Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-86
October 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF MATEWAN NATIONAL BANK, MATEWAN, WEST VIRGINIA

September 12, 1997

I. INTRODUCTION

On August 1, 1997, Matewan National Bank, Matewan, West Virginia, ("MNB") feed an application with the Office of the Comptroller of the Currency ("OCC") for approval to merge Matewan National Bank/Kentucky, Pikeville, Kentucky, ("MNB-KY") with and into MNB under MNB's charter and title, under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Kentucky Mergers). MNB has its main office in Matewan, West Virginia, and operates branches in West Virginia. MNB-KY has its main office in Pikeville, Kentucky, and operates branches in Kentucky. OCC approval is also requested for the bank resulting from the merger to retain MNB's main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain MNB's branches and MNB-KY's main office and branches, as branches after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

On August 7, 1997, MNB applied to establish five branches in Virginia to be located in VanSant ("the VanSant Branch"), Richlands ("the Richlands Branch"), Abingdon ("the Abingdon Branch"), Tazewell ("the Tazewell Branch"), and Lebanon, Virginia ("the Lebanon Branch") under 12 U.S.C. § 36. On August 7, 1997, MNB also applied to acquire the Virginia assets and liabilities, from its affiliate, Matewan Bank FSB ("MB-FSB"), Pikeville, Kentucky, under 12 U.S.C. §§ 24(Seventh) & 1828(c) ("the Virginia P&A"). This application includes the acquisition by MNB of the business currently conducted by MB-FSB at its branches in Richlands and Abingdon and that business would be transferred to MNB's new Virginia branches in Richlands and Abingdon.

MNB, MNB-KY, and MB-FSB are subsidiaries of Matewan BancShares, Inc. ("MBS"), a multistate bank holding company headquartered in Williamson, West Virginia. In the Kentucky Merger, MBS's existing bank subsidiary in Kentucky will be merged into MNB, its lead bank, in West Virginia. In the other transactions, MNB will establish five branches in Virginia and the business of two branches of MB-FSB will be transferred to two of those five new branches of MNB. After the transactions, MNB will operate branches in three states (West Virginia, Kentucky, and Virginia).

No protests or comments have been filed with the OCC with respect to any of these applications.

II. LEGAL AUTHORITY

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

1. The Kentucky Merger is authorized under sections 215a-1 & 1831u(a).

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 the Kentucky Merger, the home states of the banks are Kentucky and West Virginia; neither state has opted out. Accordingly, the Kentucky Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

---

[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).

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age requirements, 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 Kentucky Merger satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State. " 12 U.S.C. § 1831u(a)(5)(A). In the Kentucky Merger, MNB is acquiring by merger a bank (MNB-KY) in the host state of Kentucky. Kentucky law does not impose an age requirement on an interstate merger transaction where the resulting bank is an out-of-state national bank.[2] Thus, the Kentucky Merger 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).[3] The Kentucky interstate bank merger statute does not place any notice or filing

---

[2] The Kentucky interstate bank merger statute does impose a five-year age requirement for the Kentucky bank in an interstate merger transaction, but it appears to apply only when an out-of-state state bank is the surviving bank:

> The bank to be acquired in an interstate merger transaction under the provisions of subsections (2) [when a Kentucky state bank is the resulting bank] or (3) [when an out-of-state state bank is the resulting bank] shall have been involved in operation for a period of five (5) years or more.

Ky. Rev. Stat. Ann. § 287.920(4). The reference to subsection (2) suggests that Kentucky also has imposed an age requirement for the target bank in another state in interstate merger transactions in which a Kentucky state bank is the resulting bank. In the proposed transaction here, the acquiring and resulting bank (MNB) is an out-of-state national bank; and so the Kentucky age restriction does not apply. Moreover, MNB-KY and its predecessors have been in existence and operation since 1889, and so the age restriction, if applicable, would be met.

[3] 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

requirements on mergers in which the resulting bank is an out-of-state national bank.[4] MNB submitted a copy of its OCC application for the Kentucky Merger to the Kentucky state bank supervisor, as required by section 1831u(b)(1)(A)(ii). Thus, the Kentucky Merger satisfies the Riegle-Neal Act's 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). MNB and MNBKY 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 bark, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to mergers between affiliated banks since it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In the Kentucky Merger, MNB (the bank submitting the application as the acquiring bank) has a bank affiliate in Kentucky before the transaction (Lo., MNB-KY), 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 Kentucky Merger. However, the Community Reinvestment Act itself is applicable, as discussed in 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

---

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, erg., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A., pp. 4-5, 12-14 & n. 11 (OCC Corporate Decision No. 96-29) (June 1, 1996).

[4] The filing requirements in the Kentucky interstate bank merger statute apply only to out-of-state state banks. They provide that an out-of-state state bank that operates a branch in the state pursuant to an interstate merger transaction in which an out-of-state state bank is the resulting bank must file an application on a form prescribed by the commissioner of financial institutions, pay the requisite filing fee, agree in writing to comply with state laws applicable to its operation of branches in Kentucky, and comply with applicable provisions of Kentucky law governing branch and agency banks. See Ky. Rev. Stat. Ann. § 287.920(3).

application was filed, both MNB and MNB-KY 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, MNB will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the proposed interstate merger transaction between MNB and MNB-KY is legally permissible under section 1831u.

2. The resulting bank may retain the banking offices the banks under sections 36(d) & 1831u(d)(1).

MNB has requested that, upon the completion of the merger, MNB (as the resulting bank in the merger) be permitted to retain and continue to operate its main office in Matewan, West Virginia, as the main office of the resulting bank and to retain and continue to operate as branches (1) its own branches and (2) the main office and branches of MNB-KY. 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(fl(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, MNB, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the banking offices both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[5]

---

[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).

Moreover, at its branches in Kentucky, as well as those in West Virginia and Virginia, MNB is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, em., 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). f. 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).

B. MNB may Establish the Five Branches in Virginia under 12 U.S.C. § 36.

MNB also has applied to establish five new branches in Virginia. These five branches are in VanSant, Richlands, Abingdon, Tazewell, and Lebanon, Virginia. The first branch to be established, the VanSant Branch, is proposed to be authorized as a de novo interstate branch under the Riegle-Neal Act, 12 U.S.C. § 36(g). Then, after the VanSant Branch is established, the Richlands, Abingdon, Tazewell, and Lebanon branches are proposed to be authorized as additional branches in Virginia under 12 U.S.C. § 36(c).[6]

1. MNB may establish the VanSant Branch as an initial de novo branch in Virginia under section 36(g) because Virginia has a law that meets the provisions of section 36(g)(1) and the bank meets the conditions of section 36(g)(2).

MNB has applied for approval to establish an initial de novo branch in another state under 12 U.S.C. § 36(g). Section 36 authorizes a national bank to establish such a branch, subject to the requirements of the section:

> Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if -
>
> (A) there is in effect in the host State a law that -

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).

[6] MNB's Richlands Branch and Abingdon Branch will be at the same locations as branches of its affiliate, MB-FSB. MNB proposes to acquire the business of MB-FSB's two branches in the subsequent Virginia P&A. During the short time between the time MNB's branches are established and the time the Virginia P&A is consummated, branches of both institutions will operate at the same locations. See 12 C.F.R. § 7.3001 (national banks' sharing space and employees with other businesses, including other banks and financial institutions); Decision of the Office of the Comptroller of the Currency on the Applications of First American National Bank, Nashville, Tennessee, n. 6 (OCC Corporate Decision No. 97-55) Dune 26,1997) ("OCC First American Decision").

(I) applies equally to all banks; and
(ii) expressly permits all out-of-State banks to establish de novo branches in such State; and
(B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

12 U.S.C. § 36(g)(1) (Revised Statutes § 5155, as added by section 103(a) of the Riegle-Neal Act). In the application for the VanSant Branch, West Virginia is MNB's home state, and Virginia is the host state.[7]

The availability of the authority for a national bank to establish an initial de nova branch in a host state under section 36(g) therefore is triggered by host state law. The federal authority in section 36(g) is available only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A). However, section 36(g) appears to structure the relationship between federal authority and host state law differently than some other federal banking statutes that refer to state law. On the one hand, the federal authority in section 36(g) is triggered only if the host state has a law that meets the features specified in paragraph 36(g)(1)(A). But section 36(g) does not prohibit host states from having other features in their interstate branching laws beyond those needed to meet the provisions of paragraph 36(g)(1)(A). Nor does section 36(g) provide that the federal authority is ineffective if the state adds other features. That is, the state may add other features to its interstate branching law, and, as long as those features do not cause the state law to fail to meet the provisions of paragraph 36(g)(1)(A), the federal authority in section 36(g) continues to be available.[8]

Thus, in evaluating an application for an initial de novo ranch in a host state under section 36(g), the OCC must determine, first, whether the host state (in MNB's case, Virginia) has a law that meets the provisions of paragraph 36(g)(1)(A), and second, whether the applicant bank has met the conditions in section 36(g)(2). We now address these requirements in turn.

Since MNB is applying to establish an initial de novo branch in Virginia, the branch may be approved under section 36(g) only if Virginia has "a law that -- (i) applies equally to all banks; and (ii) expressly permits all out-of-State banks to establish de novo branches in such State." 12 U.S.C. § 36(g)(1)(A). Virginia enacted legislation, effective July 1, 1995, that permits interstate branching.

---

[7] For purposes of section 36(g), the following definitions apply: The term "home State" means "the State in which the main office of a national bank is located." 12 U.S.C. § 36(g)(3)(B). 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." 12 U.S.C. § 36(g)(3)(C). The term "de nova branch" means a "branch of a national bank which (i) is originally established by the national bank as a branch, and (ii) does not become a branch of such bank as a result of (I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution or (II) the conversion, merger, or consolidation of any such institution or branch." 12 U.S.C. § 36(g)(3)(A). Moreover, section 36(g) applies only to a national bank's initial de novo ranch in a host state. Once the bank has a branch or branches in the state, then that state is not one "in which the bank does not maintain a branch. In such states, as discussed below, subsequent branching by a national bank is governed by the other subsections of section 36, as appropriate.

[8] Yet, section 36(g), once triggered, singles out and specifically incorporates into the federal authority only certain features of state law referenced in section 36(g)(2).

See Va. Code Ann. §§ 6.1-44.1 through 6.1-44.25 (Michie 1996 Supp). The statute includes provisions that expressly permit de novo branches in Virginia by out-of-state banks:

> An out-of-state bank that does not already maintain a branch in this Commonwealth and that meets the requirements of this article may establish and maintain a de novo branch in this Commonwealth.

Va. Code Ann. § 6.1~4.4 (1995). See also Va. Code Ann. §§ 6.1-44.6 & 6.1-44.7 (1995) (filing requirements and reciprocity condition for interstate branches).[9]

Thus, it would seem clear that Virginia has "opted-in" to interstate branching through de novo branches for purposes of section 103 of the Riegle-Neal Act. See also Va. Code Ann. § 6.1-44.1 (Michie 1996 Supp) (statement of express intent of this article to permit interstate branching under sections 102 and 103 of the Riegle-Neal Act). However, one feature of the Virginia law casts uncertainty on the conclusion that Virginia has a law that successfully meets the provisions of paragraph 36(g)(1)(A). Virginia has placed a condition of nationwide reciprocal treatment on an out-of-state bank's establishment of a de novo branch in Virginia. Under the Virginia statute, an out-of-state bank may establish a de novo branch in Virginia only if the home state of the out-of-state bank

---

[9] Virginia also expressly provides for interstate branching through the acquisition of a branch. See Va. Code Ann. § 6.144.5 (1995). Sections 6.1-44.6 and 6.144.7 apply to both a de novo interstate branch and to one acquired through acquisition. These sections provide:

> § 6.1-44.6 Filing requirements.
>
> An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this Commonwealth shall submit to the Commission a copy of the application it files with its home state supervisor or the responsible federal banking agency to establish or acquire such branch. Such submission shall be made at the same time the application is filed by the out-of-state bank with such home state supervisor or responsible federal banking agency. The out-of state bank shall also comply with the requirements of Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act and pay any filing fee required by the Commission.
>
> § 6.1-44.7 Conditions for approval.
>
> No branch of an out-of-state bank may be established under this article, unless:
> 1. In the case of a de novo branch, the laws of the home state of the out-of-state bank permit Virginia banks to establish and maintain de novo branches in that state under substantially the same terms as set forth in this article.
> 2. In the case of a branch to be established through the acquisition of a branch, the laws of the out-of-state bank [sic] permit Virginia banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms as set forth in this article.

Va. Code Ann. §§ 6.144.6 & 6.1-44.7 (Michie 1996 Supp). For the Virginia statute, the following definitions apply: The term “bank" has the meaning set forth in 12 U.S.C. § 1813(h). The term "out-of-state bank" means Ha bank whose home state is a state other than Virginia." A bank's "home state" with respect to a national bank is The state in which the main office of the bank is located." The term "de novo branch" means a "branch of a bank located in a host state which (i) is originally established by the bank as a branch and (ii) does not become a branch of the bank as a result of the acquisition of another bank or a branch of another bank, or the merger, consolidation, or conversion of any such bank or branch." Va. Code Ann. § 6.1-44.2 (Michie 1996 Supp).

permits Virginia banks to establish de novo branches in that state under substantially the same terms as in the Virginia statute. Va. Code Ann. § 6.144.7(2) (Michie 1996 Supp).[10]

The reciprocal treatment condition means that, for the time being and until all states enact suitable interstate branching laws, out-of-state banks from some states would not in fact be permitted to establish de novo branches in Virginia under the terms of the Virginia law. This raises a question whether Virginia indeed has a law that "applies equally to all banks" and "expressly permits all out-of-state banks to establish de novo branches" as set forth in paragraph 36(g)(1)(A) (emphasis added). Reciprocal treatment is a condition that limits which banks actually may enter Virginia.

We believe that the fact that a state's opt-in law contains conditions on entry and so some banks would in practice not be permitted to branch into a state under the state law's terms cannot itself be sufficient to make the law fail to meet the terms of paragraph 36(g)(1)(A). It is unlikely that any state would have a law that had absolutely no conditions on entry by out-of-state banks. But, if we were to adopt a strict reading of section 36(g)(1)(A), only a state law that allowed every out-of-state bank to enter without qualification would fulfill the provisions of section 36(g)(1). This could render section 103 of the Riegle-Neal Act a nullity, and so we believe Congress did not intend such a strict reading. Instead, for purposes of meeting the terms of section 36(g)(1)(A), the proper inquiry is the nature of the conditions. This means, in terms of the statutory language, the important criteria are (1) that the state law opens the state for all out-of-state banks to apply under the same standards ("applies equally to all banks"); and (2) that the state law does not discriminate among banks -- i.e. it does not by its own terms exclude a fixed class of banks, whether by type of bank such as national bank, state commercial bank, or state savings bank or by listed state of origin ("expressly permits all out-of-state banks").

Under the Virginia statute, including its nationwide reciprocal treatment condition, all out-of-state banks would be subject to the same standard, and the entry requirements would apply to the same degree to any bank seeking to establish a branch. Nor does the Virginia law discriminate among types of banks or exclude banks from a fixed list of states. From the perspective of Virginia, the Virginia law lets in all out-of-state banks. Nothing in the Virginia law needs to be changed for out-of-state banks from every state to enter Virginia. Thus, we believe that Virginia has a law that meets the

---

[10] In a recent case involving an out-of-state bank's establishment of a de novo branch in Virginia, the OCC noted that the Virginia Bureau of Financial Institutions had recently taken the position that the reciprocity condition in section 6.1-44.7 would be without effect after May 31, 1997. See OCC First American Decision at n. 9. However, since the OCC First American Decision, the Virginia Bureau of Financial Institutions has advised the OCC that the Bureau may take the position that the reciprocity requirements of section 6.1-44.7 remain in effect. In any event, as will be discussed, because West Virginia permits interstate de novo branching, the Virginia reciprocity requirement, even if applicable, is satisfied.

In this regard, we also note that the nationwide reciprocal treatment condition of Virginia law also purports to apply to the establishment of an interstate branch in Virginia through acquisition. But the issue at hand does not arise in that context. In the Riegle-Neal Act, the acquisition of branches is treated as a type of merger transaction authorized in section 102, see 12 U.S.C. § 1831u(a)(4), and the provisions under which a state may have "opted in" to interstate merger transactions prior to June 1, 1997, specifically address state imposition of a nationwide reciprocal treatment condition prior to that date. See 12 U.S.C. § 1831u(a)(3)(B)(I). By contrast, section 103 of the Riegle-Neal Act, 12 U.S.C. § 36(g), governing de novo interstate branching, and section 102 of the Riegle-Neal Act, 12 U.S.C. 1831u(a)(1), governing interstate mergers undertaken in the period beginning on June 1, 1997, do not contain provisions for nationwide reciprocal treatment.

provisions of paragraph 36(g)(1)(A).[11] See Decision on the Application of Wachovia Bank of North Carolina, N.A., to establish a Branch in Norfolk, Virginia (OCC Corporate Decision No. 96-14) (March 15, 1996).

In addition, an application by a national bank to establish an interstate branch is also subject to certain conditions set forth in 12 U.S.C. § 36(g)(2). These conditions are incorporated from the provisions for approval of an interstate merger transaction by the appropriate federal banking agency under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u. Specifically, the conditions are those contained in paragraphs (1), (3), and (4) of 12 U.S.C. § 1831u(b). These conditions are: compliance with state filing requirements, community reinvestment compliance, and adequacy of capital and management skills.

MNB's application satisfies all these conditions to the extent applicable. First, the proposal complies with applicable filing requirements. A bank applying for an interstate branch must (1) comply with the filing requirements of the host state 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. § 36(g)(2)(A) (incorporating section 1831u(b)(1)). The Virginia statute requires an out-of-state bank desiring to establish a de novo branch in Virginia to provide a copy of its federal branch application to the Commission at the same time the bank files its application with the responsible federal banking agency and to comply with the applicable requirements of the Foreign Corporations Article (Article 17) in Virginia's Stock Corporation Act. See Va. Code Ann. § 6.1-44.6 (1995). MNB timely provided a COW of its OCC application to the Virginia Commissioner of Financial Institutions and has applied for a certificate of authority to transact business under the Foreign Corporations Article. Thus, it has complied with the applicable state filing requirements in accordance with the provisions of sections 36(g)(2)(A) and 1831u(b)(1).

Second, the proposal satisfies all requirements relating to community reinvestment compliance. In determining whether to approve an application under section 36(g), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the CRA evaluations of any affiliated banks of the applicant bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3) (as incorporated by section 36(g)(2)(A)). The CRA requires the OCC to take into account MNB's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, MNB has an outstanding rating with respect

[11] As already noted, see note 8, supra, the structure of section 36(g) does not specifically incorporate state law or otherwise make state law applicable to national banks, except as provided in section 36(g)(2). The reciprocity condition contained in the Virginia law is met here, however, since West Virginia law permits a Virginia bank to establish a de novo branch in West Virginia. See W. Va. Code Ann. § 31A-8E4 (Michie 1996). Accordingly, the reciprocity condition in Virginia law does not present a separate issue.

to CRA performance. MNB's lone affiliated bank, MNBKY, has a satisfactory rating.[12] West Virginia has CRA requirements similar to those imposed under federal CRA. See W.Va. Code Ann. § 31A-8B-1 through 8B-5) (Michie 1996). Consequently, no additional issues are raised under state CRA laws.

Third, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for a de novo branch under section 36(g) only if the bank is adequately capitalized as of the date the application is filed and will continue to be adequately capitalized and adequately managed after the transaction. See 12 U.S.C. § 1831u(b)(4) (as incorporated by section 36(g)(2)(A)). As of the date the application was filed, MNB satisfied all regulatory and supervisory requirements relating to adequate capitalization, and it currently is at least satisfactorily managed. The OCC has also determined that, following the transaction, MNB 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 VanSant Branch is authorized under 12 U.S.C. § 36(g).

2. MNB may establish the Richlands, Abingdon, Tazewell, and Lebanon branches under section 36(c).

MNB also applied to establish branches in Richlands, Abingdon, Tazewell, and Lebanon, Virginia. MNB intends to open these four branches after the VanSant Branch has opened. Although MNB has no branches in Virginia today or at the time it filed these applications, it has proposed to establish the Richlands, Abingdon, Tazewell, and Lebanon branches only after the VanSant branch is opened. Thus, at the time they open, the Richlands, Abingdon, Tazewell, and Lebanon branches each will be another branch in a state in which MNB already has a branch. As such, it is not within the scope of 12 U.S.C. § 36(g)(1), since section 36(g)(1) addresses the authority of a national bank to establish "a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch. " 12 U.S.C. § 36(g)(1) (emphasis added).

Instead, after a national bank's first branch in a host state, subsequent de novo branches by the national bank in that state are governed by 12 U.S.C. § 36(c). Under the Riegle-Neal Act, once a national bank has obtained interstate branches in a host state by an interstate merger transaction under 12 U.S.C. § 1831u or has established an interstate de novo branch in a host state under 12 U.S.C. § 36(g), then the national bank's later acquisition or establishment of additional branches in that state is subject to the same branching authority governing branching by other national banks in that state. See 12 U.S.C. § 1831u(d)(2) (additional branches by interstate banks formed by Riegle-Neal interstate merger transactions) and 12 U.S.C. § 36(g)(2)(B) (incorporating section 1831u(d)(2)

[12] We note that 12 U.S.C. § 1831u(b)(3)(B) requires consideration of the CRA records only of "bank" affiliates of the resulting bank. Since Federal savings bank are not "banks" for purposes of this provision, the statute does not require that MB-FSB's CRA record be taken into account. & 12 U.S.C. § 1813(a) and (b). In any event, we note that its CRA rating is satisfactory. Further discussion of compliance with CRA with respect to all steps of the proposed transactions is set forth in Part III.B. of this Decision Statement.

to apply to additional branches by interstate banks formed by a Riegle-Neal de novo branch).[13] The legislative history of the de novo branching provisions of the Riegle-Neal Act reaffirms this:

> Once a bank has established a branch in a host State by de novo branching such bank may establish and acquire additional branches at any location in the host State in the same manner as a bank could have established or acquired under applicable Federal or State law.

H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 56 (August 2, 1994) (Report on H.R. 3841, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994). See also OCC First American Decision (earlier, similar application for branches in Virginia); Decision on the Applications of Community National Bank (OCC Corporate Decision No. 96-22) (April 19, 1996) (earlier, similar application for two branches in North Carolina).

These provisions codify, for Riegle-Neal interstate national banks, the interpretation of section 36(c) adopted by the courts and the OCC in the context of interstate national banks formed under other, prior law. In section 36(c), the McFadden Act authorizes a national bank to establish new branches "at 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 ... ." 12 U.S.C. § 36(c)(2). The interpretation of the statute adopted since at least 1974 has been that, for the purpose of establishing additional branches under section 36(c), an interstate national bank is "situated" in each state in which it has its main office or a branch: The bank can establish other branches within each state to the same extent as other national banks situated in that state, i.e., to the same extent that state allows its state banks to have branches within the state. See Seattle Trust & Savings Bank v. Bank of California. N.A., 492 F.2d 48 (9th Cir.), cert. denied, 419 U.S. 844 (1974). See also Ghiglieri v. Sun World National Association, 117 F. 3d 309 (5th Cir. 1997). The OCC has applied this principle from Seattle Trust in prior decisions involving national banks with operations

---

[13] Section 1831u(d)(2) provides:

> (2) Additional Branches. -- Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

12 U.S.C. § 1831u(d)(2). Thus, in any host state, a national bank resulting from an interstate merger among national banks in different states may establish or acquire additional branches in the host state under the federal law applicable to branching by national banks in the host state (e.g., section 36(b)(2) with respect to branches acquired through merger, and section 36(c) with respect to branches acquired by purchase or established *de novo*).

Section 36(g)(2)(B) provides:

> (B) Operation. -- Subsections (c) and (d)(2) of section 44 of the Federal Deposit Insurance Act [12 U.S.C. §§ 1831u(c) & 1831u(d)(2)] shall apply with respect to each branch of a national bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of section 44 apply to a branch of a national bank which resulted from an interstate merger transaction approved pursuant to such section 44.

12 U.S.C. § 36(g)(2)(B).

in more than one state both before and after the Riegle-Neal Act. See, em, Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest, N.A. (OCC Corporate Decision No. 9505) (February 16, 1995), reprinted m Fed. Banking L. Rep. (CCH) ¶ 90,474 ("OCC Bank Midwest Decision") (Part II-B) (and other OCC decisions cited therein). See also OCC Bank Midwest Decision (Part II-C-2) (applying similar analysis in section 36(b)(2)).

Thus, both by operation of 12 U.S.C. § 36(g)(2)(B) and by existing construction of 12 U.S.C. § 36(c), MNB's establishment of the Richlands, Abingdon, Tazewell, and Lebanon branches is subject to section 36(c), not section 36(g).[14] For purposes of applying section 36(c) to MNB's later branching within Virginia after the VanSant Branch, MNB is treated as a national bank situated in Virginia, and specifically as a national bank with its main office at the VanSant Branch. Under Virginia law, a Virginia state-chartered bank is permitted to establish branches throughout Virginia without geographic limitation. See Va. Code Ann.§ 6.1-39.3(A) (Michie Supp. 1996). A Virginia state bank in VanSant could establish branches in Richlands, Abingdon, Tazewell, and Lebanon. Thus, a national bank situated in Virginia could establish branches in these four locations under 12 U.S.C. § 36(c). Therefore, MNB may establish the proposed branches in Richlands, Abingdon, Tazewell, and Lebanon under section 36(c).[15]

C. The Virginia P&A is authorized under 12 U.S.C. § 24(Seventh).

MNB also applied to acquire the Virginia assets and liabilities of its affiliate, MB-FSB, shortly after the Richlands and Abingdon branches are established.[16]

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh). See, em, City National Bank of Huron v. Fuller, 52 F.2d 870, 872-73 (8th Cir. 1931); In re Cleveland

---

[14] Another provision also added to 12 U.S.C. § 36 in the Riegle-Neal Act further supports this result. Congress added section 36(f) to address the law applicable to interstate branching operations at branches in a host state of an interstate national bank. Among other provisions, section 36(f)(1)(A) provides that "the laws of the host State regarding . . . establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except -(I) when Federal law preempts the application of such State laws to a national bank .... 12 U.S.C. § 36(f)(1)(A). Thus, under this provision, but for the preemption exception, it is clear that the subsequent establishment of branches within a host state is treated like the establishment of intrastate branches within the host state by the host state's state banks. Since there are federal laws specifically governing in-state branching by national banks (I, 12 U.S.C. §§ 36(b), 36(c), 36(g)(2)(B), & 1831u(d)(2)), those laws would preempt this provision under the preemption exception. However, since those laws also incorporate, and make applicable to national banks, state law for in-state branching by state banks, the outcome is generally the same.

[15] The Virginia statute requires a finding that the establishment of a branch will be in the "public interest." See Va. Code Ann. §§ 6.1-13(A)(4) and 6.1-39.3(A) (Michie 1993 and Supp. 1996). This requirement is satisfied. See Part III A.1. - A.3., infra (competitive analysis and discussion of financial and managerial resources and convenience and needs which address the factors for which consideration is required under the Virginia "public interest" test).

[16] MB-FSB has represented that it complied with Office of Thrift Supervision ("OTS") regulations concerning the Virginia P&A by providing the OTS with notice of the transaction pursuant to 12 C.F.R. § 563.22(c).

Savings Society, 192 N.E.2d 518, 523-24 (Ohio Com. Pi. 1961). Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, MNB may acquire the Virginia assets and liabilities of MB-FSB.

D. The Virginia P&A Complies with 12 U.S.C. § 1815(d)(3).

The Virginia P&A also complies with the Oakar Amendment, 12 U.S.C. § 1815(d)(3). MB-FSB is a member of the Savings Association Insurance Fund ("SAIF"). MNB is a member of the Bank Insurance Fund ("BIF"). The merger of a SAIF member into a BIF member, and the assumption of any liability by a BIF member to pay any deposits of a SAIF member, are conversion transactions under 12 U.S.C. § 1815(d)(2)(B)(ii) & (B)(iii)(I). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3).

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

In addition, a BIF member which is a subsidiary of a bank holding company may not be the acquiring and resulting bank in an Oakar transaction unless the transaction would comply with the requirements for an interstate bank acquisition of section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), if the SAIF member involved in the transaction was a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F).[17]

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal Community Reinvestment Act requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution. All of these are met with respect to the Virginia P&A. With respect to age requirements, Virginia law provides that out-of-state bank holding companies may not acquire a Virginia bank that has been in existence for less than two years. See Va. Code Ann. § 6.1-399(A)(3) (Michie Supp. 1996). This restriction poses no obstacle for two reasons. First, the Virginia age threshold does not apply to this transaction. Applicable age limits may be imposed by a "host state," that is, with respect to a bank holding company, a state other than the home state of the bank holding company in which the bank holding

[17] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is considered to be acquiring a hypothetical "state bank" located in a state other than the holding company's home state. The home state of MBS is West Virginia. Since the Virginia P&A involves only MB-FSB's assets and liabilities located in Virginia, we postulate that the hypothetical "state bank" from which assets and liabilities are being acquired is a state bank with offices located solely in Virginia. See Generally Decision to Approve Applications by First Bank, National Association, Minneapolis, Minnesota, pp. 22-23 (OCC Corporate Decision No. 97-32) (May 31, 1997). Accordingly, Virginia law is used for the analysis under section 1842(d) as incorporated into section 1815(d)(3)(F). Id. at 22.

company seeks to control a bank subsidiary. That is not the situation in the present case where the hypothetical transaction involves only the purchase of assets and assumption of liabilities from a "bank" rather than the acquisition of control of a "bank." See Decision on the Applications of First Western Bank, National Association, New Castle, Pennsylvania, n. 5 (OCC Corporate Decision 97-__) (September 5, 1997).[18] Consequently, for purposes of applying the age requirement, Virginia is not a "host state" in this transaction and the requirement is inapplicable. Second, even if the age requirement is applicable, for purposes of sections 1815(d)(3)(F) and 1842(d), MB-FSB is the SAIF member involved in this transaction. Accordingly, since MB-FSB has been in existence and operation for more than two years, Virginia's age requirement is satisfied.

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, MNB and all of its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). They controlled about $529.5 million in domestic deposits as of June 30, 1997, less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). If these transactions are not considered initial entries in the Oakar analysis and so paragraph (d)(2)(B) is applicable to them, this limit is met. In the Virginia P&A, deposits are merely moving among MBS's existing insured depository institution subsidiaries. Therefore, the total amount of deposits held in each state by the applicant and all of its insured depository institution affiliates will not change. MBS's total Virginia deposits of its insured depository institutions was substantially below 30%. The statewide concentration limit is satisfied in the Virginia P&A.

Third, the bank holding company's compliance with the federal Community Reinvestment Act ("CRA") and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). In this regard, we note that the applicant bank has an outstanding federal CRA rating. MBS's other depository institution subsidiaries, MNB-KY and MB-FSB, both have satisfactory ratings with respect to CRA performance. With respect to compliance with applicable state community reinvestment laws, neither Virginia or Kentucky have state community reinvestment laws and, as discussed, West Virginia's community reinvestment law is similar to federal CRA. No public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance, and the OCC has no other basis to question the bank holding company's CRA performance. Thus, no issues arise under the federal CRA or state community reinvestment laws that would require denial of these applications.

---

[18] Cf. Decision on the Application to Merge Boatman's Credit Card Bank, Albuquerque, New Mexico, with and into NationsBank of Delaware, N.A., Dover, Delaware, pp. 6-7 (OCC Corporate Decision No. 97-20) (March 20, 1997) (12 U.S.C. § 1831u(a)) (age requirement inapplicable in bank merger where no branches will remain in acquired bank's state and, thus, it is not a "host state").

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

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, including purchase and assumption transactions, between insured depository 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 Kentucky Merger and the Virginia P&A may be approved under section 1828(c).

1. Competitive Analysis.

Since MNB, MNB-KY, and MB-FSB are already owned by the same bank holding company, the Kentucky Merger and the Virginia P&A will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of MNB are presently satisfactory. MNB expects to achieve efficiencies operating the offices in Kentucky as branches rather than as a separate corporate entity and by serving what had been the Virginia customers of MB-FSB through MNB branch offices. 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 Kentucky Merger and the Virginia P&A.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. MNB will continue to serve the same areas in West Virginia and it will add MNBKY's offices in Kentucky and the five branches in Virginia. Both MNB and MNB-KY currently offer a full line of banking services, and there will be no reduction 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. The bunches in Kentucky will continue to engage in the same business and serve the same communities that MNB-

KY would have continued to serve if it had not engaged in this merger.[19] MNB will also offer its full range or products and services at its five branches in Virginia.

Upon completion of the transactions, customers of the predecessor institutions will have available to them a greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the transactions, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. The Kentucky Merger and Virginia P&A will permit the resulting bank to better serve its customers and at a lower cost.

No branch closings are contemplated as a result of the Kentucky Merger.[20] However, as part of its ongoing business plans, MNB evaluates its branch system, including branches acquired in transactions, and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

Accordingly, we believe the impact of the Kentucky Merger and the Virginia P&A on the convenience and needs of the communities to be served is consistent with approval of the applications.

B. The Community Reinvestment Act.

The 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. MNB has an outstanding rating with respect to CRA performance. MNB-KY and MB-FSB have satisfactory ratings with respect to CRA. 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 CRA.

The transactions are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will serve the same communities that MNB, MNB-KY and MB-FSB's two branches in Virginia would continue to serve if these transactions did not occur. MNB will continue its current CRA programs and policies in West Virginia. After MNB-KY is merged into MNB, the offices that it would have continued to operate will remain open as branches of MNB. And, after the five new branches are opened and the Virginia P&A has occurred, those areas will be added to MNB's assessment area. MNB will carry forward the same CRA programs and policies it, MNB-KY and MB-FSB (as to its Virginia branches) have today and add other programs as they are

---

[19] The merger application indicated there would be no branch closings associated with the merger. Subsequently, MNB-KY submitted a branch closing notice for its branch in Sidney, Kentucky. MNB-KY has indicated that this branch closing is not associated with the merger and would occur regardless of the merger.

[20] See n. 19, supra.

developed. 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 MNB, MUCKY, and MB-FSB, with respect to its Virginia branches, have today as separate entities. The Kentucky Merger, the establishment of new branches in Virginia, the Virginia P&A, and the resulting 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 approval of these applications is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Kentucky Merger is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a) and the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1), that MNB's establishment of the VanSant, Richlands, Abingdon, Tazewell, and Lebanon branches are authorized under 12 U.S.C. § 36, that, assuming that all regulatory requirements of the OTS, as previously discussed, were appropriately complied with in connection with the Virginia P&A, the Virginia P&A is authorized under 12 U.S.C. § 24(Seventh), and that the applications meet the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 09-12-97

Steven J. Weiss Date

Deputy Comptroller for Bank Organization and Structure