

RECORDATION TRADEMARK

12-22-1998

DEPARTMENT OF COMMERCE
Patent and Trademark Office



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To the Honorable Commissioner of Patents and Trademark

Documents or copy thereof

1. Name of conveying party(ies):

Midlantic National Bank, N.A.

- Individual(s)
- General Partnership
- Corporation-State
- Other National Bank
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

12-16-98

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: August 20, 1996

2. Name and address of receiving party(ies):

Name: PNC Bank, N.A.

Internal Address: One PNC Plaza

Street Address: 249 Fifth Avenue, 28th Fl.

City: Pittsburgh State: PA ZIP: 15222

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other National Bank

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

N/A

B. Trademark registration No.(s)

1,355,681
1,304,008
1,283,750

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Cara L. Levy, Esquire

Internal Address: Fox, Rothschild, O'Brien & Frankel, LLP

Street Address: 2000 Market Street, 10th Floor

City: Philadelphia State: PA ZIP: 19103

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41):..... \$ 90.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

N/A

(Attach duplicate copy of this page if paying by deposit account)

12/21/1998 JSHBAZZ 00000188 1355681

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02 FC:482 50.00 DP

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Cara L. Levy
Name of Person Signing

Cara L. Levy
Signature

12/10/98
Date

Total number of pages comprising cover sheet:



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

August 21, 1996

Michelle O'Donnell Manning
Vice President
PNC Bank Corporation
One PNC Plaza
249 Fifth Avenue, 28th Floor
Pittsburgh, Pennsylvania 15222-2707

Re: Application to merge PNC Bank, National Association, Pittsburgh, Pennsylvania with and into Midlantic Bank, National Association, Newark, New Jersey
Application Control Numbers: 96-NE-02-0022 and 96-NE-12-0218

Dear Ms. Manning:

This is to inform you that on August 20, 1996, the Office of the Comptroller of the Currency (OCC) approved the proposal to merge PNC Bank, National Association ("PNC"), Pittsburgh, Pennsylvania with and into Midlantic Bank, National Association ("Midlantic"), Newark, New Jersey under the charter of the latter, with the title "PNC Bank, National Association", and with its main office located at 249 Fifth Avenue, Pittsburgh, Pennsylvania. A copy of the OCC's Decision Document is enclosed.

This approval is granted based on a thorough review of all information available, including representations made in the application and the merger agreement and those of your representatives.

Please be advised that the OCC also authorizes the resulting bank, should the merger occur between Call Report dates, to recalculate its legal lending limit. The new lending limit should be calculated by using data from the last Call Report of the individual banks filed prior to consummating the merger, as adjusted for the merger. The resulting bank will then file a new Call Report and begin calculating its legal lending limit according to 12 C.F.R. 32.4(a) at the end of the quarter following consummation of the merger.

Approval is also granted to your request, related to the proposed merger, for an investment in fixed assets to exceed the bank's bank premises limitation. The bank may invest up to \$510 million in bank premises and \$390 million in furniture and fixtures for an aggregate fixed asset investment of \$900 million. Any future investments exceeding these amounts require the approval

Michelle O'Donnell Manning

96-NE-02-0022

Page 2

of the OCC's Northeastern District Office's Regional Bank Supervision unit if the resulting total exceeds the bank's capital stock.

The Northeastern District Office must be advised in writing in advance of the desired effective date for the merger so that the OCC may issue the necessary certification. The effective date of the merger must be after the date of this letter.

We will not issue a letter certifying consummation of the transaction until we receive:

1. A Secretary's Certificate for each applicant institution, certifying that a majority of the board of directors has agreed to the proposed transaction,
2. An executed merger agreement with Articles of Association for the resulting bank attached; and,
3. A Secretary's Certificate from each institution, certifying that the shareholder's approvals have been obtained.

If the merger is not consummated within one year from this date, the approval will automatically terminate unless the OCC grants an extension of the time period.

Any questions and all correspondence should be directed to Edward R. Rieder, Senior Corporate Analyst, Northeastern District, at (212) 790-4055 or myself at (202) 874-5060.

Sincerely,



Robert B. Norris

Bank Organization and Structure

Enclosure: Decision Document



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
PNC BANK, NATIONAL ASSOCIATION, PITTSBURGH, PENNSYLVANIA, WITH
MIDLANTIC BANK, NATIONAL ASSOCIATION, NEWARK, NEW JERSEY,
UNDER THE CHARTER OF THE LATTER AND WITH THE TITLE
PNC BANK, NATIONAL ASSOCIATION**

August 20, 1996

I. INTRODUCTION

On May 13, 1996, an Application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge PNC Bank, National Association, Pittsburgh, Pennsylvania ("PNC") with and into Midlantic Bank, National Association, Newark, New Jersey ("Midlantic") under the charter of the latter and with the title, "PNC Bank, National Association" ("PNC-Resulting" or "the Resulting Bank"), under 12 U.S.C. §§ 215a-1, 1828(c) & 1831u(a) ("the Merger Application"). The two banks are affiliates, and both banks are insured national banks. PNC has its main office in Pittsburgh and operates branches in both Pennsylvania and New Jersey, see note 5 below. Midlantic has its main office in Newark and operates branches in both New Jersey and Pennsylvania, see note 6 below. In the Merger Application, OCC approval is also requested for PNC-Resulting to retain PNC's main office in Pittsburgh as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain the branches of both merging banks, and the main office of Midlantic in Newark, as branches of the resulting bank after the merger under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Both banks are subsidiaries of PNC Bank Corp., a multistate bank holding company with its headquarters in Pittsburgh, Pennsylvania. Midlantic became a subsidiary of PNC Bank Corp., effective December 31, 1995, as a result of PNC Bank Corp.'s acquisition of its parent holding company, Midlantic Corporation. The proposed merger is the second step of a two-step plan to combine the operations of the two banks into one bank. In the first step, most of Midlantic's branches in Pennsylvania were transferred to PNC in a purchase and assumption

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transaction approved by the OCC on June 26, 1996, and completed on July 19, 1996. In the second step, the rest of Midlantic will be combined with PNC in the proposed merger. The purpose of these transactions is to effect a corporate reorganization that will simplify the structure of PNC Bank Corp.'s subsidiary banking operations in Pennsylvania and New Jersey. The applicants believe the combination of operations into one interstate national bank will enable them to more readily adapt to regulatory and competitive changes in today's complex banking environment. The mergers will produce added convenience for the customers of the banks to conduct business at any PNC-Resulting branch in both states. In addition, certain operational efficiencies will be gained by the integration of data processing and other systems enabling the resulting bank to operate as efficiently and cost effectively as possible.

As of March 31, 1996, PNC had approximately \$41.8 billion in assets and \$24.7 billion in deposits and operated 461 branch offices in Pennsylvania and New Jersey. As of the same date, Midlantic had approximately \$12.9 billion in assets and \$11.2 billion in deposits and operated 250 branch offices in New Jersey and 73 branch offices in Pennsylvania.

II. LEGAL AUTHORITY

A. **The statutory framework:** During the early opt-in period, national banks with different home states may merge under 12 U.S.C. §§ 215a-1 & 1831u(a) if each home state has a law that meets the provisions of section 1831u(a)(3)(A) and the banks meet the relevant conditions of section 1831u(a) & (b).

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 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, creating an interstate bank:

(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 addition, the Act also provides that interstate merger transactions may be approved before June 1, 1997 (the "early opt-in period") if the home states of the merging banks have the requisite enabling legislation:

(3) State Election to Permit Early Interstate Merger Transactions. --

(A) In General. -- A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that --

- (i) applies equally to all out-of-State banks; and
- (ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) Certain Conditions Allowed. -- A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if --

- (i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);
- (ii) the imposition of the conditions is not preempted by Federal law; and
- (iii) the conditions do not apply or require performance after May 31, 1997.

12 U.S.C. § 1831u(a)(3).

The availability of the authority for an interstate merger transaction under section 1831u(a) during the early opt-in period, therefore, is triggered by the existence of the requisite state law in the home states of the merging banks. The federal merger authority in section 1831u(a) is available only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). However, section 1831u appears to structure the relationship between federal authority and state law differently than some other federal banking statutes that refer to state law. The Riegle-Neal Act's interstate merger transaction provisions

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).

do not make federal law completely supplant state law. But they also do not defer entirely to each state's law, or entirely incorporate each state's law, regarding the extent and manner in which interstate merger transactions can occur in that state.

On the one hand, the federal authority in section 1831u(a) is triggered, during the early opt-in period, only if each of the home states has a law that meets the features specified in section 1831u(a)(3)(A). But section 1831u does not expressly prohibit states from having other features in their interstate merger laws beyond those needed to meet the provisions of section 1831u(a)(3)(A). In fact, the Act expressly reserves to each state the right to determine branching by that state's state-chartered banks.² Nor does section 1831u(a) provide that the federal merger authority is ineffective if the state adds other features. That is, the state may add other features to its interstate merger law, and, as long as those features do not cause the state law to fail to meet the provisions of section 1831u(a)(3)(A), the federal merger authority in section 1831u(a) continues to be available.

But, on the other hand, section 1831u, once triggered during the early opt-in period, singles out and specifically incorporates into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. Similarly, after June 1, 1997 (when subsection 1831u(a)(3) will no longer be relevant), section 1831u continues to single out and specifically incorporate into the federal merger authority only certain features of state law referenced in various subsections of section 1831u. In addition to the state law features that are included in section 1831u on that permanent basis, Congress permitted host states, during the early opt-in period, to impose conditions on branches within the host state, as long as the conditions met the requirements of section 1831u(a)(3)(B) -- namely, that they do not discriminate against out-of-state banks, that they are not preempted by federal law, and they do not continue beyond May 31, 1997. Indeed, the inclusion of section 1831u(a)(3)(B) allowing host states to impose other conditions during the early opt-in period (subject to the limits in the section) indicates Congress believed that, without such permission (and therefore also in the period after June 1, 1997), host states would not have the authority to impose any conditions or requirements beyond those included in the specific provisions of section 1831u that refer to state law (including the reserved authority of a state to regulate its own state-chartered banks in

² Section 1831u(c)(3) provides:

(3) Reservation of Certain Rights to States. -- No provision of this section shall be construed as limiting in any way the right of a State to --

(A) determine the authority of State banks chartered by that State to establish and maintain branches; or

(B) supervise, regulate, and examine State banks chartered by that State.

12 U.S.C. § 1831u(c)(3). While the Act thus preserves for the states their rights with respect to interstate mergers and branching by the state's own state-chartered banks, the Riegle-Neal Act did not give the states any additional powers with respect to national banks (or state banks chartered by other states), other than in the areas specifically set out in section 1831u.

section 1831u(c)(3)).³ This would follow from the fact that in the Riegle-Neal Act Congress has created the comprehensive federal framework governing interstate merger transactions.

Thus, in summary, the Riegle-Neal Act's provisions for interstate merger transactions set forth a federal framework for mergers of banks with different home states that includes state law in specified ways in certain specific areas, but only in those areas. Those areas include the basic determination whether to participate or to opt-out. But the opt-out provision is carefully crafted by Congress to be only the single decision to be in or out of the congressionally set framework. There is no provision for a partial opt-out, a conditional opt-out, partial participation, or modification of the terms of the framework by each state (other than in the specific areas set out in section 1831u).⁴

The circumstances of this transaction raise an additional issue concerning the authority for interstate mergers under the Riegle-Neal Act. PNC is already an interstate bank, with its main office in Pennsylvania and branches in Pennsylvania and New Jersey.⁵ Midlantic is also

³ If the states otherwise had the power to impose additional conditions and requirements, there would have been no need for section 1831u(a)(3)(B)'s permission for certain conditions during the early opt-in period and section 1831u(c)(3)'s reservation of rights to states with respect to their own state-chartered banks.

⁴ The relationship of the federal framework and state law in the interstate merger transaction provisions in the Riegle-Neal Act is similar to the relationship of the federal framework and state law in the interstate bank acquisition provisions of the Riegle-Neal Act: in both, a comprehensive federal framework is established, and it provides for state authority only in certain specified areas. See Riegle-Neal Act § 101(a) (amending section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d)). One difference is that until June 1, 1997, states are permitted to opt-out of the interstate merger transaction framework, but that difference does not affect the underlying relationship between federal and state law in the framework. Thus, even apart from considerations relating to preemption and state authority over national banks generally, under the provisions of the Riegle-Neal Act, after May 31, 1997, host states have no more authority to approve, or place other conditions on, interstate merger transactions that do not involve a state bank chartered by the host state than they do to approve, or place conditions on, an interstate bank acquisition of a bank in the host state by an out-of-state bank holding company. And until May 31, 1997, the conditions a host state may impose are limited by section 1831u(a)(3)(B).

⁵ PNC obtained the branches in New Jersey in 1995. An affiliated national bank in New Jersey relocated its main office from New Jersey to Philadelphia, retaining its branches in New Jersey, under 12 U.S.C. § 30, and then merged into PNC under 12 U.S.C. § 215a, with the resulting bank retaining the branches of both merging banks under 12 U.S.C. § 36(b). See 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) ("OCC PNC/New Jersey Decision"). Since the Riegle-Neal Act the OCC has approved a number of such interstate main office relocation applications in which the bank would retain its existing branches in its original state. Three of the approvals have been challenged in court. One case was decided adversely to the OCC, and the OCC has appealed. See Ghiglieri v. Ludwig, No. 3:95-CV-2001-H (N.D. Tex. May 22, 1996), appeal docketed, No. 96-10818 (5th Cir. July 10, 1996) ("Ghiglieri"). The OCC believes the district court opinion in Ghiglieri is incorrect for several reasons. Most significantly, the court did not follow the language of the statutes in effect at the time of the agency's decision in the case (i.e., the statutes as amended in the Riegle-Neal Act) and ignored the highly relevant legislative history in the Riegle-Neal Act concerning the statutory changes and the OCC's earlier adoption of the construction of the statutes at issue. The court also rejected even the pre-Riegle-Neal weight of authority to the effect that section 30 operates independently of section 36. In addition, the court failed to follow the standards set by the United States Supreme Court for judicial review of an agency's construction of the statutes it administers, with respect both to the OCC's pre-Riegle-Neal interpretation of the statutes and the post-Riegle-Neal interpretation. See Smiley v. Citibank (South Dakota),

an interstate bank, with its main office in New Jersey and branches in New Jersey and Pennsylvania.⁶ Since the two banks have banking offices in the same states, they are "located within the same State" (both Pennsylvania and/or New Jersey) for purposes of 12 U.S.C. § 215a. Thus, the two banks could have merged under section 215a, and the resulting bank could have retained the branches of both banks under 12 U.S.C. § 36(b)(2). See, e.g., OCC PNC/New Jersey Decision (Part II-B) (construction of sections 215a and 36(b)(2) when banks have offices in more than one state); OCC Midlantic Decision (Part II) (same). However, PNC and Midlantic are also "insured banks with different home States" under 12 U.S.C. § 1831u(a), since their main offices are in different states. Thus, this transaction can come within the scope of either merger authority. This raises the question whether the Riegle-Neal merger authority applies in circumstances such as these, where the banks are located in the same state for section 215a purposes and the merger could occur under section 215a. Except for one provision that is not relevant to this transaction,⁷ nothing in either statute suggests Congress did not intend that both could apply to a proposed merger, if the merger fell within both statutes' terms and was consistent with other applicable laws, such as 12 U.S.C. § 36(b) & 36(e). The OCC previously analyzed the statutes and legislative history in this regard and determined that, if the banks were located within the same state for section 215a purposes, then they could merge under

N.A., No. 95-860, 517 U.S. ___, 135 L.Ed.2d 25 (June 3, 1996); NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co., 513 U.S. __ (1995); Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). A more comprehensive discussion of the OCC position on the Ghiglieri case is set out in two recent OCC decisions: Decision on the Applications of Sun World, N.A. (OCC Corporate Decision No. 96-___, August 2, 1996); Decision on the Applications of KeyBank, N.A. and Society National Bank (OCC Corporate Decision No. 96-32, June 14, 1996).

⁶ Midlantic had a grandfathered interstate branch in Philadelphia, i.e., a branch that it (or its predecessors) maintained there at the time the McFadden Act was adopted in 1927. In 1994, it expanded its branch network in Pennsylvania by merging an affiliated Pennsylvania state bank into Midlantic. See Decision on the Application to Merge Continental Bank into Midlantic National Bank (OCC Corporate Decision No. 94-37, August 12, 1994) ("OCC Midlantic Decision").

⁷ In section 1831u(d)(2), Congress provided:

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). This provision suggests that, once a resulting bank has been formed in a Riegle-Neal interstate merger transaction, that bank's subsequent acquisition of branches by merger with another bank in one of the states where it has branches cannot be another Riegle-Neal merger but must be a merger under the law that would have governed the resulting bank's predecessor bank in that state (i.e., "any bank involved in the [prior Riegle-Neal merger] transaction . . . if such bank had not been a party to the merger transaction"). Thus, here if either PNC or Midlantic had become interstate banks in a Riegle-Neal interstate merger transaction, then the proposed merger here could not be another Riegle-Neal merger. On the other hand, the statute's language is permissive, not mandatory ("may establish, acquire, or operate" rather than "must" or "may . . . only"). This may indicate that Congress intended this provision to be an additional authority, i.e., one that adds another provision for acquiring branches without curtailing the authority to acquire branches in another, subsequent Riegle-Neal merger. We need not determine this matter in this transaction, since neither PNC nor Midlantic became interstate banks in an earlier Riegle-Neal interstate merger transaction.

section 215a, even when they had different home states. See Decision on the Application to Merge Fleet Bank of New York, N.A. with NatWest Bank, N.A. (OCC Corporate Decision No. 96-20, April 12, 1996); 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).

Therefore, while the proposed merger would have been authorized under 12 U.S.C. § 215a, it also comes within the scope of 12 U.S.C. § 1831u. The applicants elected to apply under section 1831u. In evaluating an application for an interstate merger transaction under section 1831u during the early opt-in period, the OCC must determine, first, whether each of the home states of the merging banks (here, Pennsylvania and New Jersey) has a law that meets the provisions of subsection 1831u(a)(3)(A), and second, whether the applicant banks meet the requirements and conditions for approval in section 1831u, including state provisions to the extent applicable in section 1831u. We now address these matters in turn.

B. Both Pennsylvania and New Jersey have laws that meet the provisions of 12 U.S.C. § 1831u(a)(3)(A).

In this Merger Application, Pennsylvania is PNC's home state, and New Jersey is Midlantic's home state. Since PNC and Midlantic are applying to merge in an interstate merger transaction under section 1831u(a) during the early opt-in period, the merger may be approved only if each home state has the requisite law "opting-in" to interstate mergers, *i.e.*, "a law that -- (i) applies equally to all out-of-State banks; and (ii) expressly permits interstate merger transactions with all out-of-State banks." 12 U.S.C. § 1831u(a)(3)(A). Both Pennsylvania and New Jersey have such laws, and therefore, the merger authority of section 1831u is triggered.

Pennsylvania adopted legislation, effective July 6, 1995, expressly permitting mergers with out-of-state banks:

(a) Upon compliance with the requirements of this chapter one or more institutions and one or more national banks and interstate banks, without regard to whether any such interstate bank maintains branches in this Commonwealth at the time of a merger or consolidation, may merge or consolidate into a national bank and, with the approval by the department, may merge into an institution or consolidate into a new institution

7 P.S. § 1602(a). See also 7 P.S. § 103(a)(x) (purposes of 1995 amendments to authorize institutions to participate fully in interstate banking and branching) and §§ 901 & 904 (provisions under which out-of-state banks may establish and maintain branches in Pennsylvania).⁸

⁸ An "institution" for purposes of this Pennsylvania law includes a Pennsylvania state bank, a Pennsylvania state bank and trust company, a Pennsylvania state trust company, and a Pennsylvania state savings bank. 7 P.S. §§ 1601 and 102(f), (g), (q), (x) & (dd). An "interstate bank" is "a banking institution existing under the laws of another state, the District of Columbia or a territory or possession of the United States and authorized to engage in the business of receiving demand deposits or a national bank having a head office in another state, the District of Columbia or a territory or possession of the United States and authorized to engage in the business of receiving demand deposits, which lawfully maintains one or more branch offices in this Commonwealth." 7 P.S. § 102(hh).

New Jersey also has enacted legislation, effective as of April 17, 1996, expressly permitting mergers with out-of-state banks. Under the New Jersey statute, New Jersey state-chartered banks may engage in an interstate merger transaction with out-of-state state banks or out-of-state national banks, with the branches of the participating banks becoming branches of the resulting bank. See 1996 N.J. Laws, ch. 17, §§ 16 (merger with out-of-state state bank) (to be codified in a new section of N.J. Stat.) & 17 (merger with out-of-state national bank) (amending N.J. Stat. § 17:9A-148).⁹

Thus, both Pennsylvania and New Jersey have laws that apply equally to all out-of-state banks and that expressly permit interstate merger transactions with all out-of-state banks. Therefore, the early interstate merger transaction authority of section 1831u(a)(3) is triggered for the merger between PNC and Midlantic.

⁹ In these provisions, "bank" includes various New Jersey chartered institutions such as banks and trust companies. "Interstate merger transaction" means "(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or (2) The purchase of all or substantially all of the assets, the assumption of all or substantially all of the liabilities, or both, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank." "Home state" means with respect to a national bank, the state in which the main office is located. 1996 N.J. Laws, ch. 17, § 2 (restating and amending N.J. Stat. 17:9A-1(1), (21) & (25)). While the New Jersey statute does not expressly address mergers between national banks whose home state is New Jersey and out-of-state banks, that is irrelevant in the Riegle-Neal analysis. The criteria needed in the state law to trigger the early merger authority of section 1831u(a)(3)(A) relate only to whether the state has a law permitting mergers with all out-of-state banks. New Jersey's statute does so. If the state has such a law, then the Riegle-Neal Act (12 U.S.C. §§ 215a-1 & 1831u(a)) authorizes national banks in the state to enter such mergers. Moreover, a Statement accompanying the New Jersey legislation specifically states: "This bill, in response to the provisions of the federal 'Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,' provides for: nationwide interstate banking; interstate branching by acquisition and merger transactions between any combination of federally and state chartered insured depository institutions in those states not opting out of the provisions concerning interstate branching...." See Statement attached to Senate Bill No. 307 (emphasis added). Thus, the legislation clearly contemplates that interstate mergers involving national banks in New Jersey will occur.

The New Jersey statute also contains a nationwide reciprocal treatment condition. Interstate merger transactions are not permitted before June 1, 1997, "unless the home state of each institution involved in the transaction has in effect, as of the date of the approval of that transaction, a law that applies equally to all out-of-state banks and expressly permits interstate merger transactions with all out-of-state banks." N.J. Stat. § 17:9A-148(F) (added by 1996 N.J. Laws, ch. 17, § 17). See also 1996 N.J. Laws, ch. 17, § 16(c) (similar reciprocal treatment condition for mergers with out-of-state state banks). In reviewing similar reciprocity conditions in state statutes with regard to the establishment of de novo interstate branches under 12 U.S.C. § 36(g), the OCC concluded the presence of a nationwide reciprocal treatment condition did not cause the state law to fail to meet the provisions of section 36(g)(1)(A), which are substantially similar to the provisions of section 1831u(a)(3)(A). See Decision on the Application of Patrick Henry National Bank, Bassett, Virginia, to Establish a Branch in Eden, North Carolina (OCC Corporate Decision No. 96-04, January 19, 1996). The same analysis applies here, and so the presence of a nationwide reciprocal treatment condition does not mean the New Jersey law fails to trigger the early interstate merger authority of section 1831u(a)(3). See also Decision on the Application of NationsBank, N.A., Richmond, Virginia, and NationsBank, N.A. (Carolinas), Charlotte, North Carolina (OCC Corporate Decision No. 95-47, September 27, 1995) (at pages 5-6) (Riegle-Neal merger).

C. The proposed merger between PNC and Midlantic meets the requirements and conditions in 12 U.S.C. § 1831u(a) & 1831u(b).

An application by national banks 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). These conditions are: (1) compliance with state-imposed age limits, if any; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. In addition, during the early opt-in period, the application may also be subject to state-imposed conditions permitted under section 1831u(a)(3)(B), if any, that pertain to the initial merger itself (as distinct from conditions relating to the later on-going operations of the branches of the resulting out-of-state bank until May 31, 1997).

PNC's and Midlantic's Merger Application satisfies all these conditions to the extent applicable. First, the proposed merger satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In this Merger Application, while PNC and Midlantic are combining under Midlantic's charter, the Resulting Bank will have Pittsburgh as its main office under 12 U.S.C. § 1831u(d)(1), see Part II-D below. Thus, after the merger, Pennsylvania will be the home state of the Resulting Bank, and New Jersey will be a host state. It is not clear whether New Jersey is also the host state for purposes of section 1831u(a)(5). Since the merger is occurring under Midlantic's charter, it might be argued that Midlantic (a New Jersey bank) is acquiring a bank in Pennsylvania. On the other hand, "acquire" is not a defined term in section 1831u, and it might be argued that "host state" in paragraph 1831u(a)(5) should be construed similarly to "host state" in other provisions in section 1831u. In addition, with respect to the bank holding company, PNC Bank Corp., New Jersey is clearly a host state. We need not resolve this question here, since the merger would satisfy the host-state imposed age limit under either view. First, although the New Jersey law contains no minimum-age requirement, the Department of Banking applies regulations to protect from acquisition banks in existence less than five years. See N.J.A.C. 3:1-2.20(a)2. On June 3, 1996, the Department of Banking proposed new rules to eliminate this minimum-age requirement from the regulations. See 28 N.J.R. 2661 (June 3, 1996). In any case, Midlantic (and its predecessor banks) has been in existence for far longer than five years. Second, the Pennsylvania law also contains no minimum age requirement for mergers with out-of-state banks, and PNC (and its predecessors) has been in existence for far longer than five years. Thus, the PNC/Midlantic 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). The New Jersey interstate bank merger and branching statute does not appear to contain a "qualify to do business" filing requirement applicable to out-of-state banks with branches in New Jersey. The New Jersey statute requires an application to, and approval of, the commissioner of the Department of Banking prior to the merger of a New Jersey state-chartered bank with an out-of-state state bank. See 1996 N.J. Laws, ch. 17, § 16. However, the New Jersey statute is silent with respect to any filing or approval requirement with respect to a national bank whose home state is New Jersey. PNC submitted a copy of its OCC Merger Application to the New Jersey commissioner. Thus, the PNC/Midlantic satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

Third, the proposed interstate merger transaction does not raise issues with respect to 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). PNC and Midlantic are affiliates.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision 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 Merger Application, PNC and Midlantic are already affiliates, each already had branches in both Pennsylvania and New Jersey, and neither is 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 provision is not applicable to the Merger Application. However, the Community Reinvestment Act itself is applicable, 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, both PNC and Midlantic satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. § 1831o(b)(1)(A). Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, PNC-

Resulting 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.

Finally, Congress permitted host states to impose conditions on a branch in the host state resulting from an interstate merger during the early opt-in period (*i.e.*, until June 1, 1997), provided the condition does not discriminate against out-of-state banks, is not preempted by federal law, and does not apply or require performance after May 31, 1997. See 12 U.S.C. § 1831u(a)(3)(B) (quoted above at page 3). In the present Merger Application, the host state of New Jersey has imposed a reciprocity condition on the permissibility of interstate mergers. Under the New Jersey statute, before June 1, 1997, interstate mergers are not permitted if the laws of the home state of the out-of-state bank do not expressly permit interstate merger transactions with all out-of-State banks. See P.L. 1996, c. 17, section 16(c). In other words, it is a condition for an interstate merger transaction between an out-of-state bank and a New Jersey bank that the home state of the out-of-state bank permit New Jersey banks to acquire banks in that state. Such a reciprocal treatment condition, provided it is nationwide and does not discriminate among states, was specifically addressed by Congress as among the conditions permitted under section 1831u(a)(3) for interstate merger transactions under the Riegle-Neal Act. See 12 U.S.C. § 1831u(a)(3)(B) (parenthetical phrase). Thus, for mergers before June 1, 1997, it is a permissible condition. Pennsylvania permits out-of-state banks, including New Jersey banks, to merge with Pennsylvania banks. See 7 P.S. § 1602(a) (quoted above at page 7). Thus, the PNC/Midlantic merger complies with the reciprocal treatment condition permitted by the Riegle-Neal Act.

D. Following the merger, PNC-Resulting may retain all the banking offices of both merging banks.

The Applicants have requested that upon the completion of the merger PNC-Resulting (as the resulting bank in the merger) be permitted to retain and continue to operate PNC's existing main office in Pittsburgh as the main office of the resulting bank and to retain and continue to operate as branches (1) PNC's existing branches and (2) Midlantic's main office and branches. 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) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

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

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, PNC-Resulting, the resulting bank in this interstate merger transaction, may retain and operate PNC's main office in Pittsburgh as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate as branches all the other existing banking offices of both merging banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1).¹⁰ Moreover, at its branches in both states PNC-Resulting, as the resulting national bank in the merger, will continue to engage in the activities, including fiduciary activities, that its predecessor banks were engaged in. See, e.g., 12 U.S.C. § 215a-1 (Riegle-Neal mergers of national banks 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). See also OCC Interpretive Letter No. 695, reprinted in Fed. Banking L. Rep. [Current] (CCH) ¶ 81,010 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Applications may be approved under section 1828(c).

¹⁰ 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). Further, Congress certainly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u. Thus, PNC-Resulting's retention of branches in these Merger Applications is authorized under sections 36(d) and 1831u(d)(1), without regard to the complex branch retention provisions of section 36(b)(2) and the detailed inquiry into state law required thereunder.

1. Competitive Analysis

Since PNC and Midlantic are already owned by the same bank holding company, their merger would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. PNC-Resulting expects to achieve efficiencies by combining the two banks, eliminating overlapping offices and duplication of many back-office functions. Each bank operates at offices in both states, and their combination into one bank will provide the resulting bank with even greater geographic diversification within both states. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. The resulting bank will continue to serve the same areas in both states now served by the merging banks. It will continue to offer a full line of banking products and services. Upon completion of the merger, customers each bank will have available to them a significantly greater number of branches at which to bank. Especially benefitting will be those customers who live in one state and work in another or who frequently travel between cities in different states. Following the merger, customers would be dealing with the same bank in both states and will be able to readily access their accounts. Businesses that have operations in the different states will similarly benefit. The PNC and Midlantic branch networks overlap in some locations. Accordingly, PNC-Resulting has identified branches it plans to close, some of which are Midlantic branches, others of which are PNC branches. These branches are generally in close proximity to another branch of the resulting bank which will remain open and take over the business of the branch being closed. In each instance the bank followed its established branch closing policy, which was previously determined by the OCC to be both an objective means of identifying branches to be closed and in compliance with regulatory guidelines. Also, this policy requires that designated CRA officers contact community members when a branch closing is being considered. Historically the bank's record of considering the needs of the community, which includes making contact with community members, when deciding which branches will be closed or consolidated is considered to be good. Consequently there should be little noticeable disruption in satisfying the needs and convenience of customers in those communities where branches are to be closed. Appropriate notice was provided to customers of the affected branches and at the branches under 12 U.S.C. § 1831r-1. We believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Application.

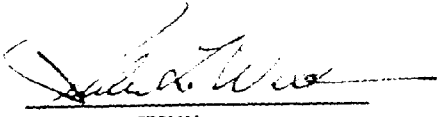
B. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, PNC has an outstanding rating and Midlantic has a satisfactory rating with respect to CRA performance.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same delineated communities that the merging banks currently serve. PNC-Resulting will carry forward the same CRA programs and policies that PNC has today, adding areas served by Midlantic to its delineated community. 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 PNC and Midlantic have today. The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. Based upon the information currently available, we do not believe the planned branch closings will adversely affect the CRA performance of the resulting bank. In addition, as provided in the CRA regulations, the effects of the closings will be considered in future CRA evaluations of the resulting bank. We find that approval of the proposed merger is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, the merger of PNC and Midlantic is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a). The resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. §§ 36(d) & 1831u(d)(1). The merger also meets the criteria for approval under other statutory factors. Accordingly, this Merger Application is hereby approved.



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8-20-96

Date

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