FEDERAL RESERVE press release

For immediate release April 18, 1994

The Federal Reserve Board today announced its approval of the applications of CNB Bancshares, Inc., Evansville, Indiana, ("CNB"), to acquire Union Bank & Trust Company, Morganfield, Kentucky, to acquire the Morganfield, Kentucky branch of CNB's wholly owned thrift subsidiary, First Federal Savings Bank of Kentucky, Madisonville, Kentucky, and to acquire substantially all of the assets and liabilities of CNB's wholly owned bank subsidiary, CNB Bank of Kentucky, Shively, Kentucky.

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

Attachment

FEDERAL RESERVE SYSTEM

CNB Bancshares, Inc.
Evansville, Indiana

Order Approving the Acquisition of a Bank

CNB Bancshares, Inc., Evansville, Indiana ("CNB"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has applied under section 3(a)(3) of the BHC Act to acquire Union Bank & Trust Company, Morganfield, Kentucky ("Union Bank").[1/] CNB has also applied under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. § 1815(d)(3)) (the "FDI Act"), as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242 § 501, 105 Stat. 2236, 2388-2392 (1991)) to acquire the Morganfield, Kentucky branch of CNB's wholly owned thrift subsidiary, First Federal Savings Bank of Kentucky, Madisonville, Kentucky ("First Federal").[2/]

Section 5(d)(3) of the FDI Act requires the Board to review any proposed merger between a bank owned by a bank holding company and a savings association, or branch of a savings association, in which the resulting institution is insured by the

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[1/] CNB will acquire Union Bank by merger with and into Morganfield Interim Bank, Inc., Morganfield, Kentucky, a state chartered interim bank, with Union Bank as the surviving institution. Simultaneously with the acquisition of Union Bank, People Bank and Trust Company, Madisonville, Kentucky ("People Bank"), a subsidiary of CNB, will merge with and into Union Bank. After these transactions, Union Bank will be renamed Citizens Bank of Kentucky, Morganfield, Kentucky ("Citizens Bank").

[2/] Union Bank will purchase all the assets and liabilities of this branch simultaneously with the mergers of Union Bank and People Bank.

Bank Insurance Fund, and in reviewing these proposals, to follow the procedures and consider the factors set forth in section 18(c) of the FDI Act (12 U.S.C. § 1828(c)) ("the Bank Merger Act").[3] This transaction also is subject to review under the Bank Merger Act by the Federal Deposit Insurance Corporation ("FDIC"), which is the primary regulator for Union Bank. The FDIC has not announced its decision with respect to approval of the transaction.

In addition, CNB has applied under section 3(a)(4) of the BHC Act (12 U.S.C. § 1842(a)(4)) for First Federal to acquire substantially all the assets and liabilities of CNB's wholly owned bank subsidiary, CNB Bank of Kentucky, Shively, Kentucky ("CNB Bank").

Notice of these applications, affording interested persons an opportunity to submit comments, has been published (59 Federal Register 4073 and 9215 (1994)). Reports on the competitive effects of the merger were requested from the United States Attorney General ("Attorney General"), the Office of the Comptroller of the Currency ("OCC"), and the FDIC. 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, the Bank Merger Act, and section 5(d)(3) of the FDI Act.

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[3] 12 U.S.C. § 1815(d)(3)(E). These factors include considerations relating to competition, financial and managerial resources, future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served. 12 U.S.C. § 1828(c).

CNB, with total consolidated assets of $2.4 billion, operates in Indiana, Kentucky, and Illinois. CNB is the 19th largest depository institution in Kentucky, controlling deposits of $258.1 million, representing less than 1 percent of total deposits in depository institutions in the state.[4] Union Bank is the 112th largest depository institution in Kentucky, controlling deposits of approximately $58 million, representing less than 1 percent of the total deposits in commercial banks in the state. Upon consummation of the proposal, CNB would remain the 19th largest depository institution in Kentucky, controlling deposits of $316.1 million, representing approximately 1 percent of total deposits in commercial banks in the state.

Competitive Considerations

CNB and Union Bank compete directly in the Union County, Kentucky, banking market.[5] CNB is the smallest of four

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[4] Asset and deposit data are current as of December 31, 1993. In this context, depository institutions include commercial banks, savings banks, and savings associations. State and market share data, except for data for First Federal, CNB's savings association subsidiary, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See* *WM Bancorp*, 76 Federal Reserve Bulletin 788 (1990); *National City Corporation*, 70 Federal Reserve Bulletin 743 (1984). In this case, the deposits of First Federal are controlled by a commercial banking organization, and would continue to be controlled by a commercial banking organization under this proposal. Accordingly, these deposits are included at 100 percent in the calculation of the pre-consummation and *pro forma* market share.

[5] This banking market is approximated by Union County, Kentucky.

depository institutions in the market, controlling deposits of $6.7 million, representing approximately 3.6 percent of total deposits in depository institutions in Union County ("market deposits"). Union Bank is the second largest depository institution in the market, controlling deposits of $58 million, representing approximately 30.6 percent of market deposits. Upon consummation, CNB would remain the second largest depository organization in the Union County banking market, controlling deposits of approximately $64.7 million, representing approximately 34.1 percent of market deposits. The Herfindahl-Hirschman Index ("HHI") would increase 217 points to a level of 3383.[6/]

The Board believes that a calculation of the HHI based on total market deposits does not accurately reflect the competitive effect of this proposal in the Union County banking market because of the unique characteristics of this market. In particular, the record indicates that government deposits represent a significant amount of the deposits held by CNB.

[6/] Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is above 1800 is considered to be highly concentrated. In such highly concentrated markets, the Justice Department is likely to challenge a merger that increases the HHI by more than 50 points. The Justice Department has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger or acquisition increases the HHI by at least 200 points. The Justice Department has stated that the higher than normal threshold for an increase in HHI when screening bank mergers and acquisitions for anti-competitive effects implicitly recognizes the competitive effect of limited-purpose lenders and other non-depository financial entities.

Government deposits may be volatile and are subject to restrictive collateral requirements that often restrict a bank's ability to use them for making loans or providing other banking products.[7] The Board previously has determined that individual, partnership, and corporation ("IPC") deposits may be the proper focus of the competitive analysis in mergers and acquisitions in markets in which government deposits constitute a relatively large share of total deposits.[8] In this case, substantially all the non-IPC deposits in the Union County banking market are government deposits, and non-IPC deposits represent approximately 7.4 percent of all market deposits.[9] In light of these and all the facts of record, the Board concludes that the competitive effects of this proposal should be considered on the basis of IPC deposits.

CNB is the fourth largest depository institution in the market, controlling IPC deposits of $3.6 million, representing 2 percent of market deposits. Union Bank is the second largest depository institution in the market, controlling IPC deposits of $52.1 million, representing 29.6 percent of market deposits. Upon consummation of this proposal, CNB would become the second

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[7] Government deposits are subject to an informal bidding process among depository institutions.

[8] See Banco Popular de Puerto Rico, 79 Federal Reserve Bulletin 979 (1993).

[9] On average, non-IPC deposits account for approximately 7 percent of total deposits in banks in the United States. Non-IPC deposits represent 47.1 percent of CNB's total deposits and 10.2 percent of Union Bank's deposits in the Union County banking market.

largest depository institution in the Union County banking market, controlling IPC deposits of $55.7 million, representing 31.6 percent of all IPC deposits in the market. The HHI would increase 120 points to 3400.

The Board also sought comments from the Attorney General, OCC, and the FDIC on the competitive effects of this proposal. The Attorney General, OCC, and the FDIC have not objected to consummation of the proposal or indicated that the proposal would have any significantly adverse competitive effects in the Union County banking market.

Based on all the facts of record, including the reduced change in the HHI when government deposits are excluded, the Board concludes that consummation of this proposal would not have a significantly adverse effect on competition or concentration of banking resources in the Union County banking market, or any other relevant banking market.[10/]

Convenience and Needs Considerations

In acting on an application to acquire a depository institution under the BHC Act and the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served, and take into account the records of the relevant depository institutions under the Community Reinvestment Act

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[10/] The Board notes that the proposal by First Federal to acquire substantially all the assets and liabilities of CNB Bank represents a corporate reorganization and that these subsidiaries do not compete in the same markets.

(12 U.S.C. § 2901 et seq.) ("CRA"). The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with the safe and sound operation of such institutions. To accomplish this end, the CRA requires the appropriate federal supervisory authority to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution," and to take that record into account in its evaluation of applications.[11]

The Board has received comments from the People for Equal Justice ("Protestant") alleging that the lead bank of CNB, Citizens National Bank of Evansville, Evansville, Indiana, ("Citizens") has failed to meet the credit needs of low- and moderate-income communities, especially communities with predominantly African-American populations, in a number of categories, including loans for home purchases, small business expansion, home improvement, and non-profit community organizations. In particular, Protestant cites lending data to support its allegations that Citizens illegally discriminates against African-American borrowers and borrowers in low- and moderate-income communities with predominately African-American populations. Protestant also alleges that the branch and

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[11] See 12 U.S.C. § 2903.

automated teller machine ("ATM") locations of Citizens do not serve the needs of inner-city residents of Evansville.[12/]

In its consideration of the convenience and needs factor, the Board has carefully reviewed the entire CRA performance record of Citizens, all comments received regarding these applications, including CNB's response to these comments, and all the other relevant facts of record, in light of the CRA, the Board's regulations, and the Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act ("Agency CRA Statement").[13/]

Record of CRA Performance

A. Evaluation of CRA Performance

The Agency CRA Statement provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record, and that these reports will be given great weight in the applications process.[14/] In this case, the Board notes that all of CNB's subsidiary banks and thrifts received "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, CNB's lead bank, Citizens, received a "satisfactory"

[12/] Protestant also believes that Citizens has failed to adhere to its plan to participate in a multi-lender community development corporation. CNB denies that it committed to participate in this project but has requested, in accordance with its policy, that the organization provide specific information to enable Citizens to evaluate any request for financial assistance.

[13/] 54 Federal Register 13,742 (1989).

[14/] Id. at 13,745.

rating from its primary regulator, the OCC, at its most recent examination for CRA performance as of March 29, 1993 ("1993 examination").

B. Home Mortgage Disclosure Act ("HMDA") Data and Lending Practices

The Board has carefully reviewed the 1991 and 1992 HMDA data for Citizens, and preliminary data for 1993, reported by Citizens in light of the Protestant's comments. In general, 1993 data indicate that Citizens has improved its lending record of home mortgage loans in the low- and moderate-income and minority areas it serves since 1991 and 1992.[15] However, the data also reflect a low percentage of loans made compared to the percentage of minority residents in the bank's service area and certain disparities in lending to low- and moderate-income areas and minority borrowers in these areas.

The Board is concerned when an institution's record indicates disparities in lending to minority applicants and believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound lending, but also assure equal access to credit by creditworthy applicants regardless of race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community. The Board

[15] For example, the rate of origination among different racial groups showed little disparity. In 1993, origination rates for African-American and white applicants were 90.9 percent and 93.9 percent, respectively. In 1992, the origination percentages for African-Americans and whites were 90.9 and 94.2 percent, respectively.

also recognizes that HMDA data have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has engaged in illegal discrimination in making lending decisions.

Initially, the Board notes that the 1993 examination indicates that there is no evidence of prohibited discriminatory or other illegal practices at Citizens and that the bank is in substantive compliance with antidiscrimination laws and regulations, including the Equal Credit Opportunity Act, the Fair Housing Act, and the Home Mortgage Disclosure Act. The bank also has developed policies that prohibit discriminatory lending practices. Moreover, the record indicates that Citizens reviews all initially denied residential mortgage loan applications to ensure compliance with fair lending laws.

In addition, Citizens has taken a number of steps to address the disparities in its HMDA data. For example, it has established several programs, such as the Partnership Mortgage Program ("PMP"), the Community Resource Center ("CRC"), Value Plus Checking, and a small business unit to increase lending to African-Americans and low- and moderate-income persons in its delineated community. The PMP was established as a result of the bank's assessment of the credit needs in low- and moderate-income areas in Evansville, Indiana. The program is designed to assist families with nontraditional credit histories and whose income does not exceed 80 percent of the median family income (as defined by the Department of Housing and Urban Development) to obtain home mortgage financing. Under this program, eligible families also participate in credit workshops conducted by bank representatives. Although the program has been in operation for less than a full year, PMP has originated 71 loans, totalling approximately $2.8 million.

The bank also established a Community Resource Center ("CRC") in 1992, which provides counseling and training on credit-related matters to all segments of the low- and moderate-income community. The CRC is located in a low-income census tract in Evansville, Indiana, and is surrounded by several low-income census tracts. CRC activities include workshops on basic banking, home budgeting, and credit programs. CRC staff has made nearly 100 such presentations to over 500 low- and moderate-income residents and community group leaders. CRC staff also meets with residents through door-to-door visits in areas of Vanderburgh County with the lowest per capita income and the highest percentage of minority residents.

Citizens also engages in other lending activities to assist in meeting the credit needs of its entire community.[16/] For example, it has extended over $3.3 million in commercial lending and lines of credit to minority-owned businesses and

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[16/] CNB has developed banking services such as the Value Plus Checking with special features that include lower service fees and minimum balance requirements for low- and moderate-income customers.

organizations in 1993.[17] In addition, the bank is the only certified Small Business Administration lender in southwestern Indiana, and to date, has extended approximately 30 loans totalling $3 million under this program. Citizens is also involved in community development activities such as the Indiana Community Business Credit Corporation, a privately owned corporation that provides financing to small businesses in the state. The bank also provides financial assistance to organizations that serve low- and moderate-income and minority areas through its Corporate Giving Program.

C. Geographic Distribution of Loans/Branch Offices

Citizens has defined all of Vanderburgh (which includes the city of Evansville, Indiana), Warrick, Gibson, Posey, and Knox counties in Indiana, and Henderson County in Kentucky, as its delineated community, and according to the 1993 examination, has not excluded any low- and moderate-income neighborhoods from this delineation. Within these low- and moderate-income neighborhoods, Citizens accepts credit applications from all segments of the community. Moreover, the institution's credit extensions, applications, and denials demonstrate a reasonable penetration of all segments of its community.[18]

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[17] CNB has created a small business lending unit that seeks to create and expand commercial lending opportunities to minority businesses.

[18] The 1993 examination found that 80 percent of commercial loans; 62 percent of installment loans; and 96 percent of home mortgage, home improvement, and home equity loans extended by Citizens were made within the bank's delineated community.

The 1993 examination also concluded that the existing branch offices of Citizens adequately serve its delineated community and offer convenient banking hours. The bank has 25 full-service branch offices, 23 of which have ATM facilities. The bank also has seven cash dispenser machines and four ATMs at other locations. The Lamasco branch in Evansville, is a full-service branch serving a community with a per capita income of $6,994 and approximately 28 percent of residents below the poverty level.

D. Additional Elements of CRA Performance

The 1993 examination concluded that Citizens has in place ascertainment and marketing programs, and lending and other activities that assist in meeting the credit needs of minorities and low- and moderate-income neighborhoods. In this regard, Citizens ascertains community credit needs through regular contacts with government, civic and community individuals and groups. The bank also has policies and procedures to monitor its lending and credit activities for effectiveness in meeting credit needs. Citizens has established a CRA committee composed of the bank's board of directors. The committee has met six times in the past seven months to develop and strengthen its CRA activities. In January 1994, Citizens also hired a full-time CRA officer, with responsibilities including, but not limited to, product development and employee training.

E. Conclusion Regarding Convenience and Needs Factors

The Board has carefully considered all the facts of record, including the comments received in this case, in reviewing the convenience and needs factor under the BHC Act and the Bank Merger Act. Based on a review of the entire record of these applications, including the most recent CRA performance examination of Citizens, the Board believes that the efforts of CNB to help meet the credit needs of all segments of the communities it serves, including low- and moderate-income neighborhoods, and all other convenience and needs considerations, are consistent with approval of these applications.[19]

The Board recognizes that the record in these applications points to areas for improvement in the CRA performance of Citizens, particularly in housing-related lending. Citizens has initiated steps designed to strengthen its CRA

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[19] Protestant has requested that the Board hold a public meeting or hearing on these applications. The Board is not required to hold a public hearing on these applications under the applicable provisions of the relevant banking statutes. Under its rules, the Board may, in its discretion, hold a public meeting or hearing on an application to clarify factual issues related to the application and to provide an opportunity for testimony, if appropriate. 12 C.F.R. 262.3(e) and 262.25(d). The Board has carefully considered Protestant's request, and the written comments submitted by Protestant. In the Board's view, interested parties have had ample opportunity to submit and have submitted substantial written comments that have been considered by the Board. In light of the foregoing and all the facts of record, the Board has determined that a public meeting or hearing is not necessary to clarify the factual record on these applications, or otherwise warranted in this case. Accordingly, the request for a public meeting or hearing on these applications is hereby denied.

performance and the Board expects to see improvement in these areas. Citizens's progress in strengthening its performance in the areas discussed in this Order will be monitored by the Federal Reserve Bank of St. Louis through reports submitted semiannually, and will be assessed in connection with future applications to expand its deposit-taking facilities.

Other Considerations

The Board also finds that the financial and managerial resources and future prospects of CNB, First Federal, and Citizens Bank, and the institutions to be acquired, as well as other supervisory factors the Board must consider under section 3 of the BHC Act, are consistent with approval. Moreover, the record in this case shows that: (1) the transaction will not result in the transfer of any federally insured depository institution's federal deposit insurance from one federal deposit insurance fund to the other; (2) CNB and Citizens Bank (and its predecessors, Union Bank and People Bank) currently meet, and upon consummation of the proposed transaction will continue to meet all applicable capital standards; and (3) since Citizens Bank is in Kentucky and is acquiring certain assets and assuming certain liabilities of a branch of a Kentucky federal savings bank, the proposed transaction would comply with the Douglas Amendment if First Federal were a state bank that CNB was applying to acquire directly. See 12 U.S.C. § 1815(d)(3).

Conclusion

Based on the foregoing and other facts of record, the Board has determined that these applications should be, and hereby are, approved. The Board's approval is specifically conditioned upon compliance with all the commitments made by CNB in connection with these applications. For purposes of this action, the commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The banking acquisitions shall not be consummated before the thirtieth calendar day following the effective date of this order, and they 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 Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,[20] effective April 18, 1994.

Jennifer J. Johnson

Jennifer J. Johnson
Associate Secretary of the Board

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[20] Voting for this action: Chairman Greenspan and Governors Kelley, LaWare, Lindsey, and Phillips.