Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-42
June 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE WACHOVIA BANK OF SOUTH CAROLINA, N.A., CHARLESTON, SOUTH CAROLINA, AND WACHOVIA BANK OF GEORGIA, N.A., AUGUSTA, GEORGIA, WITH AND INTO WACHOVIA BANK OF NORTH CAROLINA, N.A., WINSTON-SALEM, NORTH CAROLINA

June 1, 1997

I. INTRODUCTION

On March 10, 1997, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge Wachovia Bank of South Carolina, National Association, Charleston, South Carolina ("WBSC") and Wachovia Bank of Georgia, National Association, Augusta, Georgia ("WBGA") with and into Wachovia Bank of North Carolina, National Association, Winston-Salem, North Carolina ("WBNC") under the charter of the latter, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). Simultaneously with the merger, WBNC will change its name to Wachovia Bank, National Association ("Wachovia Bank, N.A."). All banks are insured national banks. WBNC has its main office in Winston-Salem, North Carolina, and operates branches in North Carolina and Virginia. WBSC has its main office in Charleston, South Carolina, and operates branches in South Carolina. WBGA has its main office in Augusta, Georgia, and operates branches in Georgia. In the Merger Application, OCC approval is also requested for the resulting bank to retain WBNC's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain WBNC's branches and the main office and branches of WBSC and WBGA as branches of the resulting bank after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

All three banks are subsidiaries of Wachovia Corporation ("Wachovia"), a multistate bank holding company headquartered in Winston-Salem, North Carolina. In the proposed merger, three of the holding company's existing bank subsidiaries will be combined into one bank with branches. As of December 31, 1996, WBNC had approximately $26.7 billion in assets

and $13.2 billion in deposits. As of the same date, WBSC had approximately $7.3 billion in assets and $5.6 billion in deposits, and WBGA had approximately $18.9 billion in assets and $9.6 billion in deposits.

II. LEGAL AUTHORITY

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

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

Section 44 authorizes mergers between banks with different home states:

> (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank 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).[1] The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In this Merger Application, the home states of the banks are North Carolina, South Carolina, and Georgia; none 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)

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[1] 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).

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, WBNC is acquiring by merger banks in the host states of South Carolina and Georgia. South Carolina law provides that an interstate merger transaction resulting in the acquisition of a South Carolina bank by an out-of-state bank shall not be permitted unless the South Carolina bank has been in continuous operation, on the date of the acquisition, for at least five years. See S.C. Code Ann. § 34-25-240(c) (Law. Co-op. 1996). WBSC has been in continuous operation since 1991 under its current name, and has operated under the names of its predecessors since 1834. Georgia law requires that an interstate merger transaction resulting in the acquisition or control of a Georgia bank by an out-of-state bank shall not be permitted unless the Georgia bank or its predecessor bank has been in existence and continuously operated or incorporated as a bank for at least five years prior to the acquisition. See Ga. Code Ann. § 7-1-628.3(b). WBGA and its predecessors have been in existence since 1865. Thus, this Merger Application satisfies the Riegle-Neal Act 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).[2]

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

The South Carolina interstate merger statute does not contain any filing requirements for an interstate merger transaction involving national banks. WBNC provided a copy of its Merger Application to the South Carolina state bank supervisor, as required by section 1831u(b)(1)(ii). WBNC advises that the supervisor has confirmed this is the only filing required in South Carolina.[3] The Georgia interstate bank merger statute contains a number of filing, notification, and certification requirements for an out-of-state bank resulting from an interstate merger with a Georgia bank that by their terms purport to include mergers between national banks. See Ga. Code Ann. § 7-1-628.5(a). While some of these requirements appear to go beyond the filing requirements permitted in section 1831u(b)(1) and so are not applicable to national banks for the reasons discussed in note 2, WBNC has indicated it plans voluntarily to follow them.[4] WBNC also provided a copy of its OCC Merger Application to the Georgia state bank supervisor. Thus, this Merger Application 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). WBNC, WBSC, and WBGA are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting

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[3] The notice, application and "qualifying to do business" requirements in S.C. Code Ann. § 34-25-250 only apply to an interstate merger transaction involving a South Carolina state bank. The requirements of this provision apply only where an out-of-state bank is the resulting bank in an interstate merger transaction involving a South Carolina state bank. A "South Carolina state bank" is defined as "a bank chartered under the laws of South Carolina." S.C. Code Ann. § 34-25-220(18). Thus, these requirements are not applicable to WBNC's merger with WBSC, a national bank. In addition, the filing requirements of section 1831u(b)(1) apply only with respect to the host states that will become host states as a result of the merger transaction under review in the application, not the host states in which the acquiring bank already operates branches. See Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9). Thus, for this merger transaction, WBNC must comply with the filing requirements of section 1831u(b)(1) for South Carolina and Georgia, not for North Carolina or Virginia (where WBNC already operates a branch).

[4] Of the five requirements that section 7-1-628.5(a) purports to apply to national banks, only the filing requirement in paragraph (a)(4) appears to be the type of state filing requirement contemplated in section 1831u(b)(1). Since WBNC plans to follow the state's requirements, we need not address in detail here the extent to which the state has the authority to impose the other conditions on national banks. See note 2.

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, WBNC (the bank submitting the application as the acquiring bank) has bank affiliates in South Carolina and Georgia before the transaction (i.e., WBSC and WBGA), 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, all three banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, WBNC 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 among WBNC, WBSC, and WBGA is legally permissible under section 1831u.

B. Following the Merger, the Resulting Bank may Retain WBNC's, WBSC's and WBGA's 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, WBNC (as the resulting bank in the merger) be permitted to retain and continue to operate its existing main office in Winston-Salem as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches and (2) the main offices and branches of WBSC in South Carolina and WBGA in Georgia. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

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

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

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

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, WBNC, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of all three banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[5]

Moreover, at its branches in South Carolina and Georgia, as well as those in North Carolina and Virginia, WBNC 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

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

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 WBNC, WBSC, and WBGA are already owned by the same bank holding company, their merger will have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of each of the three banks is presently satisfactory. Wachovia expects to eliminate redundant costs and improve efficiency and productivity by operating the offices as one entity. The geographic diversification of its operations will also strengthen the combined bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. All three banks currently offer 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. Further, upon completion of the merger, interstate branches will enhance customer satisfaction by making banking activities more convenient for those customers who travel across state lines or for business customers who have operations in more than one state. Following the merger, customers can deal with the same bank in the different states and will 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, for example, in the Charlotte and Augusta metropolitan areas. The merger will permit the resulting bank to better serve its customers and at a lower cost. The combined resources, including capital and reserves, of the currently separate banks will provide a more substantial capital cushion for unexpected losses as well as provide business customers with a higher legal lending limit.

No branch closings are contemplated as a result of this merger since the three banks serve different areas. However, as part of its ongoing business plans, Wachovia periodically evaluates its branch network and, as part of the normal course of business, may close redundant or unprofitable branches. Specifically, under a market network strategy developed in 1995, with implementation commencing in 1996, Wachovia has closed or consolidated some branches in North Carolina, South Carolina, and Georgia, with future plans to close, consolidate, or sell other branches. As such branches are identified, these later closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

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

B. The Community Reinvestment Act

The Community Reinvestment Act ("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. WBNC, WBSC, and WBGA each has an outstanding rating with respect to CRA performance. No public comments were received by the OCC relating to this application, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. After WBGA and WBSC merge into WBNC, the Georgia and South Carolina branches will remain open as branches of the resulting bank. The resulting bank will continue to serve the same communities that the merging banks currently serve. Wachovia will continue the current CRA programs and policies the three banks have in North Carolina, South Carolina, and Georgia. 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 WBNC, WBSC, and WBGA have today as separate banks. The merger and operation of interstate branches do 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 the approval of the proposed merger is consistent with the CRA.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of WBNC, WBSC, and WBGA 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 all three banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), and that the merger meets the other statutory criteria for approval. Accordingly, this Merger Application is hereby approved.

/s/ 06-01-97

Julie L. Williams Date
Chief Counsel

Application Control Number: 97-SE-02-001