Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

CRA Decision #118
December 2003

November 6, 2003

OCC Control Nr. 2003-ML-02-0009, 0010 & 0011

Mr. James E. Hanson
Director, Regulatory Reporting Services
Wells Fargo & Company
MAC N9305-152
Sixth & Marquette
Minneapolis, Minnesota 55479

Dear Mr. Hanson:

This is to inform you that on November 6, 2003, the Office of the Comptroller of the Currency ("OCC") approved the application to consolidate the following banks with and into Wells Fargo Bank, National Association, San Francisco, California ("Wells Fargo Bank") with the resulting bank's headquarters located in Sioux Falls, South Dakota.

Wells Fargo Bank Alaska, National Association, Anchorage, AK
Wells Fargo Bank Arizona, National Association, Phoenix, AZ
Wells Fargo Bank Illinois, National Association, Galesburg, IL
Wells Fargo Bank Indiana, National Association, Fort Wayne, IN
Wells Fargo Bank Iowa, National Association, Des Moines, IA
Wells Fargo Bank Michigan, National Association, Marquette, MI
Wells Fargo Bank Minnesota, National Association, Minneapolis, MN
Wells Fargo Bank Montana, National Association, Billings, MT
Wells Fargo Bank Nebraska, National Association, Omaha, NE
Wells Fargo Bank Nevada, National Association, Las Vegas, NV
Wells Fargo Bank New Mexico, National Association, Albuquerque, NM
Wells Fargo Bank North Dakota, National Association, Fargo, ND
Wells Fargo Bank Ohio, National Association, Van Wert, OH
Wells Fargo Bank South Dakota, National Association, Sioux Falls, SD
Wells Fargo Bank Texas, National Association, San Antonio, TX
Wells Fargo Bank West, National Association, Denver, CO
Wells Fargo Bank Wisconsin, National Association, Milwaukee, WI
Wells Fargo Bank Wyoming, National Association, Casper, WY

This letter also serves to inform you of our approval of the application by Wells Fargo Bank to purchase and assume certain of the assets and liabilities of Wells Fargo Bank Northwest,

National Association, Ogden, Utah.

As discussed below, this approval was granted based upon a thorough review of statutorily required evaluative factors utilizing all information available, including commitments and representations made in the application and those of Wells Fargo Bank's representatives.

I. INTRODUCTION

Wells Fargo Bank applied to the OCC for approval to engage in a series of transactions that would combine a number of affiliated national banks with Wells Fargo Bank. As a result of the transactions, virtually all of the general banking operations of Wells Fargo & Company ("WFC") would be conducted in a single national bank, Wells Fargo Bank.[1]

Wells Fargo Bank applied to consolidate Wells Fargo Bank Alaska, N.A., Anchorage, Alaska, Wells Fargo Bank Montana, N.A., Billings, Montana, Wells Fargo Bank Nebraska, N.A., Omaha, Nebraska, Wells Fargo Bank Texas, N.A., San Antonio, Texas, Wells Fargo Bank West, N.A., Denver, Colorado, and Wells Fargo Bank Wyoming, N.A., Casper, Wyoming, with and into Wells Fargo Bank, under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the "Group 1 Consolidation"). Wells Fargo Bank has branches in California and in Arizona, Colorado, Idaho, Illinois, Iowa, Minnesota, Nevada, New Mexico, Oregon, and Washington State. Each of the target banks in the Group 1 Consolidation has offices only in its home state. In the Group 1 Consolidation, it is proposed that the resulting bank will retain Wells Fargo Bank's main office in San Francisco as its main office, under 12 U.S.C. § 1831u(d)(1), and will retain, as branches, Wells Fargo Bank's branches and the main offices and branches of the target banks under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

Wells Fargo Bank also applied to consolidate Wells Fargo Bank Arizona, N.A., Phoenix, Arizona, Wells Fargo Bank Illinois, N.A., Galesburg, Illinois, Wells Fargo Bank Indiana, N.A., Fort Wayne, Indiana, Wells Fargo Bank Iowa, N.A., Des Moines, Iowa, Wells Fargo Bank Michigan, N.A., Marquette, Michigan, Wells Fargo Bank Minnesota, N.A., Minneapolis, Minnesota, Wells Fargo Bank Nevada, N.A., Las Vegas, Nevada, Wells Fargo Bank New Mexico, N.A., Albuquerque, New Mexico, Wells Fargo Bank North Dakota, N.A., Fargo, North Dakota, Wells Fargo Bank Ohio, N.A., Van Wert, Ohio, Wells Fargo Bank South Dakota, N.A., Sioux Falls, South Dakota, and Wells Fargo Bank Wisconsin, N.A., Milwaukee, Wisconsin, with and into Wells Fargo Bank, under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the "Group 2 Consolidation"). Wells Fargo Bank has branches in California and in Arizona, Colorado, Idaho, Illinois, Iowa, Minnesota, Nevada, New Mexico, Oregon, and Washington State. Each of the target banks in the Group 2 Consolidation has offices only in its home state. In the Group 2 Consolidation, it is proposed that the resulting bank will retain Wells Fargo South Dakota's main office in Sioux Falls as its main office, under 12 U.S.C. § 1831u(d)(1), and will retain, as branches, Wells Fargo South Dakota's branches and the main offices and branches of the other participating banks under 12 U.S.C.

[1] WFC would continue to have a small number of separate charters that engage in various types of limited business.

§§ 36(d) and 1831u(d)(1).[2]

Wells Fargo Bank also applied to engage in a purchase and assumption transaction with another affiliate, Wells Fargo Bank Northwest, N.A., Ogden, Utah, under 12 U.S.C. §§ 24(Seventh) and 1828(c) (the "P&A Transaction"). Wells Fargo Bank Northwest has its main office in Ogden, Utah, and operates branches in Utah, Idaho, Oregon, and Washington. Wells Fargo Bank also operates branches in Utah, Idaho, Oregon, and Washington. In the P&A Transaction, Wells Fargo Bank will acquire most of the assets and assume most of the liabilities of Wells Fargo Bank Northwest, including the acquisition of all the branch banking operations and branches in all four states, under 12 U.S.C. §§ 36 and 1831u(d)(2). Wells Fargo Bank also applied to establish a branch at the location of Wells Fargo Bank Northwest's main office in Ogden to continue the local banking operations at that location (the "Branch Application").[3]

II. AUTHORITY FOR THE TRANSACTIONS

A. The Group 1 Consolidation

In the Group 1 Consolidation, insured national banks with different home states will consolidate. Such interstate transactions are authorized under section 44 of the Federal Deposit Insurance Act:

> 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) (the "Riegle-Neal Act").[4] The Riegle-Neal Act permits a state to

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[2] It is anticipated that the Group 1 Consolidation will be consummated in the fourth quarter of 2003, and the Group 2 Consolidation will be consummated in the first quarter of 2004. However, Wells Fargo Bank may elect to consummate them at the same time.

[3] WFC intends to retain Wells Fargo Bank Northwest as a separate national bank to avoid disruption to certain lines of business currently conducted in Wells Fargo Bank Northwest and for corporate financial management purposes. Wells Fargo Bank Northwest will continue to engage in the following activities: (1) certain corporate trust and other agency and fiduciary activities (including acting as owner-trustee in connection with the United States registration of a significant number of commercial aircraft under leverage leases, certain securities safekeeping activities, and retaining other fiduciary accounts to the extent applicable law makes it impractical to transfer accounts to Wells Fargo Bank), (2) holding deposit accounts for state and local government agencies in Utah, (3) retaining certain assets and securities already on Wells Fargo Bank Northwest's balance sheet, to be retained for balance sheet management or to avoid adverse tax consequences that could result from transfer, and (4) holding shares in operating subsidiaries that will acquire participations in loans originated or held by Wells Fargo Bank. WFC has requested "wholesale bank" designation for the resulting Wells Fargo Bank Northwest for Community Reinvestment Act purposes under 12 C.F.R. § 25.25(b).

[4] Section 44 was added by section 102(a) 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 term "interstate merger transaction" includes a consolidation as well as a merger. The Riegle-Neal Act also made

elect to prohibit such interstate transactions involving a bank whose home state is the prohibiting state (*i.e.,* "opt-out") 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 the Group 1 Consolidation, the home states of the banks are Alaska, Montana, Nebraska, Texas, Colorado, Wyoming, and California. None of these states have opt-out laws in effect.[5] Accordingly, the Group 1 Consolidation may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

An application to engage in an interstate transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. The Group 1 Consolidation satisfies all these conditions to the extent applicable.

First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). But the maximum age requirement a state is permitted to impose is five years. 12 U.S.C. § 1831u(a)(5)(B). In the Group 1 Consolidation, all the participating banks have been in existence for more than five years. Thus, the Group 1 Consolidation satisfies the Riegle-Neal Act's age requirement.

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conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. *See* Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). Some interstate transactions may also be authorized under 12 U.S.C. §§ 215 (consolidations) or 215a (mergers). *See, e.g., Ghiglieri v. NationsBank of Texas, N.A.,* No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction); *Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina* (OCC Corporate Decision No. 98-19, April 2, 1998). Since Wells Fargo Bank currently has a branch in Colorado, the consolidation with Wells Fargo Bank West could have been effected under section 215. However, Wells Fargo Bank chose to make all the present consolidation applications under the Riegle-Neal Act.

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." "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).

[5] Montana and Texas previously had enacted laws opting-out, but those laws subsequently have expired or been repealed.

Second, the proposed transaction meets the applicable Riegle-Neal Act filing requirements. A bank applying for an interstate 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. 12 U.S.C. § 1831u(b)(1).[6] Wells Fargo Bank submitted a copy of its OCC application to the state banking supervisor of each state involved and has represented that it will comply with any applicable state filing requirement.

Third, the proposed consolidation 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 transactions. However, interstate transactions involving only affiliated banks are specifically excepted from these provisions. 12 U.S.C. § 1831u(b)(2)(E). Wells Fargo Bank and the other banks involved are affiliates; thus section 1831u(b)(2) is not applicable to this consolidation.

Fourth, the proposed interstate 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 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 bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, these provisions do not apply to transactions between affiliated banks. Wells Fargo Bank and the other banks involved are affiliates.[7] Thus, this Riegle-Neal Act provision is not applicable. However, the CRA itself is applicable, as discussed below in Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate transaction under

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[6] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. 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).

[7] It does not apply to transactions 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).

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. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, Wells Fargo Bank and the other banks involved satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, the banks are at least satisfactorily managed. The OCC has also determined that, following the consolidation, 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 Group 1 Consolidation is legally permissible under sections 215a-1 and 1831u.

The applicants also have requested that, upon the completion of the Group 1 Consolidation, Wells Fargo Bank (as the bank resulting from the consolidation) be permitted (1) to retain and operate, as its main office, Wells Fargo Bank's main office in San Francisco and (2) to retain and operate, as branches, Wells Fargo Bank's branches and the main offices and branches of Wells Fargo Bank Alaska, Wells Fargo Bank Montana, Wells Fargo Bank Nebraska, Wells Fargo Bank Texas, Wells Fargo Bank West, and Wells Fargo Bank Wyoming.

In interstate transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the combining banks is expressly authorized under 12 U.S.C. §§ 36(d) and 1831u(d)(1) (quoted and discussed further in Section II-B below). Therefore, Wells Fargo Bank, the resulting bank in the Group 1 Consolidation may retain and operate the requested main office and branches.

Moreover, Wells Fargo Bank will succeed to the assets, liabilities, rights, franchises and interests, including fiduciary appointments, of all the combining banks in the Group 1 Consolidation as a result of the consolidation, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates.[8]

B. The Group 2 Consolidation

As in the Group 1 Consolidation, in the Group 2 Consolidation, insured national banks with different home states will consolidate. This interstate transaction is also authorized under

[8] *See, e.g.,* 12 U.S.C. §§ 215a-1 (Riegle-Neal transactions with a resulting national bank occur under the National Bank Consolidation and Merger Act) & 215(e) (the resulting national bank in a consolidation succeeds to all the rights, franchises and interests, including fiduciary appointments, of the combining banks). *See also Decision on the Application to Merge Bank of America N.T. & S.A. with NationsBank, N.A.* (OCC CRA Decision No. 94 (May 20, 1999) (page 6, note 13) (explanation of relationship of sections 215a-1 and 215 within the National Bank Consolidation and Merger Act); *Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A.* (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states).

12 U.S.C. §§ 215a-1 and 1831u.[9] None of the home states of the banks involved opted out, and as discussed below, the applicable Riegle-Neal Act requirements are met.

First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). In the Group 2 Consolidation, all the participating banks have been in existence for more than five years.

Second, the proposed transaction meets the applicable Riegle-Neal Act filing requirements. Wells Fargo Bank submitted a copy of its OCC application to the state banking supervisor of each state involved and has represented that it will comply with any applicable state filing requirement.[10]

Third, the proposed consolidation does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. These limits do not apply to interstate transactions involving only affiliated banks. Wells Fargo Bank and the other banks involved are affiliates; thus section 1831u(b)(2) is not applicable to this consolidation.

Fourth, the proposed interstate transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act, because those provisions do not apply to transactions between affiliated banks.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. As of the date the application was filed, Wells Fargo Bank and the other banks involved satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, the banks are at least satisfactorily managed. The OCC has also determined that, following the consolidation, the resulting bank will continue to exceed the standards for an adequately capitalized and adequately managed bank.

Accordingly, the Group 2 Consolidation may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

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[9] As noted in note 4 above, some interstate transactions may also be authorized under 12 U.S.C. §§ 215 (consolidations) or 215a (mergers). Wells Fargo Bank currently has branches in Arizona, Illinois, Iowa, Minnesota, Nevada, and New Mexico, and so the affiliated banks in the Group 2 Consolidation in those states could have been consolidated into Wells Fargo Bank under section 215. However, Wells Fargo Bank chose to make all the present consolidation applications under the Riegle-Neal Act.

[10] We note that, since the consolidation is being effected under Wells Fargo Bank's charter, the current host states of Wells Fargo Bank (Arizona, Illinois, Iowa, Minnesota, Nevada, and New Mexico in the Group 2 Consolidation and Colorado in the Group 1 Consolidation, as well as Utah, Idaho, Oregon, and Washington) will continue to be host states of the resulting bank. But they will not become host states *as a result* of this Riegle-Neal interstate transaction, and so the filing requirements of section 1831u(b)(1), strictly speaking, do not apply with respect to those states. *See Decision on the Application to Merge Bank of America N.T. & S.A. with NationsBank, N.A.* (OCC CRA Decision No. 94, May 20, 1999) (page 4, note 6); *Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A.* (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9).

The applicants also have requested that, upon the completion of the Group 2 Consolidation, Wells Fargo Bank (as the bank resulting from the consolidation) be permitted (1) to retain and operate, as its main office, the main office of Wells Fargo Bank South Dakota in Sioux Falls and (2) to retain and operate, as branches, Wells Fargo Bank South Dakota's branches and the main offices and branches of the other banks involved in the interstate transaction (Wells Fargo Bank Arizona, Wells Fargo Bank Illinois, Wells Fargo Bank Indiana, Wells Fargo Bank Iowa, Wells Fargo Bank Michigan, Wells Fargo Bank Minnesota, Wells Fargo Bank Nevada, Wells Fargo Bank New Mexico, Wells Fargo Bank North Dakota, Wells Fargo Bank Ohio, Wells Fargo Bank Wisconsin, and Wells Fargo Bank).

In interstate transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the combining 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).[11]

Thus, in the present application, Wells Fargo Bank (as the resulting bank after the Group 2 Consolidation) may retain and operate as its main office "any office that any bank involved in an interstate merger transaction [*i.e.,* Wells Fargo Bank, Wells Fargo Bank South Dakota, or any other bank involved] was operating as a main office or branch immediately before the merger transaction." The Sioux Falls office is currently operating as the main office of Wells Fargo Bank South Dakota, and so the resulting bank may retain and operate it as its main office, provided the consolidation between Wells Fargo Bank and Wells Fargo Bank South Dakota is approved under section 1831u.[12]

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[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)). Section 36(d) makes it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 U.S.C. § 36(b)(2) that apply to combinations under 12 U.S.C. §§ 215 or 215a. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). 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 the complex branch retention provisions of section 36(b)(2), apply to branch retention in transactions under section 1831u.

[12] The OCC previously has approved other applications under the Riegle-Neal Act in which the resulting bank retained, as its main office, an office other than the main office of the acquiring bank. *See, e.g., Decision on the*

Similarly, Wells Fargo Bank (as the resulting bank after the Group 2 Consolidation) may retain and operate as branches "any office that [Wells Fargo Bank, Wells Fargo Bank South Dakota, and any other bank involved] was operating as a main office or branch immediately before the merger transaction." Wells Fargo Bank South Dakota's branches, the main office and branches of Wells Fargo Bank, and the main offices and branches of all the other banks involved are all operating as main offices or branches, and so the resulting bank may retain and operate them as branches, provided the Group 2 Consolidation is approved under section 1831u.

Therefore, since the Group 2 Consolidation may be approved under 12 U.S.C. §§ 215a-1 and 1831u(a), Wells Fargo Bank may retain and operate the proposed main office and branches. Moreover, Wells Fargo Bank will succeed to the assets, liabilities, rights, franchises and interests, including fiduciary appointments, of all the combining banks in the Group 2 Consolidation as a result of the consolidation, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates.[13]

C. The P&A Transaction and Branch Application

Wells Fargo Bank also applied to engage in the P&A transaction. Wells Fargo Bank Northwest has its main office in Ogden, Utah, and operates branches in Utah, Idaho, Oregon and Washington. Wells Fargo Bank also operates branches in Utah, Idaho, Oregon, and Washington. In the P&A Transaction, Wells Fargo Bank will acquire most of the assets and assume most of the liabilities of Wells Fargo Bank Northwest, including the acquisition of all of the branch banking operations and branches in all four states.

Wells Fargo Bank 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).[14] Such

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Application to Merge First National Bank and Trust Company and TeamBank, N.A. (OCC Corporate Decision No. 2000-09, June 20, 2000); *Decision on the Application to Merge Bank of America N.T. & S.A. with NationsBank, N.A.* (OCC CRA Decision No. 94 (May 20, 1999). Decision on the Application to Merge PNC Bank, N.A. with Midlantic Bank, N.A. (OCC Corporate Decision No. 96-47, August 20, 1996). One of these transactions was subject to court review, *see TeamBank, N.A. v. McClure,* 279 F.3d 614 (8th Cir. 2002).

[13] *See* note 8 above. In addition, we note that, after the Group 2 Consolidation, a number of Wells Fargo Bank's directors will reside in states in which Wells Fargo Bank will have branches. Under 12 U.S.C. § 72, a majority of the board of directors of a national bank must reside in the state in which the bank is located or within 100 miles of the location of the office of the association, except that the OCC may waive the requirement of residency. The OCC has taken the position that a national bank is "located" for purposes of section 72 in each state in which it maintains its main office or a branch. *See, e.g.,* OCC Interpretive Letter No. 654 (December 19, 1994). Moreover, the OCC could grant residency waivers to Wells Fargo Bank directors who do not meet section 72's requirements.

purchase and assumption transactions are commonplace in the banking industry. Wells Fargo Bank Northwest is also a national bank, and so no nonconforming or impermissible assets or activities are involved.

Wells Fargo Bank also may acquire and operate Wells Fargo Bank Northwest's branches in Utah, Idaho, Oregon, and Washington, and it may establish a new branch in Ogden at the site of Wells Fargo Bank Northwest's main office.[15] Wells Fargo Bank was the resulting bank following earlier interstate merger transactions under the Riegle-Neal Act with banks in Utah, Idaho, Oregon, and Washington through which it acquired its existing branches in those states. As such, under 12 U.S.C. §§ 36(d) and 1831u(d)(2), it may acquire or establish additional branches at any location where its predecessor banks in those states could have done if the predecessor bank were still a separate bank:

> Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, and 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). Utah, Idaho, Oregon, and Washington do not limit in-state branching by their respective state banks. Utah Code Ann. § 7-1-708; Idaho Code § 26-301; or. Rev. Stat. § 714.025; Wash. Rev. Code § 30.04.280. Thus, a national bank located in each of those states could acquire or establish branches at the locations of Wells Fargo Bank Northwest's branches in each state and in Ogden, under 12 U.S.C. § 36(c). Therefore, Wells Fargo Bank may acquire or establish the proposed branches.[16]

III. ADDITIONAL REVIEWS

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for certain transactions, including any consolidation between insured banks when the resulting institution will be a national bank and for purchase and assumption transactions in which an insured national bank acquires deposits from another insured institution. Under the Act, the OCC

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[14] *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).

[15] Any shared space or employees between Wells Fargo Bank's branch and Wells Fargo Bank Northwest's main office will be conducted consistent with the requirements of 12 C.F.R. § 7.3001.

[16] Moreover, caselaw had established a similar branching authority for national banks prior to and separate from the Riegle-Neal Act. If a national bank has a branch in a state, it is "situated" in that state for purposes of 12 U.S.C. § 36(c) and may establish additional branches in that state, including by acquisition of branches in a purchase and assumption, to the same extent as a national bank whose main office is in the state. *See Ghiglieri v. Sun World, N.A.,* 117 F.3d 309, 315-16 (5th Cir. 1997); *Seattle Trust & Savings Bank v. Bank of California, N.A.,* 492 F.2d 48, 51-52 (9th Cir. 1974), *cert. denied,* 419 U.S. 844 (1974).

generally may not approve a transaction that would substantially lessen competition. 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 two consolidations and the P&A Transaction transactions may be approved under section 1828(c).

1. Competitive analysis

The OCC has reviewed the competitive effects of this proposal. As the various banks involved in the transactions are owned and controlled by the same bank holding company, the contemplated combination of the banks will clearly have no adverse impact on competition.

2. Financial and managerial resources

The Bank Merger Act requires the OCC to consider "…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." We find that the financial and managerial resources of the various banks in the combination, and of Wells Fargo Bank, as the resulting bank, do not raise concerns that would cause the applications to be disapproved. The proposed transactions are merely a corporate reorganization to achieve efficiencies and economies of scale. Further, the participant banks are well capitalized and well managed. The future prospects of the proponents, individually and combined, are thus considered favorable and consistent with an approval.

The Bank Merger Act requires the OCC to consider, "…the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches." We have considered this factor, determined no material weaknesses to preclude approval are present, and concluded that approval of this transaction is appropriate

3. Convenience and needs

The applications will have no adverse impact on the convenience and needs of the communities to be served. The transactions are only an internal reorganization. No reductions in products or services available to the general public are contemplated. Accordingly, we believe the impact of these applications on community convenience and needs is consistent with the granting of an approval.

B. The Community Reinvestment Act

1. CRA Record of Performance

The CRA requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods,

when evaluating certain applications, including transactions subject to the Bank Merger Act.[17] The OCC's review revealed no evidence that the applicants' record of helping to meet the

[17] See 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

Wells Fargo Bank received an "Outstanding" CRA rating in the OCC's October 1, 2001 Performance Evaluation ("PE"). The PE indicated that in California, where Wells Fargo Bank received 96% of its deposits, Wells Fargo Bank had strong lending, investment and service performance. In Wells Fargo Bank's six largest California assessment areas ("AAs"), it reported nearly 340,000 loans that were originated or purchased during the evaluation period. These were comprised of 56% home mortgage and 44% small loans to businesses. Wells Fargo Bank's community development lending also had a positive impact on lending performance and was very responsive to the affordable housing needs of these AAs. Through Wells Fargo Bank's community development lending, the bank helped address a significant need for affordable housing. During the evaluation period, Wells Fargo Bank provided a significant quantity of community development lending relative to capital allocated to these AAs.

The volume of Wells Fargo Bank 's investments in these same AAs was high in relation to its capitalization and the available opportunities, despite the high level of competition for these investments. Wells Fargo Bank's investment and grant activities helped address essential identified needs within the six AAs. Wells Fargo Bank's investments mostly addressed the need for financing of small businesses and affordable housing and the grants focused primarily on providing services to LMI individuals. With respect to services, Wells Fargo Bank exhibited a high volume of retail banking offices with wide geographic distribution of branch offices by area income level in the Oakland, San Francisco, and San Jose Metropolitan Statistical Areas ("MSAs") and a good distribution of branches in the Los Angeles-Long Beach, Orange County, and San Diego MSAs.

The PE also noted that Wells Fargo Bank's fair lending program encompassed all lending areas of the bank, and provides for comprehensive training and controls. The OCC's review included a statistical analysis of Wells Fargo Home Mortgage, Inc.'s underwriting of Black and Hispanic applicants compared to that of White applicants.[18] The OCC's analysis also included a review of fair housing complaints registered against Wells Fargo Bank and Wells Fargo Home Mortgage, Inc. ("WFHM"). This review, coupled with ongoing analyses and previous reviews of the bank's lending practices, did not reveal indications of illegal discrimination. In addition, no substantive violations of applicable fair lending laws and regulations were identified. We note that Wells Fargo Bank and WFHM are subject to ongoing supervision and routine examinations by the OCC for compliance with the fair lending laws.

The most recent PEs of seven of the target banks assigned a CRA rating of "Outstanding," and the remaining twelve target banks were assigned a rating of "Satisfactory."[19] None of the PEs disclosed any substantive fair lending concerns. The merger is not expected to alter Wells

[18] Wells Fargo Home Mortgage, Inc., is a subsidiary of Wells Fargo Bank.

[19] Ratings for Wells Fargo Bank, Alaska, N.A., and Wells Fargo Bank, Michigan, N.A., are ratings assigned prior to their acquisitions by WFC.

Fargo Bank's CRA policies or procedures. Based on the CRA records of performance of the applicant banks, the OCC found approval of this application consistent with the CRA.

2. Discussion of Public Comments

The OCC received comments from two community organizations expressing concerns that WFC's national banks and its non-bank finance company, Wells Fargo Financial, engage in predatory lending practices.[20] The OCC also reviewed the comments received by the Federal Reserve Bank of San Francisco in connection with WFC's proposed acquisition of Pacific Northwest Bancorp to the extent that these comments related to this transaction.[21] While the commenters did not always identify which Wells Fargo entity was the subject of their concerns, many of the concerns were directed toward Wells Fargo Financial. The OCC does not supervise or regulate Wells Fargo Financial.

The comments included allegations that abuses were present in the subprime lending operations of WFHM and Wells Fargo Financial, including inadequate disclosures, providing misleading information or failing to provide material information about key terms of credit, including rates, fees, and prepayment penalty clauses; frequent and sequential refinancings with little or no benefit to the borrower; excessive fees; excessive prepayment penalty terms; making loans without regard to the borrower's ability to pay; targeting excessively expensive credit products to persons who are eligible for mainstream products; and stripping borrowers' home equity. The commenters also charged that there were similar abuses in loans originated through brokers used by WFHM.

Additionally, one commenter presented allegations that a number of consumers were misled or confused about the Wells Fargo entity with which they were dealing. These allegations included claims that (1) applicants for loans were referred from Wells Fargo Bank to Wells Fargo Financial without their knowledge, (2) existing customers of Wells Fargo Bank or WFHM received solicitations from Wells Fargo Financial and did not understand that this was a different entity or that it was engaged primarily in subprime lending, and (3) consumers thought they were dealing with Wells Fargo Bank or WFHM, but were in fact dealing with Wells Fargo Financial.

In response to the concerns raised, WFC represented that since January 31, 2001, WFHM and its subprime business unit have not made high cost loans as defined by the Home Ownership and Equity Protection Act. WFC represented that each loan is tested for compliance with HOEPA. Further, WFHM underwriting guidelines require that a borrower demonstrate a reasonable ability to repay. In addition, WFHM will not refinance a subprime loan for a

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[20] One commenter expressed concerns that Wells Fargo Bank provides financing to a nationwide payday lender. WFC declined to confirm its relationship with this entity, but stated that it does not participate in the lending practices or credit review process of payday lenders, that it customarily requires such entities to warrant in a credit agreement that they will comply with all applicable laws, and that Wells Fargo Bank is in compliance with OCC Advisory Letter 2000-10, *Payday Lending* (Nov. 27, 2000). The OCC reviews such lending relationships as part of the ongoing supervisory process.

[21] The Board of Governors of the Federal Reserve System approved this transaction on October 16, 2003.

borrower that is currently delinquent and facing foreclosure regardless of the loan-to-value ratio of the mortgage. WFC also noted that subprime lending accounts for a very small percentage of its overall mortgage lending.

WFC represented that it continues to support affordable housing through its lending and community development programs. For example, WFHM developed the National Homeownership Program through an exclusive arrangement with Freddie Mac to make available home purchase mortgage loans with more flexible qualifying criteria to first-time homebuyers. In 2002, WFHM provided over 26,600 loans under this program for a total of over $3.2 billion in financing. The Easy-to-Own program in California offers low down payment requirements and flexible underwriting to assist LMI borrowers to qualify for mortgages. In addition, WFC represented that in 2002, its retail banks provided over $93 million in Community Development Mortgage Program loans for LMI borrowers. WFC stated that it made grants in 2002 totaling $14.8 million to support affordable housing, homeownership, and credit counseling programs nationwide.

3. Undertakings and Commitments Regarding Compliance Policies and Procedures

In connection with the OCC's review of this application, we carefully considered the information provided by WFC about Wells Fargo Bank's oversight of its subprime lending operations and its program initiatives to promote affordable housing. We also carefully considered the allegations in comment letters about inappropriate lending practices involving WFC entities. In addition, we have encouraged any customers with concerns in this regard to contact the OCC's Customer Assistance Group to assist in resolution of their individual concerns.

We note that the OCC has issued pertinent supervisory guidance addressing the need for national banks and their operating subsidiaries to adopt compliance policies and procedures, as appropriate to the nature and scope of their business operations and corporate structure, to manage risks and to avoid engaging in the types of credit practices that were described in the comment letters. We further note that WFC has established a Compliance Risk Management Group to establish policies, procedures and standards for business line compliance programs, including best practices, and to review and evaluate business line compliance.[22]

Therefore, we also carefully considered Wells Fargo Bank's commitment to responding to these risks, consistent with the standards identified in OCC guidance, in connection with our review of this transaction. In this regard, Wells Fargo Bank has committed to provide to the OCC for review and supervisory non-objection, within ninety days of the date of this decision, Wells Fargo Bank's and its subsidiary WFHM's compliance policies and procedures that address the matters described below:

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[22] The OCC examines business line compliance in the course of its ongoing supervision of Wells Fargo Bank and WFHM.

a. Customer Referral Practices

Policies and procedures that ensure the consistency of Wells Fargo Bank's practices with the guidance contained in OCC Advisory Letter 2002-3, *Guidance on Unfair or Deceptive Acts or Practices* (March 22, 2002) and OCC Advisory Letter 2003-2, *Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices* (Feb. 21, 2003), including policies and procedures that:

- address potential consumer confusion by providing that Wells Fargo Bank and WFHM give consumers clear, conspicuous, and accurate information concerning the Wells Fargo entity with which consumers are dealing;
- provide that any consumers that are referred from Wells Fargo Bank or WFHM to Wells Fargo Financial receive written notice stating that the consumer has been referred from Wells Fargo Bank or WFHM to Wells Fargo Financial, that Wells Fargo Financial may offer rates, terms, or products that are different from those available at Wells Fargo Bank or WFHM and that Wells Fargo Financial is not a federally-insured depository institution or subsidiary of a federally-insured depository institution;
- protect against steering consumers toward credit products that are inappropriate, given their credit history and needs, and revise employee incentives, if needed, so as not to encourage such steering; and
- ensure that information sharing, referral practices, and application procedures comply with the Fair Credit Reporting Act, 15 U.S.C. §1681, et seq., and the Equal Credit Opportunity Act, 15 U.S.C. §1691, et seq.

b. Subprime Lending Operations

Policies and procedures that address the subprime lending operations of WFHM to ensure the consistency of Wells Fargo Bank's operations with OCC Advisory Letter 2003-2, OCC Bulletin 2001-6, *Expanded Guidance for Subprime Lending Programs* (Nov. 1, 2001), OCC Bulletin 1999-15, *Subprime Lending Risks and Rewards* (Apr. 5, 1999), OCC Bulletin 1999-10, *Subprime Lending Activities* (March 5, 1999), including policies and procedures that:

- address loan features that have been associated with predatory, unfair or abusive practices;
- assist in preventing customer misunderstanding as to the terms, relative costs, risks, and benefits of loan transactions;
- protect against steering applicants who may be eligible for prime products to subprime products, including, if needed, revise employee incentives so as not to encourage such steering;
- provide that an appropriate determination has been made that the borrower has the capacity to service and repay the loan, including principal, interest, insurance, and taxes;
- provide for a review of management oversight and controls with respect to appraisal practices; and
- require a periodic review of a random sample of transactions to ensure compliance with applicable corporate policy and legal requirements, comprehensive reviews where

appropriate, and corrective action to address any deficiencies.

c. Mortgage Broker Policies

Policies and procedures that address relationships between Wells Fargo Bank or WFHM and third-party brokers to ensure the consistency of Wells Fargo Bank's practices with OCC Advisory Letter 2003-3, *Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans* (Feb. 21, 2003), including policies and procedures that:

- address loan features that have been associated with predatory, unfair or abusive practices;
- include standards for agreements with brokers that cover (a) compliance with all applicable laws, laws prohibiting lending discrimination and unfair and deceptive practices, and (b) the use of best efforts to ensure that loans offered to borrowers are consistent with their needs, objectives, and financial situation;
- include standards for total compensation to the lender and broker and the use of overages and yield spread premiums, as well as limits on broker compensation; and
- provide for how due diligence will be conducted before entering relationships with mortgage brokers, how quality control review of brokered loans will be conducted, how brokers will be monitored, and what corrective actions will be taken for brokers found to have violated Wells Fargo Bank's or WFHM's policies, applicable law or their agreements with Wells Fargo Bank or WFHM.

IV. REQUEST FOR PUBLIC HEARING

The commenters also requested that the OCC conduct a public hearing, and one commenter requested that the OCC extend the public comment period.[23] After careful consideration, the OCC has determined not to conduct a hearing on this merger application or to extend the comment period.

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. 5.11, which provides:

> *The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.*

The parties requesting hearings believed the OCC should conduct public hearings primarily to collect information from the community on the lending practices at WFC banks and non-bank subsidiaries. However, none of the parties indicated why written submissions would be

[23] The OCC determined not to grant an extension of the comment period, because the commenters did not demonstrate that additional time was necessary to develop factual information, and no extenuating circumstances were present. *See* 12 C.F.R. 5.10(b)(2)(ii), (iii).

insufficient to make an adequate presentation of the issues or facts to the OCC.

V. CONCLUSION AND APPROVAL

For the reasons set forth above, and in reliance on the representations and commitments of the applicants, we find that: (1) the Group 1 Consolidation and the Group 2 Consolidation, together with the requests to retain and operate main offices and branches, are authorized under 12 U.S.C. §§ 215a-1, 1831u(a), 36(d) and 1831u(d)(1); (2) Wells Fargo Bank's purchase and assumption of assets and liabilities from Wells Fargo Bank Northwest, including the acquisition of Wells Fargo Bank Northwest's branches in Utah, Idaho, Oregon, and Washington, are authorized under 12 U.S.C. §§ 24(Seventh), 36 and 1831u(d)(2); and (3)Wells Fargo Bank's establishment of a branch in Ogden, Utah, is authorized under 12 U.S.C. §§ 36 and 1831u(d)(2). The applications also meet the other relevant statutory criteria for approval, and the transactions raise no supervisory and policy concerns. Accordingly, the applications are hereby approved.

As a reminder, this Office must be advised in writing in advance of the desired effective dates for the consolidations so that the OCC may issue the necessary certification letters. The effective dates may be on or after the date of this letter.

The OCC will issue a letter certifying consummation of the transaction when we receive:

1) a Secretary's Certificate for each institution, certifying that a majority of the board of directors approved;

2) an executed consolidation agreement with Articles of Association for the resulting bank attached; and,

3) a Secretary's Certificate from each institution, certifying that shareholder approval has been obtained, if required.

If the consolidations are not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

A separate letter is enclosed requesting your opinion on how we handled your application. We would appreciate your response so we may improve our service.

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 U.S., any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

In the event of questions, please contact Large Bank Licensing Manager Richard T. Erb who may be reached by e-mail: largebanks@occ.treas.gov or by telephone at (202) 874-5060. Please include the application control number in all correspondence.

Sincerely,

/s/ *Julie L. Williams*

Julie L. Williams
First Senior Deputy Comptroller and
Chief Counsel