FEDERAL RESERVE press release

For immediate release March 28, 1990

The Federal Reserve Board today announced its approval of the application filed under section 4 of the Bank Holding Company Act by The Mitsui Bank, Limited, Tokyo, Japan, and The Taiyo Kobe Bank, Limited, Kobe, Japan, to acquire Taiyo Kobe Bank and Trust Company, New York, New York, a nonbank trust company.

The Board also stated its intent to hold a public meeting on Community Reinvestment Act ("CRA") issues in connection with a related application by Applicants under section 3 of the Bank Holding Company Act unless the record developed on that application over the next several months, in the Board's view, resolves the CRA issues.

The Board received comments on the applications raising issues regarding the CRA performance of Mitsui Bank and its California bank subsidiary, Mitsui Manufacturers Bank ("MMB"), Los Angeles, California. In its Order, the Board noted that the CRA by its terms does not apply to applications to acquire nonbank companies under section 4 of the Bank Holding Company Act, and that MMB's CRA record is directly relevant to the pending application by Mitsui Taiyo Kobe Bank, Ltd., under section 3 of the Bank Holding Company Act to convert the New York trust company to a commercial bank when permitted by the interstate banking statutes of New York and California on

January 1, 1991. In view of the projected 1991 consummation date, that application would not be ready for Board action until later in the year. The Board noted that Mitsui Bank is in the process of developing a plan, which has not yet been implemented, to improve MMB's CRA performance and that the FDIC expects to conduct a CRA examination of MMB within the next several months.

Attached is the Board's Order relating to this action, together with a Dissenting Statement by Governor Seger.

Attachments

FEDERAL RESERVE SYSTEM

The Mitsui Bank, Limited
Tokyo, Japan

The Taiyo Kobe Bank, Limited
Kobe, Japan

Order Approving Acquisition of Nonbank Company

The Mitsui Bank, Limited, Tokyo, Japan ("Mitsui"), and The Taiyo Kobe Bank, Limited, Kobe, Japan ("Taiyo Kobe"), both bank holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have applied for the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) to acquire Taiyo Kobe Bank and Trust Company, New York, New York ("TKBTC"), a nonbank trust company.

Mitsui and Taiyo Kobe, both large Japanese city banks, have entered into an agreement to merge and to continue operation under Mitsui's charter and the name The Mitsui Taiyo Kobe Bank, Ltd. The merger has been approved by the Japanese Ministry of Finance and is scheduled to be consummated on April 1, 1990. No application is required under the BHC Act for this merger of foreign banks, neither of which is a federally insured depository institution. This application is required under the BHC Act for the limited purpose of permitting the merged entity, Mitsui Taiyo Kobe, to retain an interest in TKBTC after TKBTC converts to a nonbank trust company. The conversion of TKBTC has been proposed to comply with the interstate banking restrictions of the Douglas Amendment to the BHC Act.

The Douglas Amendment prohibits the Board from approving an application by a bank holding company to acquire a bank located outside of the holding company's home state, unless the state where the bank to be acquired is located has authorized the acquisition by statute. The law of the home state of Mitsui and Mitsui Taiyo Kobe after the merger (California) will not provide for the requisite reciprocity imposed by the interstate banking law of New York (where TKBTC is located) until January 1, 1991. The Douglas Amendment does not, however, prohibit the interstate acquisition of nonbank companies, such as non-depository trust companies. Accordingly, in order to avoid the closure of TKBTC, Mitsui Taiyo Kobe has proposed to convert TKBTC into a limited-purpose trust company and has applied to acquire the trust company under the nonbanking provisions of section 4 of the BHC Act. Upon consummation of this proposal, TKBTC will restrict its activities exclusively to those permissible for a limited-purpose trust company under the BHC Act.[1]

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[1] Trust companies are exempt from the definition of "bank" under the BHC Act provided that the activities of the trust company conform with certain requirements specified in the BHC Act. 12 U.S.C. § 1841(c)(2)(D). Applicants have committed to operate TKBTC in conformance with these requirements immediately upon consummation of the proposal and have committed to divest TKBTC's existing loans and deposits no later than within one year of consummation. Until this divestiture has been effected, the Board will not act upon Mitsui Taiyo Kobe's application under section 3 of the BHC Act to convert TKBTC to a bank when authorized by California and New York interstate banking provisions.

Notice of the application, affording interested persons an opportunity to submit comments, has been published (54 Federal Register 49,357 (1989)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 4 of the BHC Act.

Mitsui, with consolidated total assets equivalent to approximately $226 billion, is the 13th largest banking organization in the world.[2] In the United States, Mitsui owns a state nonmember bank, Mitsui Manufacturers Bank, Los Angeles, California, ("MMB") which has 12 branch offices in California and total assets of $1.3 billion. In addition, Mitsui operates a grandfathered branch in New York, a limited branch in Illinois, an agency in California, and representative offices in Georgia, Michigan, Texas, California, Washington, and Kentucky.[3]

Taiyo Kobe, with total consolidated assets equivalent to approximately $187.6 billion, is the 20th largest bank in the world. In the United States, Taiyo Kobe owns TKBTC, with total assets of approximately $48.8 million. In addition, Taiyo Kobe operates a branch in New York, a grandfathered branch in

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[2] Data are as of September 30, 1989.

[3] Mitsui's nonbanking activities in the United States include a trust company business (Mitsui Finance Trust Company of New York, New York, New York) and a securities brokerage subsidiary (Mitsui Securities Company (USA), Inc., New York, New York).

Washington State, a limited branch in Illinois, an agency in California, and representative offices in Georgia and Texas.[4]

As a result of the proposed merger, Mitsui's New York and Illinois branches and California agency will be combined with the duplicative Taiyo Kobe branches and agency in these respective states.[5] Mitsui will conform the deposit-taking activities of Taiyo Kobe's grandfathered branch in Washington to those of an Edge corporation under section 25(a) of the Federal Reserve Act (12 U.S.C. § 611 et seq.).[6]

In acting on this application, the Board must consider whether the standards in section 4(c)(8) of the BHC Act are satisfied. The Board has previously determined that trust activities are closely related to banking within the meaning of

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[4] Taiyo Kobe owns no nonbanking subsidiaries in the United States.

[5] The New York branches of Mitsui and Taiyo Kobe will be merged and Mitsui Taiyo Kobe, as successor to Mitsui's charter, will continue to operate a branch in New York under the International Banking Act ("IBA"). Applicants have committed to complete all mergers within one year of consummation of the merger. Mitsui Taiyo Kobe may retain these branches pursuant to section 5 of the IBA (12 U.S.C. § 3103(a)).

[6] Section 5 of the IBA generally provides that no foreign bank may establish a state branch outside of its home state unless the establishment of such branch is specifically authorized by state law and the foreign bank agrees to limit the deposit-taking activities of such branch to those permissible for an Edge corporation. Foreign banks may also retain branches established before July 27, 1978. Taiyo Kobe obtained its Washington State branch under this grandfather authority. However, Taiyo Kobe's grandfather rights to operate this branch will be extinguished by the proposed merger and Applicants have committed to conform the deposit-taking activities of the Washington branch as required by section 5 of the IBA within six months of consummating the merger.

section 4(c)(8) of the BHC Act and Applicants have proposed to conduct activities within the limitations specified in the Board's regulations. 12 C.F.R. 225.25(b)(3). The Board must also consider whether an applicant's performance of the proposed activities "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

In every case involving a nonbanking acquisition by a bank holding company under section 4 of the BHC Act, the Board considers the financial condition and resources of the applicant and the effect of the transaction on these resources.[7/] In this case, the primary capital ratios of Mitsui and Taiyo Kobe, as publicly reported, are below the minimum level specified in the Board's Capital Adequacy Guidelines. After making adjustments to reflect Japanese banking and accounting practices, however, including consideration of a portion of the unrealized appreciation in Mitsui's and Taiyo Kobe's portfolios of equity securities consistent with the principles of the Basle capital framework, capital ratios for these institutions meet United States standards.

7/ 12 CFR 225.24; The Fuji Bank Limited, 75 Federal Reserve Bulletin 94 (1989); Bayerische Vereinsbank AG, 73 Federal Reserve Bulletin 155, 156 (1987).

The Board also has considered additional factors that mitigate its concern in this case. The Board notes that Mitsui and Taiyo Kobe are in compliance with the capital and other financial requirements for banking organizations in Japan. In addition, the Board notes that the capital of Mitsui and Taiyo Kobe on a pro forma basis currently accords with the minimum requirements established by the Basle Committee capital framework for year-end 1990. Based on these and other facts of record, the Board concludes that the financial and managerial considerations are consistent with approval of the application.

Mitsui and Taiyo Kobe compete directly for trust services in New York. This market is highly competitive, however, with a number of sizable existing competitors as well as potential competitors, and the effect of the proposal on competition in this market would be de minimis. The Board has therefore determined that consummation of this proposal would not have significantly adverse effects on either existing or potential competition in any relevant market. In addition, there is no evidence in the record to indicate that approval of this proposal would result in undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

The Board has considered the public comments filed regarding this proposal. The Board has received adverse comments from 16 community-based organizations on the basis of the performance under the Community Reinvestment Act (12 U.S.C.

§ 2901 et seq.)("CRA") of Applicants and MMB, Mitsui's state nonmember bank subsidiary in California.[8] The Board also received comments urging that the Board convene a public meeting or hearing before acting on this application.

The CRA requires the federal bank supervisory agencies to encourage financial institutions -- a term the CRA defines as federally insured depository institutions -- to help meet the credit needs of the local communities in which they operate, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institutions. To accomplish this end, the CRA requires the appropriate agency to assess by examination the record of an insured depository institution in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution and to take that record into account in evaluating "an application for a deposit facility by

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[8] Protestants principally allege the following deficiencies in MMB's record of CRA performance: (i) lack of residential real estate lending or sufficient participation in programs to assist in financing housing in low- and moderate-income neighborhoods; (ii) insufficient programs for outreach to minorities, including an inadequate number of branches in minority communities; (iii) lack of basic banking services to senior citizens, minorities, and residents in low- and moderate-income neighborhoods (iv) insufficient provision of small business financing; (v) lack of consumer credit products for residents of low-income neighborhoods; and (vi) overall lack of financial commitment to low-income, minority, and inner-city economic development and residential lending for both home improvement and affordable housing. Moreover, Protestants have raised issues regarding the amount of MMB's financial commitment to CRA activities in light of its parent holding company's assets and record of real estate lending outside California.

such institution." 12 U.S.C. § 2903. The CRA expressly recognizes that the obligation to help meet the credit needs of the local community rests with insured depository institutions and their deposit facilities. Nonbank companies that are affiliated with or that own depository institutions were not included by Congress within the provisions of the CRA. These companies are not local insured deposit-taking facilities that have either the advantages or obligations of federally insured depository institutions that Congress covered under the CRA.

In instructing the federal agencies to encourage insured depository institutions to help meet the credit needs of the community, the CRA expressly lists the type of expansion proposals by depository institutions in which the agency must review the institution's record of serving the needs of its community. Section 803 of the CRA expressly defines applications by depository institutions for a deposit facility to include applications to establish new branches and to relocate existing depository facilities, and applications to charter new insured depository institutions. As it relates to bank holding companies, section 803(3)(F) of the CRA defines the scope of "application for a deposit facility" as the "acquisition of shares in, or the assets of, a regulated financial institution requiring approval under section 1842 of [Title 12] [section 3 of the BHC Act]."[9] The fact that the applications enumerated in

[9] 12 U.S.C. § 2902(3)(F).

section 803 involve exclusively applications to establish or expand deposit-taking facilities is consistent with the Congressional finding in the CRA that federally insured deposit-taking institutions have an obligation to help meet the credit needs of the local community in which they are chartered to do business. Thus, while the CRA is expressly applicable to applications by bank holding companies to acquire banks under section 3 of the BHC Act, the CRA by its terms does not apply to applications by bank holding companies to acquire nonbanking companies under section 4(c)(8) of the BHC Act. The Board has interpreted the CRA in this manner since 1979.[10/]

In this case, the acquisition and retention of TKBTC by Mitsui Taiyo Kobe is subject to approval under the nonbanking provisions of section 4 of the BHC Act and, thus, the analysis required under the CRA for section 3 applications to acquire banks is not applicable.

The Board notes that section 4(c)(8) of the BHC Act requires the Board to weigh the public benefits of each proposal reviewed under that section. Section 4(c)(8) focuses that analysis on whether permitting the affiliation of the applying bank holding company and the particular nonbank company to be acquired can reasonably be expected to produce public benefits that outweigh possible adverse effects that may result from the affiliation. The Board has previously stated that this analysis

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10/ Citicorp, 65 Federal Reserve Bulletin 507, 512 (1979); Mellon Bank Corporation, 74 Federal Reserve Bulletin 773 (1988).

does not incorporate the provisions of the CRA or require an extensive analysis of the CRA performance of bank affiliates.

In this case, the Board has considered the public benefits associated with Mitsui Taiyo Kobe's proposal to retain TKBTC and to continue to offer trust services in the United States through TKBTC. The continued operation of this company will help serve the needs of trust customers in the United States. In this regard, the Board notes that this proposal involves retention of an existing operation in the United States in connection with the merger of two foreign organizations, and does not represent an expansion in the United States of the offices or activities of the foreign organization. This proposal represents a decision by the combined organization to continue to provide existing trust services to the community through TKBTC as an alternative to closing or otherwise disposing of this operation. The Board believes that the continued provision of these trust services weighs in favor of approval of this application. The record does not indicate that the proposal is likely to result in undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

As stated above, the Board has received a number of comments regarding the record of Mitsui and MMB under the CRA as well as requests that the Board hold a public meeting or hearing on these matters. In this regard, the Board notes that Mitsui Taiyo Kobe has applied for Board approval under section 3 of the

BHC Act to acquire TKBTC as a bank upon the effective date of the California interstate banking statute (January 1, 1991). Such an application is required before TKBTC may engage in deposit-taking activities. The comments submitted by the Protestants, and the performance of MMB under the CRA, are directly and materially relevant to Mitsui Taiyo Kobe's proposal under section 3 of the BHC Act to operate a bank in New York State after January 1, 1991.

In this regard, the Board notes that although MMB received a satisfactory CRA performance rating from the Federal Deposit Insurance Corporation in its latest CRA examination, that examination is two years old and does not resolve the issues raised by the Protestants. This examination also predates the Joint Agency Policy Statement regarding the CRA,[11/] and MMB has not implemented in all respects the type of CRA program outlined in that Statement. Applicants have submitted information regarding the CRA performance of MMB and have made several commitments to improve their CRA performance along the guidelines outlined in the inter-agency CRA policy statement and to address concerns raised by Protestants.[12/] Mitsui and MMB have also

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11/ 54 Federal Register 13,742 (1989).

12/ MMB has undertaken a review of its programs to meet the current needs of its community and has submitted a draft CRA plan for MMB. In that plan, MMB has stated it will: (i) place increased emphasis on direct and systematic contact with community groups with special knowledge regarding the credit needs of low- and moderate-income areas within MMB's communities; (ii) continue small- and medium-size business lending, including an increase in SBA loan activity and work with nonprofit community-based development corporations that originate loans to conducted a series of private meetings with Protestants in an effort to clarify the issues regarding MMB's CRA performance. The Board notes that the FDIC has scheduled a new CRA examination of MMB for the near future that will include an evaluation of many of these matters, including a review of many of the issues raised by the Protestants.

Because interstate banking between California and New York will not be effective for nine months, the Board has not yet accepted for processing Mitsui Taiyo Kobe's section 3 application and does not expect to consider formally the merits of that application until later this year. In view of the issues raised regarding MMB's CRA performance, the Board would intend to hold a public meeting before it acts on the section 3 application, unless the record developed on the application over the next several months, in the Board's view, resolves the CRA issues. A public meeting would be convened at an appropriate location in California and would permit Applicant, MMB and members of the local community an opportunity to present testimony on these issues.

The Protestants and others have requested that the Board delay action on this section 4 application in order to

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help meet the needs of low- and moderate-income groups; and (iii) increase the amount of residential real estate lending through appropriate secondary market arrangements and financial intermediaries such as the California Community Reinvestment Corporation. Mitsui Taiyo Kobe should report quarterly to the Federal Reserve Bank of San Francisco on its progress in fulfilling its commitments.

permit a public meeting or hearing on the CRA issues. Given that this application under section 4 of the BHC Act is not covered by CRA, the pending section 3 application by Mitsui Taiyo Kobe, which is subject to the CRA, and the Board's intent to convene a public meeting on any unresolved CRA issues before consideration of the pending section 3 application, the Board has decided not to hold a public meeting or hearing or to delay action on the instant application under section 4(c)(8).[13/] The Board also notes that delay in acting on the section 4 application might necessitate the closure of TKBTC, which is a small part (less that $50 million in assets) of the combined Mitsui Taiyo Kobe organization (approximately $410 billion in assets), in order to permit the merger of the two foreign banks to go forward -- a merger that, as noted, is not subject to the Board's review under the BHC Act.

Given all of the above considerations bearing on the public interest, and based on all the facts of record, the Board

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[13/] The Board does not believe that the record in this application under section 4(c)(8) contains any relevant and material issue of fact that remains unresolved regarding the standards the Board must apply under section 4 of the BHC Act. Moreover, Protestants have not indicated why written submissions would not suffice in lieu of a formal administrative hearing, as required in the Board's Rules of Procedure. 12 CFR 262.3(e). For these reasons and in view of the Board's conclusion that a CRA analysis is not required in this case on the section 4 application, the Board believes that a formal hearing before an administrative law judge under the Administrative Procedure Act on the section 4 application is not required or appropriate in this case. Accordingly, the Board has determined not to grant the request for a formal administrative hearing on this application.

has determined that the balance of the public interest factors that the Board is required to consider under section 4(c)(8) of the BHC Act is favorable. Based on the foregoing and all of the facts of record, including the Applicants' representations and commitments, the Board has determined that this application under section 4 of the BHC Act should be, and hereby is, approved. This determination is subject to all of the conditions set forth in the Board's Regulation Y, including those in sections 225.4(d) and 225.23(b), and to the Board's authority to require such modifications or termination of activities of the bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with, or prevent evasions of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder.

The transaction shall not be consummated later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,[14] effective March 28, 1990.

Jennifer J. Johnson

Jennifer J. Johnson
Associate Secretary of the Board

[14] Voting for this action: Chairman Greenspan and Governors Johnson, Angell, Kelley, and LaWare. Voting against this action: Governor Seger.

Dissenting Statement of Governor Seger

I dissent from the Board's action in this case. I believe that foreign banking organizations whose primary capital, based on U.S. accounting principles, is below the Board's minimum capital guidelines for U.S. banking organizations have an unfair competitive advantage in the United States over domestic banking organizations. In my view, such foreign organizations should be judged against the same financial and managerial standards, including the Board's capital adequacy guidelines, as are applied to domestic banking organizations. The majority concludes that Applicants' primary capital meets United States standards. To do so, however, the majority makes adjustments that are not available for U.S. banks under guidelines that have not yet become effective for U.S. or foreign banking organizations.

In addition, I am concerned that while some progress is being made in opening Japanese markets to U.S. banking organizations, U.S. banking organizations and other financial institutions, in my opinion, are still far from being afforded the full opportunity to compete in Japan.

I am also unable to concur in the approval of the acquisition of Taiyo Kobe Bank and Trust Company as a New York trust company in light of the Applicants' section 3 application to reacquire this institution as a commercial bank when permitted by California and New York interstate banking laws on January 1, 1991. In my view, this proposal represents a transparent attempt to evade interstate banking laws and to permit in two steps a banking acquisition that currently is not authorized under New York law.

While I would not approve this application, I fully concur with the Board's decision and analysis that the Community Reinvestment Act ("CRA"), by its terms, does not apply to applications by bank holding companies to acquire nonbanking companies under section 4 of the Bank Holding Company Act. In view of the issues raised regarding the CRA performance of MMB, I also concur in the Board's intent to hold a public meeting on the related section 3 application, to which the CRA applies, unless the record developed on that application over the next several months resolves these issues.

March 28, 1990