



Comptroller of the Currency
Administrator of National Banks

Central District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, Illinois 60605

Corporate Decision #2009-05
June 2009

May 11, 2009

Randy L. Newman
Chief Executive Officer
Alerus Financial, N.A.
401 Demers Avenue
Grand Forks, ND 58201

Re: Purchase and Assumption whereby Alerus Financial, N.A will purchase the assets and assume the liabilities of one branch of Meridian Bank, N.A. CAIS Control #: 09-CE-02-005

Dear Mr. Newman:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application of Alerus Financial National Association, Grand Forks, North Dakota (“Alerus”) to acquire, through the purchase of certain assets and assumption of certain liabilities, and operate as a branch the Peoria, Arizona branch of Meridian Bank, National Association, Wickenburg, Arizona, (“Meridian”) for the reasons and subject to the requirements set forth herein. This approval is granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by Alerus’s representatives during the application process.

Purchase and Assumption

Alerus applied to the OCC for approval to acquire certain assets of and to assume certain liabilities of the Peoria, Arizona branch of Meridian. Alerus may purchase and assume these assets and liabilities. National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposit liabilities from other institutions, as part of their general banking powers under 12 U.S.C.

§ 24(Seventh).¹ Such purchase and assumption transactions are commonplace in the banking industry.

Accordingly, the Bank may purchase from Meridian certain assets, and assume certain liabilities, of the Peoria, AZ branch of Meridian. However, additional authority must exist to permit the Bank to acquire and operate the Peoria, AZ branch as an interstate branch of the Bank.

Interstate Branch Acquisition

Alerus' acquisition and operation of the Peoria, Arizona branch of Meridian is authorized under 12 U.S.C. §§ 1831u and 36(d). The Riegle-Neal Act added section 44 to the Federal Deposit Insurance Act, authorizing certain interstate merger transactions:

(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.²

Under the Riegle-Neal Act, the term "interstate merger transaction" may include interstate purchase and assumption transactions.³ A purchase and assumption of all, or substantially all, of the assets and liabilities of a bank with a different home state is treated like a merger, and agency approval is authorized under subsection 1831u(a)(1). The Riegle-Neal Act also authorizes the purchase and assumption of only a part of a bank located in a different home state, including the acquisition of a single branch, if the law of the state in which the branch is located permits it:

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.⁴

¹ See, e.g., [City National Bank of Huron v. Fuller](#), 52 F.2d, 870, 872-73 (8th Cir. 1931); [In re Cleveland Savings Society](#), 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 U.S.C. § 1828(c) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

² 12 U.S.C. § 1831u(a)(1).

³ An "interstate merger transaction" is defined as a "merger transaction" approved under section 1831u(a), a "merger transaction" is defined by reference to 12 U.S.C. § 1828(c), and section 1828(c) includes purchase and assumption transactions in which deposit liabilities are assumed. See 12 U.S.C. §§ 1831u(g)(6)-(7) and 1828(c)(3).

⁴ 12 U.S.C. § 1831u(a)(4)(A).

In this application, there is a purchase and assumption by the Bank of a bank branch located in Arizona, including the assumption of insured deposits. Arizona law permits an out-of-state bank to establish and maintain a branch in Arizona through the acquisition of a branch, provided that the laws of the home state of the out-of-state bank permits reciprocal acquisitions.⁵ North Dakota law permits out-of-state banks to acquire a branch in North Dakota.⁶ Accordingly, the Arizona reciprocity requirement is met.

An application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b). The proposed purchase and assumption transaction satisfies all these conditions to the extent applicable.

First, the application satisfies the state-imposed age requirements permitted by section 1831u(a)(5). The Riegle-Neal Act permits the host state to require that the bank to be acquired has been in existence for a minimum period of time, but the maximum age requirement a state is permitted to impose is five years. When the interstate merger transaction involves the acquisition of a branch only, the age requirement applies to the age of the branch to be acquired.⁷ Arizona law requires that a branch being acquired in an interstate transaction must have been in continuous operation for at least five years.⁸ The Peoria, Arizona branch being acquired in this transaction has been in continuous operation for more than five years. Therefore, the proposed interstate branch acquisition satisfies the Riegle-Neal Act age requirement.

Second, the proposed interstate transaction meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) comply with applicable state filing requirements of states that will become host states, provided they do not discriminate against out-of-state banks and are similar in effect to filing requirements imposed on out-of-state nonbanking corporations and (2) submit a copy of the application to the state bank supervisor of the host state.⁹ Arizona's statute permitting the acquisition of a branch in Arizona by an out-of-state bank requires the out-of-state bank to provide written notice of the proposed transaction to the Arizona Department of Financial Institutions ("ADFI") ten days

⁵ See Ariz. Rev. Stat. §§ 6-322(E) and 6-327(B).

⁶ Section 6-08.4-02 of the North Dakota Code provides that the responsible federal regulatory authority may approve a transaction under the Federal Deposit Insurance Act. As used in section 6-08.4-02, the term "transaction" means

a bank's establishment . . . of a bank branch office in a state other than its home state, whether de novo, *by acquisition of a separate branch office*, or through merger of a North Dakota bank with another bank.

N.D. Cent. Code § 6-08.4-01(3) (emphasis added).

⁷ See 12 U.S.C. § 1831u(a)(4)(B).

⁸ See Ariz. Rev. Stat. § 6-322(E).

⁹ See 12 U.S.C. § 1831u(b)(1).

before the effective date of the acquisition.¹⁰ The Bank has filed a copy of the interstate merger application with the ADFI. Thus, the Riegle-Neal Act's filing requirements are satisfied.

Third, the proposed interstate transaction does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places a nationwide deposit concentration limit of 10% on section 1831u(a) interstate merger transactions.¹¹ Based on the size of the transaction, Alerus's acquisition of the Peoria branch will not cause the Bank to exceed the deposit concentration limitations of the Riegle-Neal Act.

Fourth, the proposed interstate transaction 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 (including an interstate branch acquisition) in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any state in which the applicant bank had no branch or bank affiliate immediately before the transaction, section 1831u(b)(3) requires the OCC to (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.¹² Immediately after the proposed transaction the Bank will have a branch in Arizona, a state in which it had no branch or bank affiliate immediately before the transaction. Thus, the special community reinvestment compliance provisions of the Riegle-Neal Act apply. Since Arizona, North Dakota and Minnesota do not have separate community reinvestment laws, and the Bank has no bank affiliates, only performance under the federal CRA must be taken into consideration. As discussed below, the Bank's performance under the federal CRA is consistent with approval of this application. Accordingly, the requirements of 12 U.S.C. § 1831u(b)(3) are satisfied.

Finally, the proposed interstate transaction 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.¹³ These requirements are met in this transaction.

¹⁰ See Ariz. Rev. Stat. § 6-322(D). Ariz. Rev. Stat. § 6-327(F) requires an "out-of-state bank" that operates a branch in Arizona to (1) obtain a grant of authority to transact business in the state and comply with other filing requirements applicable to other foreign corporations, and (2) provide a written notice to the ADFI of the grant of authority. However, the term "out-of-state bank" does not include national banks. See Ariz. Rev. Stat. § 6-101(14). Thus, the Bank is not subject to the filing requirements of section 6-327.

¹¹ Alerus currently has no branches or affiliates located in Arizona, and Meridian currently has no branches or affiliates located in North Dakota. Accordingly, the statewide deposit concentration limits of 12 U.S.C. § 1831u(b)(2)(B) do not apply.

¹² See 12 U.S.C. § 1831u(b)(3).

¹³ 12 U.S.C. § 1831u(b)(4).

The Riegle-Neal Act also specifically provides that a national bank may maintain and operate branches in a state other than its home state as a result of an interstate merger transaction under section 1831u(a). Section 1831u(d)(1) provides:

(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.¹⁴

Accordingly, this application meets the requirements of 12 U.S.C. §§ 36(d) and 1831u.

Bank Merger Act

The OCC reviewed the proposed interstate purchase and assumption under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. We found that the proposed purchase and assumption would not have any anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the banks' effectiveness in combating money laundering activities. We considered these factors and found them consistent with approval.

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 the community, including low- and moderate-income ("LMI") neighborhoods, when evaluating certain applications, including transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

Pre-Consummation Procedures and Requirements

The district office must be advised in writing in advance of the desired effective date for the purchase and assumption, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

¹⁴ 12 U.S.C. § 1831u(d)(1). 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). *See* 12 U.S.C. § 36(d).

If the purchase and assumption is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

Conclusion

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A separate letter is enclosed requesting your feedback on how the OCC handled your application. We would appreciate your response so we may continue to improve our service. All correspondence regarding this application should reference the application control number. If you have any questions, contact the undersigned or Vicky J. Vlahos at 312.360.8886 or by e-mail at vicky.vlahos@occ.treas.gov.

Sincerely,

signed

Travis W. Wilbert
Director for District Licensing

Enclosure: Survey Letter