



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-27

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION OF
FIRST UNION NATIONAL BANK, ELKTON, MARYLAND,
TO RELOCATE ITS MAIN OFFICE TO AVONDALE, PENNSYLVANIA**

May 20, 1996

I. INTRODUCTION

On April 1, 1996, First Union National Bank, Elkton, Maryland ("FUNB") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to change the location of its main office from Elkton, Maryland to Avondale, Pennsylvania, under 12 U.S.C. § 30 ("the Relocation Application"). The location in Avondale is approximately 15.6 miles from Elkton. <NOTE: In 1995, First Union Corporation acquired the former First Fidelity Bank, N.A. Maryland, (now FUNB) headquartered at Elkton, Maryland, and its branches in Maryland, Pennsylvania, New Jersey and New York. On April 1, 1996, FUNB filed applications with the OCC for approval of an interim merger, or in the alternative, a purchase and assumption transaction, whereby, prior to FUNB's main office relocation, FUNB's existing Maryland branches would be transferred to First Union National Bank - Maryland. >

II. LEGAL AUTHORITY

The OCC has considered transactions involving interstate main office relocations, intrastate and interstate mergers, and interstate branching in a number of prior applications. Before the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the "Riegle-Neal Act"), the OCC had authorized the relocation of a national bank's main office to another location across a state line in several decisions. <NOTE: See Decision of the Office of the Comptroller of the Currency on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,695 ("OCC NationsBank/Maryland National Decision"); Decision of the Office of the Comptroller of the Currency on the Applications of First Fidelity Bank, N.A., Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,644 ("OCC First Fidelity/New Jersey Decision").> There are a number of such decisions that involve only the interstate relocation of a main office. <NOTE: See Decision on the Applications of the First National Bank of Polk County (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision on the

Application of the First National Bank of Spokane (1991) (relocation from Washington into Idaho); Decision on the Application of SouthTrust National Bank (1989) (relocation from Alabama into Georgia); Decision on the Application of the Bank of New Jersey, N.A. (1986) (relocation from New Jersey into Pennsylvania); Decision on the Application of Mark Twain Bank, N.A. (1985) (relocation from Missouri into Kansas).<

Since passage of the Riegle-Neal Act, the OCC has approved additional interstate applications. Some of those transactions involved only an interstate merger; others involved an interstate main office relocation followed by an interstate merger. In those applications we considered the impact of the new interstate branching legislation on national banks' authority under existing law and found it to be consistent with the OCC's earlier decisions regarding the authority of a national bank to undertake an interstate main office relocation within the statutory 30 mile limit set forth at 12 U.S.C. § 30 and, thereafter, to retain its existing branches.<**NOTE:** See Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), *reprinted in* Fed. Banking L. Rep. (CCH) 90,474 ("*OCC Bank Midwest Decision*"). Other decisions after the Riegle-Neal Act include: Decision on the Applications of National Westminster Bank USA and National Westminster Bank NJ (OCC Corporate Decision No. 94-43, October 20, 1994); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994) ("*OCC First Fidelity/Baltimore Decision*"); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995); Decision on the Applications of American National Bank and Trust Company of Wisconsin and American National Bank and Trust Company of Chicago (OCC Corporate Decision No. 95-12, March 8, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995); Decision on the Applications of Firststar Bank Quad Cities, N.A., and Firststar Bank Davenport, N.A. (OCC Corporate Decision No. 95-16, April 27, 1995); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995); Decision on the Applications of BayBank New York, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995); Decision on the Applications of PNC Bank, New Jersey, N.A. and PNC Bank, N.A. (OCC Corporate Decision No. 95-36, August 7, 1995); Decision on the Application to Merge Republic Bank for Savings into Republic National Bank of New York (OCC Corporate Decision No. 95-51, October 25, 1995).<

FUNB's application is similar to a number of prior interstate main office relocation applications approved by the OCC and does not raise any new legal issues. The legal analysis and authorities are set forth in the prior decisions, especially the *OCC Bank Midwest Decision*, *OCC NationsBank/Maryland National Decision*, and *OCC First Fidelity/New Jersey Decision*. Only a summary will be presented here; the earlier decisions should be consulted for the full analysis.

A. The Relocation of a National Bank's Main Office Across State Lines And Continued Operation of its Existing Branches is Authorized under 12 U.S.C. § 30.

In its Relocation Application, FUNB applied to change the location of its main office from Elkton, Maryland to Avondale, Pennsylvania, a distance of approximately 15.6 miles. It will continue to operate its existing branches in Pennsylvania, New Jersey and New York, but will no longer operate any branches in the state of Maryland. After the relocation, FUNB will continue to be an interstate national bank, with its main office in Pennsylvania and branches in Pennsylvania, New Jersey and New York.<**NOTE:** FUNB operated as First Fidelity Bank, N.A., prior to its acquisition by First Union Corporation in 1995. In 1994, First Fidelity Bank, N.A. Pennsylvania and First Fidelity Bank, N.A. New Jersey merged and applied to the OCC to establish the resulting bank's main office in Salem, New Jersey. The Comptroller approved the application. See *OCC First Fidelity/New Jersey Decision* (Part II-A). The resulting bank, First Fidelity Bank, N.A., was allowed to retain the branches of the merged banks that existed in Pennsylvania and New Jersey. *Id.* In a decision dated October 20, 1994, the OCC approved applications whereby the former First Fidelity Bank, N.A., New York, New York, was combined into First Fidelity Bank, N.A. (Salem, New Jersey). Thereafter, First Fidelity Bank, N.A. applied to the OCC to relocate its main office from Salem, New Jersey to Elkton, Maryland, to establish a branch in Salem, New Jersey, and to merge the Bank of Baltimore, Baltimore, Maryland, with and into First Fidelity Bank, N.A. See *OCC First Fidelity/Baltimore Decision*.

Those applications were granted. *Id.* Thus, First Fidelity Bank, N.A. with headquarters in Elkton, Maryland, was an interstate national bank with branches in Pennsylvania, New Jersey, New York, and Maryland.<

1. The Relocation of FUNB's Main Office from Elkton, Maryland to Avondale, Pennsylvania is Authorized.

The relocation of FUNB's main office from Elkton, Maryland to Avondale, Pennsylvania, is legally authorized under 12 U.S.C. § 30. Section 30 authorizes a national bank to change the location of its main office to any location within 30 miles of the limits of the city in which its main office is located. 12 U.S.C. § 30(b). Such a relocation, even across state lines, is authorized by the literal language of the statute, and nothing in the legislative history gives any reason not to adhere to the literal language. The authority to relocate a main office is not limited by the McFadden Act, 12 U.S.C. 36. *See, e.g., Ramapo Bank v. Camp*, 425 F.2d 333, 340-46 (3d Cir.), *cert. denied*, 400 U.S. 828 (1970); *Traverse City State Bank v. Empire National Bank*, 228 F.Supp. 984, 992 (W.D. Mich. 1964). The Bank Holding Company Act also does not apply to main office relocations. *See Synovus Financial Corporation v. Board of Governors of the Federal Reserve System*, 952 F.2d 426, 434-37 (D.C. Cir. 1991); *McEnteer v. Clarke*, 644 F.Supp. 290, 292-93 (E.D. Pa. 1986). *See also State of Idaho Department of Finance v. Clarke*, 994 F.2d 1441, 1447-49 (9th Cir. 1993). Finally, section 30 preempts state laws that conflict with the authority it confers on national banks. *See, e.g., Ramapo Bank*, 425 F.2d at 344; *McEnteer*, 644 F.Supp. at 292-94; *Traverse City State Bank*, 228 F.Supp. at 992.

Thus, national banks are authorized to move their main office to any location within 30 miles, even across state lines. *See OCC Bank Midwest Decision* (Part II-A-1); *OCC NationsBank/Maryland National Decision* (Part II-A); *OCC First Fidelity/New Jersey Decision* (Part II-A). The proposed main office location in Avondale is approximately 15.6 miles from Elkton, well within the 30 mile limit set forth in 12 U.S.C. § 30. Accordingly, FUNB's relocation of its main office from Elkton, Maryland to Avondale, Pennsylvania is legally authorized.

2. FUNB's Continued Operation of its Existing Branches in Pennsylvania, New Jersey and New York is Authorized.

When it relocates its main office to Avondale, Pennsylvania, FUNB will continue to operate its existing branches in Pennsylvania, New Jersey and New York. In three of the OCC's earlier decisions involving the relocation of a national bank's main office across a state line and the continuation of existing branches, we extensively analyzed the legal authority for the continued operation of existing branches and concluded that continued operation of existing branches is legally authorized. *See OCC Bank Midwest Decision*; *OCC NationsBank/Maryland National Decision*; *OCC First Fidelity/New Jersey Decision*.

When a national bank relocates its main office under section 30, it may continue to operate its existing branches as an implied, but necessary, adjunct to the express authority to move the main office. The statutory language of sections 30 and 36 does not expressly address this area. The OCC concluded that this was Congress' intent by examining the overall statutory framework and its historical development. Congress enacted section 30, allowing the main office to relocate, without requiring the divestiture, re-examination, or re-authorization of existing branches. Congress subsequently amended sections 30 and 36 numerous times without indicating any intent to subject the existing branches of a relocating bank to section 36. During this time period, OCC and court decisions opined that sections 30 and 36 operated independently. In the absence of express congressional action requiring that existing lawfully established

branches be subjected to a de novo analysis under section 36 and divested, we concluded that the intention of the statutory scheme, considered as a whole, was that existing branches were continued. *See OCC Bank Midwest Decision* (Part II-A-2); *OCC NationsBank/Maryland National Decision* (Part II-B-1); *OCC First Fidelity/New Jersey Decision* (Part II-B-1).

Moreover, in the Riegle-Neal Act, Congress made this understanding explicit in its amendments of sections 30 and 36. In the language of section 30, as it now reads, it is clear both that national banks may relocate their main offices across a state line and that when national banks relocate their main offices -- whether within a state or across a state line -- they keep their existing branches. In the Act, Congress placed a new limitation on a relocating national bank's authority to keep branches in the state of its former main office. Henceforward, from June 1, 1997, a relocating national bank will be able to keep such branches only in accordance with the branching rules of new section 36(e)(2). *See Riegle-Neal Act* 102(b)(2) (adding new subsection (c) to section 30) & 102(b)(1)(B)(adding new subsection (e)(2) to section 36). The legislative history refers to the OCC's prior interstate decisions and makes it clear that Congress intended interstate main office relocations with retention of existing branches under section 30 to continue until June 1, 1997. *See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57* (August 2, 1994). In placing a limitation on the authority under section 30, Congress recognized it and confirmed that it continues for branches not covered by the limitation. And, until the new limitation takes effect, even branches in the state of the former main office may be retained under section 30.

Thus, from the amended statutory language and its legislative history, it is clear Congress understood: (1) that a national bank that relocates its main office keeps its existing branches under section 30, (2) that under existing law a national bank can move its main office across state lines while keeping branches in its former state, and (3) that this existing law is being changed and limited only by the express congressional action in the amendments. For a fuller discussion of the Riegle-Neal Act and its effect on prior law, see *OCC Bank Midwest Decision* (Parts II-A-2-e & II-D).

Accordingly, after the relocation of its main office to Avondale, Pennsylvania, FUNB may continue to operate its existing branches in Pennsylvania, New Jersey, and New York.

3. Existing Main Office Relocation Authority under Section 30 Continues for National Banks after the Riegle-Neal Act.

Our analysis of the legal authority for this Application is based on current law, in particular 12 U.S.C. § 30. The recently enacted interstate banking and branching legislation does not change the legal analysis and result, and indeed has confirmed it.

The statutory changes and legislative history of the Riegle-Neal Act show that Congress was completely aware of the OCC's prior interstate main office relocation decisions (such as the *OCC NationsBank/Maryland National Decision*, and the *OCC First Fidelity/New Jersey Decision*). Those decisions involved the OCC's interpretation and application of sections 30, 36, and 215a. The Conference Report expressly shows that Congress was aware of existing authority and of OCC analysis and approvals under that authority and expected it to continue until June 1, 1997. *See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57* (1994). The Conference Report clearly shows a congressional understanding that under existing law a national bank can move its main office across state lines and retain its existing branches.

The fact that Congress, during legislation in which it was comprehensively considering interstate main

office relocations and interstate branching, left these statutes and OCC interpretation of them unaffected is conclusive evidence that the intended meanings of sections 30, 36, and 215a in the interstate context are those previously expressed in decisions of the OCC. *See, e.g., Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 846 (1986) (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-75 (1974)); *Cannon v. University of Chicago*, 441 U.S. 677, 698-99 (1979); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978); *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489, 496 (S.D. Ohio 1976). Our analysis of the relationship of the Riegle-Neal Act to existing law is discussed in more detail in the *OCC Bank Midwest Decision* (Part II-D).

Thus, this Relocation Application is authorized under existing federal law for national banks. In the Riegle-Neal Act, Congress confirmed that existing authority, changed the authority under section 30 beginning June 1, 1997, and understood that transactions such as this one would occur until that date.

III. CONCLUSION AND APPROVAL

For the reasons set forth above, the relocation of FUNB's main office from Elkton, Maryland to Avondale, Pennsylvania is legally authorized under 12 U.S.C. § 30. Accordingly, the Application is hereby approved.

/s/

Julie L. Williams
Chief Counsel

Date: 5/20/96

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