuant to section 47.52.

Section 36(b)(2)(A) permits the resulting bank in a merger to retain any office of a target bank as a branch if, under section 36(c), it might be established as a new branch of the resulting bank.[30] Minnesota law expressly authorizes a successor (resulting) state bank in a merger to

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> (C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.
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> The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

For purposes of 12 U.S.C. § 36(b)(2), the term "consolidation" includes a merger. 12 U.S.C. § 36(b)(3).

[29] Letter from Minnesota Department of Commerce Deputy Commissioner Kevin M. Murphy to OCC Senior Counsel Leslie G. Linville (April 12, 2001). The Department of Commerce oversees state banks and industrial loan and thrift companies.

[30] As indicated previously, section 36(c) permits approval of a new branch at any location where a state bank branch could be located under similar circumstances. While section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. *State of Washington v. Heimann,* 633 F.2d 886, 889-90 (9th Cir. 1980). *Cf. First National Bank of Logan v. Walker Bank and Trust Co.,* 385 U.S. 252 (1966) (where state law restricts one method of branching but provides alternative methods of branching, for example by restricting de novo branches but permitting branching by acquisition, national banks are limited to branching by the same method).

acquire another state or national bank and its branches and operate them as branches of the successor bank. Specifically, section 49.34, subd. 2, of the Minnesota Statutes[31] provides:

> (a) **Notwithstanding the** geographic limitations of subdivision 1 and the limitations on number of facilities, distance limitations, and **consent requirements contained in Section 47.52,** a state bank may apply to the commissioner, pursuant to the procedures contained in sections 47.51 to 47.56[32] and 49.35 to 49.41, to acquire another state bank or national banking association and its detached facilities through merger, consolidation, or purchase of assets and assumption of liabilities and operate them as detached facilities of the successor bank.

Section 49.34, subd. 2(a), thus permits ANB-MN, as the resulting or successor bank in its merger with the Interim Banks, to acquire and operate the Interim Banks' offices as branches following the merger.

2. Protestants' Assertions that the Series of Transactions Proposed by CAS Circumvents the Home Office Protection Provisions of Section 47.52 Are Misconceived.

The protestants contend the transactions proposed by CAS disregard the limitations on branching imposed by section 47.52 in towns of 10,000 or less. The protestants, however, do not refer to the express language of section 49.34, subd. 2, which clearly permits the resulting bank in a merger to retain and operate as branches all offices of the target banks "[n]otwithstanding the . . . consent requirements of Section 47.52. . . ."

Protestants' comments also imply a belief that the use of interim banks in some manner negates the applicability of section 49.34, subd. 2, to the proposed transactions. However, no language of that statute supports such a conclusion, no court decisions limit the scope of that section in the

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[31] Minn. Stat. Ann. § 49.34, subd. 2 (West Supp. 1999-2000) (emphasis added).

[32] State law also requires the regulator to review several factors in determining whether to approve a branch of a state bank. These relate to capital adequacy, management quality, asset condition, whether the proposed facility will improve the quality or increase the availability of banking services in the community and whether the proposed facility will have an undue effect upon the solvency of existing financial institutions in the community. Minn. Stat. Ann. § 47.54, subd. 2 (West Supp. 1999-2000). Assuming the applicability of these standards in the situation where a national bank, following its conversion from an industrial loan and thrift company and subsequent merger with interim national banks, is continuing to operate branches operated by the industrial loan and thrift prior to the conversion, we find that these standards are satisfied. ANB-MN's management, capital and asset quality are all satisfactory. Upon converting, if ANB-MN could not continue to operate the branches, the localities in which all of the branches are located would lose significant access to banking services. In contrast, continued operation assures access to all of the services that ANB-MN could make available as a national bank. In addition, because these branches represent the continuation of operations of existing branches they will not have an undue effect upon the solvency of existing financial institutions in these communities.

manner protestants suggest[33] and protestants provide no support for their assertion that would lend weight to a finding that that section should be so limited. In contrast, the Minnesota Department of Commerce, as mentioned, concurs with the OCC's interpretation of this statute.[34]

In view of the above, we conclude section 49.34, subd. 2, permits the resulting bank in a merger with one or more target interim banks (that have acquired the assets and liabilities of an existing branch or main office of a depository institution) to retain and operate the target bank(s)' offices following the merger. We therefore also conclude the protestants' objections to the CAS proposed transactions are misconceived.[35]

3. Objections to use of the name "American National Bank of Minnesota."

As discussed above, the OCC received objections to the newly converted national bank's use of the name "American National Bank of Minnesota" due to its similarity to names of state banks in the area.

The only requirement in 12 U.S.C. § 35 regarding the name of a converting bank is that it be "a name that contains the word 'national.' " Prior to 1982, national banks were required to obtain OCC approval of their initial names and subsequent changes of name. However, the passage of

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[33] The only court decision addressing the relationship between sections 47.52 and 49.34, subd. 2, is *Western State Bank of St. Paul v. Marquette Bank Minneapolis, N.A.,* 734 F. Supp. 889 (D.C. Minn. 1990). In upholding the OCC determination that branches acquired by a national bank pursuant to section 49.34, subd. 2, need not be counted against the five-branch limit which was imposed by section 47.52 at that time, the United States District Court for the District of Minnesota commented that, with respect to the OCC's interpretation of section 49.34, subd.2: "The statute at issue in this case regulates banking. Although it is a state law, it provides the OCC with that agency's rule of decision under 12 U.S.C. § 36(c) and must be considered to fall within the OCC's field of expertise. Thus, the OCC's interpretation of the statute must be accorded deference, as long as the interpretation is a reasonable one." *Id.* at 892.

[34] *See* note 29, *supra*, and accompanying text. We note, too, that where the Minnesota Legislature intended to limit the scope of a statute to banks that have been in existence for a minimum length of time prior to a merger, it has done so. *Compare* § 49.34, subd. 2, *with* § 49.411, subd. 4(b) (West Supp. 1999-2000) (Minnesota state bank must be in continuous operation for at least five years prior to its acquisition by an out-of-state bank).

[35] After receiving a copy of Minnesota Department of Commerce Deputy Commissioner Murphy's April 12, 2001 letter to the OCC, one protestor submitted an additional comment asserting the OCC must make a finding that the CAS applications meet the requirements of Minnesota law for the chartering of state banks, Minn. Stat. Ann. § 46.041, and specifically the factors in Minn. Stat. Ann. § 46.044. As discussed above, the OCC is granted the statutory authority for the chartering of national banks by the National Bank Act, 12 U.S.C. §§21, 26-27. These federal statutes are implemented by the OCC's regulation at 12 C.F.R. Part 5. However, assuming the factors contained in section 46.044 were applicable to the proposed CAS transactions, we find those factors are satisfied. The factors for approving an ILT are similar to those in section 46.044. *See* Minn. Stat. Ann. § 53.03, subd. 2 (West 1988 and Supp. 1999-2000). No adverse information has been received regarding the integrity of the proposed management and directors. Moreover, five of the seven proposed directors, including the proposed Chief Executive Officer, have been with CAS since its chartering by the Minnesota Department of Commerce as an industrial loan and thrift company (ILT) in 1983. *See also* note 32, *supra,* for further discussion of factors similar to those in section 46.044.

the Garn-St Germain Act amended 12 U.S.C. §§ 22 and 30 to delete the requirement for OCC approval of a national bank's name. The Senate Report stated:

> Comptroller approval for bank name changes will no longer be required. There exists little supervisory interest in the name of a particular national bank. Federal approval procedures are to be replaced by a simple notice requirement. **Any confusion between bank names shall be resolved under other laws, including the federal Lanham Act and state statutory and common law principles of unfair competition.**[36]

Accordingly, the OCC no longer has approval authority with respect to names chosen by national banks except with respect to the requirement that a national bank's name contain the word "national." Since "American National Bank of Minnesota" contains the required term, it complies with 12 U.S.C. § 35. If other entities believe the name in question infringes upon their prior rights to a similar name, any such dispute would need to be resolved between the parties under relevant federal law and any applicable state law.

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, including purchase and assumption transactions, where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a transaction 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 Purchase and Assumption and Merger Transactions may be approved under section 1828(c).

1. Competitive Analysis.

Since a majority of the directors of CAS, the Interim Banks, and ANB-MN are the same individuals, these entities are already affiliated and under common control. In addition, the current shareholders of the Holding Company indirectly own CAS now and will own ANB-MN stock directly following the merger. Thus, the Purchase and Assumption and Merger Transactions will have no anticompetitive effect.

[36] S. Rep. No. 536, *supra*, at 3082 (emphasis supplied).

2. Financial and Managerial Resources.

The financial and managerial resources of CAS, the Interim Banks and ANB-MN are presently satisfactory. The Purchase and Assumption and Merger Transactions should not have a material effect on ANB-MN's financial and managerial resources. The future prospects of ANB-MN are favorable. Management has demonstrated the ability to supervise a sound financial operation and to recognize and correct deficiencies. We find the financial and managerial resources factor is consistent with approval of the Purchase and Assumption and Merger Transactions.[37]

3. Convenience and Needs.

The Purchase and Assumption and Merger Transactions will not have an adverse impact on the convenience and needs of the communities to be served. ANB-MN will operate offices in the same communities as did CAS prior to the Purchase and Assumption and Merger Transactions, continuing to provide banking services to those communities. There will be no reductions in products or services offered, and no offices will be closed. Accordingly, we believe the impact of the Purchase and Assumption and Merger Transactions 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.[38] The OCC considers the CRA performance evaluation of each institution involved in the transaction.

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. CAS received a Satisfactory CRA rating as of July 20, 1999, from the FDIC. The OCC received no adverse CRA comments and found no adverse information concerning the banks' performance in complying with the Community Reinvestment Act. The transactions are not expected to have an adverse effect on ANB-MN's CRA performance. 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, we find that the chartering of the Interim Banks, the Purchase and Assumption Transactions, the Conversion Transaction, and the Merger Transaction are legally authorized. The resulting bank in each transaction may retain and operate branches, as

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[37] As noted above, CAS has represented that it will be "well capitalized," as defined in 12 C.F.R. § 6.4(b)(1), upon conversion.

[38] 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

described in the analysis above; each transaction meets other statutory criteria for approval; and there are no supervisory or policy concerns. Accordingly, these applications are hereby approved.

These approvals are granted based on a thorough review of all information available, including the representations and commitments made in the applications and by the proposed banks' representatives and assuming compliance with all other regulatory requirements. This includes the representation that prior to conversion, the capital structure will be realigned to comply with the minimum capital requirements of 12 U.S.C. §§ 35, 36, 52 and 371d to the extent applicable.

These approvals, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or an officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

-signed- 06-28-01

Ellen Tanner Shepherd Date
Licensing Manager

Application Control Numbers:

2001-MW-01-001; 2001-MW-02-003; 2001-MW-02-004;
2001-MW-02-005; 2001-MW-02-006; 2001-MW-02-007;
2001-MW-02-008