FEDERAL RESERVE press release

For immediate release November 5, 1990

The Federal Reserve Board today announced its approval of the application of BanPonce Corporation, Hato Rey, Puerto Rico, to acquire Banco Popular de Puerto Rico, Hato Rey, Puerto Rico. In connection with this application, the Board approved the applications of Banco de Ponce, Ponce, Puerto Rico, to merge with Banco Popular de Puerto Rico, and incident thereto, to establish branches pursuant to section 9 and section 25 of the Federal Reserve Act and to establish a banking corporation pursuant to section 25(a) of the Federal Reserve Act. The Board also approved Banco de Ponce's request, submitted pursuant to section 24A of the Federal Reserve Act, to invest in bank premises in excess of its capital stock in connection with the merger of Banco de Ponce and Banco Popular de Puerto Rico.

Attached is the Board's Order relating to this action.

Attachment

FEDERAL RESERVE SYSTEM

BanPonce Corporation
Hato Rey, Puerto Rico

Order Approving Acquisition of a Bank and
Merger of Banks

BanPonce Corporation, Hato Rey, Puerto Rico ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act (the "BHC Act"), has applied for the Board's approval under section 3(a)(3) of the BHC Act (12 U.S.C. § 1842(a)(3)) to acquire all of the shares of Banco Popular de Puerto Rico, Hato Rey, Puerto Rico ("Banco Popular"). In connection with the proposed acquisition, Banco de Ponce, Ponce, Puerto Rico, a state member bank subsidiary of Applicant, has applied under the Bank Merger Act (12 U.S.C. § 1828(c)) to merge with Banco Popular under the charter of Banco de Ponce.1/ In addition, Banco de Ponce has applied under section 9 of the Federal Reserve Act (12 U.S.C. § 321) to retain the United States branches of Banco Popular following the proposed merger. Banco de Ponce also has applied under section 24A of the Federal Reserve Act (12 U.S.C. § 371d) to make an additional investment in bank premises. In addition, Banco de Ponce has applied under section 25(a) of the Federal Reserve Act (12 U.S.C. § 611) to

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1/ BanPonce proposes to effect the acquisition and merger through a series of transactions. In the first step, Newco, a wholly-owned subsidiary of BanPonce, will merge with and into BanPonce, with BanPonce being the surviving corporation. Immediately after that merger, Banco Popular will merge into Banco de Ponce, and Banco de Ponce will change its name to Banco Popular de Puerto Rico.

retain the United States Virgin Islands branches of Banco Popular following the proposed merger.[2/]

Notice of the applications, affording interested parties opportunity to comment, has been duly published (55 Federal Register 26,775 (1990)). As required by the Bank Merger Act, reports of the competitive effects of the merger were requested from the United States Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The time for filing comments has expired and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the BHC Act and in the Bank Merger Act.

Competitive Considerations

BanPonce is the fourth largest commercial banking organization in Puerto Rico, controlling deposits of $2.2 billion, representing approximately 9.8 percent of the deposits in commercial banks and savings banks ("bank deposits") in Puerto Rico. Banco Popular is the largest commercial bank in Puerto Rico, controlling deposits of $4.6 billion, representing approximately 20.2 percent of bank deposits in Puerto Rico. Upon consummation of the proposed transaction, BanPonce would become the largest commercial banking organization in Puerto Rico, controlling deposits of $6.8 billion, representing approximately

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[2/] Banco de Ponce has also applied under section 25 of the Federal Reserve Act (12 U.S.C. § 601) and section 211.4(f) of the Board's Regulation K (12 C.F.R. 211.4(f)) to acquire Consumer Services, Inc., a consumer finance company that is affiliated with Banco Popular.

30.0 percent of the bank deposits in Puerto Rico.[3/] Consummation of the proposal would not have a significantly adverse effect on the concentration of banking resources in Puerto Rico.

BanPonce and Banco Popular compete in all four banking markets in Puerto Rico[4/] and in the Metropolitan New York banking market. In the Aguadilla market,[5/] Applicant is the third largest of five commercial banking organizations, controlling deposits of $35.3 million, representing approximately 9.9 percent of the total deposits in commercial banking organizations in the market. Banco Popular is the largest commercial banking organization in the market, controlling deposits of $178.3 million, representing approximately 50.0 percent of the total deposits in commercial banking organizations in the market. Upon consummation of this proposal, Applicant would become the largest commercial banking organization in the market, controlling deposits of $213.6 million, representing approximately 59.9 percent of the total deposits in commercial banking organizations in the market. The Aguadilla banking market is considered to be highly concentrated. The Herfindahl-

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3/ Island-wide deposit data are as of September 30, 1989. All other deposit data are as of June 30, 1989.

4/ The banking markets in Puerto Rico are Aguadilla, Mayaguez, Ponce, and San Juan.

5/ The Aguadilla banking market is approximated by the Aguadilla Metropolitan Statistical Area ("MSA"), with the addition of the town of Rincon.

Hirschman Index ("HHI") would increase by 987 points to 4,302 upon consummation of the proposal.[6/]

Although consummation of the proposal would result in the elimination of competition in the Aguadilla banking market, the Board believes that a number of factors mitigate the potentially anticompetitive effects of this proposal. Following consummation, four commercial banking organizations and two thrift institutions would remain in the market. The Board believes that thrift institutions are active competitors in providing bank services in the Aguadilla banking market. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks.[7/] In a limited number of decisions, the Board has considered 75 to 100 percent of a market's thrift deposits in analyzing the competitive effects of a proposed

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6/ Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (1984), a market in which the post-merger HHI is above 1800 is considered highly concentrated. In such markets, the Department is likely to challenge a merger that increases the HHI by more than 50 points. The Department has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI market is at least 1800 and the merger increases the HHI by 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial entities.

7/ WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); First Union Corporation, 76 Federal Reserve Bulletin 83 (1990); Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989).

transaction.[8/] Such Board decisions have emphasized that the subject thrifts not only were empowered to exercise virtually the same powers granted commercial banks, but also did in fact exercise such powers to a significant extent.

The record indicates that, in general, thrifts in Puerto Rico compete actively in the full range of banking products and services. Thrifts in Puerto Rico provide transaction as well as traditional savings accounts. In addition, thrifts in Puerto Rico are active in providing commercial and consumer loans. Commercial lending constitutes on average 6.6 percent of the total assets of Puerto Rico thrifts, in comparison to an average of 2.8 percent of total assets for thrifts nationwide. Consumer lending constitutes on average 19.1 percent of the total assets of Puerto Rico thrifts, as compared with the average of 4.5 percent for thrifts nationally. In addition, thrifts in Puerto Rico on average devote only approximately 29.3 percent of their total assets to the traditional thrift activity of consumer real estate lending, a significantly lower percentage than the 45.6 percent average of thrifts nationwide. On the basis of the activities, size, number, and market shares of thrift institutions in Puerto Rico, the Board has concluded that thrift institutions exert a

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8/ See, e.g., Centura Banks, Inc., 76 Federal Reserve Bulletin 869 (1990) (considering 75 percent of market thrift deposits); Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989) (considering 100 percent of market thrift deposits).

competitive influence that mitigates in part the potentially anticompetitive effects of this proposal.[9]

The Board has also considered the presence of savings and credit union cooperative societies ("cooperatives") in the Aguadilla banking market. Cooperatives are commonwealth-insured depository institutions unique to Puerto Rico.[10] Although they are membership organizations, few impose membership restrictions, and cooperatives are authorized to provide a full range of products and services to nonmembers. Cooperatives provide transaction accounts and are authorized to lend to both members and nonmembers for any purpose, including business purposes. In addition, the Puerto Rico Inspector of Cooperatives is authorized to grant broad lending authority, including commercial lending authority, to cooperatives upon request. The record indicates that cooperatives are significant providers of credit to individuals to fund small businesses in Puerto Rico. On the basis of the activities, size, number, and market shares

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9/ Thrift institutions exert a considerable competitive influence in the Aguadilla market. Commercial lending constitutes on average 9.5 percent of the total assets of Aguadilla thrifts, which is significantly greater than the national thrift average of 2.8 percent. Their average ratio of consumer loans to total assets is 17.3 percent, in comparison to the national thrift average of 4.5 percent. Aguadilla thrift institutions also provide approximately 13.0 percent of the market's consumer and small business transaction accounts. Upon consummation and after including 100 percent of the deposits of thrift institutions in market share calculation, the HHI would increase 583 points to 2,993.

10/ The Shares and Deposits Insurance Program, an agency of the Commonwealth of Puerto Rico, insures deposits in cooperatives to a maximum of $40,000 per person. P.R. Stat. Ann. tit. 7, § 1151(b).

of cooperatives in Puerto Rico, the Board has concluded that cooperatives exert a competitive influence that mitigates in part the potential anticompetitive effects of this proposal.[11/]

In order to mitigate further the potential anticompetitive effects of this proposal, Applicant has committed to divest between $18.5 and $21.0 million of deposits in the Aguadilla market. Applicant has submitted a plan of divestiture and has commenced discussions with potential purchasers regarding the sale of the branch to be divested. Applicant expects to complete the divestiture within six months of the consummation of the proposal. Upon consummation of the planned divestiture and after consideration of thrift institutions and cooperatives, as discussed above, Applicant's pro forma market share would be 37.7 percent of market deposits and the HHI would increase by 200 points to 2,166. The Board believes that the planned divestiture substantially mitigates the potential anticompetitive effects of the proposal. On the basis of the facts of record, including the divestiture plan, the competition offered by thrift institutions and cooperatives, the number of competitors remaining in the market, and other facts of record, the Board has concluded that

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11/ Seven cooperatives compete with banks in the Aguadilla banking market, and they are significant competitiors in that market. Cooperatives account for 18.6 percent of total deposits in the market and, according to a survey conducted by the Federal Reserve Bank of Atlanta, cooperatives account for an estimated 24.4 percent of the consumer loans and 11.1 percent of small business loans in the market. Upon consummation and after including 50 percent of the deposits of cooperatives in the calculation of market share, the HHI would increase by 470 points to 2,432.

consummation of the proposal is not likely to result in a significantly adverse effect on competition in the Aguadilla banking market.

In the Ponce banking market,[12] Applicant is the second largest of eight commercial banking organizations, controlling deposits of $132.5 million, representing approximately 18.4 percent of the total deposits in commercial banking organizations in the market. Banco Popular is the largest commercial banking organization in the market, controlling deposits of $260.5 million, representing approximately 36.1 percent of the total deposits in commercial banking organizations in the market. Upon consummation of this proposal, Applicant would become the largest commercial banking organization in the market, controlling deposits of $393.0 million, representing approximately 54.5 percent of the total deposits in commercial banking organizations in the market. The Ponce banking market is considered to be highly concentrated. The HHI would increase by 1,328 points to 3,500 upon consummation of the proposal.

The Board has considered a number of factors that mitigate the potentially anticompetitive effects of the proposal in this market. As discussed above, the record indicates that thrifts are active competitors in this market, and exert a

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[12] The Ponce banking market is approximated by the Ponce MSA, with the addition of the towns of Adjuntas, Coamo, Guanica, Guaynilla, Peneulas, Santa Isabel, Villalba, and Yauco.

considerable competitive influence in the Ponce market.[13] In addition, following consummation, seven commercial banks (including four large foreign banks) and two thrifts would remain in the market. For the reasons discussed above, the Board has also considered the presence of cooperatives, which are significant competitors for bank products and services in the Ponce banking market.[14]

In order to mitigate further the potential anticompetitive effects of this proposal, Applicant has committed to divest branches in the Ponce market that control deposits of approximately $70.0 million. Applicant has submitted a plan of divestiture and has commenced negotiations regarding the sale of the branches to be divested. Applicant expects to complete the divestitures within six months of consummation of the proposal. Upon consummation of the planned divestitures and after consideration of thrift institutions and cooperatives, as

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[13] Commercial lending constitutes on average 10.5 percent of total assets of Ponce thrifts, which is significantly greater than the national thrift average of 2.8 percent. The average ratio of consumer loans to total assets is 18.3 percent, in comparison to the national thrift average of 4.5 percent. Ponce thrift institutions also provide approximately 11.5 percent of the consumer and small business transaction accounts in the market. Upon consummation of the proposal and after including 100 percent of the deposits of thrift institutions in the market share calculation, the HHI would increase 623 points to 2,484.

[14] Twenty-seven cooperatives compete with banks in the Ponce banking market. Cooperatives account for 10.0 percent of total deposits and, according to a survey conducted by the Federal Reserve Bank of Atlanta, cooperatives account for approximately 19.0 percent of the total consumer loans in the market. Upon consummation and after including 50 percent of the deposits of cooperatives in the calculation of market share, the HHI would increase by 560 points to 2,231.

discussed above, Applicant's pro forma market share would be 29.1 percent of market deposits and the HHI would increase by 193 points to 1,864. The Board believes that the planned divestiture substantially mitigates the potential anticompetitive effects of the proposal. On the basis of the facts of record, including the divestiture plan, the competition offered by thrift institutions and cooperatives, the number of competitors remaining in the market, and other facts of record, the Board has concluded that consummation of the proposal is not likely to result in a significantly adverse effect on competition in the Ponce banking market.

Applicant and Banco Popular also compete in the San Juan and Mayaguez, Puerto Rico; and New York, New York, banking markets. The San Juan[15/] and Mayaguez[16/] markets are moderately concentrated, and would remain moderately concentrated following consummation of the proposal.[17/] In addition, a

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15/ The San Juan banking market is approximated by the San Juan-Caguas Consolidated Metropolitan Statistical Area, with the addition of the Arecibo MSA and the following towns: Aibonito, Arroyo, Barranquitas, Ceiba, Ciales, Comerio, Guayama, Jayuya, Lares, Maunabo, Morovis, Naguabo, Orocovis, Patillas, Salinas, Utuado, and Yabucoa.

16/ The Mayaguez banking market is approximated by the Mayaguez MSA, with the addition of the towns of Lajas, Las Marias, Maricao, and Sabana Grande.

17/ In the San Juan market, upon consummation of the proposal and after including 100 percent of thrift deposits in the market share calculation, Applicant would become the largest of 25 commercial banking and thrift organizations, controlling 32.3 percent of bank deposits. The HHI would increase by 471 points to 1,763. In the Mayaguez banking market, upon consummation of the proposal and after including 100 percent of (continued...)

large number of competitors, including large foreign banks, would remain in the markets following consummation. The New York market is unconcentrated, and would remain so following consummation, with numerous competitors remaining in the market.[18] In light of the facts of record, the Board concludes that consummation of the proposal would not result in significantly adverse effects on competition in the San Juan, Mayaguez, or New York banking markets.

For these reasons, and based on all the facts of record, the Board concludes that consummation of this proposal would not have a significantly adverse effect on competition in any relevant banking market. In making this determination, the Board has relied on the plan of divestiture offered by Applicant and expects that Applicant will complete the planned divestitures within six months of consummation of the proposal.

Financial, Managerial, and Convenience and Needs Considerations

The financial and managerial resources and future prospects of Applicant, its subsidiary bank, and Banco Popular are consistent with approval.

17/ (...continued)
thrift deposits in the market share calculation, Applicant would become the largest of ten commercial banking and thrift organizations, controlling 26.0 percent of bank deposits. The HHI would increase by 319 points to 1,755.

18/ The New York, New York banking market is approximated by New York City; Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey: and part of Fairfield County in Connecticut. Upon consummation, the HHI would increase by less than 1 point to 663.

In considering the convenience and needs of the communities to be served, the Board has reviewed the performance of both Banco de Ponce and Banco Popular under the Community Reinvestment Act (12 U.S.C. § 2901, et seq.) (the "CRA") and the Joint Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act (the "Joint Statement").[19/] Applicant has initiated a plan that implements many of the elements of an effective CRA plan as outlined in the Joint Statement. The Board expects Applicant to continue the steps it has already taken in implementing this plan and intends to monitor Applicant's progress in connection with future proposals by Applicant. On the basis of the overall CRA records of Applicant and Banco Popular and other facts of record, the Board concludes that convenience and needs considerations, including the records of performance under the CRA of both Applicant and Banco Popular, are consistent with approval of these applications.

International Banking Act Considerations

As banks chartered in Puerto Rico, Banco de Ponce and Banco Popular are deemed to be foreign banks for purposes of the requirements of the International Banking Act of 1978 ("IBA"). Applicant and Banco de Ponce have selected New York as their home state for purposes of section 5 of the IBA, and, consistent with

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[19/] The Community Coalition for Fair Banking of East Harlem ("CCFB") submitted comments critical of the CRA performance of the New York branches of both Applicant and Banco Popular. Following discussions with Applicant and Banco Popular, CCFB has withdrawn its comments.

that section, Banco de Ponce currently operates 14 state-licensed branches in New York, New York. Banco Popular has selected Illinois as its home state, and operates a branch in Chicago, Illinois, as well as eight state-licensed branches in New York; a branch in Los Angeles, California; and a limited purpose agency in Florida. Banco Popular is permitted to retain its branches in New York and California pursuant to section 5(b) of the IBA, which permits foreign banking organizations to continue to operate branches established before July 27, 1978, outside their home state. 12 U.S.C. § 3103(b).

Following consummation of the proposed transactions, Applicant and Banco de Ponce, the bank that will survive the proposed merger, propose to continue to designate New York as their home state for purposes of section 5 of the IBA. Accordingly, Banco de Ponce may retain all of its domestic branches as well as the branches of Banco Popular in New York.

Applicant contends that, following the bank merger, the resulting bank should also be permitted to retain the branches of Banco Popular in California and Illinois. Applicant argues that a foreign bank that results from the merger of two foreign banks should be permitted to retain all of the branches in the United States of each of the merging banks. In the alternative, Applicant argues that the resulting foreign bank should be permitted to choose to retain the grandfather rights of either of the merging banks.

Section 5 of the IBA generally provides that no foreign bank may establish and operate a branch outside of its home state unless operation of the branch is expressly permitted by state law and the foreign bank agrees to limit the deposit-taking activities of that branch to those permissible for an Edge corporation. 12 U.S.C. § 3103. The Board has previously determined that grandfather rights to retain branches established outside of a foreign bank's home state before July 27, 1978, are extinguished when that foreign bank is acquired by another foreign banking institution.[20/] In its previous review of this question, the Board noted that a broad interpretation of section 5 of the IBA to permit a foreign bank to operate a branch established by another bank prior to the relevant grandfather date would allow foreign banks to acquire extensive branch networks in the United States outside of the foreign bank's home state, and beyond the branching networks grandfathered in the IBA. This result is contrary to the purpose of section 5 of the IBA of limiting the branching activities of foreign banks outside their home states, and would give foreign banks a significant competitive advantage over domestic banks in establishing new

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[20/] See The Mitsui Bank, Limited, 76 Federal Reserve Bulletin 381 (1990) (merger of two foreign banking organizations); Lloyds Bank Plc, 72 Federal Reserve Bulletin 841 (acquisition of stock of a second foreign bank) (1986). The Board has reached this conclusion both when the acquisition has been a stock acquisition in which both foreign banks survive, and in the case of a merger of two foreign banks in their home country in which only one institution would survive.

interstate branch networks in the United States that was not intended by the IBA.[21/]

For these reasons, and consistent with its previous decisions, the Board has determined that the grandfather privileges accorded to Banco Popular to operate a branch in California would not survive the merger of Banco Popular into Banco de Ponce. Because the home state for Banco de Ponce would continue to be New York following the merger, the resulting bank would be without authority under the IBA to operate a branch in Illinois. Accordingly, Applicant must divest or conform the activities of the California and Illinois branches of the resulting bank within six months of consummating the proposed merger.

Other Considerations

Applicant has applied under section 9 of the Federal Reserve Act (12 U.S.C. § 321 *et seq.*) to retain the Banco Popular branches located in New York following the merger. The Board has considered the factors it is required to consider when reviewing applications for the establishment of branches pursuant to section 9 of the Federal Reserve Act and finds those factors to be consistent with approval.

Applicant also has requested permission under section 24A of the Federal Reserve Act (12 U.S.C. § 371d) to make an additional investment in bank premises in connection with this

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21/ *See* *Lloyds Bank Plc*, 72 Federal Reserve Bulletin 841 (1986).

proposal. The Board concludes that Applicant's additional investment in bank premises is consistent with approval.

Applicant also has applied under section 25 of Federal Reserve Act (12 U.S.C. § 601 *et seq.*) to retain the branches of Banco Popular located in the United States Virgin Islands following the merger. The Board concludes that Applicant's retention of these branches is consistent with approval.

Applicant also has applied under section 25 of the Federal Reserve Act for permission to acquire Consumer Services, Inc., through the resulting bank. Applicant has agreed to conform the activities of Consumer Services, Inc. to the requirements of section 25 of the Federal Reserve Act and the Board's Regulation K. The Board concludes that Applicant's acquisition of Consumer Services, Inc. is consistent with approval and with the purposes of the Federal Reserve Act.

On the basis of the foregoing and other facts of record, including the commitments and divestiture proposals made in this case by Applicant, the Board has determined that the applications should be, and hereby are, approved. The transactions shall not be consummated before the thirtieth day following the effective date of this Order, or later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,[22] effective November 5, 1990.

Jennifer J. Johnson
Associate Secretary of the Board

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[22] Voting for this action: Chairman Greenspan and Governors Seger, Angell, Kelley, LaWare and Mullins.