Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #98-20
May 1998

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
RHODE ISLAND HOSPITAL TRUST NATIONAL BANK
PROVIDENCE, RHODE ISLAND,
WITH AND INTO
BANKBOSTON, NATIONAL ASSOCIATION
BOSTON, MASSACHUSETTS

April 2, 1998

I. INTRODUCTION

On February 23, 1998, BankBoston, National Association, Boston, Massachusetts (the acquiring bank), filed an application with the Office of the Comptroller of the Currency to acquire, through merger, Rhode Island Hospital Trust National Bank, Providence, Rhode Island (the target bank) under the charter and title of the acquiring bank and with its main office at the site of the acquiring bank's main office in Boston, Massachusetts. The acquiring bank is an indirect wholly-owned subsidiary of BankBoston Corporation (the bank holding company).[1] The target bank is a wholly-owned direct subsidiary of the bank holding company. Each institution is a member of the Bank Insurance Fund (BIF). As of December 31, 1997, the acquiring bank had total assets of about $65 billion and deposit liabilities of about $43.4 billion, the target bank had total assets of about $3.5 billion and deposit liabilities of about $2.3 billion. The acquiring bank operates its main office and 334 branches in Massachusetts as well as 22 branches in New Hampshire and 67 branches in Connecticut.[2] The target bank operates its main office and 43 branches in Rhode Island.

[1] The acquiring bank is owned directly by Pacific National Corporation and BayBanks, Inc. Pacific National Corporation is wholly-owned by the bank holding company and BayBanks, Inc. is wholly-owned by Boston Bancorp. which, in turn, is wholly owned by the bank holding company.

[2] The acquiring bank and a predecessor bank, BayBank, National Association, Boston, Massachusetts (BayBank), entered Connecticut and New Hampshire through several transactions. See OCC Corporate Decision 97-30 (May 19, 1997) (permitting a bank in New Hampshire affiliated with BayBank to relocate its main office to Massachusetts under 12 U.S.C. § 30, retain its existing offices in New Hampshire, establish a branch at its former main office site, and merge into BayBank under 12 U.S.C. § 215a); OCC Corporate Decision 95-34 (July 26, 1995) (permitting BayBank Connecticut, National Association, Hartford, Connecticut, to relocate its main office to

No protests or comments have been filed with the OCC in connection with this transaction.

II. DISCUSSION

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:

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

12 U.S.C. § 1831u(a)(1).[3] The Act permits a state to elect to prohibit 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). In this merger, the home states of the banks are Massachusetts and Rhode Island; neither state exercised its option to prohibit interstate mergers. Accordingly, the proposed interstate merger may be approved under 12 U.S.C. §§ 215a-1 &

Massachusetts under section 30, retain a branch in Connecticut, establish its former main office site as a branch, and merge into BayBank Boston, National Association under section 215a); OCC Corporate Decision 95-49 (September 30, 1995) (permitting BayBank to acquire through merger BayBank Boston, National Association, under section 215a and retain BayBank Boston's branches in Connecticut); OCC Corporate Decision 96-42 (August 6, 1996) (permitting the acquiring bank in the present transaction -- BankBoston -- to acquire BayBank under section 215a and retain its existing branches). See also OCC Corporate Decision 97-91 (October 14, 1997) (permitting BankBoston to acquire Bank of Boston Connecticut and retain its branches).

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

1831u(a) 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 limitations; (2) compliance with certain state filing requirements to the extent filing requirements are permitted by the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment act compliance; and (5) adequacy of capital and management skills.

The proposed interstate merger application satisfies all of 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." See 12 U.S.C. § 1831u(a)(5)(A). The maximum age requirement permitted is five years. See 12 U.S.C. § 1831u(a)(5)(B). Because Rhode Island imposes no minimum age, this requirement is satisfied.[4]

Second, the proposed merger meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must "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. See 12 U.S.C. § 1831u(b)(1). Rhode Island imposes no filing requirements in connection with mergers involving only national banks.[5] In addition, a bank applying for an interstate merger transaction must submit a copy of the application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1). This requirement is satisfied in this case; the bank has supplied a copy of

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[4] The target bank has its origins in the 1860s, became a national bank in 1969 and was acquired by the bank holding company in 1985. Consequently, there can be no doubt that it would meet any age requirement that Rhode Island could permissibly apply under the Riegle-Neal Act.

[5] Under the filing provisions of the Riegle-Neal Act, 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 only impose 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). While Rhode Island does appear to impose filing requirements if a state bank is involved in an interstate merger, see R.I. Gen. Laws § 19-7-3 (1992 & Supp. 1997), the bank has confirmed with officials of the Rhode Island banking department, that these requirements do not apply where only national banks are involved in the merger.

the application to the Rhode Island superintendent of banking.[6] Thus, the proposed merger satisfies the filing requirements of the Riegle-Neal Act.

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). Because the the acquiring bank and the target bank are affiliates, 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 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 the 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 because it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this application, the acquiring bank (the bank submitting the application as the acquiring bank) has a bank affiliate in Rhode Island before the transaction (the target bank), 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 proposed merger. However, the CRA 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, the acquiring bank and the target bank satisfied all regulatory and supervisory requirements related to adequate capitalization and each is at least satisfactorily managed. The OCC has determined that, following the merger, the resulting bank 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 the acquiring bank and the target bank is legally permissible under sections 1831u and 215a-1.

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[6] The bank also has represented that it has filed a copy of the application with the Massachusetts commissioner of banks.

2. Following the merger, the resulting bank may retain each of the participating banks' main offices and branches under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

The acquiring bank has requested that, upon completion of the merger, it be permitted to retain and continue to operate its main office in Boston, Massachusetts, 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 the target bank in Rhode Island. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operations 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) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." See 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 Transaction. -- 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)(10)(B)). Therefore, the resulting bank in this interstate merger transaction, may retain and operate the its main office in Boston, Massachusetts, as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate as branches all of the other existing banking offices of the two merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).[7]

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[7] 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) refers 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 to interstate national banks, because the OCC had approved interstate main office relocation transactions that also involved mergers with affiliated 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

Moreover, at its branches in Massachusetts, Connecticut, Rhode Island and New Hampshire, the resulting bank 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 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, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-010 (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) (BMA), requires the OCC's approval for any merger where the resulting institution will be a national bank. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. In addition, the BMA also requires the OCC to take into consideration the financial and managerial resources of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons below, we find that the proposed merger may be approved under section 1828(c).

1. Competitive Analysis.

Because the acquiring bank and the target bank are owned by the same bank holding company, the merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of the merging institutions are presently satisfactory. The applicant is expected to achieve administrative efficiencies by operating the two institutions as part of the same bank rather than in separate corporate entities. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find that the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and needs

Following consummation of the transaction, the acquiring institution will help to meet the convenience and needs of the communities to be served. The acquiring bank will continue to operate offices in Massachusetts, New Hampshire and Connecticut as well as the offices of the target bank in Rhode Island. This will provide more convenient service to customers, such as those who live in Rhode Island but work in one of the other three states, who frequently cross the Rhode Island state line and to business customers who have operations in Rhode Island and one or

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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).

more of the other three states by enabling them to deal with same bank on either side of the Rhode Island state line and to access their accounts with greater convenience. We further note that there will be no reduction in the banking products or services offered as a result of these transactions and the acquiring bank will continue to offer a full line of banking products and services. 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 transactions.

B. The Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account the applicants' records of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications including mergers. See 12 C.F.R. § 25.29(a)(3). The OCC determined that the acquiring bank has an outstanding record of performance at its most recent CRA examination dated January 1997, and determined that the target bank has an outstanding record of performance at its most recent examination dated May 1997. The transactions do not alter the resulting banks' obligations to help meet the credit needs of the communities that each of the entities involved in the transactions serve through their offices in Massachusetts, Connecticut, New Hampshire and Rhode Island. Management for the resulting institution will be composed of management from the existing institutions and the resulting banks will have the same commitment to helping meet the credit needs of those communities that the combining entities serve as separate depository institutions. The acquiring bank has represented that it will assume the obligations of the target bank with respect to its commitments with community organizations, civic associations, or similar entities concerning the provision of banking services to the community. No public comments relating to CRA were received by the OCC relating to these applications, and the OCC has received no information critical of the institutions' performance in complying with the CRA. Accordingly, we find that approval of the proposed transactions is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicant, we find that the merger of Rhode Island Hospital Trust National Bank, Providence, Rhode Island, into BankBoston, National Association, Boston, Massachusetts, which will retain its main office in Boston, as well as its branches and those of the target bank, and operate the main office of the target bank as a branch, is legally authorized and meets the other statutory criteria for approval. Accordingly, this application is hereby approved.

/s/ 04-02-98

Julie L. Williams Date
Chief Counsel

Application Control Number: 98-ML-02-0006