Reports on the Condition of the U.S. Banking Industry

Report on the Condition of the U.S. Banking Industry: Third Quarter, 2005

Aggregate assets at all reporting bank holding companies increased 2.6 percent, or $282 billion, to $11.2 trillion, with much of the growth coming from loans to finance real estate. Earnings were strong despite somewhat higher provisions that arose mainly from the summer's Gulf Coast hurricanes. Nonperforming asset measures stayed at a historically low level.

Loans advanced 2.8 percent ($152 billion), to $5.5 trillion, fueled primarily by increases in residential mortgages ($65 billion) and commercial real estate loans ($47 billion). Construction loans, which include loans to finance the construction of new homes, accounted for roughly half of the increase in commercial real estate lending. Loans to individuals other than for credit cards or mortgages continued to grow at an elevated pace, up 4.4 percent, or $22 billion. Growth in commercial and industrial loans decelerated from 3.8 percent in the previous quarter to 1.1 percent, or $11 billion. Similarly, the pace of increases in home equity lines of credit slowed in response to higher interest rates, falling to just 0.3 percent, or $1.3 billion. More generally, unused commitments to lend increased significantly, rising 4.1 percent ($206 billion), to $5.2 trillion, consistent with reports of a robust outlook for business loans.

Money market assets also increased substantially ($71 billion)—as did money market borrowings ($75 billion)—almost entirely at one of the five large bank holding companies for which banking operations represent only a small component of the consolidated entity.[1] Investment securities expanded 2.6 percent, or $48 billion, to $1.9 trillion, with most of the growth in Treasury and other debt securities.

Funding for the growth in assets was evenly balanced between deposits and short-term borrowings. Deposit growth for the quarter was concentrated in time deposits and MMDA and savings accounts, shifting the overall deposit composition toward higher-cost categories as transaction accounts declined. At 1.9 percent ($103 billion), overall deposit growth lagged the growth in loans, pushing the loan-to-deposit ratio up slightly to 99.2 percent.

Tier 1 and total risk-based capital ratios fell modestly to 9.16 and 11.9 percent, respectively, continuing the modest downward trend seen over the past two years. The leverage ratio, however, remained roughly unchanged at 6.53 percent.

Third quarter net income for all reporting bank holding companies rose six percent ($2.0 billion), to $34.7 billion, lifting quarterly returns on equity and assets to 15.14 percent and 1.25 percent, respectively, near historic highs. A surge in noninterest income, spurred by strong trading revenues at large institutions, contributed significantly to earnings improvement. Net interest margins narrowed further, down three basis points, to 3.06 percent, due to a flatter term structure, continued competition for loans and deposits, higher short-term funding rates, and a shift in deposit mix toward higher-cost certificates of deposit. Nonetheless, net interest income increased because of asset growth.

Moderating the improvement in earnings, a substantial increase in provisions for loan losses augmented loan-loss reserves for the first time since early 2004. Large institutions with credit exposures on the Gulf Coast accounted for almost half of this increase. Further contributing to escalating provisions were anticipated losses (largely on credit cards) from stepped-up personal bankruptcies filed before the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and, to a lesser extent, the introduction of higher minimum credit card payments. Despite the hurricanes and other one-time factors, however, the nonperforming assets ratio declined slightly during the quarter to a low 0.70 percent.

Assets at the fifty large bank holding companies increased just 0.9 percent, or $75 billion, influenced

1. Financial information for five large bank holding companies (BHCs) for which banking operations represent only a small component of the consolidated entity is included in the all reporting bank holding company data shown in table 1, but not in the data for the fifty large bank holding companies (table 2) or in the data for all other reporting bank holding companies (table 3). Three of these BHCs are insurance-oriented and two are brokerage-oriented. At the end of the third quarter, these five BHCs had combined assets of $925.8 billion, more than half in the securities and money market assets category. For further background on the institutions included in each table's data, see Board of Governors of the Federal Reserve System (2004) "Report on the Condition of the Banking Industry: Third Quarter, 2003," *Federal Reserve Bulletin*, vol. 90 (Winter) pp. 47–51.

significantly by Citigroup's sale of life insurance and annuities operations to an insurance-focused bank holding company (MetLife) during the quarter. Although this transaction had no net effect on the assets of all reporting bank holding companies, aggregate earnings reflected the $2.1 billion gain realized by Citigroup on this sale.

1. Financial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio [1, 2]	2000	2001	2002	2003	2004	2004				2005		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**6,745,836**	**7,486,952**	**7,991,161**	**8,880,661**	**10,339,839**	**9,357,969**	**9,711,531**	**9,959,685**	**10,339,839**	**10,710,584**	**10,956,178**	**11,237,913**
Loans	3,728,570	3,832,553	4,079,878	4,435,683	5,109,518	4,614,913	4,802,958	4,948,873	5,109,518	5,185,007	5,355,072	5,506,691
Securities and money market	2,197,434	2,568,704	2,867,137	3,302,401	3,804,003	3,542,305	3,580,333	3,628,275	3,804,003	4,064,697	4,099,618	4,240,534
Allowance for loan losses	−60,376	−68,833	−74,784	−73,817	−74,590	−76,744	−76,533	−76,045	−74,590	−73,385	−72,954	−73,949
Other	880,209	1,154,529	1,118,931	1,216,395	1,500,909	1,277,496	1,404,772	1,458,582	1,500,909	1,534,264	1,574,443	1,564,638
Total liabilities	**6,227,975**	**6,901,281**	**7,350,380**	**8,177,652**	**9,453,246**	**8,613,886**	**8,938,465**	**9,107,754**	**9,453,246**	**9,820,040**	**10,035,265**	**10,310,107**
Deposits	3,771,749	4,025,769	4,357,245	4,705,043	5,249,488	4,847,908	5,005,099	5,064,670	5,249,488	5,349,230	5,447,870	5,551,289
Borrowings	1,991,564	2,073,770	2,244,492	2,630,242	3,158,539	2,903,088	2,956,549	3,055,319	3,158,539	3,423,243	3,525,387	3,663,114
Other [3]	464,662	801,742	748,643	842,367	1,045,219	862,891	976,816	987,765	1,045,219	1,047,567	1,062,008	1,095,704
Total equity	**517,861**	**585,671**	**640,781**	**703,009**	**886,593**	**744,083**	**773,066**	**851,931**	**886,593**	**890,544**	**920,913**	**927,806**
Off-balance-sheet												
Unused commitments to lend [4]	3,297,511	3,481,745	3,650,669	4,097,531	4,823,334	4,354,895	4,426,497	4,574,267	4,823,334	4,910,034	5,040,259	5,245,823
Securitizations outstanding [5]	n.a.	276,717	295,001	298,348	353,978	308,543	314,258	313,436	353,978	366,430	367,639	374,909
Derivatives (notional value, billions) [6]	43,608	48,276	57,886	72,914	89,115	79,273	83,109	84,723	89,115	92,623	96,658	98,275
Income statement												
Net income [7]	73,168	66,510	85,732	107,939	114,290	30,721	25,866	30,160	28,853	32,909	32,707	34,702
Net interest income	197,695	224,470	246,048	257,537	280,623	67,630	71,451	72,038	71,675	72,817	73,179	74,533
Provisions for loan losses	27,604	40,661	45,086	33,052	28,606	7,165	6,994	7,383	7,793	6,577	6,823	9,929
Non-interest income	200,872	218,984	221,516	250,608	271,465	67,222	73,714	66,986	67,661	73,221	72,266	77,490
Non-interest expense	258,213	302,141	296,966	316,338	357,711	82,984	101,029	87,213	90,009	91,256	91,684	93,898
MEMO												
Realized security gains or losses	−605	4,338	4,598	5,771	5,491	1,978	1,011	2,001	480	417	1,478	471
Ratios (percent)												
Return on average equity	15.19	11.86	14.11	16.28	14.39	17.07	13.50	14.55	13.37	14.86	14.58	15.14
Return on average assets	1.13	.91	1.11	1.26	1.17	1.33	1.07	1.22	1.12	1.24	1.20	1.25
Net interest margin [8]	3.58	3.61	3.74	3.51	3.38	3.43	3.48	3.44	3.29	3.18	3.09	3.06
Efficiency ratio [7]	63.95	66.94	62.41	61.76	63.45	61.36	67.09	62.34	64.35	60.47	61.40	61.69
Nonperforming assets to loans and related assets	1.09	1.44	1.44	1.15	.82	1.09	.96	.89	.82	.76	.71	.70
Net charge-offs to average loans	.64	.89	1.04	.84	.67	.72	.66	.60	.71	.57	.52	.65
Loans to deposits	98.86	95.20	93.63	94.28	97.33	95.19	95.96	97.71	97.33	96.93	98.30	99.20
Regulatory capital ratios												
Tier 1 risk-based	8.84	8.92	9.22	9.58	9.37	9.54	9.39	9.34	9.37	9.31	9.30	9.16
Total risk-based	11.80	11.92	12.28	12.60	12.25	12.45	12.25	12.17	12.25	12.18	12.06	11.90
Leverage	6.81	6.68	6.72	6.87	6.61	6.87	6.67	6.72	6.61	6.51	6.54	6.53
Number of reporting bank holding companies	1,727	1,842	1,979	2,134	2,254	2,193	2,211	2,240	2,254	2,282	2,296	2,288

Footnotes appear on p. B5.

2. Financial characteristics of fifty large bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio [2, 9]	2000	2001	2002	2003	2004	2004				2005		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**5,512,347**	**5,884,763**	**6,245,841**	**6,904,453**	**7,939,683**	**7,348,075**	**7,538,219**	**7,739,375**	**7,939,683**	**8,203,706**	**8,415,117**	**8,489,633**
Loans	2,939,971	2,959,024	3,142,117	3,389,569	3,930,667	3,549,509	3,684,995	3,792,824	3,930,667	3,979,426	4,097,703	4,219,537
Securities and money market	1,848,917	2,051,787	2,282,015	2,627,207	2,906,482	2,852,911	2,838,186	2,877,270	2,906,482	3,091,535	3,158,002	3,192,465
Allowance for loan losses	−49,291	−56,635	−61,213	−59,381	−59,501	−62,004	−61,583	−60,971	−59,501	−58,136	−57,442	−58,214
Other	772,750	930,587	882,923	947,059	1,162,035	1,007,660	1,076,621	1,130,251	1,162,035	1,190,882	1,216,854	1,135,846
Total liabilities	**5,101,049**	**5,436,029**	**5,758,821**	**6,373,730**	**7,250,493**	**6,780,663**	**6,948,697**	**7,082,122**	**7,250,493**	**7,510,491**	**7,703,132**	**7,773,889**
Deposits	2,850,567	3,026,178	3,264,019	3,516,299	3,951,188	3,633,531	3,762,700	3,796,536	3,951,188	4,020,766	4,082,670	4,151,706
Borrowings	1,812,975	1,876,054	2,038,758	2,355,463	2,708,953	2,611,397	2,639,524	2,738,503	2,708,953	2,892,529	3,021,302	3,095,761
Other [3]	437,507	533,797	456,044	501,968	590,353	535,735	546,473	547,083	590,353	597,196	599,160	526,423
Total equity	**411,299**	**448,734**	**487,021**	**530,723**	**689,190**	**567,412**	**589,523**	**657,253**	**689,190**	**693,216**	**711,986**	**715,744**
Off-balance-sheet												
Unused commitments to lend [4]	3,074,741	3,238,141	3,387,169	3,802,988	4,485,869	4,054,254	4,113,338	4,241,621	4,485,869	4,558,373	4,673,678	4,863,599
Securitizations outstanding [5]	n.a.	271,825	289,905	293,046	348,986	304,545	307,878	307,325	348,986	361,524	362,973	370,284
Derivatives (notional value, billions) [6]	43,542	48,158	57,766	72,723	88,671	79,042	82,841	84,460	88,671	92,136	96,303	97,994
Income statement												
Net income [7]	60,496	52,626	68,391	87,689	91,039	25,222	19,484	24,069	23,574	26,393	24,925	27,989
Net interest income	153,662	166,822	183,958	192,467	208,439	50,921	52,483	53,711	53,496	53,490	53,506	54,063
Provisions for loan losses	23,985	35,739	39,370	28,543	25,183	6,385	6,201	6,588	6,738	5,759	6,027	9,023
Non-interest income	181,672	174,481	172,740	195,743	211,357	53,262	56,521	51,253	54,438	57,542	54,795	60,320
Non-interest expense	217,113	224,644	216,055	229,509	261,076	60,842	74,524	62,537	66,697	66,135	65,766	66,509
MEMO												
Realized security gains or losses	−610	4,313	5,028	5,158	4,587	1,604	697	1,744	520	211	1,426	464
Ratios (percent)												
Return on average equity	15.86	12.22	14.71	17.48	14.86	18.33	13.31	14.98	14.02	15.28	14.29	15.75
Return on average assets	1.14	.92	1.13	1.31	1.19	1.39	1.03	1.25	1.19	1.29	1.18	1.32
Net interest margin [8]	3.45	3.39	3.56	3.36	3.22	3.28	3.27	3.29	3.17	3.03	2.93	2.89
Efficiency ratio [7]	64.08	64.63	59.59	58.75	60.66	58.33	65.00	58.95	61.65	57.15	58.67	58.12
Nonperforming assets to loans and related assets	1.17	1.56	1.56	1.22	.84	1.13	1.00	.91	.84	.78	.72	.71
Net charge-offs to average loans	.73	1.01	1.20	.97	.80	.88	.78	.71	.83	.69	.63	.78
Loans to deposits	103.14	97.78	96.27	96.40	99.48	97.69	97.93	99.90	99.48	98.97	100.37	101.63
Regulatory capital ratios												
Tier 1 risk-based	8.21	8.23	8.51	8.81	8.57	8.76	8.61	8.59	8.57	8.52	8.45	8.46
Total risk-based	11.46	11.58	11.95	12.18	11.84	12.04	11.86	11.81	11.84	11.80	11.59	11.60
Leverage	6.44	6.24	6.25	6.36	6.16	6.36	6.14	6.22	6.16	6.09	6.06	6.16

Footnotes appear on p. B5.

3. Financial characteristics of all other reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account[1, 10]	2000	2001	2002	2003	2004	2004				2005		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**1,175,255**	**1,288,955**	**1,413,460**	**1,549,066**	**1,710,394**	**1,589,910**	**1,636,640**	**1,675,090**	**1,710,394**	**1,740,972**	**1,792,900**	**1,822,494**
Loans	764,249	819,375	883,606	966,795	1,096,550	994,816	1,032,777	1,068,411	1,096,550	1,123,962	1,171,197	1,197,796
Securities and money market	319,990	360,634	409,909	451,610	477,141	467,644	466,532	468,881	477,141	474,698	471,527	469,873
Allowance for loan losses	−10,817	−11,834	−13,133	−14,019	−14,690	−14,348	−14,595	−14,767	−14,690	−14,812	−15,058	−15,258
Other	101,833	120,780	133,079	144,680	151,393	141,797	151,927	152,564	151,393	157,124	165,234	170,084
Total liabilities	**1,074,102**	**1,173,211**	**1,283,194**	**1,407,590**	**1,552,881**	**1,444,353**	**1,491,634**	**1,520,905**	**1,552,881**	**1,583,636**	**1,629,482**	**1,656,864**
Deposits	909,354	985,476	1,075,244	1,166,179	1,278,388	1,198,727	1,224,810	1,250,168	1,278,388	1,308,778	1,345,045	1,378,803
Borrowings	143,987	162,096	176,691	207,010	233,512	204,894	228,010	229,563	233,512	231,629	241,378	232,044
Other[3]	20,761	25,640	31,259	34,400	40,981	40,732	38,813	41,175	40,981	43,229	43,059	46,017
Total equity	**101,153**	**115,744**	**130,266**	**141,477**	**157,514**	**145,557**	**145,007**	**154,184**	**157,514**	**157,336**	**163,419**	**165,630**
Off-balance-sheet												
Unused commitments to lend[4]	213,707	233,430	251,594	281,630	324,094	287,259	298,142	315,329	324,094	337,261	350,998	363,465
Securitizations outstanding[5]	n.a.	4,567	4,358	4,159	2,877	2,875	3,000	2,757	2,877	2,792	2,667	2,697
Derivatives (notional value, billions)[6]	49	89	88	95	144	121	112	121	144	99	101	95
Income statement												
Net income[7]	12,377	13,745	16,553	17,850	19,586	4,811	4,829	5,034	4,912	5,240	5,470	5,548
Net interest income	43,302	46,045	50,867	52,970	57,233	13,825	13,977	14,507	14,925	15,232	15,672	15,937
Provisions for loan losses	3,448	4,485	5,084	4,292	3,191	813	797	809	772	688	742	858
Non-interest income	16,095	22,330	24,477	27,648	26,369	6,736	6,667	6,575	6,391	6,666	6,697	7,031
Non-interest expense	37,988	44,247	46,820	51,320	53,329	13,109	13,098	13,266	13,856	13,958	14,022	14,350
MEMO												
Realized security gains or losses	−1	734	650	1,021	566	314	111	133	9	114	61	59
Ratios (percent)												
Return on average equity	13.07	12.52	13.52	13.12	13.25	13.55	13.30	13.49	12.67	13.32	13.64	13.53
Return on average assets	1.11	1.12	1.24	1.20	1.20	1.23	1.20	1.22	1.16	1.22	1.24	1.24
Net interest margin[8]	4.30	4.20	4.25	3.99	3.92	3.96	3.88	3.91	3.94	3.96	3.96	3.93
Efficiency ratio[7]	62.33	63.83	61.14	62.95	62.66	62.98	62.76	62.82	63.98	62.61	61.89	61.95
Nonperforming assets to loans and related assets	.78	.98	1.03	.98	.77	.97	.87	.85	.77	.75	.71	.69
Net charge-offs to average loans	.33	.44	.46	.39	.25	.23	.25	.24	.29	.17	.19	.20
Loans to deposits	84.04	83.15	82.18	82.90	85.78	82.99	84.32	85.46	85.78	85.88	87.07	86.87
Regulatory capital ratios												
Tier 1 risk-based	11.80	12.25	12.48	12.60	12.46	12.63	12.50	12.48	12.46	12.33	12.16	12.14
Total risk-based	13.26	13.81	14.08	14.28	14.07	14.29	14.14	14.11	14.07	13.92	13.73	13.71
Leverage	8.49	8.78	8.91	9.05	9.15	9.11	9.10	9.14	9.15	9.12	9.11	9.16
Number of other reporting bank holding companies	1,652	1,779	1,916	2,071	2,199	2,131	2,149	2,182	2,199	2,227	2,241	2,233

Footnotes appear on p. B5.

4. Nonfinancial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account	2000	2001	2002	2003	2004	2004				2005		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Bank holding companies that qualify as financial holding companies [11, 12]												
Domestic												
Number	300	389	435	452	474	465	471	477	474	472	470	470
Total assets	4,497,781	5,440,842	5,921,493	6,610,429	7,462,622	6,856,173	7,082,367	7,279,238	7,462,622	7,650,658	7,905,412	8,055,975
Foreign-owned [13]												
Number	9	10	11	12	14	13	14	14	14	15	15	15
Total assets	502,506	621,442	616,254	710,441	1,376,333	994,672	1,117,266	1,193,984	1,376,333	1,526,168	1,516,408	1,625,281
Total U.S. commercial bank assets [14]	**6,130,086**	**6,416,080**	**6,897,215**	**7,397,903**	**8,207,714**	**7,614,478**	**7,850,587**	**8,041,199**	**8,207,714**	**8,403,918**	**8,534,536**	**8,715,501**
By ownership												
Reporting bank holding companies	5,657,210	5,942,670	6,429,231	6,941,106	7,786,033	7,165,662	7,409,187	7,599,697	7,786,033	7,991,934	8,119,076	8,293,331
Other bank holding companies	229,274	230,467	227,016	219,222	209,176	213,193	211,725	208,697	209,176	204,796	206,260	211,750
Independent banks	243,603	242,944	240,968	237,575	212,504	235,623	229,675	232,805	212,504	207,189	209,199	210,420
Assets associated with nonbanking activities [12, 15]												
Insurance	n.a.	426,462	372,405	437,503	579,111	468,168	583,073	579,785	579,111	574,466	582,023	594,068
Securities broker–dealers	n.a.	n.a.	630,851	656,775	892,571	713,794	710,485	756,869	892,571	1,168,482	1,165,690	1,231,412
Thrift institutions	102,218	91,170	107,422	133,056	191,201	139,713	156,033	162,396	191,201	194,267	201,317	210,182
Foreign nonbank institutions	132,629	138,977	145,344	170,630	216,758	184,366	226,094	230,569	216,758	219,828	231,564	242,332
Other nonbank institutions	1,234,714	1,674,267	561,712	678,088	954,849	844,638	862,230	887,848	954,849	898,472	927,398	961,065
Number of bank holding companies engaged in nonbanking activities [12, 15]												
Insurance	n.a.	143	96	102	97	100	101	98	97	97	99	98
Securities broker–dealers	n.a.	n.a.	47	50	44	49	48	45	44	43	46	47
Thrift institutions	50	38	32	27	27	29	27	25	27	27	27	24
Foreign nonbank institutions	25	32	37	42	39	42	41	40	39	38	37	38
Other nonbank institutions	633	743	880	1,042	1,026	1,010	1,030	1,050	1,026	926	885	875
Foreign-owned bank holding companies [13]												
Number	21	23	26	27	29	27	28	28	29	29	30	30
Total assets	636,669	764,411	762,901	934,085	1,537,208	1,145,476	1,271,378	1,349,900	1,537,208	1,690,119	1,698,197	1,811,451
Employees of reporting bank holding companies (full-time equivalent)	1,859,930	1,985,981	1,992,559	2,034,358	2,162,179	2,099,126	2,085,733	2,133,299	2,162,179	2,168,162	2,199,910	2,218,470
Assets of fifty large bank holding companies [9, 17]												
Fixed panel (from table 2)	5,512,347	5,884,763	6,245,841	6,904,453	7,939,683	7,348,075	7,538,219	7,739,375	7,939,683	8,203,706	8,415,117	8,489,633
Fifty large as of reporting date	5,319,129	5,732,621	6,032,000	6,666,488	7,940,955	7,045,844	7,385,384	7,644,504	7,940,955	8,206,462	8,417,847	8,489,633
Percent of all reporting bank holding companies	78.90	76.60	75.50	75.10	76.80	75.30	76.00	76.80	76.80	76.60	76.80	75.50

NOTE: All data are as of the most recent period shown. The historical figures may not match those in earlier versions of this table because of mergers, significant acquisitions or divestitures, or revisions or restatements to bank holding company financial reports. Data for the most recent period may not include all late-filing institutions.

1. Covers top-tier bank holding companies except (1) those with consolidated assets of less than $150 million and with only one subsidiary bank and (2) multibank holding companies with consolidated assets of less than $150 million, with no debt outstanding to the general public and not engaged in certain nonbanking activities.

2. Data for all reporting bank holding companies and the fifty large bank holding companies reflect merger adjustments to the fifty large bank holding companies. Merger adjustments account for mergers, acquisitions, other business combinations and large divestitures that occurred during the time period covered in the tables so that the historical information on each of the fifty underlying institutions depicts, to the greatest extent possible, the institutions as they exist in the most recent period. In general, adjustments for mergers among bank holding companies reflect the combination of historical data from predecessor bank holding companies.

The data for the fifty large bank holding companies have also been adjusted as necessary to match the historical figures in each company's most recently available financial statement.

In general, the data are not adjusted for changes in generally accepted accounting principles.

3. Includes minority interests in consolidated subsidiaries.

4. Includes credit card lines of credit as well as commercial lines of credit.

5. Includes loans sold to securitization vehicles in which bank holding companies retain some interest, whether through recourse or seller-provided credit enhancements or by servicing the underlying assets. Securitization data were first collected on the FR Y-9C report for June 2001.

6. The notional value of a derivative is the reference amount of an asset on which an interest rate or price differential is calculated. The total notional value of a bank holding company's derivatives holdings is the sum of the notional values of each derivative contract regardless of whether the bank holding company is a payor or recipient of payments under the contract. The actual cash flows and fair market values associated with these derivative contracts are generally only a small fraction of the contract's notional value.

7. Income statement subtotals for all reporting bank holding companies and the fifty large bank holding companies exclude extraordinary items, the cumulative effects of changes in accounting principles, and discontinued operations at the fifty large institutions and therefore will not sum to Net income. The efficiency ratio is calculated excluding nonrecurring income and expenses.

8. Calculated on a fully-taxable-equivalent basis.

9. In general, the fifty large bank holding companies are the fifty largest bank holding companies as measured by total consolidated assets for the latest period shown. Excludes a few large bank holding companies whose commercial banking operations account for only a small portion of assets and earnings.

10. Excludes predecessor bank holding companies that were subsequently merged into other bank holding companies in the panel of fifty large bank holding companies. Also excludes those bank holding companies excluded from the panel of fifty large bank holding companies because commercial banking operations represent only a small part of their consolidated operations.

11. Exclude qualifying institutions that are not reporting bank holding companies.

12. No data related to financial holding companies and only some data on nonbanking activities were collected on the FR Y-9C report before implementation of the Gramm–Leach–Bliley Act in 2000.

13. A bank holding company is considered "foreign-owned" if it is majority-owned by a foreign entity. Data for foreign-owned companies do not include data for branches and agencies of foreign banks operating in the United States.

14. Total assets of insured commercial banks in the United States as reported in the commercial bank Call Report (FFIEC 031 or 041, Reports of Condition and Income). Excludes data for a small number of commercial banks owned by other commercial banks that file separate call reports yet are also covered by the reports filed by their parent banks. Also excludes data for mutual savings banks.

15. Data for thrift, foreign nonbank, and other nonbank institutions are total assets of each type of subsidiary as reported in the FR Y-9LP report. Data cover those subsidiaries in which the top-tier bank holding company directly or indirectly owns or controls more than 50 percent of the outstanding voting stock and that has been consolidated using generally accepted accounting principles. Data for securities broker–dealers are net assets (that is, total assets, excluding intercompany transactions) of broker–dealer subsidiaries engaged in activities pursuant to the Gramm–Leach–Bliley Act, as reported on schedule HC-M of the FR Y-9C report. Data for insurance activities are all insurance-related assets held by the bank holding company as reported on schedule HC-I of the FR Y-9C report.

Beginning in 2002:Q1, insurance totals exclude intercompany transactions and subsidiaries engaged in credit-related insurance or those engaged principally in insurance agency activities. Beginning in 2002:Q2, insurance totals include only newly authorized insurance activities under the Gramm–Leach–Bliley Act.

16. Aggregate assets of thrift subsidiaries were affected significantly by the conversion of Charter One's thrift subsidiary (with assets of $37 billion) to a commercial bank in the second quarter of 2002 and the acquisition by Citigroup of Golden State Bancorp (a thrift institution with assets of $55 billion) in the fourth quarter of 2002.

17. Changes over time in the total assets of the time-varying panel of fifty large bank holding companies are attributable to (1) changes in the companies that make up the panel and (2) to a small extent, restatements of financial reports between periods.

n.a. Not available

SOURCE: Federal Reserve Reports FRY-9C and FR Y-9LP, Federal Reserve National Information Center, and published financial reports.

Report on the Condition of the U.S. Banking Industry: Fourth Quarter, 2005

Total assets of reporting bank holding companies increased slightly (0.7 percent, or $77.8 billion) over the fourth quarter of 2005, to $11.3 trillion, as robust growth in loans—particularly real estate loans—was nearly offset by a scaling back of money market assets and investment securities portfolios. Noninterest income fell somewhat after a particularly strong third quarter, contributing to a modest decline in earnings. However, profitability ratios remained high and the nonperforming assets ratio held steady at a low level.

Loans continued to grow briskly, increasing 2.5 percent, or $135 billion, over the quarter. Real estate loans accounted for almost two-thirds of that expansion. Single-family mortgage loans increased $50 billion, or 3.4 percent (compared with 4.7 percent in the preceding quarter), with most of the growth reported to have been in fixed-rate products. Home equity lines of credit (most of which take the form of variable-rate loans) fell for the first time since early 1999 as short-term rates escalated. Commercial real estate lending increased $41 billion, spurred by a sharp rise in construction and land development loans up (7.7 percent, or $27 billion). Commercial and industrial (C&I) loans advanced (up 3.4 percent, or $33 billion), while unused commitments to lend grew 3.6 percent ($191 billion), to $5.4 trillion.

Reporting bank holding companies reduced their holdings of securities and money market assets $89 billion over the quarter. The declines in money market assets (down $70 billion) and money market liabilities (down $61 billion) were due mostly to changes at one of the four large bank holding companies at which banking operations account for a small proportion of the consolidated entity.[1] Downsized investment securities portfolios reflected the adverse effect of interest rate hikes on the market value of available-for-sale securities and efforts by bank holding companies to restructure their interest rate risk positions.

Banking organizations funded asset growth with deposits (mainly time deposits), which increased 2.5 percent ($138.5 billion). They reduced borrowings $80 billion over the same period, to $3.6 trillion. Tier 1 and total risk-based capital ratios remained largely unchanged at 9.14 percent and 11.86 percent respectively. The leverage ratio was also stable at 6.50 percent.

Net income for the fourth quarter was $33 billion, 5 percent less than for the third quarter, as trading revenues at large bank holding companies dropped modestly after a strong third quarter. Net interest income edged up somewhat despite a 2 basis point drop in the net interest margin—a decline attributable to further flattening in the term structure, increased reliance on higher cost deposits, and competitive loan pricing. Reflecting overall strong asset quality, loan-loss provisions declined moderately despite the effects of a spike in personal bankruptcy filings in October related to changes in the bankruptcy code. For 2005 as a whole, net income grew 16.8 percent, to a record $133.5 billion.

The nonperforming assets ratio improved for the sixth consecutive quarter, falling 1 basis point, to 0.69 percent, in the fourth quarter of 2005 despite a modest increase in nonaccrual loans. The rise of nonaccrual loans largely reflected a midyear clarification of regulatory reporting instructions such that bank holding companies were required to recognize on their balance sheets certain delinquent and nonaccruing residential mortgage loans that had been previously securitized and sold in connection with the issuance of Government National Mortgage Association (GNMA) mortgage-backed securities. Excluding the effect of the rebooked GNMA loans, nonaccrual loans would have fallen.

1. Financial information for four large bank holding companies (BHCs) at which banking operations represent only a small component of the consolidated entity is included in the data for all reporting bank holding companies shown in table 1 but not in the data for the fifty large bank holding companies (table 2) or for all other reporting bank holding companies (table 3). For background information on the institutions included in each table, see Board of Governors of the Federal Reserve System (2004), "Report on the Condition of the Banking Industry: Third Quarter, 2003," *Federal Reserve Bulletin*, vol. 90 (Winter), pp. 47–51.

1. Financial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio	2001	2002	2003	2004	2005	2004			2005			
						Q2	Q3	Q4	Q1	Q2	Q3	Q4
Balance sheet												
Total assets	**7,486,952**	**7,991,161**	**8,880,661**	**10,339,840**	**11,335,031**	**9,711,532**	**9,959,686**	**10,339,840**	**10,710,585**	**10,956,178**	**11,257,216**	**11,335,031**
Loans	3,832,553	4,079,878	4,435,683	5,109,517	5,661,179	4,802,958	4,948,873	5,109,517	5,187,006	5,357,361	5,525,769	5,661,179
Securities and money market	2,566,252	2,863,294	3,297,932	3,804,003	4,157,644	3,576,044	3,622,986	3,804,003	4,115,227	4,144,578	4,246,879	4,157,644
Allowance for loan losses	−68,833	−74,784	−73,817	−74,589	−73,048	−76,533	−76,045	−74,589	−73,384	−72,954	−74,091	−73,048
Other	1,156,980	1,122,774	1,220,864	1,500,910	1,589,256	1,409,065	1,463,872	1,500,910	1,481,737	1,527,193	1,558,659	1,589,256
Total liabilities	**6,901,281**	**7,350,380**	**8,177,651**	**9,453,247**	**10,395,315**	**8,938,467**	**9,107,754**	**9,453,247**	**9,820,042**	**10,035,271**	**10,328,190**	**10,395,315**
Deposits	4,025,769	4,357,245	4,705,043	5,249,489	5,702,150	5,005,101	5,064,670	5,249,489	5,349,232	5,447,870	5,563,613	5,702,150
Borrowings	2,073,869	2,245,146	2,630,386	3,158,539	3,587,786	2,956,594	3,055,917	3,158,539	3,424,839	3,526,569	3,668,250	3,587,786
Other	801,644	747,990	842,222	1,045,219	1,105,378	976,771	987,168	1,045,219	1,045,972	1,060,833	1,096,328	1,105,378
Total equity	**585,671**	**640,781**	**703,010**	**886,594**	**939,716**	**773,066**	**851,931**	**886,594**	**890,543**	**920,907**	**929,026**	**939,716**
Off-balance-sheet												
Unused commitments to lend	3,481,744	3,650,670	4,097,531	4,823,334	5,438,639	4,426,497	4,574,267	4,823,334	4,930,902	5,065,563	5,247,569	5,438,639
Securitizations outstanding	276,717	295,001	298,348	353,978	389,504	314,258	313,436	353,978	366,430	367,639	374,909	389,504
Derivatives (notional value, billions)	48,261	57,865	72,883	89,115	99,072	83,079	84,693	89,115	92,623	96,658	98,282	99,072
Income statement												
Net income	66,510	85,732	107,939	114,291	133,536	25,414	29,303	28,853	32,909	32,708	34,834	33,085
Net interest income	224,470	246,048	257,537	280,621	296,375	70,719	70,594	71,675	72,815	73,179	74,899	75,483
Provisions for loan losses	40,661	45,086	33,052	28,605	32,618	6,750	6,897	7,792	6,577	6,823	9,969	9,249
Non-interest income	218,984	221,516	250,608	271,467	295,263	72,269	64,150	67,661	73,557	71,933	77,484	72,290
Non-interest expense	302,141	296,966	316,338	357,711	370,959	99,804	84,759	90,009	91,505	91,436	94,062	93,957
MEMO												
Realized security gains or losses	4,338	4,598	5,771	5,491	1,333	1,012	2,022	480	417	1,478	484	−1,046
Ratios (percent)												
Return on average equity	11.86	14.11	16.28	14.48	14.73	13.26	14.13	13.37	14.86	14.58	15.18	14.32
Return on average assets	.91	1.11	1.26	1.17	1.21	1.05	1.19	1.12	1.24	1.20	1.25	1.16
Net interest margin	3.61	3.74	3.51	3.39	3.09	3.44	3.37	3.29	3.16	3.08	3.07	3.05
Efficiency ratio	66.93	62.41	61.76	63.45	61.69	67.26	62.50	64.34	60.50	61.72	61.64	63.82
Nonperforming assets to loans and related assets	1.44	1.44	1.15	.82	.69	.96	.89	.82	.76	.71	.70	.69
Net charge-offs to average loans	.91	1.04	.84	.67	.62	.66	.60	.71	.57	.52	.65	.72
Loans to deposits	95.20	93.63	94.28	97.33	99.28	95.96	97.71	97.33	96.97	98.34	99.32	99.28
Regulatory capital ratios												
Tier 1 risk-based	8.92	9.22	9.58	9.33	9.14	9.39	9.34	9.33	9.27	9.26	9.17	9.14
Total risk-based	11.92	12.28	12.60	12.21	11.86	12.25	12.17	12.21	12.14	12.02	11.90	11.86
Leverage	6.68	6.72	6.87	6.58	6.50	6.67	6.72	6.58	6.48	6.52	6.53	6.50
Number of reporting bank holding companies	1,842	1,979	2,134	2,254	2,269	2,211	2,240	2,254	2,282	2,296	2,290	2,269

Footnotes appear on p. B11.

2. Financial characteristics of fifty large bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio	2001	2002	2003	2004	2005	2004			2005			
						Q2	Q3	Q4	Q1	Q2	Q3	Q4
Balance sheet												
Total assets	**5,896,628**	**6,258,073**	**6,917,002**	**7,952,942**	**8,631,229**	**7,551,049**	**7,752,394**	**7,952,942**	**8,217,299**	**8,429,140**	**8,504,118**	**8,631,229**
Loans	2,966,220	3,149,737	3,397,895	3,940,022	4,345,561	3,693,983	3,801,975	3,940,022	3,990,831	4,109,294	4,235,596	4,345,561
Securities and money market	2,052,602	2,281,310	2,625,476	2,909,448	3,180,371	2,836,307	2,874,450	2,909,448	3,144,864	3,206,210	3,196,071	3,180,371
Allowance for loan losses	−56,742	−61,326	−59,501	−59,632	−57,200	−61,709	−61,098	−59,632	−58,262	−57,568	−58,340	−57,200
Other	934,547	888,352	953,131	1,163,104	1,162,497	1,082,468	1,137,067	1,163,104	1,139,866	1,171,205	1,130,792	1,162,497
Total liabilities	**5,447,009**	**5,770,085**	**6,385,249**	**7,262,665**	**7,904,519**	**6,960,480**	**7,094,073**	**7,262,665**	**7,522,981**	**7,716,021**	**7,787,215**	**7,904,519**
Deposits	3,036,139	3,274,459	3,527,010	3,962,539	4,287,130	3,773,663	3,807,661	3,962,539	4,032,396	4,094,428	4,163,829	4,287,130
Borrowings	1,876,798	2,039,878	2,356,069	2,709,429	3,074,410	2,640,035	2,739,587	2,709,429	2,894,633	3,023,279	3,096,579	3,074,410
Other	534,072	455,748	502,170	590,698	542,979	546,782	546,825	590,698	595,952	598,314	526,807	542,979
Total equity	**449,619**	**487,988**	**531,753**	**690,277**	**726,710**	**590,569**	**658,321**	**690,277**	**694,318**	**713,120**	**716,903**	**726,710**
Off-balance-sheet												
Unused commitments to lend	3,241,683	3,391,297	3,807,416	4,490,154	5,049,642	4,117,409	4,245,962	4,490,154	4,583,393	4,703,627	4,868,253	5,049,642
Securitizations outstanding	271,825	289,905	293,046	348,986	384,774	307,878	307,325	348,986	361,524	362,973	370,284	384,774
Derivatives (notional value, billions)	48,143	57,745	72,692	88,671	98,742	82,812	84,429	88,671	92,136	96,303	97,994	98,742
Income statement												
Net income	52,713	68,483	87,764	91,114	106,471	19,049	23,227	23,598	26,418	24,955	28,019	27,079
Net interest income	167,191	184,340	192,829	208,826	215,608	51,844	52,366	53,599	53,595	53,617	54,178	54,218
Provisions for loan losses	35,763	39,397	28,567	25,218	29,132	5,967	6,110	6,747	5,764	6,034	9,030	8,304
Non-interest income	174,694	172,960	195,988	211,609	231,103	55,141	48,477	54,501	57,940	54,527	60,388	58,248
Non-interest expense	225,064	216,487	229,974	261,557	266,632	73,420	60,203	66,816	66,508	65,638	66,637	67,848
MEMO												
Realized security gains or losses	4,320	5,027	5,159	4,589	1,678	698	1,765	520	211	1,426	464	−423
Ratios (percent)												
Return on average equity	12.23	14.70	17.46	14.97	15.11	12.99	14.42	14.01	15.27	14.28	15.74	15.15
Return on average assets	.92	1.13	1.31	1.20	1.26	1.00	1.20	1.19	1.29	1.18	1.32	1.25
Net interest margin	3.39	3.56	3.36	3.23	2.92	3.23	3.20	3.17	3.01	2.91	2.89	2.85
Efficiency ratio	64.64	59.60	58.78	60.68	58.70	65.20	59.04	61.67	57.23	59.12	58.15	61.19
Nonperforming assets to loans and related assets	1.56	1.56	1.21	.84	.70	1.00	.90	.84	.78	.72	.71	.70
Net charge-offs to average loans	1.04	1.20	.97	.80	.74	.78	.71	.83	.69	.62	.78	.86
Loans to deposits	97.70	96.19	96.34	99.43	101.36	97.89	99.85	99.43	98.97	100.36	101.72	101.36
Regulatory capital ratios												
Tier 1 risk-based	8.24	8.52	8.81	8.57	8.44	8.62	8.59	8.57	8.53	8.46	8.47	8.44
Total risk-based	11.58	11.95	12.19	11.84	11.56	11.87	11.81	11.84	11.80	11.60	11.61	11.56
Leverage	6.25	6.26	6.37	6.17	6.15	6.15	6.22	6.17	6.09	6.07	6.16	6.15

Footnotes appear on p. B11.

3. Financial characteristics of all other reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account	2001	2002	2003	2004	2005	2004			2005			
						Q2	Q3	Q4	Q1	Q2	Q3	Q4
Balance sheet												
Total assets	**1,277,090**	**1,401,228**	**1,536,518**	**1,697,136**	**1,863,085**	**1,623,811**	**1,662,071**	**1,697,136**	**1,727,381**	**1,778,877**	**1,827,312**	**1,863,085**
Loans	812,179	875,986	958,468	1,087,194	1,230,065	1,023,789	1,059,260	1,087,194	1,114,556	1,161,896	1,200,814	1,230,065
Securities and money market	357,366	406,771	448,872	474,175	474,176	464,121	466,412	474,175	471,898	468,280	472,613	474,176
Allowance for loan losses	−11,727	−13,021	−13,900	−14,558	−15,380	−14,470	−14,639	−14,558	−14,686	−14,932	−15,274	−15,380
Other	119,273	131,492	143,077	150,325	174,223	150,371	151,038	150,325	155,613	163,634	169,159	174,223
Total liabilities	**1,162,232**	**1,271,930**	**1,396,070**	**1,540,709**	**1,694,289**	**1,479,852**	**1,508,954**	**1,540,709**	**1,571,149**	**1,616,599**	**1,661,621**	**1,694,289**
Deposits	975,514	1,064,805	1,155,468	1,267,038	1,408,702	1,213,850	1,239,043	1,267,038	1,297,151	1,333,287	1,379,003	1,408,702
Borrowings	161,450	176,225	206,549	233,036	238,985	227,544	229,077	233,036	231,121	240,583	236,361	238,985
Other	25,267	30,900	34,054	40,635	46,602	38,458	40,835	40,635	42,877	42,729	46,256	46,602
Total equity	**114,859**	**129,299**	**140,447**	**156,427**	**168,795**	**143,958**	**153,117**	**156,427**	**156,232**	**162,278**	**165,691**	**168,795**
Off-balance-sheet												
Unused commitments to lend	229,887	247,466	277,202	319,808	368,764	294,070	310,987	319,808	333,109	346,354	360,557	368,764
Securitizations outstanding	4,567	4,358	4,159	2,877	2,885	3,000	2,757	2,877	2,792	2,667	2,697	2,885
Derivatives (notional value, billions)	89	88	95	144	104	112	121	144	99	101	102	104
Income statement												
Net income	13,659	16,460	17,774	19,512	21,457	4,812	5,018	4,888	5,214	5,440	5,650	5,153
Net interest income	45,676	50,485	52,608	56,844	63,028	13,883	14,408	14,821	15,124	15,560	16,189	16,155
Provisions for loan losses	4,461	5,058	4,268	3,156	3,188	787	801	763	683	735	890	880
Non-interest income	22,118	24,257	27,403	26,119	26,500	6,603	6,514	6,329	6,603	6,633	6,957	6,307
Non-interest expense	43,828	46,388	50,855	52,848	56,583	12,977	13,146	13,737	13,835	13,902	14,386	14,460
MEMO												
Realized security gains or losses	727	651	1,020	564	61	111	133	9	114	61	72	−186
Ratios (percent)												
Return on average equity	12.54	13.55	13.16	13.29	13.27	13.35	13.55	12.70	13.35	13.67	13.76	12.35
Return on average assets	1.13	1.25	1.21	1.21	1.21	1.21	1.23	1.17	1.22	1.24	1.26	1.12
Net interest margin	4.20	4.26	3.99	3.93	3.96	3.89	3.92	3.94	3.96	3.97	3.99	3.93
Efficiency ratio	63.75	61.06	62.85	62.56	61.88	62.66	62.72	63.93	62.54	61.84	61.53	62.68
Nonperforming assets to loans and related assets	.99	1.04	.99	.78	.69	.88	.86	.78	.75	.72	.70	.69
Net charge-offs to average loans	.44	.46	.39	.25	.20	.25	.24	.29	.17	.18	.21	.24
Loans to deposits	83.26	82.27	82.95	85.81	87.32	84.34	85.49	85.81	85.92	87.15	87.08	87.32
Regulatory capital ratios												
Tier 1 risk-based	12.24	12.47	12.60	12.46	12.16	12.50	12.48	12.46	12.33	12.16	12.12	12.16
Total risk-based	13.80	14.08	14.28	14.08	13.71	14.15	14.11	14.08	13.92	13.72	13.67	13.71
Leverage	8.78	8.91	9.05	9.15	9.18	9.09	9.14	9.15	9.12	9.11	9.14	9.18
Number of other reporting bank holding companies	1,778	1,915	2,070	2,198	2,215	2,148	2,181	2,198	2,226	2,240	2,234	2,215

Footnotes appear on p. B11.

4. Nonfinancial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account	2001	2002	2003	2004	2005	2004			2005			
						Q2	Q3	Q4	Q1	Q2	Q3	Q4
Bank holding companies that qualify as financial holding companies												
Domestic												
Number	389	435	452	474	462	471	477	474	472	470	472	462
Total assets	5,440,842	5,921,493	6,610,429	7,462,622	8,191,459	7,082,367	7,279,238	7,462,622	7,650,658	7,905,412	8,075,295	8,191,459
Foreign-owned												
Number	10	11	12	14	14	14	14	14	15	15	15	14
Total assets	621,442	616,254	710,441	1,376,333	1,561,559	1,117,266	1,193,984	1,376,333	1,526,168	1,516,408	1,625,281	1,561,559
Total U.S. commercial bank assets	**6,416,080**	**6,897,215**	**7,397,903**	**8,207,714**	**8,843,309**	**7,850,587**	**8,041,199**	**8,207,714**	**8,403,920**	**8,534,534**	**8,715,545**	**8,843,309**
By ownership												
Reporting bank holding companies	5,942,670	6,429,231	6,941,106	7,785,988	8,420,308	7,409,187	7,599,697	7,785,988	7,991,887	8,119,026	8,293,342	8,420,308
Other bank holding companies	230,467	227,016	219,222	209,115	219,983	211,725	208,697	209,115	204,739	206,203	211,674	219,983
Independent banks	242,944	240,968	237,575	212,611	203,018	229,675	232,805	212,611	207,294	209,306	210,529	203,018
Assets associated with nonbanking activities												
Insurance	426,462	372,405	437,503	579,111	594,847	583,073	579,785	579,111	574,466	582,023	594,068	594,847
Securities broker–dealers	n.a.	630,851	656,775	892,571	1,170,659	710,485	756,869	892,571	1,168,482	1,165,688	1,231,410	1,170,659
Thrift institutions	91,170	107,422	133,056	191,201	220,819	156,033	162,396	191,201	194,267	201,317	210,811	220,819
Foreign nonbank institutions	138,977	145,344	170,630	216,758	242,408	226,094	230,569	216,758	219,829	231,566	242,333	242,408
Other nonbank institutions	1,674,267	561,712	678,088	954,849	976,208	862,230	887,848	954,849	898,420	927,425	961,269	976,208
Number of bank holding companies engaged in nonbanking activities												
Insurance	143	96	102	97	97	101	98	97	97	99	98	97
Securities broker–dealers	n.a.	47	50	44	46	48	45	44	43	45	46	46
Thrift institutions	38	32	27	27	26	27	25	27	27	27	25	26
Foreign nonbank institutions	32	37	42	39	35	41	40	39	38	37	38	35
Other nonbank institutions	743	880	1,042	1,026	845	1,030	1,050	1,026	926	886	873	845
Foreign-owned bank holding companies												
Number	23	26	27	29	29	28	28	29	29	30	30	29
Total assets	764,411	762,901	934,085	1,537,208	1,747,765	1,271,378	1,349,900	1,537,208	1,690,119	1,698,197	1,811,451	1,747,765
Employees of reporting bank holding companies (full-time equivalent)	1,985,981	1,992,559	2,034,358	2,162,179	2,241,443	2,085,733	2,133,299	2,162,179	2,168,165	2,199,910	2,221,004	2,241,443
Assets of fifty large bank holding companies												
Fixed panel (from table 2)	5,896,628	6,258,073	6,917,002	7,952,942	8,631,229	7,551,049	7,752,394	7,952,942	8,217,299	8,429,140	8,504,118	8,631,229
Fifty large as of reporting date	5,732,621	6,032,000	6,666,488	7,940,955	8,631,229	7,385,384	7,644,504	7,940,955	8,206,462	8,417,847	8,489,633	8,631,229
Percent of all reporting bank holding companies	76.60	75.50	75.10	76.80	76.10	76.00	76.80	76.80	76.60	76.80	75.40	76.10

NOTE: All data are as of the most recent period shown. The historical figures may not match those in earlier versions of this table because of mergers, significant acquisitions or divestitures, or revisions or restatements to bank holding company financial reports. Data for the most recent period may not include all late-filing institutions.

1. Covers top-tier bank holding companies except (1) those with consolidated assets of less than $150 million and with only one subsidiary bank and (2) multibank holding companies with consolidated assets of less than $150 million, with no debt outstanding to the general public and not engaged in certain nonbanking activities.

2. Data for all reporting bank holding companies and the fifty large bank holding companies reflect merger adjustments to the fifty large bank holding companies. Merger adjustments account for mergers, acquisitions, other business combinations and large divestitures that occurred during the time period covered in the tables so that the historical information on each of the fifty underlying institutions depicts, to the greatest extent possible, the institutions as they exist in the most recent period. In general, adjustments for mergers among bank holding companies reflect the combination of historical data from predecessor bank holding companies.

The data for the fifty large bank holding companies have also been adjusted as necessary to match the historical figures in each company's most recently available financial statement.

In general, the data are not adjusted for changes in generally accepted accounting principles.

3. Includes minority interests in consolidated subsidiaries.

4. Includes credit card lines of credit as well as commercial lines of credit.

5. Includes loans sold to securitization vehicles in which bank holding companies retain some interest, whether through recourse or seller-provided credit enhancements or by servicing the underlying assets. Securitization data were first collected on the FR Y-9C report for June 2001.

6. The notional value of a derivative is the reference amount of an asset on which an interest rate or price differential is calculated. The total notional value of a bank holding company's derivatives holdings is the sum of the notional values of each derivative contract regardless of whether the bank holding company is a payor or recipient of payments under the contract. The actual cash flows and fair market values associated with these derivative contracts are generally only a small fraction of the contract's notional value.

7. Income statement subtotals for all reporting bank holding companies and the fifty large bank holding companies exclude extraordinary items, the cumulative effects of changes in accounting principles, and discontinued operations at the fifty large institutions and therefore will not sum to Net income. The efficiency ratio is calculated excluding nonrecurring income and expenses.

8. Calculated on a fully-taxable-equivalent basis.

9. In general, the fifty large bank holding companies are the fifty largest bank holding companies as measured by total consolidated assets for the latest period shown. Excludes a few large bank holding companies whose commercial banking operations account for only a small portion of assets and earnings.

10. Excludes predecessor bank holding companies that were subsequently merged into other bank holding companies in the panel of fifty large bank holding companies. Also excludes those bank holding companies excluded from the panel of fifty large bank holding companies because commercial banking operations represent only a small part of their consolidated operations.

11. Exclude qualifying institutions that are not reporting bank holding companies.

12. No data related to financial holding companies and only some data on nonbanking activities were collected on the FR Y-9C report before implementation of the Gramm–Leach–Bliley Act in 2000.

13. A bank holding company is considered "foreign-owned" if it is majority-owned by a foreign entity. Data for foreign-owned companies do not include data for branches and agencies of foreign banks operating in the United States.

14. Total assets of insured commercial banks in the United States as reported in the commercial bank Call Report (FFIEC 031 or 041, Reports of Condition and Income). Excludes data for a small number of commercial banks owned by other commercial banks that file separate call reports yet are also covered by the reports filed by their parent banks. Also excludes data for mutual savings banks.

15. Data for thrift, foreign nonbank, and other nonbank institutions are total assets of each type of subsidiary as reported in the FR Y-9LP report. Data cover those subsidiaries in which the top-tier bank holding company directly or indirectly owns or controls more than 50 percent of the outstanding voting stock and that has been consolidated using generally accepted accounting principles. Data for securities broker–dealers are net assets (that is, total assets, excluding intercompany transactions) of broker–dealer subsidiaries engaged in activities pursuant to the Gramm–Leach–Bliley Act, as reported on schedule HC-M of the FR Y-9C report. Data for insurance activities are all insurance-related assets held by the bank holding company as reported on schedule HC-I of the FR Y-9C report.

Beginning in 2002:Q1, insurance totals exclude intercompany transactions and subsidiaries engaged in credit-related insurance or those engaged principally in insurance agency activities. Beginning in 2002:Q2, insurance totals include only newly authorized insurance activities under the Gramm–Leach–Bliley Act.

16. Aggregate assets of thrift subsidiaries were affected significantly by the conversion of Charter One's thrift subsidiary (with assets of $37 billion) to a commercial bank in the second quarter of 2002 and the acquisition by Citigroup of Golden State Bancorp (a thrift institution with assets of $55 billion) in the fourth quarter of 2002.

17. Changes over time in the total assets of the time-varying panel of fifty large bank holding companies are attributable to (1) changes in the companies that make up the panel and (2) to a small extent, restatements of financial reports between periods.

n.a. Not available

SOURCE: Federal Reserve Reports FRY-9C and FR Y-9LP, Federal Reserve National Information Center, and published financial reports.

Legal Developments

Legal Developments: Fourth Quarter, 2005

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

ABC Bancorp
Moultrie, Georgia

Order Approving the Merger of Bank Holding Companies

ABC Bancorp ("ABC"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with First National Banc, Inc. ("FNB"), St. Marys, Georgia, and acquire its subsidiary banks, First National Bank ("First National-Georgia"), also of St. Marys, and First National Bank ("First National-Florida"), Orange Park, Florida.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 50,348 (2005)). 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 3 of the BHC Act.

ABC, with total consolidated assets of approximately $1.3 billion, operates subsidiary insured depository institutions in Alabama, Georgia, and Florida. In Georgia, ABC is the 15th largest depository organization, controlling deposits of approximately $722.4 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3] In Florida, ABC is the 186th largest depository organization, controlling deposits of approximately $108.9 million, which represent less than 1 percent of state deposits in Florida.

FNB, with total consolidated assets of approximately $269.5 million, operates subsidiary depository institutions in Georgia and Florida. In Georgia, FNB is the 132nd largest depository organization, controlling deposits of approximately $118.9 million. In Florida, FNB is the 227th largest depository organization, controlling deposits of approximately $68.4 million.

On consummation of the proposal, ABC would have consolidated assets of approximately $1.5 billion. In Georgia, ABC would become the 13th largest depository organization, controlling deposits of approximately $841.3 million, which represent less than 1 percent of state deposits. In Florida, ABC would become the 131st largest depository organization controlling deposits of approximately $177.3 million, which represent less than 1 percent of state deposits.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of ABC is Georgia,[4] and FNB is located in Georgia and Florida.[5]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[6] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

1. 12 U.S.C. § 1842.

2. Immediately after the merger of FNB into ABC, First National-Georgia will be merged into The First Bank of Brunswick ("Bank of Brunswick"), Brunswick, Georgia, a subsidiary bank of ABC. The proposed merger by Bank of Brunswick is subject to approval by the Federal Deposit Insurance Corporation ("FDIC") under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)).

3. Asset, deposit, and ranking data are as of June 30, 2005, and reflect merger activity as of November 15, 2005.

4. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

5. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

6. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). ABC is adequately capitalized and adequately managed, as defined by applicable law. First National-Florida has been in existence and operated for at least the minimum period of time required by applicable state law (three years). On consummation of the proposal, ABC would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Florida. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

ABC and FNB do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by ABC, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that ABC has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase. ABC will fund the cash component of the consideration with existing working capital. ABC, each of ABC's subsidiary banks, and FNB are well capitalized and would remain so on consummation of the proposal.[8]

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of ABC, FNB, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. ABC and its subsidiary depository institutions are considered to be well managed. The Board also has considered ABC's plans for implementing the proposal, including the proposed management after consummation.[9]

Based on all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10] The CRA requires the federal financial

7. 12 U.S.C. § 1842(c)(1).

8. First National-Georgia is not currently well capitalized, but as noted, ABC intends to merge that bank into Bank of Brunswick on consummation of the proposal. Bank of Brunswick would be well capitalized after consummation of that bank merger, and the Board has considered ABC's plans for the operation of the resulting bank and has consulted with the federal and state regulators responsible for supervising Bank of Brunswick.

9. A commenter asserted that ABC has exercised a controlling influence over FNB or its subsidiary banks without receiving the prior approval of the Board as required under the BHC Act. The Board has considered these comments in light of the Agreement and Plan of Merger ("Merger Agreement") between ABC and FNB, and other information provided by ABC about its relationship with FNB. ABC has confirmed to the Board that, despite certain provisions of the Merger Agreement, it has limited and will limit its relationships with FNB before consummation of the proposal in the following ways: no officers, directors, or agents of ABC have served or will serve as directors or management officials of FNB or its subsidiary banks; ABC has not installed, and will not require installation of, any of its policies and procedures (including but not limited to ABC's credit policy) at First National or its subsidiary banks; ABC has not made and will not make credit or underwriting decisions with respect to any loan applications made to First National or its subsidiary banks; and ABC has not exercised and will not otherwise exercise a controlling influence over the management or policies of FNB or its subsidiary banks. ABC has confirmed that, although one of its employees attended meetings of the boards of directors of FNB and its subsidiary banks as an observer before the filing of the application, no directors, officers, or agents of ABC will attend such board meetings before consummation of the proposal.

10. 12 U.S.C. § 2901 et seq.

supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[11]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of ABC and FNB, data reported by ABC and FNB under the Home Mortgage Disclosure Act ("HMDA"),[12] other information provided by ABC, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on data reported under HMDA, that ABC engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[13]

ABC's 12 subsidiary banks each received a rating of "satisfactory" or better at its most recent CRA performance evaluation.[14] FNB's subsidiary banks, First National-Georgia and First National-Florida, received "satisfactory" ratings at their most recent evaluations by the Office of the Comptroller of the Currency ("OCC"), as of March 8, 2005, and June 10, 2002, respectively. After consummation of the proposal, ABC will generally implement its current CRA policies, procedures, and programs at the banks acquired from FNB.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of ABC and FNB in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that ABC disproportionately denied applications for HMDA-reportable loans by Hispanic applicants. The commenter also asserted that ABC made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.[15] The Board reviewed HMDA data for 2003 and 2004 reported by each subsidiary bank of ABC in its assessment areas.[16]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not ABC is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[17] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by ABC and FNB with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA evaluations of the subsidiary depository institutions of ABC and FNB, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that ABC has taken steps to ensure compliance with fair lending and other consumer protection laws.[18] ABC represented that it currently

11. 12 U.S.C. § 2903.

12. 12 U.S.C. § 2801 et seq.

13. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

14. The appendix lists the most recent CRA performance ratings of ABC's subsidiary banks.

15. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

16. Only six of ABC's twelve subsidiary banks originated HMDA-reportable loans: Bank of Brunswick; Southland Bank, Dothan, Alabama; Tri-County Bank, Trenton, Florida; Heritage Community Bank, Quitman, Georgia; Citizens Bank-Wakulla, Crawfordville, Florida; and First National Bank of South Georgia ("South Georgia Bank"), Albany, Georgia.

17. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

18. A commenter questioned the completeness of information provided by ABC about its policies and procedures for ensuring compliance with fair lending laws. After the commenter expressed this

conducts quarterly compliance reviews of each bank's loans, along with annual fair lending reviews involving comparative-file analyses. ABC also stated that it maintains a second-review program for its residential lending. In addition, ABC requires all its employees to participate annually in fair lending and CRA compliance training. ABC has indicated that it will institute its current fair lending policies and procedures at the banks acquired from FNB.

The Board also has considered the HMDA data in light of other information, including ABC's CRA lending programs and the overall performance records of the subsidiary banks of ABC and FNB under the CRA.[19] These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by ABC, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the banking products and services available to customers of FNB. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[20] The Board's approval is specifically conditioned on compliance by ABC with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 30, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

concern, the Board received additional information from ABC about its fair lending compliance program.

19. A commenter asserted that the absence of any denied, withdrawn, or incomplete applications in the 2004 HMDA data reported by South Georgia Bank demonstrated the bank's violation of HMDA or the Equal Credit Opportunity Act. Commenter provided no evidence that the HMDA data are, in fact, inaccurate. The OCC, as the primary federal supervisor of South Georgia Bank, is responsible for evaluating the bank's compliance with HMDA and fair lending laws. The Board has consulted with the OCC about South Georgia Bank's record of compliance with these laws.

20. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix

CRA Ratings of ABC's Subsidiary Banks

Bank	CRA Rating	Date	Supervisor
Southland Bank, Dothan, Alabama	Satisfactory	June 2002	FDIC
American Banking Company, Moultrie, Georgia	Satisfactory	June 2003	FDIC
Citizens Security Bank, Tifton, Georgia	Satisfactory	March 2003	FDIC
The First Bank of Brunswick, Brunswick, Georgia	Satisfactory	February 2004	FDIC
First National Bank of South Georgia, Albany, Georgia	Satisfactory	November 1999	OCC
Heritage Community Bank, Quitman, Georgia	Satisfactory	October 2003	FDIC
Cairo Banking Company, Cairo, Georgia	Satisfactory	May 2003	FDIC
Merchants and Farmers Bank, Donalsonville, Georgia	Satisfactory	November 2002	FDIC
Citizens Bank-Wakulla, Crawfordville, Florida	Outstanding	September 1999	FDIC
Tri-County Bank, Trenton, Florida	Satisfactory	April 2005	FDIC
Central Bank & Trust, Cordele, Georgia	Satisfactory	November 2002	FDIC
Bank of Thomas County, Thomasville, Georgia	Satisfactory	October 2004	FDIC

Bank of America Corporation
Charlotte, North Carolina

Order Approving the Merger of Bank Holding Companies

Bank of America Corporation ("Bank of America"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with MBNA Corporation ("MBNA"), Wilmington, Delaware, and acquire MBNA's two subsidiary banks.[2] Bank of America also proposes to acquire MBNA's Edge corporation, organized under section 25A of the Federal Reserve Act.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 44,650 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC and Federal Reserve Acts.[4]

Bank of America, with total consolidated assets of approximately $1.3 trillion, is the second largest depository organization in the United States.[5] Bank of America operates six depository institutions[6] with branches in 29 states and the District of Columbia, and it engages nationwide in numerous permissible nonbanking activities.

MBNA, with total consolidated assets of approximately $63 billion, operates two depository institutions, MBNA America Bank, National Association ("MBNA Bank") and MBNA America (Delaware), N.A. ("MBNA Delaware Bank"), both of Wilmington, Delaware, with branches only in Delaware. MBNA is the 23rd largest depository organization in the United States. It also engages in a broad range of permissible nonbanking activities.

On consummation of the proposal, Bank of America would remain the second largest depository organization in the United States, with total consolidated assets of approximately $1.3 trillion. The combined organization would operate under the name of Bank of America Corporation.

1. 12 U.S.C. § 1842.

2. Bank of America also has requested the Board's approval to hold and exercise an option that allows Bank of America to purchase up to 19.9 percent of MBNA's voting securities if certain events occur. This option would expire on consummation of the proposal by Bank of America to merge with MBNA. In addition, Bank of America proposes to acquire the nonbanking subsidiaries of MBNA in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

3. 12 U.S.C. § 611 et seq.

4. Thirteen commenters expressed concerns on various aspects of the proposal.

5. Asset and national ranking data are as of September 30, 2005, and reflect mergers and acquisitions as of December 1, 2005.

6. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Bank of America is North Carolina,[7] and MBNA's subsidiary banks are located in Delaware.[8]

The Board may not approve an interstate proposal under section 3(d) if the applicant controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States ("nationwide deposit cap"). The nationwide deposit cap was added to section 3(d) when Congress broadly authorized interstate acquisitions by bank holding companies and banks in the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle–Neal Act").[9] The intended purpose of the nationwide deposit cap was to help guard against undue concentrations of economic power.[10] Although the nationwide deposit cap prohibits interstate acquisitions by a company that controls deposits in excess of the cap, it does not prevent a company from exceeding the nationwide deposit cap through internal growth and effective competition for deposits or through acquisitions entirely within the home state of the acquirer.[11]

As required by section 3(d), the Board has carefully considered whether Bank of America controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions[12] in the United States. The Board calculated the percentage of total deposits of insured depository institutions in the United States and the total deposits that Bank of America controls, and on consummation of the proposal would control, in the same manner as described in the Board's order in 2004 approving Bank of America's acquisition of FleetBoston Financial Corporation ("BOA/Fleet Transaction").[13]

The Board used the deposit data reported by depository institutions to the FDIC and the Office of Thrift Supervision ("OTS"). Each insured bank in the United States must report data regarding its total deposits in accordance with the definition of "deposit" in the FDI Act on the institution's Consolidated Report of Condition and Income ("Call Report").[14] Each insured savings association similarly must report its total deposits on the institution's Thrift Financial Report ("TFR"). Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks ("RAL"). These data are reported on a quarterly basis to the FDIC and are publicly available.

The Call Report, TFR, and RAL represent the best and most complete data reported by all insured depository institutions in the United States.[15] Consequently, the Board has relied on the data collected in these reports to calculate the total amount of deposits of insured depository institutions in the United States and the total amount of deposits held by Bank of America, both before and on consummation of the proposed transaction, for purposes of applying the nationwide deposit cap in this case. The line items for total domestic deposits on the Call Report, TFR, and RAL do not require reporting of the total amount of deposits as defined in section 3(*l*) of the FDI Act. Therefore, the Board has calculated Bank of America's share of the total amount of deposits of insured depository institutions in the United States using the items on the Call Reports, TFRs, and RALs, and the formulation described in the attached appendix and the *BOA/Fleet Order*.[16] This formulation,

7. *See* 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

8. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

9. Pub. L. No. 103–328, 108 Stat. 2338 (1994).

10. *See* S. Rep. No. 102–167 at 72 (1991).

11. One commenter asserted that the nationwide deposit cap does not allow for internal growth above 10 percent of the total amount of deposits of insured depository institutions in the United States, and another commenter urged the Board to order Bank of America to reduce its share of nationwide deposits.

12. The BHC Act adopts the definition of "insured depository institution" used in the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.) ("FDI Act"). *See* 12 U.S.C. § 1841(n). The FDI Act contains an identical nationwide deposit cap applicable to bank-to-bank mergers and, consequently, many of the terms used in the nationwide deposit cap in the BHC Act refer to terms or definitions contained in the FDI Act. The FDI Act's definition of "insured depository institution" includes all banks (whether or not the institution is a bank for purposes of the BHC Act), savings banks, and savings associations that are insured by the Federal Deposit Insurance Corporation ("FDIC") and insured U.S. branches of foreign banks, as each of those terms is defined in the FDI Act. *See* 12 U.S.C. § 1813(c)(2).

13. *See Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 219 (2004) ("*BOA/Fleet Order*"). The terms "United States" and "State" are not defined in the BHC Act. For the reasons explained in the *BOA/Fleet Order*, the Board believes that the term "United States" includes the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the islands formerly referred to as the Trust Territory of the Pacific Islands, and any territory of the United States. All banks operating in those areas are eligible for FDIC deposit insurance and are subject to the jurisdiction of the FDIC in the same manner as other FDIC-insured banks. This definition is also consistent with the definition of "United States" contained in the Board's Regulation Y, which governs applications under section 3 of the BHC Act.

14. Section 3(d) of the BHC Act also specifically adopts the definition of "deposit" in the FDI Act. 12 U.S.C. § 1842(d)(2)(E) (incorporating the definition of "deposit" at 12 U.S.C. § 1813(*l*)).

15. *BOA/Fleet Order* at 220.

16. *BOA/Fleet Order* at 235. Several commenters questioned whether the proposed acquisition would violate the nationwide deposit cap, and one commenter suggested that the Board should rely on the Summary of Deposits ("SOD") data collected annually by the FDIC or that the Board not follow the formulation used in the BOA/Fleet Transaction. As noted in the *BOA/Fleet Order*, SOD data disclose an institution's deposits broken out by branch office. However, SOD data are not, and are not intended to be, an exact representation of deposits as defined in the FDI Act. Rather, these data are intended to provide a useful proxy for the size of each institution's presence in various banking markets primarily for the purpose of conducting examina-

which the Board developed in consultation with staff of the FDIC, conforms the data on Call Reports, TFRs, and RALs as closely as possible to the statutory definition of deposits in the FDI and BHC Acts.[17]

Based on the latest Call Report, TFR, and RAL data available for all insured depository institutions, the total amount of deposits of insured depository institutions in the United States is approximately $6.195 trillion. Also based on the latest Call Report, Bank of America (including all its insured depository institution affiliates) controls deposits of approximately $570.9 billion and MBNA (including all its insured depository institution affiliates) controls deposits of approximately $28.1 billion. Bank of America, therefore, currently controls approximately 9.2 percent of total U.S. deposits. On consummation of the proposed transaction, Bank of America would control approximately 9.7 percent of the total amount of deposits of insured depository institutions in the United States.

Therefore, the Board finds that Bank of America does not now control, and on consummation of the proposed transaction would not control, an amount of deposits that would exceed the nationwide deposit cap.

Section 3(d) also prohibits the Board from approving a proposal if, on consummation, the applicant would control 30 percent or more of the total deposits of insured depository institutions in any state in which both the applicant and the organization to be acquired operate an insured depository institution, or such higher or lower percentage that is established by state law.[18] This prohibition does not apply in this case because there are no states in which both Bank of America and MBNA operate insured depository institutions.

All other requirements of section 3(d) of the BHC Act also would be met on consummation of the proposal.[19] Based on all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. It also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[20] The Board has carefully considered the competitive effects of the proposal in light of all the facts of record, including public comments on the proposal.

Some commenters argued that the proposed merger would have adverse competitive effects. Many of these commenters expressed concern that large bank mergers in general, or the proposed merger of Bank of America and MBNA in particular, would have adverse effects on competition nationwide, especially among credit card issuers. Some commenters also contended that the proposed merger would result in higher fees and costs.

To determine the effect of a proposed transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant "line of commerce" or product market and a geographic market. The Board and the courts have consistently recognized that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.[21] Several studies support the conclusion that businesses and households continue to seek this cluster of services.[22] Consistent with these precedents and studies, and on the basis of the facts of record in this case, the Board concludes that the cluster of banking products and services represents the appropriate product market for analyzing the competitive effects of this proposal.

In defining the relevant geographic market, the Board and the courts have consistently held that the geographic market for the cluster of banking products and services is local in nature. MBNA's subsidiary banks are located and

tions and performing competitive analyses in local banking markets. Consequently, use of SOD data would require a variety of adjustments, most of which would be based on Call Report, TFR, and RAL data. Moreover, SOD data are collected only once a year at the end of the second quarter, which means that the most recent SOD data provide an estimation of deposits held by institutions almost six months ago. Call Report data, on the other hand, are collected each quarter, with the most recent data representing deposits as of September 30, 2005. Given the limitations of SOD data, the Board believes that Call Report, TFR, and RAL data provide a more complete and accurate representation of the amount of deposits held by the institutions involved in this transaction and by all insured depository institutions in the United States as of the date the Board has considered the proposal than SOD data provide.

17. *BOA/Fleet Order* at 220.

18. 12 U.S.C. § 1842(d)(2)(B)–(D).

19. Bank of America is adequately capitalized and adequately managed as defined in the Riegle–Neal Act (12 U.S.C. § 1842(d)(1)(A)). MBNA's subsidiary banks have been in existence and operated for the minimum age requirements established by applicable state law. *See* 12 U.S.C. § 1842(d)(1)(B); *see also* Order of the Delaware State Bank Commissioner ("Delaware Commissioner") dated October 14, 2005. The other requirements in section 3(d) of the BHC Act also would be met on consummation of the proposal.

20. 12 U.S.C. § 1842(c)(1).

21. *See Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239 (1996) and the cases and studies cited therein. The Supreme Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963); *accord United States v. Connecticut National Bank*, 418 U.S. 656 (1974); *United States v. Phillipsburg National Bank*, 399 U.S. 350 (1969).

22. Cole and Wolken, *Financial Services Used by Small Businesses: Evidence from the 1993 National Survey of Small Business Finance*, 81 *Federal Reserve Bulletin* 629 (1995); Elliehausen and Wolken, *Banking Markets and the Use of Financial Services by Households*, 78 *Federal Reserve Bulletin* 169 (1992); Elliehausen and Wolken, *Banking Markets and the Use of Financial Services by Small- and Medium-Sized Businesses*, 76 *Federal Reserve Bulletin* 726 (1990).

hold deposits only in Delaware. Bank of America does not maintain branches or hold deposits in Delaware. Accordingly, Bank of America and MBNA do not compete directly in any relevant banking market as currently defined by the Board and the courts.

Although the Board believes that the cluster of services appropriately defines the market for analyzing competitive effects of bank acquisitions, the Board has also reviewed the competitive effects of this proposal based on an alternative approach that recognizes that the business of MBNA is focused narrowly on issuing credit cards. Even viewing competitive effects on this basis, however, the proposal is unlikely to have a significantly adverse effect on competition. The Board notes that the submarket for credit card issuance is only moderately concentrated and would remain so after consummation of the proposal (whether evaluated by number of accounts, dollar balances outstanding, or dollar volume year-to-date). In addition, issuing credit cards is an activity that is conducted on a national or global scale, with relatively low barriers to entry and with numerous other large financial organizations providing these services.

The Department of Justice has conducted a detailed review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have any significantly adverse effect on competition. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. In reviewing these factors, the Board has considered, among other things, confidential reports of examination and other supervisory information from the primary federal supervisors of the organizations involved in the proposal. In addition, the Board has consulted with the relevant supervisory agencies, including the Office of the Comptroller of the Currency ("OCC"), the Securities and Exchange Commission ("SEC"), and the Delaware Commissioner. The Board also has considered publicly available financial and other information on the organizations and their subsidiaries, all information on the proposal's financial and managerial aspects submitted by Bank of America and MBNA during the application process, and public comments received by the Board on the proposal.

The Board received several comments criticizing the financial and managerial resources of Bank of America, MBNA, or their respective subsidiaries.[23] Some commenters expressed concerns about the credit card lending practices of Bank of America, MBNA, or the credit card industry in general.[24]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board has consistently considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Bank of America, MBNA, and their subsidiary banks are well capitalized and would remain so on consummation of the proposal.[25] Based on its review of the financial factors in this case, the Board finds that Bank of America has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and partial cash purchase. Bank of America will use existing cash resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of Bank of America, MBNA, and the combined organization. In evaluating the managerial resources of a banking organization in an expansion proposal, the Board considers assessments of an organization's risk management—that is, the ability of the organization's board of directors and senior management to identify, measure, monitor, and control risk across all business and corporate lines in the organization—to be especially important.[26] The Board has

23. Commenters also expressed concerns about the following matters: (1) MBNA's legislative lobbying efforts; (2) the amount of Bank of America's and MBNA's political campaign contributions; and (3) past or potential job losses or outsourcing as a result of this or past mergers. These contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

24. Several commenters alleged that Bank of America, MBNA, and generally the credit card industry engaged in "deceptive" credit card lending practices through, among other practices, universal default clauses in credit card agreements, misleading advertising of interest rates, and confusing fee structures. Some of these commenters urged the Board to impose conditions requested by the commenters in light of the concerns expressed about the credit card industry. Based on consultations with the primary supervisor of the credit card lending subsidiaries of Bank of America and MBNA, there does not appear to be any evidence of noncompliance with existing laws and regulations that would weigh against approval of the application.

25. Some commenters alleged that the compensation for MBNA's senior management under severance agreements or other compensation agreements is excessive. The Board notes that the severance and compensation agreements have been disclosed to shareholders and that Bank of America would remain well capitalized on consummation.

26. *See Revisions to Bank Holding Company Rating System*, 69 *Federal Register* 70,444 (2004). One commenter questioned whether the combined organization would present special risks to the

reviewed the examination records of Bank of America, MBNA, and the subsidiary depository institutions of each organization, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law.[27] Bank of America, MBNA, and their subsidiary depository institutions are considered to be well managed.

In addition, the Board reviewed Bank of America's plans for implementing the proposal, including the proposed management and operation of the combined organization's credit card activities after consummation. The Board considered Bank of America's record of successfully integrating acquired institutions and credit card businesses into its existing operations.

The Board also considered the existing compliance systems and internal audit programs at Bank of America and its subsidiary depository institutions and significant nonbanking subsidiaries, and the assessments of these systems and programs by the relevant federal supervisory agencies. The Board consulted with the OCC, the primary federal regulator of Bank of America's and MBNA's subsidiary depository institutions.[28] The Board also considered confidential supervisory information and consulted with the SEC about Bank of America's nonbanking securities activities. Moreover, the Board considered information provided by Bank of America on enhancements the organization has made to its compliance systems and programs as part of an ongoing review, development, implementation, and maintenance of effective risk-management policies and programs for its operations.[29] After careful consideration of all the facts of record, the Board has determined that Bank of America's managerial resources, including its risk-management systems, are consistent with approval.

Based on these and all the facts of record, including a review of all the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Bank of America, MBNA, and their respective subsidiaries are consistent with approval of the proposal.[30] The Board also finds that the other supervisory factors that it must consider under section 3 of the BHC Act are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment

federal deposit insurance funds or the financial system in general. The commenter also expressed concerns about Bank of America's financial resources, risk management, and future prospects. These concerns were based entirely on public information about Bank of America's investments in China and its credit card lending to small businesses, and on the commenter's perception of the combined institution's possible exposure to interest-rate and credit risks and risks in general. As noted, the Board has reviewed publicly available information as well as confidential supervisory information in assessing the financial and managerial resources of Bank of America, MBNA, and the proposed combined organization.

27. Some commenters expressed concern about press reports regarding the loss and theft of some of Bank of America's customer data and contended that greater risks to customer data would exist on consummation of the proposal. Bank of America and MBNA have policies and procedures in place to address the sharing and safeguarding of customer information. Other commenters alleged that Bank of America's lead bank, Bank of America, N.A. ("BA Bank"), Charlotte, North Carolina, has violated California labor law by charging fees to individuals without accounts at BA Bank who cash paychecks issued by Bank of America's payroll customers. The litigation about this matter is still pending. The Board will continue to monitor this issue and consult with the OCC, the primary federal supervisor of BA Bank.

28. The Board received comments asserting that Bank of America lacks sufficient policies and procedures and other resources to prevent money laundering based, in part, on reports that BA Bank and other subsidiaries of Bank of America held accounts for certain international leaders or their families. As part of its review of managerial factors, the Board reviewed confidential supervisory information on the policies, procedures, and practices of Bank of America and its subsidiary banks to comply with the Bank Secrecy Act and consulted with the OCC.

29. Some commenters asserted that the Board should deny Bank of America's application based on press reports of various investigations or litigation regarding certain past tax planning, mutual fund, and structured-finance transactions with certain domestic and international corporate entities. The Board has consulted with the SEC on these matters and notes that the SEC has generally concluded its investigations into the mutual fund matters. The Board also has reviewed Bank of America's compliance with the Written Agreement with the Federal Reserve Bank of Richmond concerning the organization's mutual fund-related activities. In addition, Bank of America has settled most matters involving structured-finance transactions and revised its policies regarding such transactions. The Board will continue to monitor developments on the tax-planning-vehicle investigations, which involve matters beyond the jurisdiction of the Board. Importantly, Bank of America has taken actions to enhance corporate governance capabilities, improve its monitoring of mutual fund operations, and provide more stringent disclosure requirements for structured-finance clients.

30. Several commenters reiterated the concerns they expressed in comments on the BOA/Fleet Transaction about Bank of America's relations with unaffiliated third parties engaged in subprime lending, check cashing, automobile-title lending, and operating pawnshops. They asserted that Bank of America performed inadequate due diligence to screen for "predatory" loans, and some commenters urged Bank of America to adopt particular factors or methods for such screening. Several commenters also criticized Bank of America for its investment in OwnIt Mortgage ("OwnIt"), formerly Oakmont Mortgage Company, Woodland Hills, California. Bank of America represented that its investment in OwnIt is a passive, noncontrolling investment. As a general matter, the activities of the consumer finance businesses identified by the commenters are permissible, and the businesses are licensed by the states where they operate. *See BOA/Fleet Order* 217, at 223 n.29 (2004). Moreover, none of these commenters provided evidence that Bank of America had originated, purchased, or securitized "predatory" loans or otherwise engaged in abusive lending practices. Bank of America provides warehouse lines-of-credit to subprime lenders and other consumer finance companies, and purchases subprime mortgage loans from unaffiliated lenders and securitizes pools of subprime mortgage loans. Bank of America has policies and procedures to help ensure that the subprime loans it purchases and securitizes are in compliance with applicable state and federal consumer protection laws.

Act ("CRA").[31] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and it requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Bank of America and MBNA, including public comments on the effect the proposal would have on the communities to be served by the resulting organization.

In response to the Board's request for public comment on this proposal, several commenters submitted comments that expressed concern about the lending records of Bank of America or MBNA, recommended approval only if subject to conditions suggested by the commenter, or opposed the proposal. Some commenters who opposed the proposal alleged that Bank of America has not addressed the diversity and community reinvestment needs of California communities.[32] A commenter who neither supported nor opposed the proposal expressed concern that the acquisition of MBNA could negatively affect Delaware's LMI residents if MBNA's current CRA programs were altered.[33] In addition, some commenters expressed concern, based on data submitted under the Home Mortgage Disclosure Act ("HMDA"),[34] that Bank of America and MBNA engaged in disparate treatment of minority individuals in home mortgage lending.

Bank of America stated that it would work to combine the community development and community investment activities of the two institutions to strengthen and meet the banking needs of its communities and that it has no current plans to discontinue any products or services of MBNA.[35]

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the appropriate federal supervisors' examinations of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[36]

Bank of America's lead bank, BA Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2001 ("2001 Evaluation").[37] MBNA's lead bank, MBNA Bank, also received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of April 4, 2005. All other subsidiary banks of Bank of America and MBNA subject to the CRA received "satisfactory" ratings at their most recent CRA performance evaluations by the OCC.[38]

CRA Performance of BA Bank. The 2001 Evaluation of BA Bank was discussed in the *BOA/Fleet Order*.[39] Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in that order concerning BA Bank's CRA performance record. Bank of America provided the Board with additional information about its CRA performance since its 2001 Evaluation and the *BOA/Fleet Order*. The Board also consulted with the OCC with respect to BA Bank's CRA performance since the 2001 Evaluation.[40]

In the 2001 Evaluation, examiners commended BA Bank's overall lending performance, which they described as demonstrating excellent or good lending-test results in all its rating areas. Examiners reported that the distribution of HMDA-reportable mortgage loans among areas of different income levels was good, and they commended BA Bank for developing mortgage loan programs with flexible underwriting standards, such as its Neighborhood Advantage programs, which assisted in meeting the credit needs

31. 12 U.S.C. § 2901 et seq.

32. These commenters reiterated allegations made during the BOA/Fleet Transaction that Bank of America has not been responsive to California community groups and has failed to work with local government in addressing California's unique and diverse needs, particularly in San Diego. The commenters also criticized BA Bank for not providing adequate banking services or products to LMI residents in California.

33. Several commenters criticized Bank of America's performance under its previous community reinvestment pledges, urged the Board to require Bank of America to provide specific pledges or plans, or asked the Board to condition its approval on a commitment by Bank of America to improve its CRA record. The Board views the enforceability of such third-party pledges, initiatives, and agreements as matters outside the CRA. The Board has consistently explained that an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action. Moreover, the Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See BOA/Fleet Order* at 232–33. Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

34. 12 U.S.C. § 2801 et seq.

35. Bank of America represented that it is evaluating the products and services currently offered by MBNA and that no decisions have been made about the aspects of Bank of America's community development program in Delaware.

36. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

37. The evaluation period for the 2001 Evaluation was January 1, 2000, through December 31, 2001.

38. Bank of America, National Association (USA), Phoenix, Arizona, received a "satisfactory" rating, as of December 31, 2001; MBNA Delaware Bank received a "satisfactory" rating, as of April 7, 2003.

39. *See BOA/Fleet Order* at 225–229.

40. One commenter forwarded a number of consumer complaints regarding BA Bank that had been filed with various regulators. The Board has consulted with, and forwarded these letters to, the OCC's consumer complaint function.

of BA Bank's assessment areas.[41] Examiners also reported that the bank's small business lending was excellent or good in the majority of its rating areas, and they commended the distribution of small business loans among businesses of different sizes in several of BA Bank's assessment areas.[42] In addition, examiners noted in the 2001 Evaluation that BA Bank's level of community development lending was excellent.

Since the 2001 Evaluation and the *BOA/Fleet Order*, BA Bank has maintained a substantial level of home mortgage, small business, and community development lending. The bank originated more than 395,000 HMDA-reportable home mortgage loans totaling more than $102 billion throughout its assessment areas in 2004. Bank of America reported that more than 103,000 of those loans totaling more than $10.6 billion were originated to LMI individuals through Bank of America's various affordable mortgage products, such as loans requiring no or low down payments, as well as FHA and VA products.[43] From October 1, 2003, through September 30, 2004, BA Bank was recognized by the SBA as the leading small business lender in the country, based on its origination of almost 13,000 SBA loans totaling more than $451 million. Bank of America represented that BA Bank's total community development lending reached approximately $2.3 billion in 2004.

In the 2001 Evaluation, examiners reported that BA Bank consistently demonstrated strong investment-test performance, noting that its performance was excellent or good in the majority of its assessment areas. During the evaluation period, BA Bank funded more than 17,000 housing units for LMI families through its community development investments throughout its assessment areas.[44] Examiners commended BA Bank for taking a leadership role in developing and participating in complex investments that involved multiple participants and both public and private funding.

Since the 2001 Evaluation, BA Bank has continued its strong community-development investment activity in its assessment areas. Bank of America represented that BA Bank made more than $1 billion in qualifying investments in 2004 and that BA Bank's subsidiary community development corporation had helped develop more than 6,000 housing units in LMI census tracts or for LMI individuals since 2002.

Examiners commended BA Bank's service performance throughout its assessment areas in the 2001 Evaluation.[45] They reported that the bank's retail delivery systems were generally good and that the bank's distribution of branches among geographies of different income levels was adequate.[46] Examiners also commended BA Bank for its community development services, which typically responded to the needs of the communities served by the bank throughout its assessment areas.

CRA Performance of MBNA Bank. As noted, MBNA Bank received an overall "outstanding" rating in its April 2005 evaluation.[47] MBNA Bank engages primarily in credit card operations and is designated as a limited purpose bank for purposes of evaluating its CRA performance. As such, it is evaluated under the community development test, and examiners may consider the bank's community development investments, loans, and services nationwide rather than only in the bank's assessment area.[48]

Examiners reported that during the evaluation period, MBNA Bank had a level of qualified community development investments commensurate with its size, financial capacity, and available opportunities. During the evaluation period, MBNA made financial commitments totaling $454.6 million for qualified investments and community development loans. In addition, examiners reported that MBNA Bank provided $48.9 million in qualified grants that benefited more than 360 community development organizations and programs and contributed an additional $58.3 million to nonprofit agencies providing consumer credit counseling throughout the United States.

Examiners commended MBNA Bank's responsiveness to the credit needs of its assessment area. They reported that MBNA Bank was highly responsive to the credit needs of LMI individuals and communities and offered many affordable housing programs for LMI individuals and families. Examiners noted that MBNA Bank substantially met the affordable housing needs of its assessment area through both qualified investments and community development loans. In addition, examiners commended the bank's commitment to enhancing educational opportunities for disadvantaged students from LMI families. They also reported

41. Some commenters criticized Bank of America's record of serving the credit needs of LMI residents in the San Diego area. In the 2001 Evaluation, BA Bank received an "outstanding" rating under the lending test in its California assessment areas. Bank of America represented that it has consistently increased lending and investment in San Diego each year since the evaluation. For example, Bank of America represented that its overall amount of CRA lending and investment in San Diego totaled $271.6 million in 2001 and had increased to $322.1 million by the end of 2003.

42. In this context, "small business loans" are loans with original amounts of $1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to U.S. addresses.

43. In June 2003, Bank of America began a new nationwide loan program to support the construction of 15,000 new affordable housing units within three years.

44. Bank of America also has provided grants to nonprofit organizations, such as ACCION and the New Mexico Community Development Loan Fund, that originate microloans in amounts as low as $500 and promote SBA programs.

45. Some commenters asserted that Bank of America should augment its array of banking services to LMI customers in California and specifically criticized Bank of America for not providing certain deposit products designed for LMI customers that were recommended by California community groups. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes their costs to the consumer.

46. Some commenters alleged that Bank of America does not maintain banking centers in LMI communities in the San Diego area. Bank of America noted that 28 of its 74 banking centers in the San Diego area (38 percent) were in LMI census tracts, as of September 2005.

47. The evaluation period was from January 1, 2002, through December 31, 2004.

48. *See* 12 CFR 25.25.

that MBNA Bank was very responsive to small-business financing needs in the assessment area.

B. HMDA Data and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of Bank of America and MBNA in light of public comments received on the proposal. One commenter alleged, based on 2004 HMDA data, that Bank of America denied the home mortgage loan applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various states, the District of Columbia, and Metropolitan Statistical Areas ("MSAs"). Another commenter alleged that, based on 2003 HMDA data, MBNA denied home mortgage loan applications from African Americans and Hispanics more frequently than applications from nonminorities in certain markets. The commenters also alleged that Bank of America, MBNA, and their subsidiaries made higher-cost loans more frequently to African-American and Hispanic borrowers than to nonminority borrowers.[49] The Board reviewed the 2003 and 2004 HMDA data reported by Bank of America, MBNA, and their subsidiary banks.[50]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Bank of America or MBNA is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[51] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by the subsidiary depository and lending institutions of Bank of America and MBNA with fair lending laws. Examiners noted no substantive violations of applicable fair lending laws in the examinations of the depository institutions controlled by Bank of America or MBNA. In addition, the Board has consulted with the OCC, the primary federal supervisor of Bank of America's and MBNA's subsidiary banks.

The record also indicates that Bank of America and MBNA have taken steps to ensure compliance with fair lending and consumer protection laws. Bank of America and MBNA have corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Bank of America's and MBNA's compliance programs include fair lending policy and product guides, compliance file reviews, testing of their HMDA data's integrity, and other quality-assurance measures. In addition, Bank of America and MBNA represented that their consumer real estate associates receive and will continue to receive compliance training that includes courses in fair lending laws, privacy laws, information security, HMDA reporting, and ethics. Furthermore, Bank of America's fair-lending monitoring program has been significantly expanded in the area of pricing review and analysis to accommodate recent HMDA changes concerning the reporting of loan pricing. Bank of America also has undertaken an extensive analysis to interpret and respond to HMDA pricing results. Bank of America has stated that its fair lending policies will continue to apply to current Bank of America operations and that it will review any modifications of MBNA's operations that might be required after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including Bank of America's and MBNA's CRA lending programs and the overall lending performance records of the subsidiary banks of Bank of America and MBNA under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Branch Closings

Several commenters expressed concerns about the proposal's possible effect on branch closings. The Board has carefully considered these comments in light of all the facts of record. Bank of America has represented that it is not planning any merger-related branch closings and that any such closings, relocations, or consolidations would be minimal because there is no geographic overlap with MBNA. Bank of America's branch closure policy entails a review of many factors before any closing or consolidation of a branch, including an assessment of the branch, the marketplace demographics, a profile of the community

49. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

50. These data were analyzed to reflect the BOA/Fleet Transaction. The Board reviewed HMDA-reportable loan originations for various MSAs individually, as well as for the metropolitan portions of BA Bank's and MBNA's assessment areas statewide.

51. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

where the branch is located, and the effect on customers. The most recent CRA evaluation of BA Bank noted favorably the bank's record of opening and closing branches.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[52] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the OCC, as the appropriate federal supervisor of BA Bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

D. Conclusion on Convenience and Needs Considerations

The Board has carefully considered all the facts of record, including reports of evaluation of the CRA performance records of the institutions involved, information provided by Bank of America and MBNA, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to the customers of MBNA, including access to almost 6,000 Bank of America banking centers. Based on a review of the entire record, and for reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.[53]

Foreign Activities

Bank of America proposes to acquire MBNA's Edge corporation, organized under section 25A of the Federal Reserve Act.[54] The Board concludes that all the factors required to be considered under the Federal Reserve Act and the Board's Regulation K are consistent with approval of the proposal.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved.[55]

In reaching its conclusion, the Board has considered all the facts of record in light of the factors that is required to consider under the BHC Act and other applicable statutes.[56] The Board's approval is specifically conditioned on compliance by Bank of America with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.[57]

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52. Section 42 of the FDI Act (12 U.S.C. §1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires a bank to provide the public with at least a 30-day notice and the appropriate federal banking agency with at least a 90-day notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

53. One commenter reiterated comments he made in connection with the BOA/Fleet Transaction, urging the Board not to approve the proposal until Bank of America meets certain "commitments" regarding its lending programs in Hawaii and its goal for mortgage lending to Native Hawaiians on Hawaiian home lands. *See BOA/Fleet Order* at 232–33. As noted in that order, Bank of America's publicly announced plans to engage in certain lending programs in Hawaii were not commitments to the Board, and these plans were not conditions to the Board's approvals in earlier applications by Bank of America or its predecessors. *See id.* As also previously noted, the Board views the enforceability of such third-party pledges, initiatives, and agreements as matters outside the CRA. Bank of America has represented that since the BOA/Fleet Transaction, Bank of America's loans and investments in Hawaii that qualify under its understanding with the state of Hawaii Department of Hawaiian Home Lands have increased from approximately $70 million to more than $99 million.

54. Bank of America intends to acquire MBNA's foreign operations under section 4(c)(13) of the BHC Act and section 25 of the Federal Reserve Act (12 U.S.C. §601 et seq.) pursuant to the general consent procedure of section 211.9 of Regulation K (12 CFR 211.9(b)).

55. Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

56. One commenter also requested that the Board delay action or extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and considerable public comment. As also noted, the commenters had ample opportunity to submit their views and provided substantial written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that a further delay in considering the proposal, extension of the comment period, or a denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

57. One commenter reiterated his request from the BOA/Fleet Transaction that certain Federal Reserve System staff and Board

The proposal may not be consummated before the 15th calendar day after 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 by the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 15, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

Calculation of the Nationwide Deposit Cap

For purposes of applying the nationwide deposit cap, the total amount of deposits held by insured banks in the United States was computed by first calculating the sum of total deposits in domestic offices as reported on Schedule RC of the Call Report, interest accrued and unpaid on deposits in domestic offices as reported on Schedule RC-G of the Call Report, and the following items reported on Schedule RC-O of the Call Report: unposted credits, uninvested trust funds, deposits in insured branches in Puerto Rico and U.S. territories and possessions, unamortized discounts on deposits, the amount by which demand deposits would be increased if the reporting institution's reciprocal demand balances with foreign banks and foreign offices of other U.S. banks that were reported on a net basis had been reported on a gross basis, amount of assets netted against demand deposits, amount of assets netted against time and savings deposits, demand deposits of consolidated subsidiaries, time and savings deposits of consolidated subsidiaries, and interest accrued and unpaid on deposits of consolidated subsidiaries. From that sum, subtract the amount of unpaid debits and unamortized premiums.

The total amount of deposits held by insured U.S. branches of foreign banks was computed by first calculating the sum of the following items reported on Schedule O of the RAL: total demand deposits in the branch, total time and savings deposits in the branch, interest accrued and unpaid on deposits in the branch, unposted credits, demand deposits of majority-owned depository subsidiaries and wholly owned nondepository subsidiaries, time and savings deposits of majority-owned depository subsidiaries and wholly owned nondepository subsidiaries, interest accrued and unpaid on deposits of majority-owned depository subsidiaries and wholly owned nondepository subsidiaries, the amount by which demand deposits would be increased if the reporting institution's reciprocal demand balances with foreign banks and foreign offices of other U.S. banks that were reported on a net basis had been reported on a gross basis, amount of assets netted against demand deposits, amount of assets netted against time and savings deposits, demand deposits of consolidated subsidiaries, time and savings deposits of consolidated subsidiaries, and time and savings deposits of consolidated subsidiaries. From that sum, subtract the amount of unpaid debits.

The total amount of deposits held by insured savings associations in the United States was computed by taking the sum of total deposits in domestic offices reported on Schedule SC of the TFR, deposits held in escrow and accrued interest payable-deposits, both as reported on Schedule SC of the TFR, plus the following items reported on Schedule SI of the TFR: time and savings deposits of consolidated subsidiaries, outstanding checks drawn against Federal Home Loan Banks and Federal Reserve Banks, demand deposits of consolidated subsidiaries, assets netted against demand deposits, and assets netted against time and savings deposits.

Because insured banks and savings associations that are subsidiaries of other insured banks and savings associations have been consolidated into their parent institutions for reporting purposes, the individual data for subsidiary insured depository institutions have not been added in order to avoid double counting deposits held by these institutions.

Bank of Montreal
Montreal, Canada

Order Approving the Merger of Bank Holding Companies

Bank of Montreal ("BMO") and its U.S. subsidiaries, Harris Financial Corp. ("HFC") and Harris Bankcorp, Inc. ("Harris"), both of Chicago, Illinois (collectively, "Applicants"), each financial holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act to acquire Edville Bankcorp, Inc. ("Edville") and its subsidiary bank, Villa Park Trust & Savings Bank ("Villa Park Bank"), both of Villa Park, Illinois.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 51,065 (2005)). 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 3 of the BHC Act.

members recuse themselves from consideration of the application, or alternatively, that the application be dismissed because of the commenter's allegations of conflicts of interests between Federal Reserve System staff and Bank of America. *See BOA/Fleet Order* at 234 n.89. For the reasons stated in the *BOA/Fleet Order*, the Board concludes that no conflicts of interests exist that would require recusal from consideration or dismissal of this proposal. *See id.*

1. 12 U.S.C. § 1842. Pursuant to the merger agreement, Harris will form Omaha Acquisition Corporation ("Omaha"), Wilmington, Delaware, a wholly owned subsidiary of Harris, to merge with and into Edville. Immediately after this merger, Omaha would merge with and into Harris (with Harris as the survivor), and Harris would directly acquire Villa Park Bank.

BMO, with total consolidated assets of approximately $237.4 billion, is the fifth largest banking organization in Canada.[2] BMO is the 32nd largest depository organization in the United States, controlling deposits of $26 billion through its four U.S. depository institutions with branches in Arizona, California, Florida, Illinois, Indiana, and Washington.[3] In Illinois, BMO operates the third largest depository organization through two subsidiary depository institutions, Harris National Association ("Harris N.A."),[4] Chicago, and NLSB, Plainfield, both of Illinois.[5] BMO controls deposits of approximately $22.1 billion, which represent 8 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[6]

Edville, with total consolidated assets of approximately $286.6 million, operates one depository institution, Villa Park Bank, with branches only in Illinois.[7] Villa Park Bank is the 138th largest insured depository institution in Illinois, controlling deposits of approximately $240.5 million.

On consummation of the proposal, BMO would have consolidated assets of approximately $237.7 billion and would control deposits of $26.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BMO would continue to operate the third largest depository organization in Illinois, controlling deposits of approximately $22.3 billion, which represent 8 percent of state deposits.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[8]

Harris N.A. and Villa Park Bank compete directly in the Chicago banking market in Illinois.[9] The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Harris N.A. and Villa Park Bank,[10] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[11] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Chicago banking market. After consummation, the Chicago banking market would remain unconcentrated, as measured by the HHI. In this market, the increase in concentration would be small and numerous competitors would remain.[12]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the

2. Asset data are as of July 31, 2005, and Canadian ranking data are as of December 31, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. Deposit and U.S. and state ranking data are as of March 31, 2005.

4. On May 27, 2005, Applicants reorganized and consolidated 26 of their 30 subsidiary banks, including their lead bank, Harris Trust and Savings Bank ("HTSB"), Chicago, into Harris N.A. BMO also operates a limited-charter national bank, Harris Central National Association, Roselle, Illinois, which provides cash-disbursement services only.

5. BMO operates two other depository institutions, Harris Bank National Association, Scottsdale, Arizona, and Mercantile National Bank of Indiana, Hammond, Indiana.

6. The operations of Harris N.A. and NLSB in Illinois were considered collectively to determine BMO's state rankings and percentage of deposits. Harris N.A. controls deposits of approximately $21.3 billion and NLSB controls deposits of $883 million.

7. Asset data are as of September 30, 2005. Edville is currently engaged in a limited number of real estate management and investment activities that are not permissible for a bank holding company. Applicants have committed to conform these investments and activities to the requirements of the BHC Act, including by divestiture if necessary, within two years of consummating the proposal.

8. 12 U.S.C. § 1842(c)(1).

9. The Chicago banking market is defined as Cook, Du Page, and Lake Counties, all in Illinois. NLSB does not compete in the Chicago banking market.

10. Deposit and market share data are as of June 30, 2004, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

11. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

12. After the proposed acquisition, the HHI would increase 3 points, to 756. BMO operates the third largest depository institution in the market, controlling deposits of $18.5 billion, which represent 10 percent of market deposits. Edville operates the 71st largest depository institution in the market, controlling deposits of approximately $241.5 million, which represent less than 1 percent of market deposits. After the proposed acquisition, BMO would continue to operate the third largest depository institution in the market, controlling deposits of approximately $18.7 billion, which represent approximately 10 percent of market deposits. One hundred and eighty-seven depository institutions would remain in the banking market.

Board that consummation of the proposal would not likely have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Chicago banking market in which Harris N.A. and Villa Park Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the various U.S. banking supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the Applicants, and public comment on the proposal.[13] The Board also has consulted with the Canadian Office of the Superintendent of Financial Institutions ("OSFI"), which is responsible for the supervision and regulation of Canadian banks.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Applicants have sufficient financial resources to effect the proposal. Applicants will use existing resources to effect the proposal as a cash purchase. Applicants and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Applicants, Edville, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Applicants, Edville, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Applicants' plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[14] As noted, the home country supervisor of BMO is the OSFI.

In approving applications under the BHC Act and the International Banking Act ("IBA"),[15] the Board previously has determined that BMO was subject to home country supervision on a consolidated basis by the OSFI.[16] Based on this finding and all the facts of record, the Board has concluded that BMO continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and

13. A commenter criticized HTSB's managerial resources based on its decision to have a lending relationship with an unaffiliated, nontraditional provider of financial services, a rent-to-own company. As a general matter, these types of businesses are licensed by the states where they operate and are subject to applicable state law. Applicants stated that HTSB's business relationship with this provider is limited to serving as an administrative agent and extending credit consistent with applicable legal requirements. Applicants also represented that they do not play any role in the business decisions, leasing, or credit practices of the borrower. In addition, the loan document executed by the borrower to HTSB contains representations, warranties, and covenants that the borrower obtains and maintains all necessary licenses to conduct its operations and complies with state law.

14. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

15. 12 U.S.C. § 3101 et seq.

16. *See, e.g., Bank of Montreal/Mercantile Bancorp, Inc.*, as noted in Federal Reserve Release, H.2. no. 51, p. 4 (December 14, 2004); *Bank of Montreal/New Lennox Holding Company*, as noted in Federal Reserve Release, H.2. no. 19, p. 2 (May 4, 2004); *Bank of Montreal/Lakeland Financial Corp.*, as noted in Federal Reserve Release, H.2. no. 2, p. 2 (January 10, 2004); *Bank of Montreal*, 80 *Federal Reserve Bulletin* 925 (1994).

enforce compliance with the BHC Act.[17] The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which BMO operates and has communicated with relevant government authorities concerning access to information. In addition, BMO previously has committed to make available to the Board such information on its operations and those of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal laws. BMO also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable BMO and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that BMO has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of Applicants and Edville, data reported by Applicants under the Home Mortgage Disclosure Act ("HMDA"),[20] other information provided by Applicants, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2004 HMDA data, that HTSB has engaged in discriminatory treatment of minority individuals in its home mortgage operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[21]

Applicants' newly reorganized lead bank, Harris N.A., has not yet been examined under the CRA by the Office of the Comptroller of the Currency ("OCC"). Before the consolidation and restructuring of Applicants' subsidiary banks in May 2005, HTSB was Applicants' lead bank, and it accounted for approximately 65 percent of the assets and 55 percent of the deposits of Harris, the direct parent of all Applicants' insured depository institutions. HTSB received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of April 29, 2002. Each of the other 25 subsidiary banks that later formed Harris N.A. received a "satisfactory" rating at its most recent CRA performance evaluation. Applicants' four remaining banks each received a rating of "satisfactory" or better at its most recent CRA performance evaluation.

Villa Park Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of September 17, 2001. Applicants have represented that they will institute their CRA policies, procedures, and programs at Villa Park Bank on consummation of the proposal.

B. HMDA and Fair Lending Record

The Board has carefully considered Applicants' lending record and HMDA data in light of public comment received on the proposal. The commenter alleged, based on 2004 HMDA data, that HTSB denied the home mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in the Chicago Metropolitan Statistical Area ("Chicago MSA"). The commenter also alleged that HTSB made higher-cost loans more frequently to African-American and Hispanic borrowers than to nonminority borrowers.[22] The Board reviewed HTSB's HMDA data for 2004 in the Chicago MSA, which included the bank's assessment area.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by them-

17. *See* 12 U.S.C. § 1842(c)(3)(A).
18. 12 U.S.C. § 2901 et seq.
19. 12 U.S.C. § 2903.
20. 12 U.S.C. § 2801 et seq.
21. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
22. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

selves to conclude whether or not HTSB is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[23] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by the subsidiary depository institutions of Applicants with fair lending laws. In the fair lending review conducted in conjunction with the 2002 CRA Evaluation, examiners noted no substantive violations of applicable fair lending laws by HTSB. In addition, the Board has consulted with the OCC, the primary federal supervisor of Harris N.A., HTSB's successor institution.

The record also indicates that Applicants have taken steps to ensure compliance with fair lending laws and other consumer protection laws. Applicants have centralized the compliance functions performed by their Corporate Compliance Department ("CCD") and CRA Office, which have responsibility for planning, administering, monitoring, and reviewing the organization's responsibilities under the fair lending and consumer protection laws on a corporate-wide basis. In addition, Applicants' Corporate Audit Department periodically conducts a separate fair lending audit to ensure compliance with Applicants' policies and procedures. The CCD and CRA Office have implemented uniform fair lending policies, procedures, and training programs at Applicants' subsidiary depository institutions. The CCD also conducts annual reviews of the banks for their fair lending and consumer protection compliance monitoring, which includes a fair lending comparative file review. Any notable exceptions or deviations discovered during a review are reported, investigated, and addressed at the appropriate managerial levels. The CCD's last comparative file review covered 2004 HMDA-reportable refinance transactions and was completed in September 2005. Applicants represented that the exceptions identified in this review were investigated, that no fair lending issues were found, and that the results of this review were disseminated to senior management. Applicants intend to institute their centralized compliance structure and implement their fair lending policies and procedures at Villa Park Bank after the merger.

The Board also has considered the HMDA data in light of other information, including the Applicants' CRA lending programs and the overall performance records of the subsidiary banks of Applicants and Edville under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to Edville's customers, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[24] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[25] The Board's approval is specifically

23. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

24. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

25. The commenter also requested that the Board extend the comment period and delay action on the proposal. As previously noted, the

conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 10, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Cathay General Bancorp
Los Angeles, California

Order Approving the Acquisition of a Bank

Cathay General Bancorp ("Cathay"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire up to 100 percent of the outstanding shares of Great Eastern Bank, New York, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 54,555 (2005)). 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 3 of the BHC Act.

Cathay, with total consolidated assets of approximately $6 billion, operates one depository institution, Cathay Bank, also in Los Angeles, with branches in California, Massachusetts, New York, Washington, and Texas. Cathay Bank is the 116th largest insured depository institution in New York State, controlling deposits of approximately $213 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3]

Great Eastern Bank is the 97th largest insured depository institution in New York, controlling deposits of approximately $278 million, representing less than 1 percent of the total amount of state deposits. On consummation of the proposal, Cathay would become the 73rd largest depository organization in New York, controlling deposits of approximately $491 million, which represent less than 1 percent of state deposits.

Great Eastern Bank's management opposes the proposal and has submitted comments to the Board urging denial on several grounds. The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, regardless of whether they are supported or opposed by the management of the institutions to be acquired.[4] Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the BHC Act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.[5]

In considering these factors, the Board is mindful of the potential adverse effects that contested acquisitions might have on the financial and managerial resources of the company to be acquired and the acquiring organization. In addition, the Board takes into account the potential for adverse effects that a prolonged contest may have on the safe and sound operation of the institutions involved. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board's discretion under the BHC Act.[6]

Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. In the Board's view, the commenter has had ample opportunity to submit its views and, in fact, has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is necessary.

1. 12 U.S.C. § 1842.

2. Cathay entered into agreements with certain shareholders of Great Eastern Bank under which Cathay was granted the option to acquire 41 percent of the bank's outstanding common shares ("option shares"), subject to receipt of regulatory approval and certain other restrictions. Cathay may attempt to acquire additional shares of Great Eastern Bank directly from other shareholders or, if possible, to enter into a definitive merger agreement with Great Eastern Bank.

3. Asset, deposit, and ranking data are as of June 30, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. *See Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 94 (2004) ("*Central Pacific*"); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) ("*North Fork*"); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 259 (1988) ("*BONY*").

5. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates, or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. *See* 12 U.S.C. § 1842(c).

6. *See Central Pacific*; *FleetBoston Financial Corporation*, 86 *Federal Reserve Bulletin* 751, 752 (2000); *North Fork*; *BONY*.

As explained below, the Board has carefully considered the statutory criteria in light of all the comments and information provided by Great Eastern Bank and the responses submitted by Cathay.[7] The Board also has carefully considered all other information available, including information accumulated in the application process, supervisory information of the Board and other agencies, relevant examination reports, and other public comments. In considering the statutory factors, particularly the effect of the proposal on the financial and managerial resources of Cathay, the Board has received detailed financial information, including the terms and cost of the proposal and the resources that Cathay proposes to devote to the transaction.

After reviewing the proposal in light of the requirements of the BHC Act, and for the reasons explained below, the Board has determined to approve the application subject to the conditions established herein by the Board. The Board's decision is conditioned on the requirement that Cathay's offer not differ in any material aspect from the terms that it has provided to the Board. Accordingly, if Cathay amends or alters the terms of the offer as described by Cathay to the Board or is unable to complete all aspects of its proposal, it must consult with the Board to determine whether the difference is material to the Board's analysis and conclusions regarding the statutory factors and, therefore, would require a modification to this order, a new application, or further proceedings before the Board.

In reviewing this proposal, the Board has taken into account the potential for adverse effects on the financial and managerial resources of the companies involved if there is prolonged delay in consummation of the proposal. As discussed below, the Board has followed its standard practice of requiring that consummation of the proposal be completed within three months from the date of this order. If the transaction is not concluded within this period, the Board will review carefully any requests by Cathay to extend the consummation period and would expect to grant an extension only if the Board is satisfied that the statutory factors continue to be met.

The Board's decision and conclusions on this proposal are limited to the application of the statutory factors set out in the BHC Act. The Board expresses no view or recommendation on whether this transaction is in the best interests of the shareholders or whether this or any other proposed acquisition involving Great Eastern Bank should be accepted by the management or shareholders of Great Eastern Bank.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Cathay is California,[8] and Great Eastern Bank is located in New York.[9]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[10] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[11]

7. Great Eastern Bank contends that, by entering into option agreements with stockholders of Great Eastern Bank, Cathay violated section 3(a) of the BHC Act, which prohibits a bank holding company from taking any action that would cause a bank to become a subsidiary of a bank holding company or from acquiring direct or indirect ownership or control of 5 percent of the voting shares of a bank without the prior approval of the Board. Another commenter also objected to the fact that Cathay had notified the option grantors of its intent to acquire the options before receiving regulatory approval. Under the option agreements, Cathay does not own or have power to vote the option shares and may not actually purchase or vote the shares until it has received regulatory approval.

Under the Board's regulations, a company that enters into an agreement pursuant to which the rights of a holder of voting securities of a bank are restricted in any manner is presumed to control those securities. The presumption does not apply, however, when the agreement relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate federal supervisory authority with respect to acquisition by the company of the securities (12 CFR 225.31(d)(ii)). The Board has reviewed the option agreements and concluded that Cathay's proposal meets those requirements.

8. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

9. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

10. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). Cathay is adequately capitalized and adequately managed, as defined by applicable law. Cathay's proposed acquisition of Great Eastern satisfies the minimum age requirement imposed by New York law. On consummation of the proposal, Cathay Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in New York. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

11. 12 U.S.C. § 1842(c)(1).

Cathay and Great Eastern Bank compete directly in the Metro New York banking market.[12] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Cathay Bank and Great Eastern Bank,[13] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[14] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Metro New York banking market. On consummation, the Metro New York banking market would remain unconcentrated, as measured by the HHI, and the increase in concentration would be small.[15] Numerous competitors would remain in the market.

The Department of Justice also has reviewed the competitive effects of the proposal and advised the Board that consummation of the proposal likely would not have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Cathay and Great Eastern Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the applicant, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. Strong capital is particularly important in proposals that involve higher transaction costs or risks, such as proposals that are contested. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Cathay, Cathay Bank, and Great Eastern Bank are all well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also believes that Cathay has sufficient financial resources to effect the proposal. Cathay has described the terms and costs of its proposal. Cathay proposes to acquire the shares of Great Eastern Bank with cash and shares of Cathay's common stock.

The Board also has considered the managerial resources of Cathay and Cathay Bank and the proposed combined bank. The Board has reviewed the examination records of Cathay, Cathay Bank, and Great Eastern Bank, including

12. The Metro New York banking market is defined as: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

13. Deposit and market share data are as of June 30, 2005, based on ownership of depository institutions as of November 30, 2005, and reflect 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

14. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

15. Cathay operates the 133rd largest depository institution in the Metro New York market, controlling deposits of $213 million, which represent less than 1 percent of market deposits. Great Eastern Bank is the 118th largest depository institution in the market, controlling deposits of approximately $278 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Cathay would operate the 81st largest depository institution in the market, controlling deposits of approximately $491 million, which represent less than 1 percent of market deposits. Two hundred and fifty-eight depository institutions would remain in the banking market. The HHI would remain unchanged at 1069.

assessments of their management, risk-management systems, and operations.[16] In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Cathay, Cathay Bank, and Great Eastern Bank are all considered to be well managed.[17]

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered carefully all the facts of record, including the CRA performance evaluations of Cathay Bank and Great Eastern Bank, data reported by Cathay Bank and Great Eastern Bank under the Home Mortgage Disclosure Act ("HMDA")[20] in 2003 and 2004, small business lending data reported under the CRA, other information provided by Cathay, confidential supervisory information, and public comment received on the proposal. A commenter criticized Cathay's record of small business lending and the organization's performance under the services test portion of its CRA evaluation.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[21]

Cathay Bank received a "satisfactory" rating at its most recent CRA evaluation by the FDIC, as of February 23, 2004 ("2004 CRA Evaluation"). Great Eastern Bank received an overall rating of "satisfactory" at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of April 7, 2004. In the fair lending reviews of Cathay Bank and Great Eastern Bank conducted in conjunction with their most recent CRA evaluations, examiners noted no substantive violations of applicable fair lending laws by either bank. Cathay has indicated that, after the merger of Great Eastern Bank into Cathay Bank, it would evaluate the practices for CRA-related lending programs of Cathay Bank and Great Eastern Bank and incorporate the most effective practices into its CRA program for the combined institution.

Cathay Bank. In the 2004 CRA Evaluation, Cathay Bank was rated "high satisfactory" under the lending test.[22] Examiners reported that Cathay Bank's lending levels demonstrated good responsiveness to the credit needs of the bank's assessment areas. Examiners found that the distribution of Cathay Bank's loans by income level of geography was good and that the bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. The examiners also noted that the bank exhibited an overall good record of serving the credit needs of the most economically disadvantaged areas of the assessment areas. In addition, examiners stated that Cathay Bank was a leader in community development lending, with $201 million in community development loans during the review period. Examiners noted that the bank's small

16. A commenter expressed concern about Cathay's managerial record in light of a recent memorandum of understanding ("MOU") with the Federal Deposit Insurance Corporation ("FDIC") requiring Cathay Bank to correct deficiencies in its compliance with the Bank Secrecy Act. The FDIC terminated the MOU in September 2005 after determining that Cathay Bank had achieved substantial compliance with its terms. The Board has reviewed the managerial factors in this case in light of the MOU and the steps taken by Cathay to address those issues.

17. Great Eastern Bank alleged that Cathay has violated the Securities Act of 1933 because, under the option agreements, Cathay is offering to exchange its shares for shares of Great Eastern Bank in an unregistered transaction. In addition, Great Eastern Bank alleges that Cathay violated federal securities laws in connection with the proposed exchange of shares of Cathay's common stock for Great Eastern Bank shares. The SEC, rather than the Board, has jurisdiction to investigate and adjudicate any violations of federal securities laws. The Board has consulted with the SEC regarding these matters and expects that Cathay will effect this transaction in a manner that complies with federal securities laws.

18. 12 U.S.C. § 2901 et seq.

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

21. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

22. Examiners evaluated Cathay Bank's CRA performance in the bank's three assessment areas in California and in its assessment areas in New York and Texas. The substantial majority of the bank's loans were in the Los Angeles and San Francisco assessment areas. The evaluation period for the lending and service tests was January 1, 2002, through December 31, 2003. The evaluation period for the investment test was January 22, 2001, through February 23, 2004.

business loans exceeded the aggregate market data[23] and that 59.6 percent of the bank's total number of loans was in amounts of less than $250,000.[24] Examiners commended the bank's use of innovative and flexible lending programs to serve the credit needs of its assessment area.

Cathay Bank received an overall "outstanding" rating under the investment test in the 2004 CRA Evaluation. Examiners reported that Cathay Bank's qualified investments, which totaled more than $50 million during the evaluation period, demonstrated excellent responsiveness to the credit and community economic development needs of the bank's assessment areas. In addition, examiners commended the bank's use of complex investments to support community development initiatives, particularly affordable housing projects.

In the 2004 CRA Evaluation, Cathay Bank received a "needs to improve" rating under the service test.[25] Examiners noted, however, that Cathay Bank's delivery systems for services were reasonably accessible to all geographies, including LMI areas, and to individuals of different income levels. Examiners reported that Cathay Bank provided a limited level of community development services. Cathay has represented that since the bank's last CRA evaluation, Cathay Bank has increased its participation in community development programs, such as providing financial literacy training and participating in seminars for small business owners. Cathay Bank Foundation reports that during 2005, it has donated a total of $225,000 to nonprofit organizations for CRA-related activities. To increase Cathay's outreach to all communities, more than 65 percent of the funds granted by the foundation went to nonprofit organizations serving minority and disadvantaged communities other than Asian-American communities. In addition, Cathay has made contributions during 2005 to sponsor CRA-related events in California and New York, including events marketed to non-Asian communities.

Great Eastern Bank. As noted, Great Eastern Bank received an overall "satisfactory" rating at its April 2003 evaluation.[26] Examiners reported that the bank's overall record of lending to borrowers of different income levels, including LMI individuals, and businesses of different sizes was outstanding in light of the demographics of the bank's assessment area.[27] Examiners particularly commended the bank's level of consumer lending to LMI borrowers. Examiners noted that the bank's overall geographic distribution of loans was satisfactory given the demographics of the bank's assessment area. In addition, examiners reported that the bank's community development activities in its assessment areas included a line of credit to a nonprofit community development corporation, an investment in a community development credit union that served primarily LMI individuals, and financial contributions to organizations that provided services to LMI individuals and neighborhoods.

B. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Cathay, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the banking products and services available to customers of Great Eastern Bank. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[28] In reaching its conclusion, the Board

23. For purposes of the evaluation, "small business loans" are loans that have original amounts of $1 million or less and are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans.

24. A commenter expressed concern that Cathay Bank provided few small business loans in certain counties. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific types of products or services, including small business loans in certain amounts.

25. A commenter expressed concern about Cathay's CRA performance record based on the "needs to improve" rating under the service test.

26. The evaluation period was March 13, 2001, through April 6, 2003.

27. The commenter also expressed concern that Great Eastern Bank's 2004 HMDA data were "homogenous" and showed approved and originated loans but no loans that were denied, withdrawn, or approved but not accepted. The commenter provided no evidence that the bank's limited home mortgage lending activity violated any laws or that its HMDA data were inaccurate. Great Eastern Bank generally makes home mortgage loans to its business customers on an accommodation basis and, accordingly, would not necessarily be expected to have loans in those categories that concerned the commenter. Because the bank made a limited number of HMDA-reportable loans during the evaluation period, HMDA-related lending was not included in the examiners' analysis of Great Eastern Bank's overall CRA performance.

28. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or

has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[29] The Board's approval is specifically conditioned on compliance by Cathay with the conditions imposed in this order and the commitments made to the Board in connection with the application. In particular, in the event of any material change in the transaction, such as a material change in the price, financing, terms, conditions, or structure of the transaction, or an inability to complete all the aspects of the transaction as proposed, Cathay must consult with the Board to determine whether the change is consistent with the Board's action in this case, or whether further Board action is necessary. The Board reserves the right in the event of significant changes in the proposal to require a new application from Cathay. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

In previous cases, the Board has recognized that a prolonged contest for ownership of a banking institution might result in adverse effects on the financial and managerial resources of the organizations or other factors. The BHC Act does not provide a specific time period for consummation of a transaction. Generally, however, the Board requires consummation of an approved transaction within three months from the date of the Board's order to ensure that there are no substantial changes in an applicant's or target's condition or other factors that might require the Board to reconsider its approval.

In this case, although prolonged delay may have a negative impact on Cathay and Great Eastern Bank, a short delay should not affect the financial or managerial resources of either organization or other factors so severely as to warrant denial of the proposal. Accordingly, the Board has followed its standard practice and requires that the transaction be consummated within three months after the effective date of this order unless that period is extended by the Board. If Cathay requests an extension of time to consummate the proposal, the Board will examine carefully all relevant circumstances, and the impact of any extension on those resources and on the other statutory factors that the Board must consider under the BHC Act. The Board may require Cathay to provide supplemental information if necessary to evaluate the managerial and financial resources of Cathay and Great Eastern Bank or other factors at the time any extension is requested. The Board would extend the consummation period only if it is satisfied that the statutory factors continue to be met.

The proposed transaction may not be consummated before the 15th calendar day after 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.

By order of the Board of Governors, effective December 13, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

29. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter had ample opportunity to submit its views and, in fact, provided written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that extension of the comment period or denial of the proposal on the basis of the comments discussed above or on informational insufficiency is unwarranted.

Hudson Valley Holding Corp.
Yonkers, New York

Order Approving the Acquisition of a Bank

Hudson Valley Holding Corp. ("Hudson Valley") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire New York National Bank ("NYNB"), Bronx, New York. Hudson Valley operates one subsidiary insured depository institution, Hudson Valley Bank, also in Yonkers.[2]

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (70 *Federal Register* 22,314 (2005)).[3] 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 3 of the BHC Act.

Hudson Valley, with total consolidated assets of approximately $1.9 billion, is the 41st largest depository organization in New York, controlling deposits of approximately $1.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits"). NYNB, with total consolidated assets of approximately $133 million, is the 156th largest insured depository institution in New York, controlling deposits of approximately $118 million. On consummation of the proposal, Hudson Valley would become the 40th largest depository organization in New York, controlling

1. 12 U.S.C. § 1842.

2. Hudson Valley proposes to convert NYNB to a state-chartered bank and to operate it as a separate subsidiary. NYNB would be merged with and into an interim national bank, NYNB Bank, N.A., and immediately thereafter the interim national bank would be converted to NYNB Bank, a bank chartered by the state of New York. Applications for these transactions were filed with the Office of the Comptroller of the Currency ("OCC") and the New York State Banking Department.

3. 12 CFR 262.3(b).

deposits of approximately $1.5 billion, which represent less than 1 percent of state deposits.[4]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[5]

Hudson Valley and NYNB compete directly in the Metro New York banking market.[6] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record.[7] In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market ("market deposits") controlled by Hudson Valley and NYNB,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Metro New York banking market, and numerous competitors would remain in the market.[10] The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Metro New York banking market or in any other relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, information provided by Hudson Valley, and public comment received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Hudson Valley has sufficient financial resources to effect the proposal. The transaction will be funded by a divi-

4. Asset data are as of March 31, 2005. Deposit data and state rankings are as of June 30, 2005, and are adjusted to reflect mergers and acquisitions completed through December 5, 2005.

5. 12 U.S.C. § 1842(c)(1).

6. The Metro New York banking market includes: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

7. Hudson Valley has 19 branches, including two branches in Bronx County. NYNB has six branches, including its main office in Bronx County.

8. Deposit and market share data are as of June 30, 2005, are adjusted to reflect subsequent mergers and acquisitions through December 5, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

10. Hudson Valley operates the 45th largest depository institution in the market, controlling deposits of approximately $1.4 billion, which represent less than 1 percent of market deposits. NYNB operates the 174th largest depository institution in the market, controlling deposits of approximately $118 million. After the proposed acquisition, Hudson Valley would operate the 43rd largest depository institution in the market, controlling deposits of approximately $1.5 billion, which represent less than 1 percent of the market. The HHI would remain unchanged at 1069. Two hundred and fifty-eight depository institutions would remain in the banking market after consummation of this proposal.

dend from Hudson Valley Bank to Hudson Valley. Hudson Valley and its subsidiary bank are well capitalized and would remain so on consummation of this proposal.

The Board also has considered the managerial resources of Hudson Valley, Hudson Valley Bank, and NYNB and the effect of the proposal on these resources. The Board has reviewed the examination records of Hudson Valley and its subsidiary banks and NYNB, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Hudson Valley and its subsidiary depository institution are considered to be well managed. The Board also has considered Hudson Valley's plans for implementing the proposal, including the proposed management after consummation.

After careful consideration of all the facts of record, the Board has determined that Hudson Valley's managerial resources, including its risk management, are consistent with approval. In reaching this conclusion, the Board considered the existing compliance and internal audit programs at Hudson Valley and Hudson Valley Bank and the assessment of these systems and programs by the relevant federal and state supervisory agencies. The Board also has consulted with the Federal Deposit Insurance Corporation ("FDIC"), the primary federal regulator of Hudson Valley Bank, and the bank's state regulator. In addition, the Board has considered information provided by Hudson Valley on enhancements it has made and is currently making to its systems and programs as part of an ongoing review, including development, implementation, and maintenance of effective compliance policies and programs.[11]

Based on all the facts of record, including a review of the public comments received and information provided by Hudson Valley and by the primary federal and state regulators of the organizations involved, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Hudson Valley, Hudson Valley Bank, and NYNB are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[13]

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of Hudson Valley Bank and NYNB, data reported by Hudson Valley Bank and NYNB in 2004 under the Home Mortgage Disclosure Act ("HMDA"),[14] small business lending data reported by the banks under the CRA, other information provided by Hudson Valley, confidential supervisory information, and public comment received on the proposal. A commenter criticized Hudson Valley Bank's record of small business lending, alleging that it disproportionately lent to businesses in middle- and upper-income census tracts and did not provide enough loans to businesses in LMI census tracts.[15] Specifically, the commenter alleged that Hudson Valley Bank's business plan focused on affluent customers and that the bank made few home mortgage loans and small business loans in LMI or predominantly minority communities. The commenter also asserted, based on data reported under HMDA, that Hudson Valley Bank has engaged in discriminatory treatment of minority individuals in its home mortgage operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

Hudson Valley Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 1, 2004.[17] NYNB received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of June 30, 1997. Hudson Valley plans to implement the CRA policies, programs, and procedures of Hudson Valley Bank at NYNB after consummation of this proposal.

11. A commenter urged the Board to deny the application, because Hudson Valley disclosed in filings with the Securities and Exchange Commission that the FDIC had found deficiencies in Hudson Valley Bank's consumer compliance program.

12. 12 U.S.C. § 2901 et seq.

13. 12 U.S.C. § 2903.

14. 12 U.S.C. § 2801 et seq.

15. The commenter also alleged that Hudson Valley Bank's low loan-to-deposit ratio suggested that the bank sought deposits from, but did not adequately lend to, LMI areas in the Bronx. Hudson Valley Bank noted that as of May 31, 2005, the loan-to-deposit ratio for its Bronx branches was higher than the bank's overall loan-to-deposit ratio.

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

17. The evaluation period was January 22, 2002, through December 1, 2004.

B. CRA Performance of Hudson Valley Bank and NYNB

Hudson Valley Bank. As noted above, Hudson Valley Bank received an overall "satisfactory" rating at its most recent CRA performance evaluation. Although Hudson Valley Bank received a rating of "needs to improve" under the investment test, the bank received a rating of "high satisfactory" under the lending test. In addition, the FDIC stated that it gave greater weight to small business lending in evaluating the bank's overall lending record because small business loans constituted such a large percentage of its loan portfolio.[18] The examiners concluded that the bank's record of lending, in light of the product lines offered by the bank, reflected good distribution among customers of different income levels and that the bank had been a leader in originating community development loans in the assessment area.[19]

Hudson Valley Bank is one of the leading small business lenders in LMI census tracts in its assessment area.[20] Small business loans represented more than 85 percent of the number and dollar amount of the bank's total loans originated in its assessment area in 2003. The examiners noted that Hudson Valley Bank's small business lending (by total number and dollar amount as a percentage of total loans) in LMI census tracts in its assessment area approximated the volume for the aggregate of all lenders ("aggregate lenders").[21]

In their review of 2003 HMDA data, examiners found that although the bank's residential mortgage loans in LMI areas in its assessment area compared unfavorably with the distribution by the aggregate lenders, the bank's distribution of such loans to borrowers of different income levels was adequate.[22] They also noted that the bank's percentage of home purchase loans to LMI borrowers approximated or exceeded the percentage for the aggregate lenders.[23]

Examiners also commended Hudson Valley Bank for its role as a leader in providing community development loans in its assessment area. As of September 30, 2004, its outstanding community development loans and commitments totaled $32.9 million. Examiners noted that the majority of the bank's community development lending supported social services programs for economically disadvantaged residents in the assessment area.

The bank received an overall rating of "high satisfactory" under the service test. The examiners found that Hudson Valley Bank provided a commendable level of support to its community. The evaluation noted that the bank's retail banking services were reasonably available to all segments of the assessment area through online banking, an ATM network, and extended branch hours. The examiners also commended Hudson Valley Bank for providing a relatively high level of community development services.

NYNB. As previously noted, NYNB received an "outstanding" rating at its most recent CRA performance evaluation. Examiners found that NYNB's overall lending activity demonstrated responsiveness to the credit needs of its assessment area. NYNB provides banking services to an area that is significantly underserved by other banking institutions. Examiners reported that the bank's level of qualified community development investments in its assessment area was good relative to the size and capacity of the institution. The examiners also noted that the bank's investments and community development services had increased credit availability in the assessment area.

C. HMDA and Fair Lending Record

The Board has considered carefully Hudson Valley Bank's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter expressed concern, based on 2004 HMDA data, that Hudson Valley Bank disproportionately excluded or denied applications by African-American and Hispanic applicants for HMDA-reportable loans. In support of this assertion, the commenter also referenced Hudson Valley Bank's low number of home mortgage applications from and originations to African-American and Hispanic applicants. The Board reviewed the HMDA data for 2004 reported by Hudson Valley Bank in its assessment area, which is part of the Metro New York banking market.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not Hudson Valley Bank is excluding any racial or ethnic group, or imposing higher credit costs on these groups, on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information,[24] provide only lim-

18. For purposes of this analysis, small business loans included business loans with an original amount of $1 million or less.

19. Although the Board has recognized that depository institutions help to serve the banking needs of communities by making a variety of products and services available, neither the CRA nor the federal banking agencies' CRA regulations require an institution to provide any specific types of products or services in its assessment areas.

20. The examiners also noted that the aggregate data for small business loans in this area included several large credit card banks that recorded each advance drawn on their cards as an individual small business loan, which might have overstated their activity in the assessment area.

21. The lending data of the aggregate of lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area. In 2004, Hudson Valley Bank's total dollar value and originations for small business lending in LMI census tracts in its assessment area approximated or exceeded the aggregate lenders' performance.

22. Examiners noted that the bank's opportunities to make residential loans in LMI areas were limited by a low percentage of owner-occupied units in the assessment area and by a low median income that was substantially less than the median value of residential properties.

23. In 2004, Hudson Valley Bank received 91 mortgage applications, which resulted in 42 mortgage loans in its assessment area.

24. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for

ited information about the covered loans.[25] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by Hudson Valley Bank with fair lending laws and the CRA performance records of Hudson Valley Bank and NYNB that are detailed above. In the fair lending review conducted in conjunction with its CRA evaluation, examiners noted no substantive violations of applicable fair lending laws by Hudson Valley Bank. The Board has also consulted with the primary banking supervisors of Hudson Valley Bank and NYNB about this proposal and the compliance records of the banks since their last examinations.

The record also indicates that Hudson Valley Bank has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. Hudson Valley Bank has implemented comprehensive operating procedures and quality control measures to confirm that appropriate consumer compliance policies and procedures are followed. The bank has implemented increased compliance training for staff, including semiannual updates on relevant issues for all employees, and annual updates for all personnel whose responsibilities include providing information about the Bank's loan products and services. In addition, the bank has established a system for compliance monitoring by senior management and the board of directors.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance record of Hudson Valley Bank and NYNB. These efforts demonstrate that the institutions are active in meeting the convenience and needs of their communities and that their records of performance are consistent with approval of this proposal.

loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

25. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, comments received on the proposal, information provided by Hudson Valley, and confidential supervisory information. The Board notes that the proposal would provide customers of the combined entity with access to a broader array of products and services in expanded service areas, including trust services, internet banking, and telephone banking service. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.[26] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[27] The Board's

26. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

27. The commenter also requested that the Board delay action or extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter has had ample opportunity to submit its views and, in fact, has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that further delay in considering the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

approval is specifically conditioned on compliance by Hudson Valley with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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, effective December 6, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

NBT Bancorp Inc.
Norwich, New York

Order Approving the Merger of Bank Holding Companies

NBT Bancorp Inc. ("NBT"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with CNB Bancorp, Inc. ("CNB"), and thereby acquire its subsidiary bank, City National Bank and Trust Company ("City National Bank"), both of Gloversville, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 48,953 (2005)). 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 3 of the BHC Act.

NBT, with total consolidated assets of approximately $4.4 billion, operates one depository institution, NBT Bank, with branches in New York and Pennsylvania. NBT Bank is the 28th largest depository institution in New York, controlling deposits of approximately $2.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3]

CNB, with total consolidated assets of approximately $419 million, operates one insured depository institution, City National Bank. The bank is the 85th largest insured depository institution in New York, controlling deposits of approximately $344 million. On consummation of the proposal, NBT would become the 25th largest depository organization in New York, controlling deposits of approximately $2.7 billion, which represent less than 1 percent of state deposits.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[4]

NBT and CNB compete directly in the Albany banking market in New York.[5] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the Albany market ("market deposits") controlled by NBT Bank and City National Bank,[6] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[7] and other characteristics of the market.

1. 12 U.S.C. § 1842.

2. NBT's only subsidiary bank, NBT Bank, National Association ("NBT Bank"), also of Norwich, has filed an application with the Office of the Comptroller of the Currency ("OCC") to merge City National Bank into NBT Bank under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)).

3. Deposit, ranking, and asset data are as of June 30, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. 12 U.S.C. § 1842(c)(1).

5. The Albany banking market is defined as Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington counties in New York.

6. Deposit and market share data are as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

7. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Albany market. On consummation, the Albany banking market would remain moderately concentrated, as measured by the HHI. The increase in concentration would be small and numerous competitors would remain in the market.[8]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Albany banking market or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

NBT and NBT Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board believes that NBT has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash purchase. NBT will issue trust preferred securities to fund the cash portion of the transaction.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of NBT, CNB, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. NBT, CNB, and their subsidiary depository institutions are considered to be well managed. The Board also has considered NBT's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[9] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[10]

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of NBT Bank and City National Bank, data reported by these banks in 2003 and 2004 under the Home Mortgage Disclosure Act ("HMDA"),[11] other information provided by NBT, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2003 and 2004 HMDA data, that NBT Bank and City National Bank had low levels of home mortgage lending to, and engaged in disparate treatment of, minority borrowers in their home mortgage operations. In addition,

8. NBT operates the ninth largest depository institution in the Albany banking market, controlling deposits of approximately $579.9 million, which represent approximately 2.6 percent of market deposits. CNB is the twelfth largest depository institution in the market, controlling deposits of approximately $343.7 million, which represent approximately 1.5 percent of market deposits. On consummation, NBT would operate the eighth largest depository institution in the market, controlling deposits of approximately $923.6 million, which represent approximately 4.1 percent of market deposits. The HHI would increase 28 points, to 1745.

9. 12 U.S.C. § 2901 et seq.

10. 12 U.S.C. § 2903.

11. 12 U.S.C. § 2801 et seq.

the commenter expressed concern about NBT Bank's rating under the service test in its most recent CRA performance evaluation.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[12]

NBT Bank received an "outstanding" rating at its most recent CRA evaluation by the OCC, as of July 6, 2004 ("2004 CRA Evaluation").[13] City National Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 27, 2003.[14] After consummation of the proposed series of transactions, NBT will direct the resulting institution to adopt the community development program, including products, services, outreach, and initiatives, that is currently in place at NBT Bank.

In its 2004 CRA Evaluation, NBT Bank received an overall "outstanding" rating under the lending test. Examiners reported that NBT Bank's lending levels reflected excellent responsiveness to the credit needs of its communities. Furthermore, examiners noted that NBT Bank's distribution of loans showed a good penetration among geographies and customers of different income levels and among businesses of different revenue sizes.

Examiners commended NBT Bank's lending activity in the New York assessment areas and noted that its overall geographic distribution of loans was good. In NBT Bank's New York assessment areas where examiners conducted a full-scope review, they noted that the bank's percentage of home purchase loans in moderate-income geographies generally exceeded the percentage of owner-occupied housing units in these geographies.[15] Moreover, the market share for home purchase loans made to LMI borrowers exceeded NBT Bank's overall market share for all home purchase loans. Examiners also took into consideration programs offered by NBT Bank to address the credit needs of LMI individuals and geographies. These programs included a partnership with the State of New York Mortgage Agency to increase home ownership opportunities for LMI households through subsidized loans and closing-cost assistance.[16] Examiners noted that NBT Bank also had partnerships with a number of nonprofit agencies through which it offered an affordable housing mortgage product to LMI individuals and participated in the Federal Home Loan Bank of New York's First Home Club program that aided low-income borrowers. The First Home Club program provides down payment and closing cost assistance to participating low-income borrowers by providing matching funds to augment participants' savings.

The 2004 CRA Evaluation also found that the bank demonstrated an excellent overall record of serving the credit needs of small businesses. Examiners concluded that the overall geographic distribution of small loans to businesses and farms was good, particularly in the bank's Albany Assessment Area.

Examiners commended NBT Bank for its level of community development lending throughout its assessment areas in the 2004 CRA Evaluation. During the evaluation period, NBT Bank originated 19 community development loans totaling $25.7 million in New York and Pennsylvania, the majority of which supported affordable housing initiatives.

NBT Bank received an overall "outstanding" rating under the investment test in the 2004 CRA Evaluation, reflecting what examiners reported as an "excellent" level of qualified investments in various assessment areas. The bank's qualified investments in New York during the evaluation period totaled approximately $19.8 million.

NBT Bank received a "low satisfactory" rating in the 2004 CRA Evaluation under the service test overall and in its New York assessment areas. In Pennsylvania, NBT Bank was rated "high satisfactory" under the service test. Examiners reported that the bank's branches in its assessment areas were reasonably accessible to individuals and geographies of different income levels. Examiners also reported that NBT Bank's hours and services offered in its assessment areas were good and that the bank offered services that provided easy access to funds for low-income people who received government assistance at its branches.[17] Examiners commended NBT Bank for support-

12. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

13. Examiners evaluated NBT Bank's CRA performance in its 11 assessment areas in New York and Pennsylvania. In determining NBT Bank's overall rating, examiners gave the greatest weight to the bank's performance in the assessment areas in New York. The evaluation period for home mortgage and small business loans was January 1, 2001, through December 31, 2002. The evaluation period for community development loans and the investment and service tests was September 17, 2001, through July 6, 2004.

14. The evaluation period for City National Bank's CRA performance was January 1, 2000, through December 31, 2002. A commenter alleged that City National Bank's CRA examination was dated, but this comment referred to the bank's 1999 CRA examination.

15. These areas included the Albany region, consisting of Montgomery, Saratoga, Schoharie, and Schenectady counties, and the northern portion of Albany County ("Albany Assessment Area"), and the Southern Tier Region, consisting of Chenango, Delaware, and Otsego counties, and portions of Madison, Greene, and Ulster counties, all in New York.

16. NBT Bank originated almost $1.6 million in loans to LMI borrowers through the agency's programs during the evaluation period.

17. The commenter requested that the Board require NBT to file branch closing information as part of this proposal. The Board notes that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal super-

ing community development services throughout its assessment areas that promoted or facilitated affordable housing, services, and economic development in LMI areas and for LMI individuals.

B. HMDA and Fair Lending Record

The Board has considered carefully NBT Bank's and City National Bank's lending records and HMDA data in light of public comment about their records of lending to minorities. A commenter expressed concern, based on 2004 HMDA data, that NBT Bank disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants. The commenter also expressed concern that the 2003 and 2004 HMDA data indicated that NBT Bank and City National Bank made few home purchase loans to minority applicants and that the banks received few applications from minority individuals. Based on the 2004 HMDA data, the commenter also criticized NBT Bank for making higher-cost mortgage loans.[18] The Board reviewed the HMDA data for 2003 and 2004 reported by NBT Bank and City National Bank in the Albany–Schenectady–Troy Metropolitan Statistical Area.[19]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves to conclude whether or not NBT Bank or City National Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[20] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by NBT Bank and City National Bank with fair lending laws. In the fair lending reviews of NBT Bank and City National Bank conducted in conjunction with their most recent CRA evaluations, examiners noted no substantive violations of applicable fair lending laws by either bank.

The record also indicates that NBT has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. NBT represented that it performs significant monitoring of compliance in its mortgage lending operations through a wide variety of audit and review methods, including file reviews, statistical analyses, and exception reviews. One such review method at NBT Bank is a "second-look" program for all residential mortgage loan applications initially scheduled for denial. Under this program, a manager or other supervisory officer reviews such applications to ensure that they were properly evaluated and to determine whether the applicants qualify for another loan product offered by NBT Bank. Furthermore, NBT Bank primarily offers conventional mortgage products such as those offered by government-sponsored enterprises that conform to secondary-market underwriting guidelines. NBT Bank's mortgage program includes risk-priced procedures consistent with these guidelines and it uses automated software for underwriting and pricing mortgage loans. In addition, NBT Bank stated that it will conduct a quarterly review of the overall distribution of its mortgage loan applications and originations, including the distribution of lending to minority individuals, in the Albany Assessment Area for a period of at least two years after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs described above and the overall performance records of NBT Bank and City National Bank under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

visory agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least a 30-day notice and the appropriate federal supervisory agency and customers of the branch with at least a 90-day notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings. In addition, the Board notes that the OCC, as the appropriate federal supervisor of NBT Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

18. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4). NBT Bank stated that some of its HMDA-reported loans are higher-priced loans because they are for the purchase of manufactured housing and represented that these loans generally have a higher credit risk and are secured by collateral that decreases in value. The bank also stated that a loan's administrative cost might cause it to be priced differently.

19. The Albany–Schenectady–Troy Metropolitan Statistical Area is defined as Albany, Saratoga, Schenectady, Schoharie, and Rensselaer counties in New York.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

C. Conclusion on Convenience and Needs and CRA Performance Records

The Board has carefully considered all the facts of record, including reports of evaluation of the CRA performance records of the institutions involved, HMDA data reported by NBT Bank and City National Bank, information provided by NBT, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to the customers of City National Bank, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[21] The Board's approval is specifically conditioned on compliance by NBT with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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.

21. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

By order of the Board of Governors, effective December 14, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

New York Community Bancorp, Inc.
Westbury, New York

Order Approving the Merger of Bank Holding Companies

New York Community Bancorp, Inc. ("NYCB"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval pursuant to section 3 of the BHC Act[1] to merge with Long Island Financial Corp. ("LIFC"), and thereby acquire its subsidiary bank, Long Island Commercial Bank ("LICB"), both of Islandia, New York.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 55,858 (2005)). 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 3 of the BHC Act.

NYCB, with total consolidated assets of approximately $25 billion, operates two depository institutions, New York Community Bank ("NY Community Bank"), with branches in New Jersey and New York, and New York Commercial Bank ("NY Commercial Bank"),[2] both of Flushing, New York.[3] NYCB is the 11th largest depository organization in New York, controlling deposits of approximately $11.2 billion, which represent less than 2 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").

LIFC, with total consolidated assets of approximately $532 million, operates one depository institution, LICB, with branches only in New York. LIFC is the 80th largest insured depository institution in New York, controlling deposits of approximately $420 million.

On consummation of the proposal, NYCB would have consolidated assets of approximately $25.5 billion. NYCB would remain the 11th largest depository organization in New York, controlling deposits of approximately $11.6 billion, which represent less than 2 percent of state deposits.

1. 12 U.S.C. § 1842.

2. NY Commercial Bank, a wholly owned subsidiary of NY Community Bank, is a limited-purpose bank that only accepts municipal deposits.

3. Asset data are as of September 30, 2005, and statewide deposit and ranking data are as of June 30, 2005. Data reflect subsequent merger activity through December 13, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[4]

NYCB and LIFC compete directly in the Metro New York banking market (New York banking market).[5] The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by NYCB and LIFC,[6] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[7] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation of the proposal, the New York banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in the market.[8]

The Department of Justice also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market where NYCB and LIFC compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by NYCB, and public comment on the proposal.[9]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the

4. 12 U.S.C. § 1842(c)(1).

5. The Metro New York banking market includes: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

6. Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through December 13, 2005), and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

7. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

8. After the proposed acquisition, the HHI would remain unchanged at 1069. NYCB operates the tenth largest depository institution in the market, controlling deposits of approximately $11.8 billion, which represent less than 2 percent of market deposits. LIFC operates the 94th largest depository institution in the market, controlling deposits of approximately $420 million, which represent less than 1 percent of market deposits. After the proposed acquisition, NYCB would continue to operate the tenth largest depository institution in the market, controlling deposits of approximately $12.2 billion, which represent less than 2 percent of market deposits. Two hundred and eighty-two depository institutions would remain in the banking market.

9. A commenter criticized LIFC for having lending relationships with several check-cashing businesses. As a general matter, these types of businesses are licensed by the states where they operate and are regulated by state law. LIFC has entered into lending or other limited banking relationships with these companies but does not play any role in their lending and business practices or credit-review processes. LICB represented that it conducts a due diligence review before commencing a banking relationship with any check casher.

Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

NYCB, LIFC, and their subsidiary depository institutions are well capitalized, and the resulting organization and its subsidiary banks would remain so on consummation of the proposal. The proposed transaction is structured as a share exchange. Based on its review of the record in this case, the Board believes that NYCB has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of NYCB, LIFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Moreover, the Board consulted with the Federal Deposit Insurance Corporation ("FDIC"), the primary federal banking supervisor of NYCB's and LIFC's subsidiary banks. The Board also has considered NYCB's plans for implementing the proposal, including the proposed management after consummation. NYCB, LIFC, and their subsidiary depository institutions are considered to be well-managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10] 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 their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating depository institutions' expansionary proposals.[11]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of NYCB and LIFC, data reported by NYCB under the Home Mortgage Disclosure Act ("HMDA"),[12] other information provided by NYCB, confidential supervisory information, and public comment received on the proposal. A commenter opposing the proposal asserted, based on 2004 HMDA data, that NYCB has engaged in discriminatory treatment of minority individuals in its home mortgage operations.[13]

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of both organizations. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[14]

NY Community Bank received a "satisfactory" rating at its most recent performance evaluation from the FDIC, as of March 25, 2002.[15] LICB received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 15, 2004. NYCB has represented that it does not plan to implement major changes to programs for managing community reinvestment activities at LICB, which already has CRA programs similar to those of NYCB.

B. HMDA Data and Fair Lending Record

The Board has carefully considered NY Community Bank's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter expressed concern, based on 2004 HMDA data, that NY Community Bank denied or excluded the home mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of

10. 12 U.S.C. § 2901 et seq.
11. 12 U.S.C. § 2903.
12. 12 U.S.C. § 2801 et seq.
13. The commenter also alleged that NYCB lends to "slumlords." NYCB represented that NY Community Bank's primary lending focus is its multifamily loan program, which concentrates on loans for rent-controlled and rent-stabilized residential buildings in New York City. NYCB further stated that it engages in extensive due diligence in its lending to residential landlords, including conducting inspections of properties, assessing the real estate management experience of landlord/borrowers, and requiring remediation of building code violations. In addition, NYCB represented that it conducts inspections of the properties during the term of the mortgage loans.
14. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
15. NY Commercial Bank is a special-purpose bank not subject to the CRA. *See* 12 CFR 345.11(c)(3).

nonminority applicants in the New York, New York Metropolitan Statistical Area ("MSA"); the Nassau-Suffolk, New York MSA; and the Edison, New Jersey MSA.[16] The Board reviewed the HMDA data for 2004 reported by NY Community Bank in its assessment area.[17]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to support a conclusion on whether or not NY Community Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[18] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by NY Community Bank with fair lending laws. In the fair lending review conducted in conjunction with the bank's CRA evaluation in 2002, examiners noted no violations of the substantive provisions of applicable fair lending laws. In addition, the Board has consulted with the FDIC, the primary federal supervisor of NY Community Bank, about the bank's record of compliance with fair lending laws and other consumer protection laws.

The record also indicates that NYCB has taken steps designed to ensure compliance with fair lending laws and other consumer protection laws. NYCB represented that it has implemented fair lending policies, procedures, and training programs at NY Community Bank and that all lending department personnel at the bank are required to take annual compliance training. NYCB further represented that the bank's fair lending policies and procedures are designed to help ensure that loan officers price loans uniformly, illegally discriminatory loan products are avoided, and current and proposed lending activities and customer complaints are reviewed. NY Community Bank conducts independent audits of its lending activities, and audit results are provided to its Audit Committee of the Board of Directors, Compliance Department, and Legal Department. The bank also analyzes HMDA Loan Application Register data to help assess its lending activities for compliance with the CRA.

NYCB has represented that LICB maintains similar policies and programs designed to ensure compliance with applicable fair lending and consumer protection laws and that NYCB does not intend to make significant changes to LICB's policies and programs.

The Board also has considered the HMDA data in light of other information, including NY Community Bank's CRA lending programs and the overall performance records of NY Community Bank and LICB under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by NYCB, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to LIFC's customers, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.[19] In reaching this

16. In 2004 the Nassau–Suffolk MSA was renamed the Nassau–Suffolk, New York Metropolitan Division by the Office of Management and Budget ("OMB"), and the New York, New York MSA is now encompassed within the New York–White Plains–Wayne, New York–New Jersey Metropolitan Division. The OMB also delineated the Edison, New Jersey Metropolitan Division. *See* OMB Bulletin No. 05-02 (2004).

17. The Board reviewed 2004 HMDA data reported by NY Community Bank in portions of the following Metropolitan Divisions that comprise the bank's assessment area: (1) Nassau–Suffolk, New York; (2) New York–White Plains–Wayne, New York–New Jersey; and (3) Newark–Union, New Jersey–Pennsylvania. The Edison, New Jersey Metropolitan Division is not within the bank's assessment area.

18. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

19. The commenter also requested that the present proposal be consolidated with a separate application under the BHC Act that NYCB may file in connection with another acquisition that it recently announced. This potential application would be considered by the Board separately from the NYCB/LIFC proposal pursuant to standard procedures under section 3 of the BHC Act and Regulation Y.

conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.[20] The Board's approval is specifically conditioned on compliance by NYCB with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction shall not be consummated before the 15th calendar day after 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 by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 14, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Penn Bancshares, Inc.
Pennsville, New Jersey

Order Approving Acquisition of Shares of a Bank Holding Company

Penn Bancshares, Inc. ("Penn"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire up to 24.89 percent of the voting shares of Harvest Community Bank ("HCB"), also of Pennsville.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 56,899 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Penn, with total consolidated assets of approximately $164.7 million, is the 102nd largest depository organization in New Jersey, controlling deposits of approximately $150.5 million, which represent less than 1 percent of total deposits of insured depository institutions[3] in the state ("state deposits").[4] HCB, with assets of approximately $141.1 million, is the 110th largest depository organization in New Jersey, controlling approximately $120.9 million in deposits. If Penn were deemed to control HCB on consummation of the proposal, Penn would become the 74th largest depository organization in New Jersey, controlling approximately $271.4 million in deposits, which represent less than 1 percent of state deposits.

The Board received approximately 73 comments on the proposal. Comments were submitted by HCB and government officials, private organizations, and individuals, including HCB and Penn shareholders and customers. Many commenters objected to the proposal on the grounds that the investment could create uncertainty about the future independence of HCB or result in Penn acquiring control of HCB and potentially harming its future prospects. A number of commenters also expressed concern that the proposal could have an adverse effect on competition and on the convenience and needs of the communities that HCB serves. The Board has considered these comments carefully in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company.[5] The requirement in section 3(a)(3) of the BHC Act, however, that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of

20. The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

1. 12 U.S.C. § 1842.

2. Penn and its officers and directors currently own 4.98 percent of HCB's voting shares. Penn proposes to acquire the additional voting shares in negotiated purchases from shareholders and through open market purchases.

3. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Asset data are as of September 30, 2005. Deposit and ranking data are as of June 30, 2005, and reflect merger activity through December 14, 2005.

5. *See, e.g., C-B-G, Inc.*, 91 *Federal Reserve Bulletin* 421 (2005) ("*C-B-G*"); *S&T Bancorp Inc.*, 91 *Federal Reserve Bulletin* 74 (2005) ("*S&T Bancorp*"); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.*, 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

banks.[6] On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[7]

Penn has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over HCB. Penn has agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.[8] For example, Penn has committed not to exercise or attempt to exercise a controlling influence over the management or policies of HCB or any of its subsidiaries; not to seek or accept representation on the board of directors of HCB or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with HCB or any of its subsidiaries. Penn also has committed not to attempt to influence the dividend policies, loan decisions, or operations of HCB or any of its subsidiaries. Moreover, the BHC Act prohibits Penn from acquiring shares of HCB in excess of the amount considered in this proposal or attempting to exercise a controlling influence over HCB without the Board's prior approval.[9]

The Board has adequate supervisory authority to monitor compliance by Penn with its commitments and can take enforcement action against Penn if it violates any of the commitments.[10] The Board also has authority to initiate a control proceeding[11] against Penn if facts presented later indicate that Penn or any of its subsidiaries or affiliates, in fact, controls HCB for purposes of the BHC Act.[12] Based on these considerations and all the other facts of record, the Board has concluded that Penn would not acquire control of, or have the ability to exercise a controlling influence over, HCB through the proposed acquisition of voting shares.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the applicant, and public comments received.[13]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. When applicable, the Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.[14]

Penn and its subsidiary bank, The Pennsville National Bank ("PNB"), Pennsville, are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board believes that Penn has sufficient financial resources to effect the proposal. The proposed transaction would be funded from Penn's general corporate resources.

6. *See* 12 U.S.C. § 1842(a)(3).

7. *See, e.g., C-B-G* (acquisition of up to 24.35 percent of the voting shares of a bank holding company); *S&T Bancorp* (acquisition of up to 24.9 percent of the voting shares of a bank holding company); *Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

8. *See, e.g., C-B-G; S&T Bancorp; Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Banc shares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). Penn's commitments are set forth in the appendix.

9. HCB claimed that Penn and the president, a director, and an officer of Penn, as well as an HCB shareholder who is a business associate of Penn's president, have already acted together to acquire more than 5 percent of the shares of HCB without prior approval of the Board, as required under section 3 of the BHC Act. The Board has reviewed information provided by Penn and HCB and confidential supervisory information regarding the current ownership of both organizations, including information about the ownership of HCB's shares by individuals associated with Penn, in light of the Board's rules and precedent for aggregating shares held by a company and persons associated with the company. The record does not support a finding that Penn, its president, the director and the officer of Penn, and the HCB shareholder have acted together to acquire more than 5 percent of the voting shares of HCB in violation of the BHC Act.

10. *See* 12 U.S.C. § 1818(b)(1).

11. *See* 12 U.S.C. § 1841(a)(2)(C).

12. HCB asserted that despite Penn's commitments, Penn would control HCB after consummation of the proposal and thereby potentially harm the future prospects of HCB. As noted, the Board believes that the facts of record, including the commitments made in this case, do not support this conclusion and that the Board has adequate supervisory authority to monitor and enforce Penn's compliance with its commitments.

13. HCB claimed that Penn is in violation of state law because Penn has not yet filed an application with, and received approval from, the New Jersey Department of Banking and Insurance ("Banking Department") under the New Jersey banking statutes. Penn has represented that it plans to file an application with the Banking Department after the proposal is approved by the Board. The Federal Reserve provided notice of the application filed with the Board to the Banking Department, as required under section 3 of the BHC Act, and the Board has consulted with the department. The Banking Department has not filed any comments with the Board about this proposal. As in other proposed transactions that might be subject to approval from multiple banking supervisory agencies, an applicant must obtain all required regulatory approvals in accordance with applicable law. The Board's approval of this proposal is conditioned on Penn obtaining any approval required by New Jersey law.

14. As previously noted, the current proposal provides that Penn would acquire only up to 24.89 percent of HCB's voting shares and would not be considered to control HCB. Under these circumstances, the financial statements of Penn and HCB would not be consolidated.

The Board also has considered the managerial resources of the organizations involved.[15] The Board has reviewed the examination records of Penn, PNB, and HCB, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. Penn, PNB, and HCB are considered to be well managed.

Several commenters contended that Penn's investment could cause confusion among HCB's shareholders, customers, and employees about the continued independence of HCB and could compromise HCB's ability to retain employees. As noted above, Penn has committed that it will not attempt to influence HCB's operations, personnel decisions, pricing of services, activities, or dividend, loan, or credit policies; or to exercise a controlling influence over HCB. The Board believes that these and the other commitments made by Penn clarify that the company will maintain a passive role as an investor in HCB and that the operation of HCB will continue to be the responsibility of HCB's management. No evidence has been presented to show that the purchase of shares of HCB on the open market by Penn would adversely affect the financial condition of HCB or Penn.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal are consistent with approval, as are the supervisory factors under the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition[16] in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[17]

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.[18] The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.[19]

HCB contends that the relevant geographic market for reviewing this transaction is Salem County, New Jersey, and not the Philadelphia banking market ("Philadelphia Market").[20] HCB asserts that Salem County is the relevant market because of the county's population and economic demographics and because all of Penn's and HCB's offices and the vast majority of their customer bases are, according to HCB, in Salem County. In reviewing this contention, the Board has considered a number of factors to identify the economically integrated market that represents the appropriate local geographic banking market for purposes of analyzing the competitive effects of this proposal.

The Board has reviewed the geographic proximity of the Philadelphia Market's population centers and the worker commuting data from the 2000 census, which indicated that more than 35 percent of the labor force residing in Salem County commuted to work elsewhere in the Philadelphia Market. In addition, several large banks without a branch in Salem County, but with branches elsewhere in the Philadelphia Market, advertise in the local telephone directory and through radio, television, and newspapers that serve the county. Moreover, small-business lending data submitted by depository institutions in 2004 under the Community Reinvestment Act ("CRA") regulations[21] of the federal supervisory agencies indicated that approximately 25 percent of the total number of small business loans made to businesses in Salem County were made by depository institutions without a branch in the county but with branches elsewhere in the Philadelphia Market. Based on these facts and other information, the Board reaffirms that Salem County should be included in the Philadelphia Market and that the Philadelphia Market is the appropriate local geographic banking market for purposes of analyzing the competitive effects of this proposal.

15. HCB alleged that Penn owns more than 5 percent of HCB's voting shares and asserted that Penn is, therefore, in violation of federal securities laws and regulations requiring Penn to file certain reports. As previously noted, the record does not support a finding that Penn has acquired more than 5 percent of the voting shares of HCB. Moreover, the Federal Deposit Insurance Corporation ("FDIC"), rather than the Board, is the appropriate agency to investigate and adjudicate any violations of federal securities laws and regulations pertaining to the securities of state nonmember banks such as HCB. *See* 12 CFR Part 335. The Board has consulted with the FDIC, which is investigating HCB's assertion in light of the relevant laws and regulations. The Board believes the FDIC has adequate supervisory authority to monitor and enforce Penn's compliance with those laws and regulations.

16. Several commenters expressed concern that consummation of the proposal would provide Penn with the ability to exert control over HCB, with a resulting adverse effect on competition.

17. *See* 12 U.S.C. § 1842(c)(1).

18. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

19. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37, 38 (1993); *Sun Banks* at 244.

20. The Philadelphia Market is the Philadelphia/South Jersey banking market and is defined as Burlington, Camden, Cumberland, Gloucester, and Salem counties, all in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania.

21. *See, e.g.*, 12 CFR 228 et seq.

If PNB and HCB were viewed as a combined organization, consummation of the proposal would be consistent with Board precedent and the Department of Justice Merger Guidelines[22] in the Philadelphia Market. The market would remain moderately concentrated as measured by the HHI, and numerous competitors would remain in the market.[23]

The Department of Justice also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Accordingly, in light of all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive considerations are consistent with approval of the proposal.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.[24] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[25]

The Board has considered carefully the entire record, including Penn's commitments not to control HCB or its operations and policies, the federal agencies' evaluations of the CRA performance records of PNB and HCB, data reported by PNB and HCB under the Home Mortgage Disclosure Act ("HMDA"),[26] other information provided by Penn, confidential supervisory information, and public comment received on the proposal.[27] Several commenters generally criticized PNB's level of service to its community, including the bank's level of community and small business lending. One commenter specifically criticized PNB's record of lending to small businesses owned by minorities.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[28]

PNB received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of October 27, 2003 ("2003 Evaluation"). HCB also received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of January 11, 2002.

In the 2003 Evaluation, examiners found that PNB exceeded the standards for satisfactory performance for lending in its assessment area and demonstrated a good record of lending to small businesses. Examiners reported

22. Under the revised Department of Justice Merger Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice has stated that the higher-than-normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other non-depository financial entities.

23. Penn is the 53rd largest depository organization in the Philadelphia Market, controlling $150.5 million in deposits, which represents less than 1 percent of the total deposits in depository institutions in the market ("market deposits"). HCB is the 61st largest depository institution in the market, controlling $120.9 million in deposits. If considered a combined banking organization on consummation of the proposal, Penn and HCB would be the 39th largest depository institution in the Philadelphia Market, controlling $271.4 million in deposits, which would represent less than 1 percent of market deposits. The HHI for the Philadelphia Market would remain unchanged at 1043. One hundred and thirty-two depository institutions would remain in the market.

Market deposit data are as of June 30, 2005, and reflect mergers and acquisitions through December 14, 2005. Market share data are based on calculations that include the deposits of thrift institutions 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

24. 12 U.S.C. § 2901 et seq.

25. 12 U.S.C. § 2903.

26. 12 U.S.C. § 2801 et seq.

27. Several commenters expressed concern about PNB's branching policies and possible branch closures, reductions in service, and job losses after consummation of the proposal and generally objected to the transaction because PNB would implement its policies and procedures at HCB. As previously noted, Penn has agreed to a set of passivity commitments that prevent it from, among other things, attempting to influence the policies and business decisions of HCB, including the credit decisions of HCB and the locations or operations of HCB's branches. The effect of a proposed acquisition on employment in a community is not among the factors included in the BHC Act. *See Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

28. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

that PNB ranked second out of 243 peer lenders in originating home mortgage loans and that the bank's commercial loan portfolio was substantially composed of loans to small businesses. Examiners also noted no evidence of illegal discrimination or other illegal credit practices.

Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all other facts of record, the Board has determined that the application should be, and hereby is, approved.[29] In reaching this conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[30] The Board's approval is specifically conditioned on compliance by Penn with the conditions imposed in this order and all the commitments made to the Board in connection with the application, including the commitments discussed in this order, and receipt of all required regulatory approvals. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of HCB's voting shares shall not be consummated before the 15th calendar day after 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 by the Federal Reserve Bank of Philadelphia, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 19, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

In connection with its application to acquire up to 24.89 percent of HCB, Penn commits that it will not, directly or indirectly:

(1) exercise or attempt to exercise a controlling influence over the management or policies of HCB or any of its subsidiaries;
(2) seek or accept representation on the board of directors of HCB or any of its subsidiaries;
(3) serve, have, or seek to have any representative serve as an officer, agent, or employee of HCB or any of its subsidiaries;
(4) take any action that would cause HCB or any of its subsidiaries to become a subsidiary of Penn or any of its subsidiaries;
(5) acquire or retain shares that would cause the combined interests of Penn and its subsidiaries, and their respective officers, directors, and affiliates, to equal or exceed 25 percent of the outstanding voting shares of HCB or any of its subsidiaries;
(6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of HCB or any of its subsidiaries;
(7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of HCB or any of its subsidiaries;
(8) attempt to influence the dividend policies or practices of HCB or any of its subsidiaries;
(9) attempt to influence the investment, loan, or credit decisions or policies; pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of HCB or any of its subsidiaries;
(10) dispose or threaten to dispose of shares of HCB or any of its subsidiaries in any manner as a condition of specific action or nonaction by HCB or any of its subsidiaries; or
(11) enter into any other banking or nonbanking transactions with HCB or any of its subsidiaries, except that Penn may establish and maintain deposit accounts with depository institution subsidiaries of

29. HCB requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully HCB's request in light of all the facts of record. In the Board's view, HCB has had ample opportunity to submit its views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. HCB's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

30. HCB also requested that the Board delay action on the application until the Banking Department has evaluated the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that further delay in considering the proposal is not necessary.

HCB, provided that the aggregate balance of all such accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with HCB or any of its subsidiaries.

Sky Financial Group, Inc.
Bowling Green, Ohio

Order Approving the Acquisition of a Bank

Sky Financial Group, Inc. ("Sky"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Falls Bank, Stow, Ohio, a state-chartered savings bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 48,548 (2005)). 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 3 of the BHC Act.

Sky, with total consolidated assets of approximately $15.2 billion, controls Sky Bank,[3] Salineville, Ohio, with branches in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia. Sky is the eighth largest depository organization in Ohio, controlling deposits of approximately $8 billion, which represent 4 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[4]

Falls Bank is the 189th largest insured depository institution in Ohio, controlling deposits of approximately $53.8 million, representing less than 1 percent of state deposits. On consummation of the proposal, Sky would remain the eighth largest depository organization in Ohio, controlling deposits of approximately $8.1 billion, which represent 4 percent of state deposits.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

Sky and Falls Bank compete directly in the Akron banking market in Ohio.[6] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Sky and Falls Bank,[7] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[8] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Akron banking market. After consum-

1. 12 U.S.C. § 1842.

2. Sky also has requested the Board's approval under section 3 of the BHC Act to acquire Falls Interim Savings Bank, Bowling Green, Ohio, a subsidiary formed by Sky that will merge with Falls Bank (with Falls Bank as the surviving entity) after receiving regulatory approval from the Federal Deposit Insurance Corporation ("FDIC") and the Ohio Division of Financial Institutions. In a separate application that is not subject to this order, Falls Bank has requested the Board's approval to become a state member bank, subsequently merge with Sky Bank (with Falls Bank as the surviving entity), and operate Sky Bank's offices as branches of Falls Bank pursuant to section 9 of the Federal Reserve Act and section 18(c) of the Federal Deposit Insurance Act. Sky intends to change the name of Falls Bank to Sky Bank and move its headquarters to Salineville, Ohio.

3. Sky also controls Sky Trust, National Association, Pepper Pike, Ohio ("Sky Trust"), a limited-purpose bank that provides only trust services.

4. Deposit, asset, and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of October 27, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. 12 U.S.C. § 1842(c)(1).

6. The Akron banking market is defined as Summit County, excluding the cities of Macedonia, Twinsburg, and Hudson and the townships of Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston; Portage County, excluding the cities of Aurora, Streetsboro, and Mantua and the townships of Hiram, Nelson, Shalersville, Freedom, and Windham; the townships of Sharon, Homer, Harrisville, Westfield, Guilford, and Wadsworth in Medina County; the townships of Lawrence and Lake in Stark County; and the townships of Milton and Chippewa in Wayne County, all in Ohio.

7. Market deposit and share data are as of June 30, 2005, and reflect merger acquisition activity as of October 27, 2005. The market share data also 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Because the deposits of Falls Bank are being acquired by a commercial banking organization, they are included at 100 percent in the calculation of Sky's post-consummation share of market deposits. *See Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990).

8. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

mation, there would be no increase in the HHI, and 24 competitors would remain in the banking market.[9]

The Department of Justice also has reviewed the competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Akron banking market or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Sky has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash purchase. Sky will use existing resources to fund the cash portion of the transaction. Sky and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Sky and its subsidiary banks and Falls Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Sky and its subsidiary depository institutions and Falls Bank are considered to be well managed. The Board also has considered Sky's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[11]

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of Sky Bank and Falls Bank, data reported by Sky Bank in 2004 under the Home Mortgage Disclosure Act ("HMDA"),[12] small-business lending data reported under the CRA,[13] other information provided by Sky, confidential supervisory information, and public comment received on the proposal. A commenter criticized Sky's record of small

9. Sky operates the tenth largest depository institution in the Akron market, controlling deposits of approximately $173 million, which represent approximately 2.1 percent of market deposits. Falls Bank is the 21st largest depository institution in the market, controlling deposits of approximately $26.9 million, which represent less than 1 percent of market deposits. On consummation, Sky would operate the ninth largest depository institution in the market, controlling weighted deposits of approximately $226.7 million, which represent approximately 2.7 percent of market deposits. The HHI would decrease 6 points, to 1348.

10. 12 U.S.C. § 2901 et seq.

11. 12 U.S.C. § 2903.

12. 12 U.S.C. § 2801 et seq.

13. Under the Board's CRA regulations, state member banks (other than small banks) are subject to reporting requirements for loans with original amounts of $1 million or less ("small business loans") for each geography in which the bank originated or purchased a small business loan. Banks must report the aggregate number and amount of small business loans in specified origination amount categories and the aggregate number and amount of small business loans to businesses with gross annual revenues of $1 million or less ("small businesses") (12 CFR 228.42).

business lending, alleging that it disproportionately lent to businesses in middle- and upper-income census tracts and did not provide enough loans to businesses in the LMI census tracts. The commenter also alleged, based on 2004 HMDA data, that Sky had low levels of home mortgage lending to minority borrowers and engaged in disparate treatment of minority individuals in its home mortgage operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[14]

Sky Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Reserve Bank of Cleveland ("Reserve Bank"), as of October 14, 2003 ("2003 CRA Evaluation").[15] Falls Bank also received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 1, 2001.[16] After consummation of the proposed series of transactions, Sky will implement in the resulting institution the community development strategy, including products, services, outreach, and initiatives, that is currently in place at Sky Bank.

In its 2003 CRA Evaluation, Sky Bank received a "high satisfactory" rating under the lending test. Examiners reported that the majority of Sky's lending was inside its assessment areas and that Sky Bank's lending levels reflected good responsiveness to the credit needs of its communities.[17] Furthermore, examiners noted that Sky Bank's distribution of loans showed a good penetration among geographies and customers of different income levels and among businesses of different revenue sizes.

In the Ohio and the Steubenville–Weirton MSA assessment areas, examiners concluded that Sky Bank's lending activity was good, and they commended the overall geographic distribution of the bank's loans. Examiners noted that Sky Bank's lower levels of HMDA-reportable lending in low-income census tracts was offset by the bank's strong lending levels in moderate-income census tracts. Examiners also took into consideration programs offered by Sky Bank in evaluating Sky's flexible lending practices to address the credit needs of LMI individuals and geographies. These programs included a partnership with the Federal Home Loan Bank of Cincinnati to increase home ownership opportunities and the supply of affordable housing, partnerships with four Metropolitan Housing Authorities to originate loans using conversions of the U.S. Department of Housing and Urban Development's section 8 rental subsidies into mortgage payments, and partnerships with Fannie Mae and others to develop the GoodStart Mortgage Program, which focuses on LMI and underserved minority borrowers. The GoodStart Mortgage Program provides 100 percent financing and a more competitive rate and fee structure than the Federal Housing Administration loan program.[18]

With respect to Sky Bank's small-business lending performance, the 2003 CRA Evaluation found that the bank demonstrated an adequate overall record of serving the credit needs of small businesses. Although the percentage of small business loans[19] made by the bank in LMI census tracts in some parts of its primary assessment areas was less than the percentage of the aggregate of all lenders ("aggregate lenders"), it exceeded that of the aggregate lenders in other parts of its primary assessment areas.[20] For example, in Sky Bank's multistate Steubenville–Weirton MSA assessment area, although Sky Bank's percentage of small business lending in low-income census tracts was less than that of the aggregate lenders, Sky Bank's percent-

14. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

15. Examiners evaluated Sky Bank's CRA performance in its 17 assessment areas in Ohio, Pennsylvania, Michigan, and Indiana and in one assessment area that included a part of the Steubenville–Weirton Metropolitan Statistical Area ("MSA") that covers portions of Ohio and West Virginia. The substantial majority of the bank's deposits, loans, and branches were in Ohio. In determining Sky Bank's overall rating, examiners gave the greatest weight to the bank's performance in the Steubenville–Weirton MSA and the bank's other assessment areas in Ohio, particularly the Toledo and Youngstown–Warren MSAs. The evaluation period for home mortgage loans and small business loans was January 1, 2001, through December 31, 2002. The evaluation period for community development loans and the investment and services tests was August 7, 2000, through October 14, 2003. Sky Trust, a special-purpose bank, is not subject to the CRA (12 CFR 225.11(3)).

16. The evaluation period for Falls Bank's CRA performance was from July 1, 1999, through January 24, 2001. Falls Bank's CRA performance was evaluated according to the FDIC's small-bank performance standards (12 CFR 345.26).

17. The commenter noted that Sky originated mortgages in various states outside its assessment areas in 2004. HMDA data from 2004 indicate that the majority of Sky's HMDA-reportable loans were generated in its assessment areas. Sky has represented that it does not actively lend outside its five core states of Ohio, Pennsylvania, Michigan, West Virginia, and Indiana, and that the loans made outside those states are generally for non-owner-occupied or multifamily housing properties.

18. During the evaluation period, Sky provided more than $41 million in financing to LMI households in the GoodStart Mortgage Program.

19. In this context, "small business loans" are loans that have original amounts of $1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans. The commenter criticized Sky Bank's record of small business lending in LMI census tracts outside the bank's assessment areas in Indiana and West Virginia, as well as its lending in Illinois and New York, both states where the bank has no assessment areas. Sky Bank asserted that only a very small portion of the small business loans it closed in 2004 were outside the five core states in its assessment areas.

20. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions subject to reporting requirements in a particular area.

age of small business loans in moderate-income census tracts exceeded the percentage for the aggregate lenders. In the Youngstown–Warren MSA, examiners found the geographic distribution of the bank's small business loans to be "excellent," with its percentage of small business lending in LMI geographies exceeding the percentage for the aggregate lenders.[21]

The Board has also considered additional information about Sky Bank's small-business lending performance since the 2003 CRA Evaluation. The 2004 CRA data reported by Sky Bank indicated that the percentage of the bank's total dollar amount of small business loans to businesses in LMI census tracts in Ohio was generally comparable to the percentage for the aggregate lenders. Furthermore, Sky represented that Sky Bank was recognized each fiscal year by the Small Business Administration ("SBA") from 2000 to 2004 as a "top five" lender on the basis of the number of loans made to small businesses in the SBA's northern Ohio district. Sky also represented that it participates in economic development programs in Toledo and Youngstown, two cities that have a significant concentration of LMI census tracts, and that it conducts various outreach efforts to small businesses in LMI areas, including advertising its small business products in media that focus on minority-owned and emerging businesses and holding meetings about its small business products with small business owners in an LMI area of Cleveland.[22]

In the 2003 CRA Evaluation, examiners commended Sky Bank for having an "excellent" level of community development lending throughout its assessment areas, particularly in Ohio. During the evaluation period, Sky Bank originated 70 community development loans totaling $81.8 million, the majority of which supported affordable housing initiatives.

Sky Bank received an overall "high satisfactory" rating under the investment test in the 2003 CRA Evaluation, reflecting what examiners reported as an "excellent" level of qualified investments in various assessment areas. For example, examiners found the bank's investment performance in Ohio to be "outstanding" based on the bank's qualified investments in the state that totaled approximately $29.4 million.

Sky Bank also received an overall "high satisfactory" rating under the service test in the 2003 CRA Evaluation. Examiners reported that Sky Bank's retail delivery systems were accessible to essentially all portions of its assessment areas and that the bank's new branches improved accessibility in LMI geographies in the Youngstown–Warren and Pittsburgh MSAs. Examiners also commended the bank for providing a relatively high percentage of community development services throughout its assessment areas that promoted or facilitated affordable housing, services, and economic development in LMI areas and for LMI individuals.

B. HMDA and Fair Lending Record

The Board has considered carefully Sky's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter expressed concern, based on 2004 HMDA data, that Sky disproportionately excluded or denied applications by African-American and Hispanic applicants for HMDA-reportable loans. The commenter also expressed concern that the 2004 HMDA data indicated that Sky made higher-cost loans to African Americans more frequently than nonminorities in its overall business and in Ohio in particular.[23] The Board reviewed the HMDA data for 2004 reported by Sky Bank in its assessment areas on a statewide basis in Ohio, Pennsylvania, Michigan, West Virginia, and Indiana.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not Sky Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[24] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Sky Bank with fair lending laws.

21. Although the bank's small business lending in LMI census tracts in its assessment area in the Toledo MSA was less than that of the aggregate lenders, examiners noted competitive factors affecting the bank's performance and considered it to be adequate.

22. The commenter criticized Sky Bank's level of small business lending in LMI census tracts in its assessment areas in Indiana and West Virginia in 2004. The 2003 CRA Evaluation indicated that the bank's overall small business lending record was adequate. The Reserve Bank will continue to evaluate Sky Bank's lending activities in future CRA performance evaluations, including its small business lending activities.

23. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

24. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

In the fair lending review conducted in conjunction with the 2003 CRA Evaluation, examiners noted no substantive violations of applicable fair lending laws by Sky Bank. As the primary federal supervisor of Sky Bank, the Board will continue to carefully examine the bank's compliance with fair lending and other consumer protection laws.

The record also indicates that Sky has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Sky represented that it undertakes significant monitoring of compliance in its mortgage lending operations using a wide variety of audit and review mechanisms, including file reviews, statistical analyses, and exception reviews. Furthermore, Sky Bank's mortgage products are conventional, conforming products such as those offered by government-sponsored enterprises that conform to secondary-market underwriting guidelines. Sky Bank's mortgage program offers risk-priced procedures consistent with these guidelines, and it uses automated software for underwriting and pricing mortgage loans. The bank does not offer any nonprime or "Alt-A" mortgage loan products other than those offered through programs of government- sponsored enterprises.

The Board also notes that Sky has typically acquired rural community banks and has only recently entered into certain urban areas with significant minority populations. Sky has undertaken initiatives since entering those markets to enhance its outreach and loan distribution to minorities in urban areas. These initiatives have included hiring community mortgage originators and community development officers, marketing in local minority-focused media, and developing Spanish-language marketing materials.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of Sky Bank and of Falls Bank under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of evaluation of the CRA performance records of the institutions involved, information provided by Sky, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to the customers of Falls Bank, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[25] The Board's approval is specifically conditioned on compliance by Sky with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 14, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Treetops Acquisition Group LP,
Treetops Acquisition Group Ltd.,
Treetops Acquisition Group II LP,
Treetops Acquisition Group II Ltd.
All in Grand Cayman, Cayman Islands

Edgar M. Bronfman IDB Trusts A through G
Quebec, Canada

Cam-Discount, Ltd.
Grand Cayman, Cayman Islands

Order Approving the Formation of Bank Holding Companies and Acquisition of a Bank

25. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

Treetops Acquisition Group LP ("Treetops LP"), Treetops Acquisition Group Ltd. ("Treetops Ltd."), Treetops Acquisition Group II LP ("Treetops II LP"), Treetops Acquisition Group II Ltd. ("Treetops II Ltd."), Edgar M. Bronfman IDB Trusts A through G ("EMB IDB Trusts"), and Cam-Discount, Ltd. ("Cam-Discount") (collectively, "Applicants") have requested the Board's approval under section 3 of the Bank Holding Company Act[1] ("BHC Act") to become bank holding companies, acquire up to 51 percent of the voting shares of Israel Discount Bank Ltd., Tel Aviv, Israel ("IDB"),[2] a foreign bank that is a bank holding company within the meaning of the BHC Act, and acquire control of Israel Discount Bank of New York ("IDBNY"), New York, New York.[3]

Notice of the proposal, affording interested persons an opportunity to comment, has been published (70 *Federal Register* 20,373 (2005)). 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 of the BHC Act. IDB, with total consolidated assets of approximately $33 billion, is the third largest banking organization in Israel. IDBNY is the 79th largest depository organization in the United States, with total U.S. assets of $8.7 billion. It controls approximately $3.5 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4]

In considering the factors required to be reviewed under the BHC Act in this case, the Board has had extensive consultations with the New York State Banking Department ("NYSBD") and the Federal Deposit Insurance Corporation ("FDIC"), the primary supervisors of IDBNY, about this proposal and the financial and managerial resources, risk-management systems, and compliance efforts and programs of IDBNY, including those involving Bank Secrecy Act/anti-money-laundering ("BSA/AML") compliance. The Board also has consulted with the Israeli Supervisor of Banks regarding the structure, financing, and timing of the proposal. The Board has taken account of the fact that this proposal represents the privatization of a foreign bank after an extensive bidding process conducted by a foreign government. The Board has also considered the time schedule imposed on this transaction by the privatization process in Israel and by the purchase contract between the state of Israel and Applicants, which contemplates completion of the privatization during 2005.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered carefully these factors in light of all the facts of record, including confidential reports of examination, other supervisory information received from the international, federal, and state banking supervisors of the organizations involved, publicly reported and other financial information, and information provided by the Applicants.

In evaluating the financial factors in proposals involving the formation of new bank holding companies, the Board reviews the financial condition of both the applicants and the target depository institutions. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

IDBNY is well capitalized and would remain so on consummation of the proposal, and the capital levels of IDB would continue to exceed the minimum levels that would be required under the Basel Capital Accord. Furthermore, IDB's capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization and would remain so after consummation of this proposal. The proposed transaction would be funded from cash and promissory notes, and Applicants have sufficient resources to effect the transaction as proposed. In addition, Applicants have represented that they were formed solely to hold this investment in IDB and that they will not engage in activities other than holding the shares of IDB.

The Board also has considered the managerial resources of IDB and IDBNY and the effect of the proposal on these resources. In reviewing the proposal, the Board has assembled and considered a broad and detailed record that includes the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. In particular, the Board has reviewed the assessments of

1. 12 U.S.C. § 1842.

2. The state of Israel currently owns 57 percent of the voting shares of IDB through M.I. Holdings; the remaining outstanding shares are publicly traded on the Tel Aviv Stock Exchange. In 2004, M.I. Holdings established a formal bidding process for privatizing a portion of its ownership interest in IDB. Treetops LP and Treetops II LP were the successful bidders in the privatization process and on February 1, 2005, the state of Israel entered into an agreement with the Applicants to sell 26 percent of the shares of IDB to the Applicants and to grant the Applicants an option to acquire an additional 25 percent of IDB's shares. Treetops LP and Treetops II LP would own 60 percent and 40 percent, respectively, of the Applicants' proposed total investment in IDB. Treetops Ltd. and Treetops II Ltd. are general partners of Treetops LP and Treetops II LP, respectively. The seven EMB IDB Trusts each owns 6.45 percent of the limited partnership interests of Treetops LP and owns the same percentage of the voting shares of Treetops Ltd. Cam-Discount is the only shareholder of Treetops II Ltd. As a result, on consummation of the proposal, Treetops LP, Treetops II LP, Treetops Ltd., Treetops II Ltd., Cam-Discount, and the EMB IDB Trusts would all be considered to control IDB. Each of the Applicants would be a qualifying foreign banking organization under Regulation K. *See* 12 CFR 211.23.

3. IDB is a foreign bank within the meaning of the International Bank Act ("IBA") (12 U.S.C. § 3101(7). IDB indirectly holds all the shares of IDBNY through a wholly owned subsidiary bank holding company, Discount Bancorp, Inc., Wilmington, Delaware.

4. Worldwide asset and ranking data are as of December 31, 2004. U.S. asset and deposit data are as of September 30, 2004, and national ranking is as of June 30, 2004. The data and rankings are adjusted to reflect exchange rates then in effect.

the organizations' management and risk-management systems by the FDIC and the NYSBD, the primary regulators of IDBNY. In addition, the Board has reviewed confidential supervisory information on the anti-money-laundering programs at IDB and IDBNY, including the assessment of those programs by the relevant federal supervisory agencies, state banking agencies, and the Bank of Israel.[5]

The Board has also considered that, on December 16, 2005, IDBNY entered into consent cease and desist orders issued by the NYSBD and the FDIC that obligate it to remedy deficiencies in compliance, internal controls, and risk-management practices, including deficiencies with respect to BSA/AML compliance. The orders require IDBNY to establish enhanced due diligence with respect to customer accounts, institute new policies and procedures to ensure compliance with BSA/AML requirements, undertake a detailed review of existing customer accounts to determine whether any should be closed, and review customer account information on an annual basis. IDBNY must also submit to the regulators a plan designed to ensure compliance with the terms of the consent orders. In addition, IDBNY has entered into a settlement and cooperation agreement with the New York County District Attorney ("NYCDA") relating to these deficiencies. This agreement obligates IDBNY to comply fully with the consent orders issued by the FDIC and the NYSBD. In connection with these actions, the various authorities have indicated that IDBNY may also be subject to money penalties of up to $25 million.[6]

The Board has reviewed the proposals by IDBNY and IDB to address these matters. The Board also has considered the plans and abilities of Applicants to address these matters and has relied on commitments made by Applicants and IDB to cause IDBNY to correct deficiencies identified by any state or federal regulator, and to work to ensure that IDBNY will in the future remain in compliance with U.S. laws and regulations. As noted, the Board also has consulted with the NYSBD and the FDIC about the proposed transaction, and neither agency objected to the proposal.

Based on these and all other facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is "subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country."[7] The Supervisor of Banks, who heads the Banking Supervision Unit of the Bank of Israel, is the primary regulator of Israeli banks, including IDB. The Board has previously determined in an application under the BHC Act involving Bank Hapoalim B.M., Tel Aviv, that Bank Hapoalim was subject to comprehensive consolidated supervision by the Supervisor of Banks.[8] In this case, the Board has determined that IDB is supervised on substantially the same terms and conditions as Bank Hapoalim. Based on all the facts of record, the Board has concluded that IDB is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.[9]

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[10] The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which the Applicants and IDB operate and has communicated with relevant government authorities concerning access to information. In addition, the Applicants have committed to make available to the Board such information on the operations of IDB and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. The Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable IDB and its affiliates to make such information available to the Board. In light of the Board's review of the restrictions on disclosure and these commitments, the Board concludes that the Applicants have provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

5. The Board notes that Israel has substantially modified and strengthened its legal framework to combat money laundering since 2001, thereby addressing deficiencies that had been noted previously by the Financial Action Task Force, an intergovernmental body that develops and promotes policies to combat money laundering. In 2004, the Israeli Parliament adopted additional legislation to enhance Israel's ability to combat terrorist financing and to cooperate with other countries on such matters.

6. The various authorities that may assess the penalties are the NYSBD, the FDIC, the NYCDA, and the U.S. Department of the Treasury's Financial Crimes Enforcement Network.

7. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

8. *See Bank Hapoalim B.M.*, 87 *Federal Reserve Bulletin* 327 (2001).

9. As a condition of approving the acquisition of IDB, Israeli law requires Applicants to obtain prior approval for any changes in the holding company structure and prohibits the holding companies from conducting activities other than holding the shares of IDB.

10. *See* 12 U.S.C. § 1842(c)(3)(A).

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[11]

This proposal involves only the formation of new bank holding companies. Applicants are all newly organized entities that do not control any depository institutions in the United States. Accordingly, the Board concludes, based on all the facts of record, that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Convenience and Needs Considerations

In acting on this proposal, the Board also is required to consider the effects of the transaction on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[13]

The Board has considered carefully the convenience and needs factor and the CRA performance record of IDBNY in light of all the facts of record. As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance record of IDBNY. IDBNY received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of December 1, 2004. Applicants have indicated that after consummation of the proposal, they expect to continue the CRA and lending programs at IDBNY and, as appropriate, to consider expanding the lending activities and broadening the range of deposit and other customer services of the bank to provide additional services to the community that IDBNY serves.

Based on these and all the facts of record, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance record of IDBNY, are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by the Applicants with the conditions imposed in this order; the commitments made to the Board in connection with the applications, including commitments made by IDB; and receipt of all other regulatory approvals, including approvals by the NYSBD and the Israeli Supervisor of Banks. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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, effective December 16, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Zions Bancorporation
Salt Lake City, Utah

Order Approving the Acquisition of a Bank Holding Company

Zions Bancorporation ("Zions"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Amegy Bancorporation, Inc. ("Amegy") and its subsidiary bank, Amegy Bank, National Association ("Amegy Bank"), both of Houston, Texas.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published

11. 12 U.S.C. § 1842(c)(1).
12. 12 U.S.C. § 2901 et seq.
13. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

1. 12 U.S.C. § 1842.
2. Zions also would acquire Amegy Holding Delaware, Inc., Wilmington, Delaware, a bank holding company through which Amegy owns Amegy Bank. Zions intends to operate Amegy Bank as a subsidiary bank after consummation of the proposal.

(70 *Federal Register* 53,361 (2005)). 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 3 of the BHC Act.

Zions, with total consolidated assets of approximately $32.9 billion, is the 44th largest depository organization in the United States, controlling deposits of approximately $24.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[3] Zions operates subsidiary depository institutions in Utah, California, Washington, Arizona, Nevada, New Mexico, and Oregon and engages in numerous nonbanking activities that are permissible under the BHC Act.

Amegy, with total consolidated assets of approximately $7.7 billion, is the 11th largest depository organization in Texas, controlling deposits of approximately $5.1 billion.[4] On consummation of the proposal, Zions would become the 38th largest depository organization in the United States, with total consolidated assets of approximately $41.7 billion, and would control deposits of approximately $29.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Zions is Utah,[5] and Amegy is located in Texas.[6]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[7] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.

Zions and Amegy do not compete directly in any relevant banking market.[8] Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.[9]

3. Asset, deposit, and national ranking data are as of June 30, 2005. Asset and national ranking data are based on total assets reported by bank holding companies on Consolidated Financial Statements for Bank Holding Companies and by thrift institutions on Thrift Financial Reports. Deposit data reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports.

4. State ranking is based on deposits, and deposit data are as of June 30, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

6. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7), and 1842(d)(1)(A) and (d)(2)(B)).

7. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). Zions is adequately capitalized and adequately managed, as defined by applicable law. Amegy Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Zions would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Texas. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

8. 12 U.S.C. § 1842(c)(1). One commenter asserted that the competitive factors the Board must consider should weigh against approval because consummation of the proposed transaction would not have demonstrable procompetitive effects. The applicable standard in section 3(c)(1) of the BHC Act bars the Board from approving a proposal that would result in or would further a monopoly and permits the Board to approve a proposal with substantial anticompetitive effects only if such effects are clearly outweighed by certain beneficial effects. Contrary to commenter's claim, section 3(c)(1) of the BHC Act does not make evidence of procompetitive effects a necessary condition for approval. As noted, because Zions and Amegy do not compete directly in the Houston, Texas banking market or in any other banking market, the proposal would not result in a monopoly or have a significant adverse effect on competition in any relevant market.

9. One commenter asserted that the Board should take into account the likely competitive effects of the proposal on credit unions. Even if the deposits of credit unions were expressly included in the analysis of competitive effects of this proposal, Zions currently is not located in the Houston, Texas banking market and, therefore, the proposal would not increase the concentration level of market deposits. Contrary to the assertion of the commenter, the Board does not view the initial entry of a competitor through an acquisition as per se anticompetitive.

Moreover, the Board has expressly factored credit unions into analyses of bank acquisition proposals only when the facts of record with respect to the specific proposal demonstrate that credit unions offer bank-like products to a broad segment of a geographic market. *Wells Fargo*, 86 *Federal Reserve Bulletin* 832, 834 (2000); *WestStar Bank*, 84 *Federal Reserve Bulletin* 294, 296 (1998). In reviewing the competitive effects of a proposal, the Board takes into consideration, among other factors, the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index under the Department of Justice Merger Guidelines ("DOJ Guidelines"), 49 *Federal Register* 26,823 (1984). The Department of Justice has stated that the higher-than-normal thresholds it uses for measuring market concentration for screening bank mergers for anticompetitive effects under the DOJ Guidelines implicitly recognize the competitive effects of limited-purpose lenders, including credit unions.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Zions, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.[10]

Based on its review of these factors, the Board finds that Zions has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase. Zions will fund the cash component of the consideration with proceeds from the issuance of subordinated debt securities. Zions and each of its subsidiary banks and Amegy Bank are well capitalized and would remain so on consummation of the proposal.[11]

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Zions, Amegy, and their subsidiary banks, including assessments of their management, risk-management systems, and operations.[12] In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Zions, Amegy, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Zions's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[14]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of Zions and Amegy, data reported by Zions and Amegy under the Home Mortgage Disclosure Act ("HMDA"),[15] other information provided by Zions, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on data reported under HMDA, that Zions and Amegy engaged in discriminatory treatment of minority individuals in their respective home mortgage lending operations.

See, e.g., J.P. Morgan Chase & Co., 90 *Federal Reserve Bulletin* 352, 354 n. 16 (2004).

10. Two commenters questioned whether Zions would realize its projected cost savings from the proposal, and one of these commenters also asserted that the transaction could increase interest-rate risk for the companies involved and would be unlikely to generate cross-marketing efficiencies. The Board has evaluated the financial effects of this proposal under the assumption that no cost savings would be realized. In addition, as noted, the Board has considered a wide range of information in considering the financial resources and future prospects of the institutions involved in the proposal.

11. A commenter objected to the levels of compensation provided by employment agreements between Zions and six executive officers of Amegy. The Board notes that information about these agreements was provided to Amegy shareholders before the October 11 special meeting at which the Amegy shareholders approved the organization's acquisition by Zions. As noted, Zions and Amegy would remain well capitalized on consummation of the proposal.

12. A commenter criticized Zions's relationships with an unaffiliated pawnshop and other unaffiliated nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. Zions stated that neither it nor Amegy focuses on marketing credit services to such nontraditional providers except as part of broader marketing to small businesses generally. Zions represented that neither it nor Amegy plays any role in the lending practices or credit-review processes of such firms.

13. 12 U.S.C. § 2901 et seq.

14. 12 U.S.C. § 2903.

15. 12 U.S.C. § 2801 et seq.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process, because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

Zions's largest subsidiary bank, as measured by total deposits, is California Bank & Trust ("CB&T"), San Diego, California.[17] The bank received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of January 3, 2005. Zions's other subsidiary banks all received either "outstanding" or "satisfactory" ratings at their most recent CRA performance evaluations.[18] Amegy Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of May 5, 2003.[19] Zions has represented that it intends to maintain Amegy Bank's CRA program on consummation of the proposal.

CRA Performance of Zions. As noted above, CB&T received an overall "outstanding" rating for CRA performance in the FDIC's most recent CRA performance evaluation.[20] CB&T was rated "outstanding" under each of the lending, investment, and service tests.

Examiners reported that the distribution of CB&T's loans by income level of geography was good and that CB&T's mortgage lending demonstrated good distribution to LMI borrowers. In addition, they stated that CB&T had an excellent record of lending to small businesses.[21] They also stated that CB&T was a leader in community development lending, with more than $232 million in community development loans during the review period. Examiners commended the bank's use of innovative and flexible lending programs to serve the credit needs of its assessment areas.

Examiners reported that CB&T's qualified investments, grants, and donations, which totaled more than $77 million, demonstrated excellent responsiveness to the credit and community economic development needs of the bank's assessment areas. In addition, they commended CB&T's leadership role in providing community development services and noted that CB&T's service delivery systems were accessible to all geographies, including LMI areas, and to individuals of different income levels.

CRA Performance of Amegy. As noted above, Amegy Bank received an overall "outstanding" rating for CRA performance in its most recent CRA performance evaluation by the OCC.[22] Amegy Bank received "outstanding" ratings under the lending and investment tests and a "high satisfactory" rating under the service test.

Examiners reported that Amegy Bank's overall lending performance was excellent. They found that the distribution of the bank's loans by income level of geography was good and that its mortgage lending demonstrated adequate distribution to LMI borrowers. In addition, examiners stated that Amegy Bank's distribution of loans to small businesses was good and that its community development lending, which totaled more than $84 million, demonstrated excellent responsiveness to the credit and community development needs of the bank's assessment area. Examiners also commended Amegy Bank for its excellent level of qualified investments, which totaled more than $14 million during the evaluation period, and extensive use of innovative and complex investments. Examiners stated the bank made extensive use of innovative and flexible lending practices that supported small businesses and affordable housing.

Examiners noted that Amegy Bank's service delivery systems were accessible to all geographies and to individuals of different income levels. They characterized the bank's community development services as excellent and reported that the services primarily addressed identified needs for affordable housing, economic development, and community services.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of Zions and Amegy in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Zions and Amegy disproportionately denied applications by African-American and Hispanic applicants for HMDA-reportable loans. The commenter also asserted that Zions made higher-cost loans to African Americans

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

17. As of June 30, 2005, CB&T accounted for 32.9 percent of the total deposits of Zions's six subsidiary insured depository institutions.

18. The appendix lists the most recent CRA ratings of Zions's other subsidiary banks.

19. At the time of the evaluation, Amegy Bank was named Southwest Bank of Texas, National Association.

20. The evaluation period for the lending test was January 1, 2002, through September 30, 2004, except for community development loans. The evaluation period for community development loans and for the investment and service tests was September 17, 2001, through January 3, 2005. At the time of the evaluation, CB&T had six assessment areas in California, one of which received a full-scope review.

21. For purposes of the evaluations discussed in this order, small businesses are businesses with gross annual revenues of $1 million or less.

22. The evaluation period for the lending test was January 1, 1999, through December 31, 2002, except for community development loans. The evaluation period for community development loans and for the investment and service tests was May 10, 1999, through May 5, 2003. At the time of the evaluation, the bank had one assessment area that encompassed the greater Houston metropolitan area.

and Hispanics more frequently than Zions did to nonminorities.[23] The Board reviewed the HMDA data for 2003 and 2004 reported by each subsidiary bank of Zions and by Amegy Bank in their assessment areas.[24]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not Zions or Amegy is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[25] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Zions and Amegy with fair lending laws. In the fair lending reviews conducted in conjunction with the most recent CRA evaluations of the subsidiary depository institutions of Zions and Amegy, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Zions has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Zions represented that it conducts regular compliance reviews of each business unit and that its fair lending reviews include statistical analyses of comparable files by loan product. Zions also stated that it maintains a second-review program for residential and small business lending. Zions has indicated that Amegy will adopt Zions's current fair lending policies and procedures.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Zions and Amegy under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Zions, comments received on the proposal, and confidential supervisory information. In addition, Zions has represented that the proposal would expand the availability and array of banking products and services to the customers of Amegy.[26] Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.[27] In reaching its conclusion, the Board has

23. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

24. One Zions subsidiary, The Commerce Bank of Washington, National Association, Seattle, Washington, did not originate or purchase any HMDA-reportable loans in 2003 or 2004. In addition, The Commerce Bank of Oregon, Portland, Oregon, another Zions subsidiary, is a de novo bank established on October 31, 2005.

25. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

26. A commenter asserted that Zions did not provide sufficient information for the Board to conclude that considerations related to the convenience and needs of the community are consistent with approval of the proposal. As noted, however, the Board's consideration of this factor was based on a review of a broad range of information in addition to information provided by Zions, including the CRA performance records of the institutions involved in the proposal, HMDA data reported by Zions and Amegy, and confidential supervisory information.

27. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[28] The Board's approval is specifically conditioned on compliance by Zions with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 18, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies and Olson. Absent and not voting: Governor Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

28. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. In the Board's view, for the reasons discussed above, the commenter has had ample opportunity to submit its views, and in fact, has provided written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that extension of the comment period, or denial of the proposal on the basis of the comments discussed above or on informational insufficiency, is not warranted.

Appendix

CRA Performance Ratings of Zions's Other Subsidiary Banks[1]

Bank	CRA Rating	Date	Supervisor
Zions First National Bank, Salt Lake City, Utah	Outstanding	December 2003	OCC
The Commerce Bank of Washington, National Association, Seattle, Washington	Satisfactory	April 2004	OCC
National Bank of Arizona, Tucson, Arizona	Satisfactory	October 2003	OCC
Nevada State Bank, Las Vegas, Nevada	Outstanding	July 2004	FDIC
Vectra Bank Colorado, National Association, Farmington, New Mexico	Outstanding	November 2001	OCC

1. Zions's subsidiary bank, The Commerce Bank of Oregon ("CBO"), Portland, Oregon, is a de novo bank established on October 31, 2005. CBO was established to purchase and assume the assets and liabilities of First Consumers National Bank, Lake Oswego, Oregon, a credit card bank that had been in liquidation since June 2003. Accordingly, CBO does not have a CRA performance record.

Orders Issued Under Section 4 of the Bank Holding Company Act

Deutsche Bank AG
Frankfurt, Germany

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

Deutsche Bank AG ("Deutsche Bank"), a foreign bank that is a financial holding company ("FHC") for purposes of the Bank Holding Company Act ("BHC Act"), and its wholly owned U.S. subsidiary Taunus Corporation ("Taunus," and collectively with Deutsche Bank, "Notificants"), also an FHC, have requested the Board's approval under section 4 of the BHC Act[1] and the Board's Regulation Y[2] to engage in physical commodity trading in the United States. Deutsche Bank currently conducts physical commodity trading outside the United States.[3]

Regulation Y authorizes bank holding companies ("BHCs") to engage as principal in derivative contracts based on financial and nonfinancial assets ("Commodity Derivatives"). Under Regulation Y, a BHC may conduct Commodity Derivatives activities subject to certain restrictions that are designed to limit the BHC's activity to

1. 12 U.S.C. § 1843.
2. 12 CFR Part 225.
3. Deutsche Bank will enter into physical commodity trades in the United States either directly or indirectly through Notificants' nonbanking subsidiary, DB Energy Trading, LLC, New York, New York.

trading and investing in financial instruments rather than dealing directly in physical nonfinancial commodities.[4] Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

The BHC Act, as amended by the Gramm–Leach–Bliley Act ("GLB Act"), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.[5] The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.[6] Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.[7]

In addition, the BHC Act permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.[8] This authority is intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature but that is meaningfully connected to a financial activity in a manner that complements the financial activity.[9] The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board's prior approval under section 4(j) of the BHC Act.[10]

Notificants regularly engage as principals in BHC-permissible Commodity Derivatives based on a variety of commodities and plan to expand those activities to include physical commodity transactions in the United States. Notificants have, therefore, requested that the Board permit them to engage in physical commodity trading activities in the United States involving commodities such as natural gas, crude oil, and emissions allowances,[11] and to take and make delivery of physical commodities to settle BHC-permissible Commodity Derivatives in which they currently engage ("Commodity Trading Activities"). The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in BHC-permissible Commodity Derivatives based on that commodity.[12] In light of the foregoing and all other facts of record, the Board believes that Commodity Trading Activities are complementary to the Commodity Derivatives activities of Notificants.

To authorize Notificants to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the U.S. financial system generally.[13] In addition, the Board must determine that the performance of Commodity Trading Activities by Notificants "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."[14]

Approval of the proposal would likely benefit Notificants' customers by enhancing Notificants' ability to provide efficiently a full range of commodity-related services. Approving Commodity Trading Activities for Notificants also would enable them to improve their understanding of physical commodity and commodity derivatives markets and their ability to serve as an effective competitor in those markets.

The Board has evaluated the financial resources of the Notificants and their subsidiaries. Deutsche Bank's capital levels exceed the minimum levels that would be required under the Basel Capital Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization.

The Board also has evaluated the managerial resources of Notificants and their subsidiaries, including their management expertise, internal controls, and risk-management systems. The Board notes that on October 12, 2005, Deutsche Bank's subsidiary bank, Deutsche Bank Trust Company Americas ("DBTCA"), New York, New York, a

4. Commodity Derivatives permissible for BHCs under Regulation Y are hereinafter referred to as "BHC-permissible Commodity Derivatives."

5. 12 U.S.C. § 1843(c)(8).

6. The Board determined by regulation before November 12, 1999, that engaging as principal in Commodity Derivatives, subject to certain restrictions, was closely related to banking. Accordingly, engaging as principal in BHC-permissible Commodity Derivatives is a financial activity for purposes of the BHC Act. *See* 12 U.S.C. § 1843(k)(4)(F).

7. 12 U.S.C. § 1843(k)(1)(A).

8. 12 U.S.C. § 1843(k)(1)(B).

9. *See* 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) ("It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.").

10. 12 U.S.C. § 1843(j).

11. An emission allowance is an intangible right to emit certain pollutants during a given year or any year thereafter that is granted by the U.S. Environmental Protection Agency or comparable foreign regulatory authority to an entity, such as a power plant or other industrial concern, affected by environmental regulation aimed at reducing emission of pollutants. An allowance can be bought, sold, or exchanged by individuals, brokers, corporations, or government entities that establish an account at the relevant governmental authority. Emissions allowances are stored and tracked on the records of the relevant government authority. Accordingly, there are no transportation, environmental, storage, or insurance risks associated with ownership of emissions allowances.

12. *JPMorgan Chase & Co.*, 92 *Federal Reserve Bulletin* C57 (2006) (Order dated November 18, 2005); *Barclays Bank PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in BHC-permissible Commodity Derivatives based on Brent crude oil.

13. 12 U.S.C. § 1843(k)(1)(B).

14. 12 U.S.C. § 1843(j)(2)(A).

state member bank, entered into a written agreement (the "Written Agreement") with the Board and the New York State Banking Department pursuant to section 8 of the Federal Deposit Insurance Act[15] to address deficiencies in its anti-money-laundering programs.[16] In reviewing this proposal, the Board has considered the enhancements DBTCA has already made and is currently making to its systems and programs to ensure compliance with anti-money-laundering laws and the Written Agreement. The Board will continue to monitor DBTCA's ongoing actions to develop, implement, and maintain effective compliance systems and programs and to meet the requirements of the Written Agreement. Furthermore, the proposed Commodity Trading Activities will not be conducted by DBTCA or its management and commencement of the proposed activities should not impede Deutsche Bank's efforts to address the weaknesses at DBTCA.

In reviewing Notificants' managerial expertise and internal control framework with respect to the proposed Commodity Trading Activities, the Board notes that Notificants have established and maintained policies for monitoring, measuring, and controlling the credit, market, settlement, reputational, legal, and operational risks involved in their Commodity Trading Activities. These policies address key areas, such as counterparty-credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of Commodity Trading Activities. Notificants have integrated the risk management of Commodity Trading Activities into their overall risk-management framework. Based on the above and all the facts of record, the Board believes that Notificants have the managerial expertise and internal control framework to manage adequately the risks of taking and making delivery of physical commodities as proposed.

As a condition of this order, to limit the potential safety and soundness risks of Commodity Trading Activities, the market value of commodities held by Notificants as a result of Commodity Trading Activities must not exceed 5 percent of Deutsche Bank's consolidated tier 1 capital (as calculated under its home country standard).[17] Notificants also must notify the Federal Reserve Bank of New York if the market value of commodities held by Notificants as a result of their Commodity Trading Activities exceeds 4 percent of Deutsche Bank's tier 1 capital.

In addition, Notificants may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or that have been specifically approved by the Board.[18] This requirement is designed to prevent Notificants from becoming involved in dealing in finished goods and other items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of Notificants to additional risks, including storage, transportation, legal, and environmental risks, Notificants would not be authorized (i) to own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) to process, refine, store, or otherwise alter commodities in the United States. In conducting their Commodity Trading Activities, Notificants have committed to use appropriate storage and transportation facilities owned and operated by third parties.[19]

Notificants and their Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

Permitting Notificants to engage in the limited amount and types of Commodity Trading Activities described above, on the terms described in this order, would not appear to pose a substantial risk to Notificants, depository institutions, or the U.S. financial system generally. Through their existing authority to engage in Commodity Derivatives, Notificants already may incur the price risk associated with commodities. Permitting Notificants to buy and sell commodities in the spot market or physically settle Commodity Derivatives would not appear to increase significantly their potential exposure to commodity-price risk.

For these reasons, and based on Notificants' policies and procedures for monitoring and controlling the risks of Commodity Trading Activities, the Board concludes that consummation of the proposal does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

15. 12 U.S.C. § 1818.

16. *See* Board of Governors of the Federal Reserve System (2005), "Deutsche Bank Trust Company Americas," press release, October 14, www.federalreserve.gov/newsevents.htm.

17. Notificants would be required to include in this 5 percent limit the market value of any commodities they hold as a result of a failure of reasonable efforts to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y (12 CFR 225.28(b)(8)(ii)(B)).

18. The particular commodity derivative contract that Notificants take to physical settlement need not be exchange traded, but (in the absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of the CFTC-authorized commodity contracts. *See* Commodity Futures Trading Commission, *FY 2004 Annual Report to Congress* 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

19. Approving Commodity Trading Activities as a complementary activity, subject to limits and conditions, would not in any way restrict the existing authority of Notificants to deal in foreign exchange, precious metals, or any other bank-eligible commodity.

Based on all the facts of record, including the representations and commitments made to the Board by Notificants in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y, including those in section 225.7,[20] and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective December 19, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

JPMorgan Chase & Co.
New York, New York

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

JPMorgan Chase & Co. ("JPM Chase"), a financial holding company ("FHC") within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 4 of the BHC Act[1] and the Board's Regulation Y (12 CFR Part 225) to trade in physical commodities.

Regulation Y authorizes bank holding companies ("BHCs") to engage as principal in derivative contracts based on financial and nonfinancial assets ("Commodity Derivatives"). Under Regulation Y, a BHC may conduct Commodity Derivatives activities subject to certain restrictions that are designed to limit the BHC's activity to trading and investing in financial instruments rather than dealing directly in physical nonfinancial commodities.[2] Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

The BHC Act, as amended by the Gramm–Leach–Bliley Act ("GLB Act"), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.[3] The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.[4] Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.[5]

In addition, the BHC Act permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.[6] This authority is intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature but that is meaningfully connected to a financial activity such that it complements the financial activity.[7] The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board's prior approval under section 4(j) of the BHC Act.[8]

Through its indirect subsidiary, JPMorgan Ventures Energy Corporation ("JPMVEC"), JPM Chase engages as principal in BHC-permissible Commodity Derivatives and plans to expand those activities to include physical commodity transactions, with a principal focus on energy-related commodities. JPM Chase has, therefore, requested that the Board permit it to engage in physical commodity trading activities, including physical transactions in energy-related commodities, such as natural gas, crude oil, and emissions allowances,[9] and to take and make delivery of

20. 12 CFR 225.7.

1. 12 U.S.C. § 1843.

2. Commodity Derivatives permissible for BHCs under Regulation Y are hereinafter referred to as "BHC-permissible Commodity Derivatives."

3. 12 U.S.C. § 1843(c)(8).

4. The Board determined by regulation before November 12, 1999, that engaging as principal in Commodity Derivatives, subject to certain restrictions, was closely related to banking. Accordingly, engaging as principal in BHC-permissible Commodity Derivatives is a financial activity for purposes of the BHC Act. *See* 12 U.S.C. § 1843(k)(4)(F).

5. 12 U.S.C. § 1843(k)(1)(A).

6. 12 U.S.C. § 1843(k)(1)(B).

7. *See* 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) ("It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.").

8. 12 U.S.C. § 1843(j).

9. An emission allowance is an intangible right to emit certain pollutants during a given year or any year thereafter that is granted by the U.S. Environmental Protection Agency or comparable foreign regulatory authority to an entity, such as a power plant or other industrial concern, affected by environmental regulation aimed at reducing emission of pollutants. An allowance can be bought, sold, or exchanged by individuals, brokers, corporations, or government entities that establish an account at the relevant governmental authority. Emissions allowances are stored and tracked on the records of the relevant government authority. Accordingly, there are no transportation, environmental, storage, or insurance risks associated with ownership of emissions allowances.

physical commodities to settle BHC-permissible Commodity Derivatives in which JPM Chase currently engages ("Commodity Trading Activities"). The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in BHC-permissible Commodity Derivatives based on that commodity.[10] In light of the foregoing and all other facts of record, the Board believes that the Commodity Trading Activities are complementary to the Commodity Derivatives activities of JPM Chase.

To authorize JPM Chase to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the U.S. financial system generally.[11] In addition, the Board must determine that the performance of Commodity Trading Activities by JPM Chase "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."[12]

Approval of the proposal likely would benefit JPM Chase's customers by enhancing the company's ability to provide efficiently a full range of commodity-related services. Approving Commodity Trading Activities for JPM Chase also would enable the company to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in those markets.

JPM Chase has established and maintains policies for monitoring, measuring, and controlling the credit, market, settlement, reputational, legal, and operational risks involved in its Commodity Trading Activities. These policies address key areas, such as counterparty-credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of Commodity Trading Activities. Based on the above and all the facts of record, the Board believes that JPM Chase has the managerial expertise and internal control framework to manage adequately the risks of taking and making delivery of physical commodities as proposed.

As a condition of this order, to limit the potential safety and soundness risks of Commodity Trading Activities, the market value of commodities held by JPM Chase as a result of Commodity Trading Activities must not exceed 5 percent of JPM Chase's consolidated tier 1 capital.[13] JPM Chase also must notify the Federal Reserve Bank of New York if the market value of commodities held by JPM Chase as a result of its Commodity Trading Activities exceeds 4 percent of its tier 1 capital.

In addition, JPM Chase may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or that have been specifically approved by the Board.[14] This requirement is designed to prevent JPM Chase from becoming involved in dealing in finished goods and other items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of JPM Chase to additional risks, including storage risk, transportation risk, and legal and environmental risks, JPM Chase would not be authorized (i) to own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) to process, refine, or otherwise alter commodities. In conducting its Commodity Trading Activities, JPM Chase has committed to use appropriate storage and transportation facilities owned and operated by third parties.[15]

JPM Chase and its Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

Permitting JPM Chase to engage in the limited amount and types of Commodity Trading Activities described above, on the terms described in this order, would not appear to pose a substantial risk to JPM Chase, depository institutions, or the U.S. financial system generally. Through its existing authority to engage in Commodity Derivatives, JPM Chase already may incur the price risk associated with commodities. Permitting JPM Chase to buy and sell

10. *Barclays Bank, PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in BHC-permissible Commodity Derivatives based on Brent crude oil.

11. 12 U.S.C. § 1843(k)(1)(B).

12. 12 U.S.C. § 1843(j)(2)(A).

13. JPM Chase would be required to include in this 5 percent limit the market value of any commodities held by JPM Chase as a result of a failure of its reasonable efforts to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y.

14. The particular commodity derivative contract that JPM Chase takes to physical settlement need not be exchange traded, but (in the absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of the CFTC-authorized commodity contracts. *See* Commodity Futures Trading Commission, *FY 2004 Annual Report to Congress* 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

15. Approving Commodity Trading Activities as a complementary activity, subject to limits and conditions, would not in any way restrict the existing authority of JPM Chase to deal in foreign exchange, precious metals, or any other bank-eligible commodity.

commodities in the spot market or physically settle Commodity Derivatives would not appear to increase significantly the organization's potential exposure to commodity-price risk.

For these reasons, and based on JPM Chase's policies and procedures for monitoring and controlling the risks of Commodity Trading Activities, the Board concludes that consummation of the proposal does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

Based on all the facts of record, including the representations and commitments made to the Board by JPM Chase in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y, including those in section 225.7 (12 CFR 225.7), and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective November 18, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies and Olson. Absent and not voting: Governor Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Bank of the Federated States of Micronesia Kolonia, Pohnpei Federated States of Micronesia

Order Approving Establishment of a Branch

The Bank of the Federated States of Micronesia ("Bank"), Kolonia, Pohnpei, Federated States of Micronesia ("Micronesia"), a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. § 3105(d)) to establish a branch in Honolulu, Hawaii. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Honolulu, Hawaii (*The Honolulu Star-Bulletin*, November 4, 2005). The time for filing comments has expired, and all comments have been considered.

Bank, with total assets of $78 million, is the only commercial bank incorporated in Micronesia.[1] The state and national governments or governmental agencies of Micronesia control 80 percent of Bank's shares.[2] Bank provides a variety of banking services to retail and corporate customers through branches in each of the four states comprising Micronesia (Kosrae, Pohnpei, Chuuk, and Yap). The proposed branch would be Bank's first office outside Micronesia.[3] Bank is a qualifying foreign banking organization under Regulation K (12 CFR 211.23(b)).

The primary reason for establishing the proposed branch is to provide Bank with access to check-clearing and wire-transfer services in the United States that are currently provided by the bank's U.S. correspondent bank. The branch would also coordinate safekeeping and other services related to access to the U.S. payments system. In addition, Bank anticipates that the branch may engage in other permissible activities in the future.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank:

(1) engages directly in the business of banking outside of the United States;
(2) has furnished to the Board the information it needs to assess the application adequately; and
(3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1)).[4] The

1. Asset data are as of September 30, 2005.

2. No other shareholder owns or controls more than 5 percent of Bank's shares.

3. Bank also has a license for a loan production office in Saipan, the Northern Mariana Islands; however, it does not currently have an office in Saipan.

4. In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors:

(i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide;
(ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise;
(iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic;
(iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis;
(v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

Board also may consider additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, Bank is subject to supervision and regulation by the Federated States of Micronesia Banking Board ("FSMBB"). In addition, Bank is subject to all U.S. banking and banking-related laws by treaty and is supervised by the Federal Deposit Insurance Corporation ("FDIC") pursuant to those laws. On October 1, 1982, the governments of the United States and Micronesia concluded a Compact of Free Association (the "Compact").[5] Under section 221 of the Compact, the United States is obligated to make available to Bank the FDIC's programs and services, and under section 231, they are provided in accordance with a Federal Programs and Services Agreement between the governments of the United States and Micronesia (the "Agreement"), that became effective simultaneously with the Compact.[6]

The Agreement provides that "[a]s an ongoing FDIC-insured and FDIC-supervised bank, the Bank and its management are and shall continue to be subject to existing and future U.S. banking and banking-related laws, rules and regulations relating to supervision, regulatory, and resolution and receivership matters. . . ." Accordingly, Bank is supervised by the FDIC on a consolidated basis. Bank is subject to on-site examination by both the FSMBB and FDIC and is audited annually in accordance with U.S. auditing standards.[7] Based on all the facts of record, and in light of the Agreement, which designates the FDIC as a supervisor of Bank, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in its home country for purposes of the IBA.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)) have also been taken into account. The FSMBB and FDIC have no objection to the establishment of the proposed branch.

As noted, Bank is subject to all U.S. banking laws and regulations, including those related to capital adequacy and anti-money-laundering, and Bank's compliance with those laws and regulations is monitored and enforced by the FDIC. Bank is considered well capitalized, and managerial and other financial resources of Bank are considered consistent with approval. The activities of the proposed branch would initially be limited to processing transactions for Bank's head office and customers. Bank appears to have the experience and capacity to support the proposed branch. Bank has also established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, the FDIC is permitted to share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a branch is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[8] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective December 23, 2005.

JENNIFER J. JOHNSON
Secretary of the Board

5. In the United States, the Compact was approved by Public Law 99–239 of January 14, 1986, as amended (48 U.S.C. § 1901 et seq.) and became effective on November 3, 1986. *See Presidential Proclamation 5564 of November 3, 1986*, 51 *Federal Register* 40,399 (1986).

6. Article XI of the Agreement governs the provision of FDIC services and related programs.

7. FSMBB cooperates with the FDIC by participating in examinations and sharing information.

8. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of Hawaii to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Hawaii to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

Deutsche Genossenschafts-Hypothekenbank AG
Hamburg, Germany

Order Approving Establishment of a Representative Office

Deutsche Genossenschafts-Hypothekenbank AG ("Bank"), Hamburg, Germany, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York, New York (*The New York Times*, July 8, 2005). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately $93 billion,[1] is the third largest mortgage bank in Germany and is primarily engaged in commercial real estate financing. Outside Germany, Bank operates representative offices in Paris, London, and Amsterdam. Bank's proposed New York office would be its first office in the United States. Bank is a subsidiary of Deutsche Zentral-Genossenschaftsbank AG, Frankfurt, Germany ("DZ Bank"), one of two regional central banks for the German cooperative financial sector. DZ Bank engages in banking operations in the United States through its branch in New York, New York, and also engages in nonbanking activities in the United States through a number of subsidiaries. DZ Bank owns 5.1 percent of Bank directly and 62.6 percent of Bank indirectly through a wholly owned subsidiary, VR-Immobilien AG ("VR Immo").[2]

The proposed representative office would market Bank's real estate loans to existing and potential customers in the United States. Bank would also seek syndication opportunities through the proposed office.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board shall take into account whether:

(1) the foreign bank has furnished to the Board the information it needs to assess the application adequately;
(2) the foreign bank and any foreign bank parent engages directly in the business of banking outside the United States; and
(3) the foreign bank and any foreign bank parent is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2)).[3] The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously determined that DZ Bank's predecessor, Deutsche-Genossenschaftsbank AG, was subject to comprehensive consolidated supervision in connection with the application of its foreign bank subsidiary, Deutsche VerkehrsBank, to establish a representative office in the United States.[4] In addition, the Board has determined in connection with applications involving other mortgage banks in Germany that those banks were subject to supervision on a consolidated basis by their primary home country supervisor, Germany's Federal Agency for the Supervision of Financial Services ("BaFin").[5] Bank is supervised by BaFin on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is, and DZ Bank continues to be, subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. BaFin has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, consideration of Bank's record of operations in its

1. Unless otherwise indicated, data are as of June 30, 2005.

2. The remaining shares of DZ Bank are owned by four cooperative holding companies that own the shares in trust for VR Immo. Local credit cooperatives hold the ownership interests in these four companies.

3. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors:

(i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide;
(ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise;
(iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic;
(iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis;
(v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

4. *See Deutsche VerkehrsBank*, 85 *Federal Reserve Bulletin* 588 (1999). That finding was affirmed in connection with DZ Bank's 2004 election to be treated as a financial holding company.

5. *See, e.g., Hypothekenbank in Essen AG*, 90 *Federal Reserve Bulletin* 402 (2004); *Allgemeine HypothekenBank Rheinboden AG*, 88 *Federal Reserve Bulletin* 196 (2002); *DePfa Bank AG*, 87 *Federal Reserve Bulletin* 710 (2001); and *Deutsche Hyp Deutsche Hypothekenbank Frankfurt-Hamburg AG*, 86 *Federal Reserve Bulletin* 658 (2000)).

home country, its overall financial resources, and its standing with its home country supervisor, indicate that financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Germany is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Germany, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank and its parent companies have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, BaFin may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a representative office is hereby approved.[6] Should any restrictions on access to information on the operations or activities of Bank or its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[7] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 25, 2005.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

6. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

Lloyds TSB Offshore Limited St. Helier, Jersey

Order Approving Establishment of a Representative Office

Lloyds TSB Offshore Limited ("Bank"), St. Helier, Jersey, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami, Florida (*The Miami Herald*, March 21, 2005). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately $12 billion,[1] is one of the largest banks in Jersey. Bank provides a range of financial services to corporate and retail clients and is authorized to provide such services to residents of Jersey.[2] Outside Jersey, Bank operates branches in Guernsey and the Isle of Man and a representative office in Hong Kong. The proposed representative office would be Bank's first office in the United States. Bank is an indirect wholly owned subsidiary of Lloyds TSB Bank, plc ("Lloyds UK"), London, England.[3] Lloyds UK is the principal wholly owned bank subsidiary of

7. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. Unless otherwise indicated, data are as of June 30, 2005.

2. Bank does not operate under an "offshore banking license," as that term is defined in section 312(a)(4)(A) of the USA PATRIOT Act of 2001 (31 U.S.C. § 5318(i)(4)(A)).

3. Lloyds UK holds its interest in Bank through two other wholly owned subsidiaries, Lloyds TSB Offshore Holdings Limited, a Jersey company, and Lloyds Bank Subsidiaries Limited, a U.K. company.

Lloyds TSB Group plc, also of London ("Lloyds Group"), which is Bank's ultimate parent.[4] Through its offices and subsidiaries, Lloyds UK offers banking services in a number of countries worldwide. In the United States, Lloyds UK operates a branch in New York, New York, and an agency in Miami, Florida, and owns several U.S. subsidiaries that engage in nonbanking activities.

The proposed representative office would act as a liaison between Bank and its existing and potential customers in the United States. The office's activities would include soliciting new business, providing information to customers concerning their accounts with Bank, and maintaining client data and records.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board shall take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2)).[5] The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)). The Board will consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.[6] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications, because representative offices may not engage in banking activities (12 CFR 211.24(d)(2)). This application has been considered under the lesser standard.

As noted above, Bank and Lloyds UK engage directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

The Jersey Financial Services Commission ("Jersey FSC") is the primary regulatory and supervisory authority for Jersey banks and, as such, is the home country supervisor of Bank.[7] Jersey FSC policy permits only banking groups of "international stature and reputation" that it has determined to be subject to satisfactory consolidated supervision by the supervisory body of the group's country of origin to establish banks in Jersey. The Jersey FSC performs on-site inspections and off-site monitoring of all Jersey banks, including monitoring the work of external auditors. The Jersey FSC uses on-site reviews to focus on the adequacy of policies and procedures designed to combat money laundering and the bank's management of information systems and internal procedures to determine whether the bank is adequately managing its principal risks. The frequency of on-site reviews depends on the bank's risk profile, but all Jersey banks, including Bank, are inspected at least once every two years.

Off-site supervision consists primarily of the review of periodic financial reports submitted by Bank, including quarterly prudential returns, large exposure reports, suspicious transaction reports, and annual financial statements. External auditors are required to confirm that returns have been prepared in accordance with reporting instructions issued by the Jersey FSC. In addition, Bank's internal auditors conduct periodic risk-based audits of Bank's business activities.

Jersey law authorizes the Jersey FSC to conduct investigations, to request and receive information from any bank and its domestic and foreign affiliates, and to impose conditions on licensees and revoke licenses, and provides penalties for violations of the law.

Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

With respect to supervision of Lloyds UK by home country authorities, the Board previously has determined, in connection with other applications involving banks in the United Kingdom, that those banks were subject to home country supervision on a consolidated basis.[8] Lloyds UK is supervised by the Financial Services Authority ("FSA") on substantially the same terms and conditions as

4. No shareholder holds more than 5 percent of Lloyds Group's shares.

5. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors:

(i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide;
(ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise;
(iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic;
(iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis;
(v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

6. *See, e.g., Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001); *see also Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Komercni Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); *Commercial Bank "Ion Tiriac," S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

7. The Jersey FSC is responsible for the direct oversight of Bank. The U.K. Financial Services Authority, as the supervisor of Lloyds UK and its subsidiaries, consults with the Jersey FSC about supervision of Bank.

8. *See Barclays plc*, 91 *Federal Reserve Bulletin* 48 (2005); *HBOS Treasury Services plc*, 90 *Federal Reserve Bulletin* 103 (2004); *The Royal Bank of Scotland Group*, 90 *Federal Reserve Bulletin* 87 (2004).

those other banks. Based on all the facts of record, it has been determined that Lloyds UK is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The FSA and the Jersey FSC have no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Jersey is a member of the Offshore Group of Banking Supervisors, which is an observer organization to the Financial Action Task Force ("FATF"), and subscribes to the FATF's recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Jersey has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Jersey, and financial services businesses are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. Bank has policies and procedures to comply with these laws and regulations, and these policies and procedures are monitored by the Jersey FSC.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank and Lloyds Group have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and Lloyds Group have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Jersey FSC may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and Lloyds Group have provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a representative office is hereby approved.[9] Should any restrictions on access to information on the operations or activities of Bank or its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank and Lloyds Group with the conditions imposed in this order and the commitments made to the Board in connection with this application.[10] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective November 1, 2005.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

9. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

10. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Department of Financial Services ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

Legal Developments: First Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

Compass Bancshares, Inc.
Birmingham, Alabama

Compass Bank
Birmingham, Alabama

Order Approving the Acquisition of Bank Holding Companies, Merger of Banks, and Establishment of Branches

Compass Bancshares, Inc. ("Compass"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire TexasBanc Holding Co. ("TBH"), Weatherford, and its subsidiary, TexasBank, Fort Worth, both of Texas.[2] In addition, Compass's subsidiary bank, Compass Bank, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[3] to merge with TexasBank, with Compass Bank as the surviving entity. Compass Bank has also applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at TexasBank's main office and branch locations.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (70 *Federal Register* 70,613 (2005)) and in local publications in accordance with relevant statutes and the Board's Rules of Procedure.[5] As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. 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 of the BHC Act, the Bank Merger Act, and the FRA.

Compass, with total consolidated assets of approximately $30.8 billion, is the 48th largest depository organization in the United States, and it controls deposits of approximately $17.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Compass operates subsidiary depository institutions in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas and engages in numerous permissible nonbanking activities. In Texas, Compass is the eighth largest depository organization, controlling deposits of approximately $7 billion, which represent 2 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").

TBH, with total consolidated assets of approximately $1.7 billion, operates one depository institution, TexasBank, which has branches only in Texas. TexasBank is the 31st largest depository institution in Texas, controlling deposits of approximately $1.8 billion, which represent less than 1 percent of state deposits.

On consummation of the proposal, Compass would become the 47th largest depository organization in the United States, with total consolidated assets of approximately $32.5 billion. Compass would become the seventh largest depository organization in Texas, controlling deposits of approximately $8.8 billion, which represent 2.3 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[7] Section 44 of the Federal Deposit Insurance Act ("FDI Act") authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction

1. 12 U.S.C. § 1842.
2. Compass also would acquire M&F Financial Corp., Wilmington, Delaware, the intermediate parent holding company of TexasBank.
3. 12 U.S.C. § 1828(c).
4. 12 U.S.C. § 321. These branches are listed in Appendix A.
5. 12 CFR 262.3(b).
6. Asset data are as of December 31, 2005, and national ranking data are as of September 30, 2005. Deposit data and state rankings are as of June 30, 2005, and reflect merger activity through November 15, 2005. In this context, the term "insured depository institutions" includes insured commercial banks, savings banks, and savings associations.
7. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

adopted a law expressly prohibiting merger transactions involving out-of-state banks.[8] For purposes of section 3(d) of the BHC Act, the home state of Compass is Alabama, and for purposes of section 44 of the FDI Act, the home state of Compass Bank is Alabama.[9] Compass proposes to acquire, and Compass Bank proposes to merge with, a bank located in Texas.

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all the conditions for an interstate acquisition and bank merger enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.[10] In light of the facts of record, the Board is permitted to approve the proposal under both statutes.

COMPETITIVE CONSIDERATIONS

The BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Both acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[11]

Compass and TBH compete directly in the Dallas and Fort Worth banking markets in Texas.[12] The Board has carefully reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by Compass and TBH,[13] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[14] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of these banking markets. After consummation of the proposal, the Dallas banking market would remain moderately concentrated and the Fort Worth banking market would remain highly concentrated, as measured by the HHI.[15] In each market the increase in concentration would be small and numerous competitors would remain.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Dallas or Fort Worth banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

The BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and

8. 12 U.S.C. § 1831u.

9. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered, or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7), 1842(d)(1)(A), and 1842(d)(2)(B). Under section 44 of the FDI Act, a state member bank's home state is the state where it is chartered (12 U.S.C. § 1831u(g)(4)).

10. *See* 12 U.S.C. § 1842(d)(1)(A)–(B), (d)(2)(A)–(B); 12 U.S.C. § 1831u. Compass and Compass Bank are adequately capitalized and adequately managed, as defined by applicable law. TexasBank has been in existence and operated for the minimum period of time required by applicable law (five years). On consummation of the proposal, Compass and Compass Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 20 percent of the total amount of deposits of insured depository institutions in Texas. All other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act also would be met on consummation of the proposal.

11. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

12. The Dallas banking market is defined as follows: Dallas and Rockwall counties; the southeastern quadrant (including Denton and Lewisville) of Denton County; the southwestern quadrant (including McKinney and Plano) of Collin County; Forney and Terrell in Kaufman County; Midlothian, Waxahachie, and Ferris in Ellis County; and Grapevine and Arlington in Tarrant County, all in Texas. The Fort Worth banking market is defined as follows: Johnson and Parker counties; Tarrant County, excluding Grapevine and Arlington; Boyd, Newark, and Rhome in Wise County; and the southwestern quadrant (including Roanoke and Justin) of Denton County, all in Texas.

13. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits (SOD) data as of June 30, 2005 (adjusted to reflect mergers and acquisitions through November 15, 2005) and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market-share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

14. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

15. Summaries of the market data for these banking markets are provided in Appendix B.

future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Compass, and public comment on the proposal.[16]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organizations at consummation, including their capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Compass, TBH, and their subsidiary depository institutions are well capitalized and the resulting organizations would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Compass has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase. Compass will use existing resources to fund the cash portion of the transaction.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organizations.[17] The Board has reviewed the examination records of Compass, TBH, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with the relevant organizations and the organizations' records of compliance with applicable banking law. Compass, TBH, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Compass's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act and the Bank Merger Act.

CONVENIENCE AND NEEDS AND OTHER CONSIDERATIONS

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board also must consider its effects on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Compass Bank and TexasBank, data reported by Compass Bank under the Home Mortgage Disclosure Act ("HMDA"),[20] other information provided by Compass, confidential supervisory information, and public comment received on the proposal. A commenter opposing the proposal asserted, based on 2004 HMDA data, that Compass engaged in disparate treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[21]

16. A commenter expressed concern about Compass Bank's relationships with unaffiliated retail check cashers, pawn shops, and other alternative-financial-service providers. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. Compass has represented that Compass Bank has lending relationships with fewer than ten alternative-financial-service providers and that these firms are subject to the bank's annual "Know Your Customer" review related to the Bank Secrecy Act. Compass also has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

17. The commenter also expressed concern about a press report indicating that a political action committee related to Compass might have contributed to candidates on the recommendation of another unrelated political action committee currently under investigation for alleged violations of Texas campaign finance laws. The Board does not have jurisdiction to administer state campaign finance laws or to investigate or adjudicate alleged violations of such laws. This matter is not within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

18. 12 U.S.C. § 2901 et seq.

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

21. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

Compass Bank received a "satisfactory" rating at its most recent CRA performance evaluation from the Federal Reserve Bank of Atlanta, as of March 10, 2003 ("2003 Evaluation").[22] TexasBank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas, as of October 6, 2003. Compass Bank's current CRA program will be implemented at the resulting bank after consummation of the merger of Compass Bank and TexasBank.

B. HMDA Data and Fair Lending Record

The Board has carefully considered Compass's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter alleged, based on 2004 HMDA data, that Compass denied home purchase and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various Metropolitan Statistical Areas ("MSAs"). In addition, the commenter alleged that in the Houston MSA, Compass made higher-cost loans more frequently to African Americans than to nonminority borrowers.[23] The Board reviewed the HMDA data for 2004 that were reported by Compass Bank on a company-wide basis and for the states and MSAs in which it principally operates.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Compass Bank is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[24] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Compass Bank.

In the fair lending review conducted in conjunction with Compass Bank's 2003 Evaluation, examiners cited failures to comply with the Board's Regulation B (Equal Credit Opportunity Act) in a nonmortgage lending program but concluded that the bank's record of complying with antidiscrimination laws generally had been sound. The Board has considered the actions that Compass Bank took since then to address the compliance failures, including immediate termination of the criticized practice when advised of examiners' concerns and revisions to its compliance policies, procedures, and training.

The Board also has considered other steps by Compass to ensure compliance with fair lending and other consumer protection laws. Compass has stated that Compass Bank's corporate compliance staff handles consumer compliance matters for the entire Compass organization. The corporate compliance staff monitors regulatory requirements, assists with and oversees implementation of compliance procedures and controls, and performs ongoing compliance risk assessments and monitoring. The corporate compliance staff also makes quarterly risk assessments available to a risk-management committee of Compass executives and to senior managers of Compass's business lines making home mortgage and consumer loans. Compass Bank's fair lending analysis includes testing to detect pricing, redlining, or underwriting issues, review of underwriting policies and practices, comparative file analysis, and analysis of HMDA data. Compass Bank also maintains a program to track and respond to consumer complaints, and the corporate compliance staff administers a web-based program to provide ongoing training to employees. Compass Bank's current compliance program will be used at the resulting bank after Compass Bank and TexasBank merge.

The Board also has considered the HMDA data in light of other information, including Compass Bank's CRA lending programs and the overall performance records of Compass Bank and TexasBank under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Compass, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would provide customers of TexasBank with a broader array of products and services, including expanded options for affordable mortgage loans and ATM networks. Based

22. Compass's other subsidiary bank, Central Bank of the South, Anniston, Alabama, engages only in providing controlled-disbursement services, and accordingly, is not evaluated under the CRA. *See* 12 CFR 345.11(c)(3).

23. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

24. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

As previously noted, Compass Bank also has applied under section 9 of the FRA to establish and operate branches at the locations listed in Appendix B. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.[25]

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved.[26] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. The Board's approval is specifically conditioned on compliance by Compass and Compass Bank with the conditions imposed in this order, the commitments made to the Board in connection with the applications, and receipt of all other regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transactions may not be consummated before the 15th calendar day after 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 8, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

BRANCHES IN TEXAS TO BE ESTABLISHED BY COMPASS BANK

Arlington
2221 E. Lamar Blvd., Suite 110
610 West Randol Mill Road
5980 S. Cooper Street

Benbrook
9200 Benbrook Blvd.

Cleburne
1671 West Henderson Street

Colleyville
4841 Colleyville Blvd.

Crowley
816 South Crowley Road

Denton
1013 W. University Drive
729 Forth Worth Drive

Flower Mound
3212 Long Prairie Road

Fort Worth
2525 Ridgmar Blvd.
8875 Camp Bowie West
300 W. Seventh Street
2601 Hulen Street
1600 W. Rosedale Drive

Granbury
702 West Pearl Street

Grapevine
1205 South Main Street

Hudson Oaks
2817 Fort Worth Highway

Lewisville
1101 W. Main Street

Southlake
2200 W. Southlake Blvd.

Weatherford
139 College Park Drive
102 N. Main Street
1400 Santa Fe Drive

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25. 12 U.S.C. § 322; 12 CFR 208.6(b).

26. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. The Bank Merger Act and the FRA do not require the Board to hold a public meeting or hearing.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Willow Park
5171 E. I-20 Service Road N.

Appendix B

MARKET DATA FOR BANKING MARKETS IN TEXAS

Moderately Concentrated Banking Market

Dallas

On consummation, the HHI would increase 2 points, to 1426. Compass operates the fourth largest depository institution in the market, controlling deposits of approximately $2.5 billion, which represent approximately 4 percent of market deposits. TBH operates the 21st largest depository institution in the market, controlling deposits of approximately $423.4 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Compass would remain the fourth largest depository institution in the market, controlling deposits of approximately $2.9 billion, which represent approximately 5 percent of market deposits. One hundred and twenty-five depository institutions would remain in the banking market.

Highly Concentrated Banking Market

Fort Worth

On consummation, the HHI would increase 1 point, to 4711. Compass operates the 26th largest depository institution in the market, controlling deposits of approximately $86.8 million, which represent less than 1 percent of market deposits. TBH operates the sixth largest depository institution in the market, controlling deposits of approximately $908.1 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Compass would operate the fifth largest depository institution in the market, controlling deposits of approximately $994.9 million, which represent approximately 2 percent of market deposits. Fifty-eight depository institutions would remain in the banking market.

Fulton Financial Corporation Lancaster, Pennsylvania

Order Approving the Merger of Bank Holding Companies

Fulton Financial Corporation ("Fulton"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with Columbia Bancorp ("Columbia") and acquire its subsidiary bank, The Columbia Bank ("Columbia Bank"), both of Columbia, Maryland.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 61,826 (2005)). 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 3 of the BHC Act.

Fulton, with total consolidated assets of approximately $12.3 billion, operates 14 subsidiary insured depository institutions in Pennsylvania, New Jersey, Virginia, Maryland, and Delaware, as well as a nondepository trust company in Pennsylvania. Fulton is the ninth largest depository organization in Pennsylvania, controlling deposits of approximately $5.1 billion, which represent approximately 2.3 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3] In Maryland, Fulton is the 20th largest depository organization, controlling deposits of approximately $481.3 million, which represent less than 1 percent of state deposits.

Columbia, with total consolidated assets of approximately $1.3 billion, is the 12th largest depository organization in Maryland, controlling deposits of approximately $976.5 million, which represent approximately 1 percent of state deposits. On consummation of the proposal, Fulton would become the 10th largest depository organization in Maryland, controlling deposits of approximately $1.5 billion, which represent approximately 1.6 percent of state deposits.[4] Fulton would have consolidated assets of approximately $13.8 billion.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Fulton is Pennsylvania,[5] and Columbia is located in Maryland.[6]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all

1. 12 U.S.C. § 1842.

2. In addition, Fulton has requested the Board's approval to hold and exercise a warrant to purchase up to 19.9 percent of Columbia's common stock. The warrant would expire on consummation of the proposal.

3. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Asset data are as of September 30, 2005. Deposit data and state rankings are as of June 30, 2005, and are adjusted to reflect mergers and acquisitions completed through January 6, 2006.

5. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

6. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered, or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[7] Accordingly, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[8]

Fulton and Columbia compete directly in the Washington, D.C./Maryland/Virginia/West Virginia banking market ("Washington, D.C. market").[9] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market ("market deposits") controlled by Fulton and Columbia,[10] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[11] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Washington, D.C. market.[12] The market would remain unconcentrated as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington, D.C. market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information received from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Fulton, and public comment received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality,

7. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). Fulton is adequately capitalized and adequately managed, as defined by applicable law. Maryland does not have a minimum age requirement applicable to the proposal. On consummation of the proposal, Fulton would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Maryland. All other requirements of section 3(d) would be met on consummation of the proposal.

8. 12 U.S.C. § 1842(c)(1).

9. The Washington, D.C. market includes: the Washington, D.C. Ranally Metropolitan Area ("RMA"); the non-RMA portions of Fauquier and Loudoun counties, and the cities of Alexandria, Fairfax, Falls Church, and Manassas, all in Virginia; the non-RMA portions of Calvert, Charles, Frederick, and St. Mary's counties, all in Maryland; and Jefferson County, West Virginia.

10. Deposit and market share data are as of June 30, 2005, reflect mergers and acquisitions through January 6, 2006, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

11. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial institutions.

12. Fulton is the 35th largest depository organization in the Washington, D.C. market, controlling deposits of approximately $177.3 million, which represent less than 1 percent of market deposits. Columbia Bank is the 26th largest depository institution in the market, controlling deposits of approximately $308.6 million, which represent less than 1 percent of market deposits. On consummation, Fulton would operate the 21st largest depository organization in the market, controlling deposits of approximately $485.9 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 868. Ninety-one depository institutions would remain in the banking market after consummation of the proposal.

and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Fulton, each of Fulton's subsidiary banks, and Columbia Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Fulton has sufficient financial resources to effect the proposal. The transaction is structured as a combination of cash and an exchange of shares. The cash portion of the transaction would be funded by issuing trust preferred securities.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Fulton and its subsidiary banks, Columbia, and Columbia Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Fulton, each of Fulton's subsidiary banks, Columbia, and Columbia Bank are considered to be well managed. The Board also has considered Fulton's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[14]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Fulton's subsidiary insured depository institutions and Columbia Bank, data reported by Fulton's subsidiary banks and Columbia Bank under the Home Mortgage Disclosure Act ("HMDA"),[15] other information provided by Fulton, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 data reported under HMDA, that Fulton engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

Fulton's 14 subsidiary banks each received a rating of "satisfactory" or "outstanding" at its most recent CRA performance evaluation.[17] Columbia Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of August 9, 2004. Fulton represented that it intends to maintain Columbia Bank's CRA program on consummation of the proposal.

B. HMDA and Fair Lending Record

The Board has considered carefully Fulton's lending record and HMDA data in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that certain Fulton subsidiary banks made higher-cost loans[18] to African Americans and Hispanics more frequently than to nonminorities in various states and Metropolitan Statistical Areas ("MSAs"). The commenter also asserted that some Fulton subsidiary banks disproportionately excluded or denied applications by African-American and Hispanic applicants for HMDA-reportable loans.[19] The Board reviewed the HMDA data for 2004 reported by certain subsidiary banks of Fulton in their assessment areas and in certain MSAs where portions of the banks' assessment areas are located.

13. 12 U.S.C. § 2901 et seq.
14. 12 U.S.C. § 2903.
15. 12 U.S.C. § 2801 et seq.
16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
17. The appendix lists the most recent CRA performance ratings of Fulton's subsidiary banks.
18. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).
19. The majority of the commenter's concerns related to 2004 HMDA data reported by Resource Bank, Virginia Beach, Virginia. Fulton acquired Resource Bank in April 2004.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, the HMDA data provide an insufficient basis by themselves on which to conclude whether or not Fulton's subsidiary banks are excluding any racial or ethnic group or imposing higher credit costs on these groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[20] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance by Fulton with fair lending laws. In the fair lending reviews conducted in conjunction with the most recent CRA evaluations of Fulton's subsidiary depository institutions, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Fulton has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Fulton represented that it undertakes significant monitoring of compliance in its mortgage lending operations by using a wide variety of audit and review programs, including loan file reviews, statistical analyses, and exception reviews. Fulton also performs a second review of all residential mortgage loan applications scheduled for denial to verify that no factors have been overlooked in the analysis of the application and to determine whether the applicant qualifies for any other available programs.

Fulton represented that it intends to maintain Columbia Bank's fair lending policies and procedures at the bank on consummation of the proposal, which include a quality-control review performed by an outside company. The quality-control review features statistical sampling and a random evaluation of denied loans and third-party originations. The review also includes verification of origination documents. Fulton represented that Columbia Bank's fair lending policies and procedures would be subject to oversight by Fulton on consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance records of each of Fulton's subsidiary banks. These efforts demonstrate that Fulton is active in meeting the convenience and needs of its entire community.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Fulton, public comment received on the proposal, and confidential supervisory information. The Board notes that the proposal would provide customers of Columbia with a broader array of products and services, including personal and corporate trust services, new leasing products, and expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[21] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[22] The Board's approval is specifically conditioned on compliance by Fulton with the conditions imposed in this order and the

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

21. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

22. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that further delay in considering the proposal is not necessary.

commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Philadelphia, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 17, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

CRA RATINGS OF FULTON'S SUBSIDIARY BANKS

Bank	CRA Rating	Date	Supervisor
FNB Bank, National Association, Danville, Pennsylvania	Satisfactory	June 9, 2003	Office of the Comptroller of the Currency ("OCC")
Fulton Bank, Lancaster, Pennsylvania	Satisfactory	October 21, 2002	FDIC
Lafayette Ambassador Bank, Easton, Pennsylvania	Outstanding	December 1, 2003	Federal Reserve Bank of Philadelphia ("FRB Phil.")
Lebanon Valley Farmers Bank, Lebanon, Pennsylvania	Outstanding	February 22, 2005	FRB Phil.
Premier Bank, Doylestown, Pennsylvania	Satisfactory	January 5, 2004	FRB Phil.
Swineford National Bank, Middleburg, Pennsylvania	Satisfactory	March 7, 2005	OCC
The Bank, Woodbury, New Jersey	Outstanding	January 18, 2005	FDIC
First Washington State Bank, Windsor, New Jersey	Satisfactory	March 1, 2004	FDIC
Skylands Community Bank, Hackettstown, New Jersey	Satisfactory	April 28, 2005	FDIC
Somerset Valley Bank, Somerville, New Jersey	Satisfactory	January 21, 2004	FDIC
Hagerstown Trust Company, Hagerstown, Maryland	Satisfactory	January 18, 2005	FDIC
The Peoples Bank of Elkton, Elkton, Maryland	Outstanding	December 30, 2002	FDIC
Resource Bank, Virginia Beach, Virginia	Satisfactory	March 15, 2004	Federal Reserve Bank of Richmond
Delaware National Bank, Georgetown, Delaware	Outstanding	January 6, 2003	OCC

Huntington Bancshares, Incorporated Columbus, Ohio

Order Approving the Acquisition of a Bank Holding Company

Huntington Bancshares, Incorporated ("Huntington"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Unizan Financial Corp. ("Unizan") and its subsidiary bank, Unizan Bank, National Association ("Unizan Bank"), both of Canton, Ohio.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published

1. 12 U.S.C. § 1842.
2. In addition, Huntington proposes to acquire the nonbanking subsidiaries of Unizan in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

(70 *Federal Register* 66,435 (2005)).[3] The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Huntington, with total consolidated assets of $32.7 billion, controls one depository institution, The Huntington National Bank ("Huntington Bank"), also in Columbus, with branches in Florida, Indiana, Kentucky, Michigan, Ohio, and West Virginia. Huntington is the fifth largest depository organization in Ohio, controlling deposits of approximately $14.3 billion, which represent 7.1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[4]

Unizan, with total consolidated assets of approximately $2.5 billion, controls one depository institution, Unizan Bank, with branches only in Ohio. Unizan is the 14th largest depository organization in Ohio, controlling deposits of approximately $1.9 billion, which represent less than 1 percent of state deposits. On consummation of the proposal, Huntington would become the fourth largest depository organization in Ohio, controlling deposits of approximately $16.2 billion, which represent approximately 8.1 percent of state deposits.[5]

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[6]

Huntington and Unizan compete directly in the Akron, Columbus, and Dayton, Ohio banking markets.[7] The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets ("market deposits") controlled by Huntington and Unizan,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets. After consummation, each banking market would be considered moderately concentrated, the increase in concentration would be small, and numerous competitors would remain.[10]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Akron, Columbus, or Dayton banking markets or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Huntington, and public comments received on the proposal.

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3. 12 CFR 262.3(b).

4. Asset data are as of September 30, 2005; statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through November 21, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. Huntington Bank has applied to the Office of the Comptroller of the Currency ("OCC") for permission to merge with Unizan Bank and Unizan Financial Services Group, National Association, a nondepository national trust and wholly owned subsidiary of Unizan, on consummation of the proposal before the Board.

6. 12 U.S.C. § 1842(c)(1).

7. These banking markets are described in Appendix A.

8. Deposit and market share data are as of June 30, 2005, are adjusted to reflect mergers and acquisitions through December 7, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

10. The effect of the proposal on the concentration of banking resources in each market is described in Appendix B.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Huntington and Huntington Bank are well capitalized and would remain so on consummation of the proposal.[11] Based on its review of the record, the Board believes that Huntington has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of Huntington and Unizan and the effect of the proposal on those resources. In addition, the Board has considered Huntington's plans for implementing the proposal, including the proposed management after consummation.

In reviewing this proposal, the Board has assembled and considered a detailed record, including substantial confidential and public information about Huntington, Unizan, and their subsidiaries. The Board considered its supervisory experiences with Huntington; the supervisory experiences and assessments of Huntington Bank's management, risk-management systems, and operations by the OCC; and the organizations' records of compliance with applicable banking laws. The Board also consulted with the Securities and Exchange Commission ("SEC") about Huntington's record of compliance with applicable federal securities laws and considered its public settlement of an investigation initiated by the SEC related to Huntington's accounting practices. The SEC terminated its investigation on June 2, 2005, when it approved Huntington's proposed settlement.[12]

In addition, the Board has considered that on February 28, 2005, Huntington entered into a formal written agreement ("Written Agreement") with the Federal Reserve Bank of Cleveland ("Cleveland Reserve Bank") to address certain deficiencies in its corporate governance, accounting policies and procedures, internal audit, risk management, and financial and regulatory reporting.[13] The Board has considered Huntington's record of compliance with the Written Agreement and the actions Huntington has already taken and is in the process of implementing rules to correct the deficiencies noted in the Written Agreement.[14]

Based on all the facts of record, including the actions Huntington has taken to address the managerial matters discussed above, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[16]

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of the subsidiary depository institutions of Huntington and Unizan, data reported by Huntington under the Home Mortgage Disclosure Act ("HMDA"),[17] other information provided by Huntington, confidential supervisory information, and public comment received on the proposal. A commenter who opposed the proposal expressed concern about possible branch closures after consummation of the proposal. The commenter also alleged, based on 2004 HMDA data, that Huntington Bank engaged in discriminatory treatment of minority individuals in home mortgage lending.

11. As noted, Huntington also intends to merge Unizan Bank into Huntington Bank on consummation of the proposal. Huntington Bank would be well capitalized after consummation of the bank merger, which the OCC recently approved.

12. The investigation resulted in the SEC charging Huntington, one of its current officers, and two former officers with violations of several provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and their implementing rules. Under the settlement, Huntington and the officers entered into a cease-and-desist agreement, Huntington paid a civil money penalty of $7.5 million for its actions, and the three officers paid disgorgement fees.

13. Huntington's Written Agreement included provisions that required Huntington to develop and submit to the Cleveland Reserve Bank the following documents: (i) written policies and procedures in the areas of accounting, financial and regulatory reporting, internal audit, and corporate governance that fully address the findings and recommendations of independent consultants approved by the Cleveland Reserve Bank; and (ii) a detailed written plan designed to strengthen Huntington's risk management in the areas of accounting and regulatory reporting. Huntington Bank entered into a similar written agreement with the OCC, which was terminated on October 6, 2005.

14. A commenter expressed a general concern about Huntington's accounting practices.

15. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

16. 12 U.S.C. § 2903.

17. 12 U.S.C. § 2801 et seq.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[18]

Huntington Bank received an overall "satisfactory" rating at its most recent CRA evaluation by the OCC, as of March 31, 2003. The OCC has not yet evaluated Unizan Bank's CRA performance. Unizan Bank was formed in 2002 by the merger of First National Bank of Zanesville ("First National"), Zanesville, and The United National Bank and Trust Company ("United National"), Canton, both in Ohio. Both banks had "satisfactory" CRA performance ratings by the OCC when they were consolidated.[19] Huntington has represented that, on consummation of the proposal, it will implement Huntington Bank's current CRA policies, procedures, and programs at the combined organization.

B. Branch Closings

Huntington stated that it intends to close six branches and consolidate three other branches after consummation but that none of these branches are in LMI census tracts. Huntington also provided the Board with Huntington Bank's policy regarding office openings, closings, and consolidations. That policy entails a review of a number of factors before a branch is closed, including consideration of any adverse impact on LMI communities. Examiners at Huntington Bank's most recent CRA performance evaluation reported that the bank's service delivery systems were accessible to geographies and individuals of different income levels throughout its assessment areas.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[20] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisor before closing a branch. In addition, the Board notes that the OCC, as the appropriate federal supervisor of Huntington Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

C. HMDA and Fair Lending Records

The Board has carefully considered the lending record and HMDA data of Huntington Bank in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Huntington Bank disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants. The commenter also asserted that Huntington Bank made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.[21] The Board reviewed HMDA data for 2004 reported by Huntington Bank on a company-wide basis.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Huntington Bank is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[22] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Huntington Bank with fair lending laws and the CRA performance record of Huntington Bank and Unizan Bank that are detailed above. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of the subsidiary

18. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

19. First National received an overall "satisfactory" CRA performance rating as of December 8, 1998, and United National received an overall "satisfactory" CRA performance rating as of October 29, 2001.

20. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

21. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

22. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

depository institutions of Huntington and Unizan, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Huntington has taken steps to ensure compliance with fair lending and other consumer protection laws. Huntington represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, Huntington represented that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policy using monthly reporting and quality control reviews. Huntington also represented that its fair lending policy includes a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas.

The Board also has considered the HMDA data in light of other information, including Huntington's CRA lending programs and the overall performance records of the subsidiary banks of Huntington and Unizan under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

D. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Huntington, comments received on the proposal, and confidential supervisory information. Huntington represented that the proposal would benefit Unizan customers by providing expanded delivery channels and access to a broader array of investment products, including annuities and a broader array of mutual funds, and enhanced investment management and research capabilities. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[23] The Board's approval is specifically conditioned on compliance by Huntington with the conditions imposed in this order and the commitments made in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Cleveland Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 26, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

OHIO BANKING MARKETS IN WHICH HUNTINGTON AND UNIZAN COMPETE DIRECTLY

Akron

(1) Summit County, excluding (i) the cities of Hudson, Macedonia, and Twinsburg, and (ii) the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg and the villages adjoining those townships;

(2) Portage County, excluding (i) the cities of Aurora and Streetsboro and (ii) the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham and the villages adjoining those townships;

(3) in Medina County, the city of Wadsworth, the townships of Guilford and Sharon, and the village of Seville;

(4) in Stark County, the townships of Lake and Lawrence and the villages of Canal Fulton and Hartville; and

(5) in Wayne County, the city of Rittman, the townships of

23. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Chippewa and Milton, and the villages adjoining those townships.

Columbus

Delaware, Franklin, Fairfield, Licking, Madison, Morrow, Pickaway, and Union counties and Perry County, excluding the township of Harrison.

Dayton

Greene, Miami, Montgomery, and Preble counties.

Appendix B

MARKET DATA FOR OHIO BANKING MARKETS

Akron

Huntington operates the seventh largest depository institution in the market, controlling deposits of $364.6 million, which represent approximately 4.2 percent of market deposits. Unizan operates the 13th largest depository institution in the market, controlling deposits of approximately $116.6 million, which represent approximately 1.4 percent of market deposits. After consummation of the proposal, Huntington would remain the seventh largest depository organization in the market, controlling deposits of approximately $481.2 million, which represent approximately 5.6 percent of market deposits. Twenty-three depository institutions would remain in the banking market. The HHI would increase 11 points, to 1349.

Columbus

Huntington operates the largest depository institution in the market, controlling deposits of $8.1 billion, which represent approximately 28.6 percent of market deposits. Unizan operates the 11th largest depository institution in the market, controlling deposits of approximately $300.8 million, which represent approximately 1.1 percent of market deposits. After consummation of the proposal, Huntington would remain the largest depository organization in the market, controlling deposits of approximately $8.4 billion, which represent approximately 29.7 percent of market deposits. Fifty-five depository institutions would remain in the banking market. The HHI would increase 60 points, to 1639.

Dayton

Huntington operates the seventh largest depository institution in the market, controlling deposits of $242.9 million, which represent approximately 2.5 percent of market deposits. Unizan operates the eighth largest depository institution in the market, controlling deposits of approximately $225.6 million, which represent approximately 2.3 percent of market deposits. After consummation of the proposal, Huntington would become the sixth largest depository organization in the market, controlling deposits of approximately $468.5 million, which represent approximately 4.9 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase 13 points, to 1512.

Marshall & Ilsley Corporation Milwaukee, Wisconsin

Order Approving the Merger of Bank Holding Companies

Marshall & Ilsley Corporation ("M&I"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Trustcorp Financial, Inc. ("Trustcorp"), St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company ("MSBTC"), Clayton, both of Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 4365 (2006)). 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 3 of the BHC Act.

M&I, with total consolidated assets of approximately $46.3 billion, operates four subsidiary insured depository institutions in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. In Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.7 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[2]

Trustcorp, with total consolidated assets of approximately $748 million, operates one depository institution, MSBTC, which has branches only in Missouri. Trustcorp is the 17th largest depository organization in Missouri, controlling deposits of approximately $606 million.

On consummation of this proposal, M&I would have total consolidated assets of approximately $47 billion. In Missouri, M&I would become the sixth largest depository organization, controlling deposits of approximately $2.2 billion, which represent 2.4 percent of state deposits.

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1. 12 U.S.C. § 1842. The Board also approved today the separate applications and a notice by M&I to acquire Gold Banc Corporation, Inc. ("Gold Banc") and its subsidiary bank Gold Bank, both of Leawood, Kansas, under sections 3 and 4 of the BHC Act and the application by M&I's subsidiary bank, M&I Marshall & Ilsley Bank ("M&I Bank"), Milwaukee, Wisconsin, a state member bank, to merge with Gold Bank under section 18(c) of the Federal Deposit Insurance Act, with M&I Bank as the surviving entity (collectively, the "Gold Banc proposal"). *See Marshall & Ilsley Corporation*, 92 *Federal Reserve Bulletin* C121 (2006) ("Gold Banc Order").

2. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of February 24, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of M&I is Wisconsin,[3] and MSBTC is located in Missouri.[4]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met. Accordingly, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

M&I and Trustcorp compete directly in the St. Louis, Missouri banking market ("St. Louis market").[6] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market ("market deposits")[7] controlled by M&I and Trustcorp, the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[8] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the St. Louis market.[9] The market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would likely not have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies also have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL AND MANAGERIAL RESOURCES AND FUTURE PROSPECTS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other

3. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

4. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in states in which the bank is headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A)–(d)(2)(B).

5. 12 U.S.C. § 1842(c)(1).

6. The St. Louis market consists of (1) the city of St. Louis; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties; the eastern half of Gasconade County, including the cities of Hermann and Owensville; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; and (2) Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, and St. Clair counties; the western part of Randolph County (bounded by route 3 to the east and the Kaskaskia River to the south), including the cities of Red Bud, Ruma, and Evansville; and Washington County, excluding Ashley and DuBois townships, and the city of Centralia, all in Illinois.

7. Deposit and market share data are as of June 30, 2005, reflect merger and acquisition activity as of February 24, 2006, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

8. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI more than 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 effects of limited-purpose and other nondepository financial institutions.

9. M&I is the sixth largest depository organization in the St. Louis market, controlling deposits of approximately $1.7 billion, which represent 3.5 percent of market deposits. Trustcorp is the 14th largest depository organization in the market, controlling deposits of approximately $606 million, which represent 1.3 percent of market deposits. On consummation, M&I would become the fifth largest depository organization in the market, controlling deposits of approximately $2.3 billion, which represent 4.8 percent of market deposits. The HHI would increase 9 points, to 735. One hundred and forty-two depository institutions would remain in the banking market after consummation of the proposal.

supervisory information from the various primary federal and state banking supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by M&I.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the proposal under the financial factors. M&I, its subsidiary depository institutions, and MSBTC are all well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase, and M&I will fund the cash portion by incurring long-term debt.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of M&I, Trustcorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. M&I, Trustcorp, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[11]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of M&I and Trustcorp, data reported by the subsidiary depository and lending institutions of M&I and Trustcorp under the Home Mortgage Disclosure Act ("HMDA"),[12] other information provided by M&I, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and repeated its allegations from the Gold Banc proposal that, based on 2004 data reported under HMDA, M&I's subsidiary depository institution, M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, made higher-cost loans more frequently to minority borrowers than to nonminority borrowers in certain states. The commenter also alleged that M&I FSB's nationwide mortgage subsidiary, M&I Mortgage Corp. ("M&I Mortgage"), and MSBTC disproportionately denied minority applicants for certain home mortgage loans in the St. Louis Metropolitan Statistical Area ("MSA").[13] In reviewing this proposal, the Board incorporates its findings in the Gold Banc proposal.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[14]

M&I Bank, M&I's largest subsidiary depository institution as measured by total deposits, received an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 11, 2003. M&I's other subsidiary depository institutions received "satisfactory" ratings at their most recent

10. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

11. 12 U.S.C. § 2903.

12. 12 U.S.C. § 2801 et seq.

13. In addition, the commenter reiterated the assertions it raised in the Gold Banc proposal about an investment made by Gold Bank in multifamily housing revenue bonds, which is not an institution involved in this proposal. The Board considered that issue in connection with its approval of the Gold Banc proposal. *See* Gold Banc Order, at 14 n. 31.

14. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

CRA performance evaluations.[15] MSBTC received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of March 1, 2005.

M&I represented that it would implement its CRA policies, procedures, and programs throughout the combined organization. This implementation would be carried out by local and regional CRA committees with coordinated oversight from M&I's corporate CRA committee, in accordance with its CRA program.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Trustcorp in light of public comment received on the proposal. As noted, the commenter reiterated the comments it submitted in the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans[16] more frequently to minority borrowers than nonminority borrowers statewide in Wisconsin and Ohio.[17] As noted in the Gold Banc Order, the Board reviewed HMDA data reported by M&I FSB in its assessment area in the Milwaukee-Waukesha Primary Metropolitan Statistical Area and in its assessment areas statewide in Wisconsin and Ohio.

The commenter also based its allegation that M&I Mortgage and MSBTC denied applications by minority borrowers for conventional home-purchase loans more frequently than nonminority applicants in the St. Louis MSA on 2004 HMDA data. The Board analyzed 2004 HMDA data, M&I Bank, M&I FSB, M&I Mortgage, and reported by Southwest Bank in Southwest Bank's assessment areas in the St. Louis MSA and statewide in Missouri.[18] In addition, the Board analyzed 2004 HMDA data reported by MSBTC in its assessment area in the St. Louis MSA and in its assessment areas statewide in Missouri.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not M&I or Trustcorp is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[19] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by M&I and Trustcorp with fair lending laws. The Board also consulted with the FDIC, the primary regulator of MSBTC, and considered the compliance examination records of M&I's and Trustcorp's subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by their subsidiary depository institutions.

The record also indicates that M&I, Trustcorp, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure compliance with fair lending and other consumer protection laws. As noted in the Gold Banc Order, M&I represented that it has centralized programs in place to monitor and manage compliance that feature (1) ongoing comprehensive training programs to ensure that regulatory requirements and policies are clearly communicated to personnel and (2) an internal audit department that periodically performs independent testing and validation of the compliance performance of M&I's various business units to ensure compliance with fair lending and consumer protection laws and to measure the effectiveness of internal controls. The Board hereby reaffirms and adopts the facts and findings detailed in the Gold Banc Order with respect to M&I's lending compliance and auditing programs.[20] M&I also represented that it would implement its centralized compliance-related policies and procedures across its combined organization, thereby ensuring that all entities have the same compliance monitoring and independent testing processes and centralized performance of critical functions, such as underwriting for consumer and mortgage lending.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance

15. Southwest Bank of St. Louis ("Southwest Bank"), a subsidiary bank of M&I, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of August 11, 2003. M&I Bank FSB received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

16. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

17. The commenter also repeated its allegation from the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans more frequently to Latinos than to nonminority borrowers in Missouri. M&I FSB has no assessment areas in Missouri.

18. M&I Bank, M&I FSB, and M&I Mortgage do not have an assessment area in the St. Louis MSA or in Missouri.

19. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

20. *See* Gold Banc Order, at footnote 17.

records of the subsidiary depository and lending institutions of M&I and Trustcorp. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on the Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by M&I, the comment received on the proposal, and confidential supervisory information. M&I represented that the proposal would provide customers of Trustcorp with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above and in the Gold Banc Order, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.[21] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&I with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 13, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

21. The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

National City Corporation Cleveland, Ohio

Order Approving the Acquisition of a Bank Holding Company

National City Corporation ("National City"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Forbes First Financial Corporation ("Forbes"), St. Louis, and its subsidiary bank, Pioneer Bank and Trust Company ("Pioneer Bank"), Maplewood, both in Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 933 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

National City, with total consolidated assets of $142.4 billion, is the 15th largest depository organization in the United States and controls deposits of $76.6 billion, which represent approximately 1.3 percent of total deposits in insured depository institutions in the United States.[2] National City operates subsidiary insured depository institutions in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, and Pennsylvania. In Missouri, National City is the tenth largest depository organization, controlling deposits of $1.46 billion, which represent approximately 1.6 percent of total deposits of insured depository institutions in the state ("state deposits").

Forbes, with total consolidated assets of approximately $529.5 million, operates one depository institution, Pioneer Bank, which has branches only in Missouri. Pioneer Bank is the 32nd largest depository institution in Missouri, controlling deposits of $397 million, which represent less than 1 percent of state deposits.

On consummation of this proposal, National City would remain the 15th largest depository organization in the United States, with total consolidated assets of $142.9

1. 12 U.S.C. § 1842.

2. Asset and nationwide deposit and ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 7, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

billion. National City would become the seventh largest depository organization in Missouri, controlling deposits of approximately $1.9 billion, which represent approximately 2 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of National City is Ohio,[3] and Pioneer Bank is located in Missouri.[4]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[5] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

National City and Forbes compete directly in the St. Louis, Missouri banking market ("St. Louis market").[7] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by National City and Forbes,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the St. Louis market.[10] After consummation of the proposal, the St. Louis market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation would not likely have a significantly adverse effect on competition in the St. Louis market or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis market or in any other relevant

3. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. §1841(o)(4)(C)).

4. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. §§1841(o)(4)–(7) and 1842(d)(1)(A)–(D)(2)(B).

5. *See* 12 U.S.C. §§1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). National City is adequately capitalized and adequately managed, as defined by applicable law. Pioneer Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). *See* Mo. Rev. Stat. §362.077. On consummation of the proposal, National City would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States. National City also would comply with the applicable state deposit cap in Missouri by controlling less than 13 percent of state deposits. *See* Mo. Rev. Stat. §362.915. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

6. 12 U.S.C. §1842(c)(1).

7. The St. Louis market consists of (1) the city of St. Louis; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties; the eastern half of Gasconade County, including the cities of Hermann and Owensville; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; and (2) Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe and St. Clair counties, the western part of Randolph County (bounded by Route 3 to the east and the Kaskaskia River to the south), including the cities of Red Bud, Ruma, and Evansville; and Washington County, excluding Ashley and DuBois townships, and the city of Centralia, all in Illinois.

8. Market share data are as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is below 1000. The Department of Justice 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 is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

10. National City is the seventh largest depository organization in the St. Louis market, controlling deposits of $1.5 billion, which represent 3.1 percent of market deposits. Forbes operates the 18th largest depository institution in the market, controlling deposits of $397.2 million, which represent less than 1 percent of market deposits. After consummation of the proposal, National City would become the sixth largest depository organization in the market, controlling deposits of $1.8 billion, which represent approximately 3.8 percent of market deposits. The HHI would increase 5 points, to 731. One hundred and thirty-nine bank and thrift competitors would remain in the market.

banking market and that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by National City, and public comments received on the proposal.[11]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance.[12] In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors. National City, all its subsidiary banks, and Pioneer Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that National City has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase, and National City will use available resources to fund the transaction.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of National City, Forbes, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. National City, Forbes, and their subsidiary depository institutions are considered to be well managed. The Board also has considered National City's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13] 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 their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[14]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of National City's subsidiary banks and Pioneer Bank, data reported by National City under the Home Mortgage Disclosure Act ("HMDA"),[15] other information provided by National City, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data, that National City engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by

11. A commenter expressed concern about National City's relationships with unaffiliated retail check cashers, pawn shops, and other alternative financial services providers. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. National City has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

12. The commenter also expressed concern about a press report asserting that nontraditional mortgage loans, such as interest-only mortgages, could raise asset-quality issues for institutions holding them. The press report indicated that First Franklin Financial Corporation, San Jose, California, a subsidiary of National City Bank of Indiana ("National City Indiana"), Indianapolis, Indiana, originates many interest-only mortgages. The Board and the Office of the Comptroller of the Currency ("OCC"), the primary regulator of National City Indiana, carefully scrutinize institutions' lending programs, including the policies and procedures and risk-management processes that they have in place for nontraditional lending products. The Board has consulted with the OCC about the risk-management processes for nontraditional lending activities at National City Indiana and its mortgage subsidiaries.

13. 12 U.S.C. § 2901 et seq.

14. 12 U.S.C. § 2903.

15. 12 U.S.C. § 2801 et seq.

the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

National City's largest subsidiary bank, as measured by total deposits, is its Cleveland subsidiary, National City Bank ("National City Cleveland").[17] The bank received an "outstanding" rating by the OCC, as of February 22, 2000. National City's remaining subsidiary banks all received either "outstanding" or "satisfactory" ratings at their most recent CRA evaluations.[18] Pioneer Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of June 12, 2003. National City has indicated that its CRA and consumer compliance programs would be implemented at Pioneer Bank on consummation of the proposal.

B. HMDA Data, Subprime Lending, and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of National City in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that National City disproportionately denied applications for HMDA-reportable loans by African-American and Latino applicants in certain Metropolitan Statistical Areas ("MSAs"). The commenter also asserted that National City made higher-cost loans to African Americans and Latinos more frequently than to nonminorities.[19] The Board reviewed HMDA data reported by all of National City's subsidiary banks, and National City's nonbank lending subsidiary, National City Mortgage Services, Kalamazoo, Michigan, (collectively, "National City Lenders"), in the MSAs identified by the commenter and focused its analysis on the MSAs that comprise the assessment areas of the National City Lenders in Illinois, Indiana, Kentucky, Michigan, and Ohio.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not National City is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[20] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by National City with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of National City's subsidiary banks, examiners noted no substantive violations of applicable fair lending laws. The Board has also consulted with the OCC about the fair lending compliance records of those institutions.

National City has represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, National City represented that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policy using monthly reporting and quality control reviews. National City also represented that its fair lending policy includes a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas. National City has indicated that its consumer compliance program will be implemented at Pioneer Bank after consummation of the proposal.[21]

The Board also has considered the HMDA data in light of other information, including the CRA performance records of each of National City's subsidiary banks. These established efforts and records demonstrate that National City is active in helping to meet the credit needs of its entire community.

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

17. As of December 31, 2005, National City Cleveland accounted for more than 42 percent of the total domestic deposits of National City's six subsidiary banks.

18. The appendix lists the most recent CRA ratings of National City's other subsidiary banks.

19. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

21. A commenter expressed concern about a press report that National City had imposed a prepayment penalty on a customer who used insurance proceeds to pay off a mortgage on her home, which was damaged by Hurricane Katrina. The Board has referred this individual complaint to National City and to the OCC for their review and has considered National City's response.

C. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by National City, comments received on the proposal, and confidential supervisory information. National City represented that the proposal would provide customers of Forbes with access to a broader array of financial products, including trust, foreign exchange, and brokerage services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[22] The Board's approval is specifically conditioned on compliance by National City with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 23, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

22. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix

CRA PERFORMANCE EVALUATIONS OF NATIONAL CITY'S BANKS

Bank	CRA Rating	Date	Supervisor
National City Bank of Indiana, Indianapolis, Indiana	Satisfactory	February 2000	OCC
National City Bank of Kentucky, Louisville, Kentucky	Satisfactory	February 2000	OCC
National City Bank of the Midwest, Bannockburn, Illinois	Outstanding	February 2000	OCC
National City Bank of Pennsylvania, Pittsburgh, Pennsylvania	Outstanding	February 2000	OCC
National City Bank of Southern Indiana, New Albany, Indiana	Satisfactory	February 2000	OCC

New York Community Bancorp, Inc. Westbury, New York

New York Community Newco, Inc. Westbury, New York

Order Approving the Acquisition of a Bank

New York Community Bancorp, Inc. ("NYCB"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), and New York Community Newco, Inc. ("Newco"), have requested the Board's approval pursuant to section 3 of the BHC Act[1] to acquire Atlantic Bank of New York ("Atlantic Bank"), New York, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 119 (2006)). 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 of the BHC Act.[3]

NYCB, with total consolidated assets of approximately $26.3 billion, operates two depository institutions, New York Community Bank ("NY Community Bank"), Flushing, New York, with branches in New Jersey and New York, and NY Commercial Bank,[4] with branches in New York.[5] NYCB is the eighth largest depository organization in New York, controlling deposits of approximately $11.7 billion, which represent approximately 2 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").

Atlantic Bank, with total consolidated assets of approximately $2.7 billion, has branches only in New York. Atlantic Bank is the 30th largest insured depository institution in New York, controlling deposits of approximately $1.8 billion.

On consummation of the proposal, NYCB would have consolidated assets of approximately $29 billion. NYCB would remain the eighth largest depository organization in New York, controlling deposits of approximately $13.5 billion, which represent approximately 2 percent of state deposits.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[6]

NYCB and Atlantic Bank compete directly in the Metro New York banking market ("New York banking market").[7] The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by NYCB and Atlantic Bank,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the market.

1. 12 U.S.C. § 1842.

2. NYCB would acquire Atlantic Bank from National Bank of Greece, S.A., Athens, Greece. NYCB has also requested the Board's approval pursuant to section 3 for its subsidiary bank, New York Commercial Bank ("NY Commercial Bank"), Islandia, New York, to purchase all the assets and assume all the liabilities of Atlantic Bank in exchange for the subsidiary bank's stock, which Atlantic Bank would immediately dividend back to NYCB. The proposed purchase-and-assumption transaction also is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") and the state of New York.

3. Twenty commenters expressed concerns on various aspects of the proposal.

4. On December 31, 2005, NYCB acquired Long Island Financial Corporation ("LIFC") and thereby acquired its subsidiary bank, Long Island Commercial Bank ("LICB"), both of Islandia, New York. *See New York Community Bancorp, Inc.*, 92 *Federal Reserve Bulletin* C33 (2006) ("*NYCB/LIFC Order*"). In connection with the acquisition, NYCB (1) changed the name of New York Commercial Bank, a limited-purpose bank wholly owned by NY Community Bank, to New York Municipal Bank ("NYMB"), Flushing, New York, and (2) renamed LICB as NY Commercial Bank. NYCB has represented that it intends to dissolve NYMB.

5. Asset data are as of December 31, 2005, and statewide deposit and ranking data are as of June 30, 2005. Data reflect subsequent merger activity through March 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. 12 U.S.C. § 1842(c)(1).

7. The New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

8. Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through March 6, 2006), and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation of the proposal, the market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[10]

The DOJ also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the New York banking market or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by NYCB, and public comment on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board carefully considered the proposals under the financial factors. NYCB, Newco, their subsidiary depository institutions, and Atlantic Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash purchase. Based on its review of the record in this case, the Board believes that NYCB, Newco, and Atlantic Bank have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of NYCB and its subsidiary depository institutions and Atlantic Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Moreover, the Board has consulted with the FDIC, the primary federal banking supervisor of NYCB's subsidiary banks and Atlantic Bank.[11] The Board also has considered NYCB's plans for implementing the proposal, including the proposed management after consummation. NYCB, Newco, and their subsidiary depository institutions and Atlantic Bank are considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial

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or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

10. After the proposed acquisition, the HHI would increase 1 point, to 1054. NYCB operates the tenth largest depository organization in the market, controlling deposits of approximately $12.2 billion, which represent less than 2 percent of market deposits. Atlantic Bank is the 35th largest depository institution in the market, controlling deposits of approximately $1.8 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, NYCB would operate the ninth largest depository institution in the market, controlling deposits of approximately $14 billion, which represent less than 2 percent of market deposits. Two hundred and ninety depository institutions would remain in the banking market.

11. Commenters alleged that NY Community Bank holds mortgages on a significant number of deteriorated multifamily buildings in New York City and that it has failed to conduct adequate due diligence on the buildings before extending credit to the owners of these buildings. A commenter alleged that many of NY Community Bank's multifamily borrowers are overleveraged, thereby preventing them from maintaining their buildings in good condition. NYCB stated that it conducts inspections before closing mortgage transactions on multifamily residential properties and periodically reinspects the properties during the term of the loan. In its reinspection program for residential buildings, NYCB represented that its inspectors notify borrowers in writing of any deferred maintenance found during routine reinspections and that, when appropriate, follow-up actions are taken by NYCB. NYCB further represented that NY Community Bank has never incurred a loss on a multifamily loan in more than 25 years. The Board consulted with the FDIC, the primary federal regulator of NY Community Bank and NY Commercial Bank, about the adequacy of NY Community Bank's management of its multifamily loan programs. The Board notes that the supervisory guidance proposed by the banking agencies for institutions with concentrations in commercial real estate lending, including lending activities involving multifamily residential buildings, urges lenders to remain informed about any credit deterioration or value impairment affecting the collateral. *See* proposed *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, www.federalreserve.gov/boarddocs/press/bcreg/2006/20060110/.

resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] 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 their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating depository institutions' expansionary proposals.[13]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of NYCB's subsidiary depository institutions and Atlantic Bank, data reported by NYCB under the Home Mortgage Disclosure Act ("HMDA"),[14] other information provided by NYCB, confidential supervisory information, and public comments received on the proposal.[15]

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of both organizations. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

NY Community Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 25, 2002.[17] NY Commercial Bank, formerly LICB, received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 15, 2004. Atlantic Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 7, 2005. NYCB has represented that it intends to implement Atlantic Bank's CRA program at NY Commercial Bank.

B. HMDA Data and Fair Lending Record

The Board has carefully considered NY Community Bank's lending record and HMDA data in light of public comment about the bank's record of lending to minorities. Two commenters expressed concern, based on 2004 HMDA data in certain Metropolitan Statistical Areas ("MSAs") in New York and New Jersey, that NY Community Bank has (1) denied or excluded the home mortgage and refinance applications of African-American and Latino borrowers more frequently than those of nonminority applicants and (2) lagged its competitors in conventional home mortgage lending in minority geographies.[18] In its consideration of NYCB's proposal to acquire LIFC, the Board reviewed essentially these same allegations in light of the HMDA data for 2004 reported by NY Community Bank in its assessment area.[19]

12. 12 U.S.C. § 2901 et seq.

13. 12 U.S.C. § 2903.

14. 12 U.S.C. § 2801 et seq.

15. As discussed above in footnote 11, a number of commenters alleged that some of NY Community Bank's multifamily loan borrowers do not maintain their properties appropriately, and some commenters identified specific landlords and buildings with alleged housing code violations. Most commenters asserted that NY Community Bank's alleged failure to ensure good property maintenance by its mortgagor/residential landlords is a disservice to the tenants and the communities where the bank lends. They argued that the Board should deny the proposal or approve it only on the condition that NYCB address property maintenance concerns. NYCB represented that NY Community Bank contributes positively to the communities it serves by providing approximately $14 billion in loans to building and apartment owners in the New York City area in the last five years. As noted above, NYCB has provided information about its preclosing-inspection and postclosing-reinspection programs for its multifamily loans, and the Board has consulted with the FDIC about the adequacy of NY Community Bank's management of its multifamily lending program. The Board has also considered the weight given to those loans by the FDIC in its evaluation of the CRA performance record of NY Community Bank. In addition, the Board has previously considered these allegations in the context of NYCB's application to acquire LIFC. *See NYCB/LIFC Order.*

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620, 36,640 (2001).

17. A commenter alleged that NY Community Bank maintains few full-service branches in low-income, minority neighborhoods. FDIC examiners reported in the most recent CRA performance evaluation of NY Community Bank that the bank had a limited branch presence in the low- income census tracts of its assessment area. Examiners noted, however, that new branch openings and relocations during the evaluation period improved the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Overall, NY Community Bank's performance was rated "low satisfactory" for the service test. Atlantic Bank and LICB each received a "high satisfactory" rating for the service test at its most recent CRA performance evaluation, and examiners noted that the retail banking services of each bank were reasonably available to all segments of its assessment area, including LMI geographies.

18. One commenter complained that NYCB provided the 2004 HMDA data of NY Community Bank on paper rather than electronically in the CD-ROM format requested by the commenter. The Board notes that neither HMDA nor the CRA require financial institutions to provide HMDA data in an electronic format on written request. *See* 12 CFR 203.5. Another commenter expressed concern that NY Community Bank did not consistently report the ethnicity, race, and gender of denied applicants. The Board has consulted with the FDIC about the bank's compliance with HMDA reporting requirements. The Board and the other banking agencies make HMDA data available to the public through the Federal Financial Institutions Examination Council, which provides HMDA data through its web site and in CD-ROM format on request.

19. The Board reviewed 2004 HMDA data reported by NY Community Bank in portions of the following metropolitan divisions that

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to support a conclusion on whether or not NY Community Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[20] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by NY Community Bank with fair lending laws. In the fair lending review conducted in conjunction with the bank's CRA evaluation in 2002, examiners noted no violations of the substantive provisions of applicable fair lending laws. In addition, the Board has consulted with the FDIC, the primary federal supervisor of NY Community Bank, about the bank's record of compliance with fair lending laws and other consumer protection laws.

As noted in the *NYCB/LIFC Order*, the record also indicates that NYCB has taken steps designed to ensure compliance with fair lending laws and other consumer protection laws. NYCB represented that it has implemented fair lending policies, procedures, and training programs at NY Community Bank and that all lending department personnel at the bank are required to take annual compliance training. NYCB further represented that the bank's fair lending policies and procedures are designed to help ensure that loan officers price loans uniformly, illegally discriminatory loan products are avoided, and current and proposed lending activities and customer complaints are reviewed. NY Community Bank conducts independent audits of its lending activities, and audit results are provided to its Audit Committee of the Board of Directors, Compliance Department, and Legal Department. The bank also analyzes HMDA Loan Application Register data to help assess its lending activities for compliance with the CRA.

NYCB has represented that NY Commercial Bank maintains similar policies and programs designed to ensure compliance with applicable fair lending and consumer protection laws. NYCB intends to combine the compliance programs of NY Commercial Bank and NY Community Bank into one comprehensive compliance program managed through NYCB.

The Board also has considered the HMDA data in light of other information, including NY Community Bank's CRA lending programs and the overall performance records of NY Community Bank and Atlantic Bank under the CRA.[21] These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by NYCB, comments received on the proposal, and confidential supervisory information.[22] The Board notes that the proposal would expand the availability and array of banking products and services to Atlantic Bank's customers, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

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comprise the bank's assessment area: (1) Nassau-Suffolk, New York; (2) New York-White Plains-Wayne, New York-New Jersey ("New York City MD"); and (3) Newark-Union, New Jersey-Pennsylvania. *See NYCB/LIFC Order*.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

21. A commenter also expressed concern, based on 2004 HMDA data, that the percentage of NY Community Bank's total number of conventional home mortgage loans and refinancings in LMI census tracts in the New York City MD lagged the percentages for the aggregate of lenders ("aggregate lenders"). The Board notes that the percentage of NY Community Bank's total HMDA-reportable loans in LMI census tracts and to LMI individuals in the New York City MD exceeded the percentages for the aggregate lenders.

22. A commenter expressed concern about planned branch closures at NY Community Bank. NYCB has represented that it does not plan to close any branches in connection with this proposal or the planned merger of Atlantic Bank into NY Commercial Bank. The Board notes that federal law will require NYCB or its subsidiary banks to provide notice before the date of any proposed branch closing, including a 30-day advance notice to the public and a 90-day advance notice to the FDIC and customers of the branch (12 U.S.C. § 1831r-1, as implemented by *Joint Policy Statement Regarding Branch Closings*, 64 *Federal Register*, 34,844 (1999)). The bank also must provide reasons and other supporting data for the proposed closure, consistent with the institution's written policy for branch closings. The Board notes that the FDIC, as the appropriate federal supervisor of NY Community Bank and NY Commercial Bank, will continue to review each depository institution's branch closing record during CRA performance evaluations.

CONCLUSION

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.[23] The Board's approval is specifically conditioned on compliance by NYCB with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction shall not be consummated before the 15th calendar day after 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 by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 30, 2006.

Voting for this action: Chairman Bernanke and Governors Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson and Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Sky Financial Group, Inc. Bowling Green, Ohio

Order Approving Acquisition of Shares of a Bank Holding Company

Sky Financial Group, Inc. ("Sky"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire through its subsidiary, Sky Holdings, Inc., Wilmington, Delaware, up to 9.99 percent of the voting shares of LNB Bancorp, Inc. ("LNB") and thereby indirectly acquire an interest in LNB's subsidiary bank, The Lorain National Bank ("Lorain National"), both of Lorain, Ohio.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 76,850 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Sky, with total consolidated assets of approximately $15.7 billion, controls Sky Bank,[3] Salineville, Ohio, with branches in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia. Sky is the eighth largest depository organization in Ohio, controlling deposits of approximately $8.1 billion, which represent 4 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[4] LNB, with consolidated assets of approximately $801.1 million, is the 25th largest depository organization in Ohio, controlling approximately $642.8 million in deposits. If Sky were deemed to control LNB on consummation of the proposal, Sky would become the seventh largest depository organization in Ohio, controlling approximately $8.7 billion in deposits, which represent 4.3 percent of state deposits.

The Board received a comment from LNB objecting to the proposal on the grounds that the investment could create uncertainty about the future independence of LNB or result in Sky controlling and potentially harming LNB.[5] LNB asserted that the commitments that Sky has provided to prevent the exercise of a controlling influence over LNB are insufficient, and LNB requested that the Board impose additional commitments to ensure that Sky cannot exercise control over LNB. The Board has considered these comments carefully in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding

23. Several commenters requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing or meeting on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

1. 12 U.S.C. § 1842.

2. Sky currently owns 4.73 percent of LNB's voting shares and proposes to acquire the additional voting shares through open-market purchases.

3. Sky also controls Sky Trust, National Association ("Sky Trust"), Pepper Pike, Ohio, a limited-purpose bank that provides only trust services.

4. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of February 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. LNB also expressed concern that investor uncertainty over the future of LNB due to Sky's investment could result in the sale of LNB shares by long-term investors and undermine LNB's business plan. The Board is limited under the BHC Act to consideration of the factors specified in the act. *See Western Bancshares, Inc. v. Board of Governors of the Federal Reserve System*, 480 F.2d 749 (10th Cir. 1973). The potential effect of a proposal on the behavior of other investors in the market is not among the factors the Board is charged with considering under the BHC Act or other applicable statutes.

company.[6] The requirement in section 3(a)(3) of the BHC Act, however, that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks.[7] On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[8]

Sky has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over LNB. Sky has agreed to abide by certain commitments on which the Board previously has relied in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.[9] For example, Sky has committed not to exercise or attempt to exercise a controlling influence over the management or policies of LNB or any of its subsidiaries; not to seek or accept representation on the board of directors of LNB or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with LNB or any of its subsidiaries. Sky also has committed not to attempt to influence the dividend policies, loan decisions, or operations of LNB or any of its subsidiaries. The Board concludes that additional commitments are unnecessary to ensure that Sky does not acquire control of, or have the ability to exercise a controlling influence over, LNB through the proposed acquisition of voting shares. Moreover, the BHC Act prohibits Sky from acquiring shares of LNB in excess of the amount considered in this proposal or attempting to exercise a controlling influence over LNB without the Board's prior approval.

The Board has adequate supervisory authority to monitor Sky's compliance with its commitments and can take enforcement action against Sky if it violates any of the commitments.[10] The Board also has authority to initiate a control proceeding[11] against Sky if facts presented later indicate that Sky or any of its subsidiaries or affiliates, in fact, controls LNB for purposes of the BHC Act. Based on these considerations and all the other facts of record, the Board has concluded that Sky would not acquire control of, or have the ability to exercise a controlling influence over, LNB through the proposed acquisition of voting shares.[12]

FINANCIAL AND MANAGERIAL CONSIDERATIONS AND FUTURE PROSPECTS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the applicant, and public comments received.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. When applicable, the Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.[13]

The Board has carefully considered the financial factors. Sky and Sky Bank are well capitalized and would remain

6. *See, e.g., Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) ("*Penn Bancshares*"); *C-B-G, Inc.*, 91 *Federal Reserve Bulletin* 421 (2005) ("*C-B-G*"); *S&T Bancorp Inc.*, 91 *Federal Reserve Bulletin* 74 (2005) ("*S&T Bancorp*"); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.*, 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

7. *See* 12 U.S.C. § 1842(a)(3).

8. *See, e.g., Penn Bancshares* (acquisition of up to 24.89 percent of the voting shares of a bank holding company); *C-B-G* (acquisition of up to 24.35 percent of the voting shares of a bank holding company); *S&T Bancorp* (acquisition of up to 24.9 percent of the voting shares of a bank holding company); *Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

9. *See, e.g., Penn Bancshares, C-B-G; S&T Bancorp; Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). Sky's commitments are set forth in the appendix.

10. *See* 12 U.S.C. § 1818(b)(1).

11. *See* 12 U.S.C. § 1841(a)(2)(C).

12. LNB asserted that Sky did not fully investigate or disclose whether it and any associated persons had already acquired more than 5 percent of the shares of LNB without prior approval of the Board, or whether Sky and any such persons constitute a "group acting in concert" under the Change in Bank Control Act ("CIBC Act") (12 U.S.C. section 1817(j)) and are required to file a CIBC Act Notice. Sky surveyed its management officials with major policymaking functions about their ownership of LNB shares and reported those findings as part of this proposal. In addition, Sky has represented and committed to the Board that it does not and will not have any agreement, understanding, or arrangement with any person regarding voting or transferring LNB shares and that it has not provided financing for the purchase of LNB shares. The Board has reviewed information provided by Sky and LNB and confidential supervisory information about the current ownership of both organizations, including information about the ownership of LNB's shares by individuals associated with Sky, in light of the Board's rules and precedent for aggregating shares held by a company and persons associated with the company. The record does not support a finding that Sky has acted together with any of its directors, officers, or employees or together with any other person to acquire voting shares of LNB in violation of the BHC Act or the CIBC Act.

13. As previously noted, the current proposal provides that Sky would acquire only up to 9.99 percent of LNB's voting shares and would not be considered to control LNB. Under these circumstances, the financial statements of Sky and LNB would not be consolidated.

so on consummation of the proposal. Based on its review of the record, the Board believes that Sky has sufficient financial resources to effect the proposal. The proposed transaction would be funded from Sky's general corporate resources.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Sky, Sky Bank, Sky Trust, LNB, and Lorain National, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. Sky, Sky Bank, Sky Trust, LNB, and Lorain National are considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the supervisory factors under the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[14]

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.[15] The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.[16]

Sky and LNB compete directly in the Cleveland, Ohio banking market ("Cleveland market").[17] In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market ("market deposits") controlled by Sky and LNB,[18] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[19] and other characteristics of the market. If Sky and LNB were viewed as a combined organization, consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Cleveland market.[20] Although the market would remain highly concentrated, the increase in market concentration as measured by the HHI would be small, and numerous competitors would remain in the market.[21]

The Department of Justice also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

14. *See* 12 U.S.C. § 1842(c)(1).

15. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

16. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37, 38 (1993); *Sun Banks* at 244.

17. The Cleveland market is defined as Cuyahoga, Geauga, Lake, and Lorain counties; all of Medina County except the city of Wadsworth, the townships of Guilford, Sharon, and Wadsworth, and the village of Seville; the cities of Aurora and Streetsboro, the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham, and the villages adjoining these townships in Portage County; the cities of Hudson, Macedonia, and Twinsburg, the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg, and the villages adjoining these townships in Summit County; and part of the city of Vermilion in Erie County, all in Ohio.

18. Deposit and market share data are as of June 30, 2005, reflect mergers and acquisitions through January 4, 2006, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

19. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post- merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial institutions.

20. LNB expressed concern that Sky is expanding its operations in the Cleveland market by acquiring banks instead of internal growth. Bank holding companies may expand in any geographic market by acquisition, as long as the acquisition is consistent with the competitive requirements and other factors of the BHC Act.

21. Sky is the 11th largest depository organization in the Cleveland market, controlling $1.1 billion in deposits, which represent 1.9 percent of the total deposits in depository institutions in the market ("market deposits"). LNB is the 13th largest depository organization in the market, controlling $642.8 million in deposits. If considered a combined banking organization on consummation of the proposal, Sky and LNB would be the ninth largest depository organization in the Cleveland market, controlling approximately $1.8 billion in deposits, which would represent 2.9 percent of market deposits. The HHI for the Cleveland market would increase 4 points, to 1883. Forty-three depository institutions would remain in the market.

Accordingly, in light of all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive considerations are consistent with approval of the proposal.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.[22] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[23]

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. Sky Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Reserve Bank of Cleveland as of October 14, 2003. Lorain National also received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of October 7, 2002.

Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all other facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[24] The Board's approval is specifically conditioned on compliance by Sky with the conditions imposed in this order and all the commitments made to the Board in connection with the application, including the commitments discussed in this order, and receipt of all required regulatory approvals.[25] The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of LNB's voting shares shall not be consummated before the 15th calendar day after 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 by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 24, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

In connection with its application to acquire up to 9.99 percent of LNB, Sky commits that it will not, directly or indirectly, without the Federal Reserve System's prior approval:

(1) exercise or attempt to exercise a controlling influence over the management or policies of LNB or any of its subsidiaries;
(2) seek or accept representation on the board of directors of LNB or any of its subsidiaries;
(3) serve, have, or seek to have any representative serve as an officer, agent, or employee of LNB or any of its subsidiaries;
(4) take any action that would cause LNB or any of its subsidiaries to become a subsidiary of Sky or any of its subsidiaries;
(5) acquire or retain shares that would cause the combined interests of Sky and its subsidiaries, and their respective officers, directors, and affiliates, to equal or exceed 25 percent of the outstanding voting shares of LNB or any of its subsidiaries;
(6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of LNB or any of its subsidiaries;
(7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of LNB or any of its subsidiaries;

22. 12 U.S.C. § 2901 et seq.
23. 12 U.S.C. § 2903.
24. LNB expressed concern that public disclosure of Sky's proposal was inadequate because it did not accompany disclosure in public reports filed with the Securities and Exchange Commission ("SEC"). All public notices required by the Board's regulations in connection with the application have been made, including publishing notice of the transaction in local newspapers in the communities where Sky and LNB are headquartered (12 CFR 262.3(b)(1)(ii)(E)). Furthermore, Sky has represented that it was not legally required to disclose the proposed transaction in filings with the SEC, because the proposed investment would not qualify as a material investment for Sky and therefore would not trigger an SEC filing requirement. The SEC has jurisdiction to determine whether Sky has violated any federal securities laws or violations.
25. LNB questioned when the passivity commitments that Sky provided would become effective. The commitments are effective when Sky owns, controls, or holds the power to vote at least 5 percent of LNB's voting shares.

(8) attempt to influence the dividend policies or practices of LNB or any of its subsidiaries;
(9) attempt to influence the investment, loan, or credit decisions or policies; pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of LNB or any of its subsidiaries;
(10) dispose or threaten to dispose of shares of LNB or any of its subsidiaries in any manner as a condition of specific action or nonaction by LNB or any of its subsidiaries; or
(11) enter into any other banking or nonbanking transactions with LNB or any of its subsidiaries, except that Sky may establish and maintain deposit accounts with depository institution subsidiaries of LNB, provided that the aggregate balance of all such accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with LNB or any of its subsidiaries.

Synovus Financial Corp. Columbus, Georgia

Order Approving the Merger of Bank Holding Companies

Synovus Financial Corp. ("Synovus"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Riverside Bancshares, Inc. ("Riverside") and its subsidiary bank, Riverside Bank ("Riverside Bank"), both of Marietta, Georgia.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 54,747 (2005)). 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 3 of the BHC Act.

Synovus, with total consolidated assets of approximately $27.1 billion, is the 46th largest depository organization in the United States.[2] Synovus operates 39 subsidiary insured depository institutions in Alabama, Florida, Georgia, South Carolina, and Tennessee, as well as a nondepository trust company in Georgia. Synovus is the fourth largest depository organization in Georgia, and its subsidiary depository institutions control approximately $10.6 billion in combined deposits, which represent 7.1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3]

Riverside, with total consolidated assets of approximately $668.6 million, operates one depository institution, Riverside Bank, which has branches only in Georgia. Riverside Bank is the 30th largest insured depository institution in Georgia, controlling deposits of approximately $459.5 million.

On consummation of the proposal, Synovus would have consolidated assets of $27.8 billion. In Georgia, Synovus would remain the fourth largest depository organization, controlling deposits of $11.1 billion, which represent 7.4 percent of state deposits.[4]

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

Seven Synovus banks[6] compete directly with Riverside Bank in the Atlanta Area Banking Market ("Atlanta Market").[7] The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Synovus's Atlanta Area banks and Riverside Bank,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI")

1. 12 U.S.C. § 1842.
2. National asset and ranking data are as of September 30, 2005.
3. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through November 25, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
4. Synovus represented that it plans to file an application with the Federal Deposit Insurance Corporation ("FDIC") for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) to merge Riverside Bank into Bank of North Georgia ("BNG"), Alpharetta, Georgia, a Synovus subsidiary bank, after consummation of the proposal.
5. 12 U.S.C. § 1842(c)(1).
6. These institutions include: Athens First Bank & Trust Company, Athens; Bank of Coweta, Newnan; BNG; Citizens & Merchants State Bank, Douglasville; First Nation Bank, Covington; The National Bank of Walton County, Monroe; and Peachtree National Bank, Peachtree City, all of Georgia (collectively, "Synovus's Atlanta Area banks").
7. The Atlanta Market is defined as: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County excluding the town of Clermont; the towns of Auburn and Winder in Barrow County; and the town of Luthersville in Meriwether County, all in Georgia.
8. Deposit and market share data are as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the relevant thresholds in the DOJ Guidelines in the Atlanta Market. After consummation, the Atlanta Market would remain unconcentrated, as measured by the HHI. In addition, the increase in concentration would be small, and numerous competitors would remain in this market.[10]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal likely would not have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta Market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the various primary federal and state banking supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Synovus, and public comment on the proposal.[11]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Synovus and all its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Synovus has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

10. On consummation of the proposal, the HHI would increase 4 points, to 1601 in the Atlanta Market. Synovus operates the fourth largest depository organization in the market, controlling deposits of $3.4 billion, which represent 3.9 percent of market deposits. Riverside operates the 19th largest depository institution in the market, controlling deposits of approximately $459.5 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Synovus would continue to operate the fourth largest depository organization in the market, controlling deposits of approximately $3.9 billion, which represent 4.4 percent of market deposits. One hundred eight depository institutions would remain in the banking market.

11. A commenter criticized the relationship between Synovus's lead subsidiary bank, Columbus Bank and Trust ("CB&T"), Columbus, Georgia, and an unaffiliated lender, CompuCredit Corporation ("CompuCredit"), Atlanta, Georgia. The Board previously reviewed CB&T's relationship with CompuCredit in its decision approving Synovus's acquisition of a de novo institution. *See Synovus Financial Corp.*, 91 *Federal Reserve Bulletin* 273, 275 n.15 (2005) ("Board's February 2005 Decision"). The Board noted that CompuCredit is an unaffiliated organization that engages in subprime credit card and payday lending activities. CB&T and CompuCredit offer a co-branded credit card program ("credit card affinity program") under a contractual arrangement. Under the contract, CB&T reviews, modifies, and approves the credit terms and underwriting criteria proposed by CompuCredit for the credit card affinity program and issues the credit cards, and CompuCredit buys the credit card receivables and provides certain marketing and other services for the issued cards. Synovus represented that, since the Board's February 2005 Decision, CB&T has engaged in the following additional activities to ensure regulatory compliance of its CompuCredit relationship with applicable fair lending and consumer protection laws: (1) reviewing the application of the credit and underwriting criteria to the credit card accounts and the scoring used to adjust credit lines under the credit card affinity program; (2) reviewing the process for approving statement inserts and strengthening controls over the process; (3) participating in CompuCredit's internal compliance audits; (4) developing a system to allow the CB&T compliance officer to engage in remote, anonymous monitoring of customer service and collection calls handled by CompuCredit and its service providers; and (5) requiring CB&T's compliance officer to perform monthly reviews of the CompuCredit relationship and to provide reports to CB&T's Credit Risk Committee concerning those reviews. In addition, Synovus represented that it is not involved in any other business conducted by CompuCredit and does not own or control CompuCredit within the meaning of the BHC Act. The Board also consulted with the FDIC and reviewed supervisory and other confidential information about the credit card affinity program and CB&T's relationship with CompuCredit.

records of Synovus, Riverside, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Synovus, Riverside, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Synovus's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[13]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of Synovus and Riverside, data reported by Synovus under the Home Mortgage Disclosure Act ("HMDA"),[14] other information provided by Synovus, confidential supervisory information, and public comment received on the proposal. Based primarily on 2004 HMDA data, a commenter alleged that Synovus, through its primary mortgage lender, Synovus Mortgage Company ("SMC"), Birmingham, Alabama,[15] engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

All Synovus subsidiary depository institutions that have been examined under the CRA received "outstanding" or "satisfactory" ratings at their most recent performance evaluations. CB&T, Synovus's lead bank, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 18, 2005. Riverside Bank also received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of November 17, 2003. Synovus has represented that it will institute BNG's CRA policies, procedures, and programs at Riverside Bank after its merger with and into BNG. As noted above, Synovus plans to merge Riverside Bank with BNG, and Synovus will operate Riverside Bank's branches as branches of BNG after consummation of the proposed transaction.[17]

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of SMC in light of public comment received on the proposal. The commenter alleged, based primarily on 2004 HMDA data, that SMC denied the home mortgage and refinance applications of African Americans more frequently than those of nonminority applicants in several Metropolitan Statistical Areas ("MSAs") in Alabama and Georgia where it operates. The commenter also alleged that SMC made higher-cost loans more frequently to African-American borrowers than to nonminority borrowers on a company-wide basis, on a statewide basis in Alabama, and in MSAs in Alabama, Florida, and Georgia.[18] The Board has analyzed the 2004 HMDA data reported by SMC on a company-wide basis and for its lending in Alabama, Florida, and Georgia.[19]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not SMC is excluding or imposing higher costs on any racial or

12. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).
13. 12 U.S.C. § 2903.
14. 12 U.S.C. § 2801 et seq.
15. SMC is a subsidiary of First Commercial Bank, also of Birmingham.
16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
17. BNG received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 10, 2004.
18. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).
19. Specifically, the Board examined the HMDA data for SMC company-wide, in Alabama statewide, and in certain MSAs in Alabama, Florida, and Georgia that constitute significant markets for SMC.

ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[20] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Synovus and Riverside with fair lending laws. The Board also consulted with the FDIC, the primary regulator of First Commercial Bank, SMC, and CB&T, and considered examination records of compliance with fair lending laws of these and other Synovus subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by First Commercial Bank, SMC, CB&T, or any other Synovus subsidiary depository institution.

The record also indicates that Synovus and SMC have taken steps to ensure compliance with fair lending and other consumer protection laws. Synovus represented that it has programs in place to monitor and manage compliance that include periodic reviews of all consumer lending programs, systemic tracking of applicable laws and regulations, ongoing risk analyses, the development of programs to train personnel involved in consumer lending, and oversight of the drafting and use of consumer lending forms for its depository and lending institutions to verify compliance with applicable consumer and fair lending laws. Synovus also represented that it is enhancing its system for corporate-wide reporting of compliance information. Synovus represented that its internal audit function examines SMC annually, and that SMC has engaged an independent third-party firm to review monthly a random sample of all closed loans from the application stage to the loan closing for any evidence of illegal discrimination.

The Board also has considered the HMDA data in light of other information, including Synovus's CRA lending programs and the overall CRA performance records of the subsidiary depository and lending institutions of Synovus and Riverside. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

C. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by the applicant, comments received on the proposal, and confidential supervisory information. Synovus represented that the proposal would provide customers in Riverside Bank's assessment area with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.[21] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[22] The Board's approval is specifically conditioned on compliance by Synovus with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein

21. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

22. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As noted, the commenter had ample opportunity to submit its views and has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is necessary.

and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 19, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

The Toronto-Dominion Bank
Toronto, Canada

TD Banknorth Inc.
Portland, Maine

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank ("TD") and its subsidiary, TD Banknorth Inc. ("TD Banknorth") (collectively "Applicants"), both financial holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act[1] to acquire Hudson United Bancorp and its wholly owned subsidiary, Hudson United Bank, both of Mahwah, New Jersey.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 56,166 and 57,876 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

TD, with total consolidated assets of approximately $310 billion, is the second largest banking organization in Canada.[3] TD is the 39th largest depository organization in the United States, controlling $29.2 billion in deposits through its U.S. subsidiary insured depository institutions, TD Waterhouse Bank, National Association ("TDW Bank"), Jersey City, New Jersey, and TD Banknorth, National Association ("TDB Bank"), Portland, Maine. TD also operates a branch in New York City and an agency in Houston.

Hudson United Bancorp, with total consolidated assets of approximately $9.1 billion, is the 74th largest depository organization in the United States, controlling deposits of $6.6 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States. On consummation of this proposal, TD would become the 34th largest depository organization in the United States, controlling deposits of approximately $35.8 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met.[4] For purposes of the BHC Act, the home state of TD is New York, and Hudson United Bank is located in Connecticut, Pennsylvania, New Jersey, and New York.[5]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[6] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a

1. 12 U.S.C. § 1842.

2. Applicants propose to acquire the nonbanking subsidiaries of Hudson United Bank in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y (12 U.S.C. § 1843(k); 12 CFR 225.87).

3. Canadian asset data are as of October 31, 2005, and rankings are as of July 31, 2005. Both are based on the exchange rate then in effect. Domestic assets are as of September 30, 2005, and deposit data and rankings are as of June 30, 2005.

4. Under section 3(d), a bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)). New York is the home state of TD for purposes of the International Banking Act and Regulation K (12 U.S.C. § 3103; 12 CFR 211.22).

5. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

6. 12 U.S.C. § 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). TD is adequately capitalized and adequately managed, as defined by applicable law. Hudson United Bank has been in existence and operated for the minimum period of time required by applicable state law. *See* Conn. Gen. Stats. Ann. Ch. 666 § 36a–411 (five years). Pennsylvania and New Jersey do not have minimum age requirements applicable to the proposal. On consummation of the proposal, TD would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States. TD would also control less than 30 percent of total deposits in Connecticut and New Jersey, consistent with state law. *See* Conn. Gen. Stats. Ann. Ch. 666 § 36a–411 and N.J. Stat. Ann. 17.9A–413(2003). All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[7]

TD and Hudson United Bancorp compete directly in the Metro New York and the Hartford and New Haven, Connecticut banking markets.[8] The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by TD and Hudson United Bancorp,[9] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[10] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in these banking markets.[11] After consummation, the Metro New York and New Haven banking markets would remain moderately concentrated, and the Hartford banking market would remain highly concentrated, as measured by the HHI. In each market, the increase in concentration would be small, and numerous competitors would remain.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in any of these markets or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by the Applicants, and public comment on the proposal.[12] The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), which is responsible for the supervision and regulation of Canadian banks.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The capital levels of TD would continue to exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the U.S. subsidiary depository institutions of Applicants and Hudson United Bancorp are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase. TD will use existing resources to enable TD Banknorth to fund the cash portion of the

7. 12 U.S.C. § 1842(c)(1).

8. These banking markets are described in Appendix A.

9. Deposit and market share data are based on Summary of Deposits reports filed as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); National City Corporation, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

11. Market data for these banking markets are provided in Appendix B.

12. A commenter expressed concerns about press reports of a lawsuit recently filed against TD by options traders at the Chicago Board of Options Exchange. The lawsuit involves allegations about the price paid by TD in its earlier acquisition of the traders' limited liability company. This matter is not within the Board's jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, e.g., Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

consideration to be received by Hudson United Bancorp shareholders.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of TD's U.S. operations, Hudson United Bancorp, and Hudson United Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws.[13] TD, Hudson United Bancorp, and their U.S. subsidiary banks are considered well managed. The Board has also considered Applicants' plans for implementing the proposal, including the proposed management after consummation.

Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.[14]

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[15] As noted, the home country supervisor of TD is the OSFI.

In approving applications under the BHC Act and the International Banking Act ("IBA"),[16] the Board previously has determined that TD was subject to home country supervision on a consolidated basis by the OSFI.[17] Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[18] The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed to make available to the Board such information on the operations of it and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable TD and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that TD has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on this proposal, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[19] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[20]

The Board has considered carefully all the facts of record, including reports of examination on the CRA performance records of TD's subsidiary insured depository institutions and Hudson United Bank, data reported by Applicants under the Home Mortgage Disclosure Act

13. A commenter also expressed concern about TDB Bank's relationships with unaffiliated retail check cashers, pawn shops, and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. Applicants have indicated that they regularly review TDB Bank's relationships with these types of businesses and have opted to continue relationships with those firms willing to meet certain conditions. These conditions include providing representations and warranties in each loan agreement with TDB Bank that the firm will comply with all applicable laws, including all applicable fair lending and consumer protections laws, and will follow the bank's requirements to ensure compliance with anti-money-laundering laws and regulations. Applicants have represented that neither TDB Bank nor any of its affiliates play any role in the lending practices, credit review, or other business practices of these firms, nor does the bank or any of its affiliates purchase any loans originated by these firms.

14. A commenter reiterated its concerns about allegations in press reports that TD assisted Enron in preparing false financial statements. The commenter had submitted substantially similar comments in connection with TD's proposal to acquire Banknorth Group, Inc., Portland, Maine. As noted in the Board's order approving that proposal, the Securities and Exchange Commission ("SEC") has the authority to investigate and adjudicate whether any violations of federal securities laws have occurred. *The Toronto-Dominion Bank*, 91 *Federal Reserve Bulletin* 277, fn. 15, (2005) ("*TD Banknorth Order*"). The Board has consulted with the SEC about this matter.

15. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

16. 12 U.S.C. § 3101 et seq.

17. *TD Banknorth Order*.

18. *See* 12 U.S.C. § 1842(c)(3)(A).

19. 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

20. 12 U.S.C. § 2903.

("HMDA"),[21] other information provided by Applicants, and public comments on the proposal. Two commenters opposed the proposal and expressed concern about the community reinvestment or home mortgage lending records of TDB Bank and Hudson United Bank. One commenter expressed concern about possible branch closures after consummation of the proposal. Commenters also alleged, based on 2004 HMDA data, that TDB Bank and Hudson United Bank provided a low level of home mortgage lending to LMI borrowers or in LMI communities and that Applicants engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[22]

TDW Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 10, 2003.[23] The OCC has not yet evaluated TDB Bank's CRA performance. After acquiring Banknorth Group, Inc. in 2005, TD formed TDB Bank by renaming Banknorth, National Association ("Banknorth Bank"), Portland, Maine. Banknorth Bank was formed in 2002 by the consolidation of seven subsidiary banks of Banknorth Group, Inc.[24] All those subsidiary banks had "satisfactory" or "outstanding" CRA performance ratings when they were consolidated.[25]

Hudson United Bank received an overall rating of "satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of February 10, 2005.[26]

On consummation of the proposal, Applicants propose to merge Hudson United Bank into TDB Bank.[27] Applicants stated that TDB Bank will implement its CRA organization and programs in Hudson United Bank's markets immediately after consummation of the acquisition.[28] In addition, Applicants represented that TDB Bank will hire a community development manager, who will be responsible for coordinating the CRA plan in Hudson United Bank's markets, and will appoint a CRA committee composed of senior managers from both banks to oversee the development and implementation of this plan.

B. CRA Performance of TDW Bank and TDB Bank

The Board considered the March 2003 CRA evaluation of TDW Bank and the July 2001 evaluation of TDB Bank in the *TD Banknorth Order*. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the *TD Banknorth Order* concerning TDW Bank's and TDB Bank's CRA performance records. Applicants provided the Board additional information about both banks' CRA performance since the latest evaluations. The Board also consulted with the OCC about the CRA performance of TDW Bank and TDB Bank and with the FDIC about the CRA performance of Hudson United Bank since the banks' most recent CRA evaluations.

1. CRA Performance of TDW Bank

As noted, TDW Bank received a "satisfactory" CRA performance rating in its March 2003 evaluation.[29] Examiners reported that the bank originated or purchased almost $16.8 million in community development loans during the evaluation period and had met its annual goals for community development lending each year. These loans funded affordable housing for LMI individuals in the bank's assessment areas in New Jersey and New York.

The bank's community development investments totaled almost $77 million at the end of the evaluation period and included investments in community development financial institutions, low-income housing tax credit projects, and affordable housing bonds issued by the New Jersey and

21. 12 U.S.C. § 2801 et seq.

22. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

23. TD dissolved its other U.S. subsidiary insured depository institution, TD Bank USA, FSB, Jersey City, New Jersey, as of December 31, 2004.

24. Peoples Heritage Bank, N.A. ("Peoples Heritage"), also of Portland, was the surviving institution of that consolidation and was renamed Banknorth Bank.

25. Peoples Heritage received an "outstanding" CRA performance rating by the OCC as of July 2001. First Massachusetts Bank, N.A. ("First Massachusetts"), Worcester, Massachusetts, Banknorth Group, Inc.'s largest subsidiary bank before consolidation, received a "satisfactory" CRA performance rating by the OCC as of April 2001. The CRA performance ratings of the remaining consolidated subsidiary banks are listed in Appendix A of the *TD Banknorth Order*.

26. The evaluation period for the lending test was January 1, 2002, through December 31, 2004. The evaluation period for the investment and service tests was April 25, 2002, through February 25, 2005.

27. Applicants have filed an application under the Bank Merger Act (12 U.S.C. § 1828(c)) with the OCC to merge Hudson United Bank into TDB Bank, with TDB Bank as the surviving entity.

28. One commenter expressed concern that TDB Bank had not provided a detailed plan for how it will meet the needs of the communities served by Hudson United Bank after consummation of the proposal. The OCC will evaluate TDB Bank's CRA performance after consummation in future CRA evaluations of the bank.

29. TDW Bank has elected to be evaluated for CRA performance under a strategic plan. Under this alternative, a bank submits a plan, subject to the OCC's approval, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment area, and the OCC evaluates the bank on its success in achieving the goals in the approved plan. *See* 12 CFR 25.27. The evaluation period for the March 2003 evaluation was January 1, 2000, through December 31, 2002, and reviewed the bank's CRA performance under strategic plans approved by the OCC in March 1998 (for 2000) and November 2000 (for 2001 and 2002). In February 2004, the OCC approved the bank's strategic plan for 2004 through 2006.

New York housing authorities. Examiners reported that the bank met its goals for community development investments in 2000 and 2002 and substantially met its goal in 2001. Examiners also reported that TDW Bank made $1.04 million in qualified community development grants during the evaluation period and met its annual goals for grants in all three years. In addition, the bank met its annual goals for membership in community development organizations, including organizations involved in providing affordable LMI housing and supporting community development corporations.

2. CRA Performance of TDB Bank

As noted, TDB Bank is the successor to Banknorth Bank, which was formed in 2002 through the consolidation of the subsidiary banks of Banknorth Group, Inc. The OCC began a CRA evaluation of TDB Bank during the fourth quarter of 2004, but the results are not yet available. The Board has consulted with the OCC, however, about the preliminary results of this exam. The OCC also has not evaluated TDB Bank's predecessor, Banknorth Bank. Banknorth Bank's principal predecessor banks included Peoples Heritage and First Massachusetts, which, as noted, received "outstanding" and "satisfactory" ratings, respectively, at their most recent CRA evaluations by the OCC in 2001.

Peoples Heritage. Peoples Heritage received a rating of "outstanding" under the lending test in its July 2001 CRA performance evaluation.[30] Examiners stated that the bank's overall distribution of home mortgage loans to LMI geographies and borrowers was good during the evaluation period. They also noted that Peoples Heritage participated in mortgage programs sponsored by the state of Maine that offered flexible underwriting and documentation standards, below-market interest rates, and low-down-payment requirements.

Examiners reported that Peoples Heritage's record of making small loans to businesses in LMI census tracts was excellent.[31] The bank also made more than $16 million in community development loans during the evaluation period, including $11 million in loans to help create more than 160 units of housing for LMI individuals and families.

Peoples Heritage received ratings of "high satisfactory" and "outstanding" on the investment and service tests, respectively, in the July 2001 evaluation. During the evaluation period, Peoples Heritage made 80 qualified investments totaling $3.6 million, a level that examiners described as good. Examiners noted that the percentage of the bank's branches in LMI census tracts generally equaled or exceeded the percentage of the population living in LMI census tracts in the bank's assessment areas. They also reported that Peoples Heritage provided an excellent level of community development services.

First Massachusetts. First Massachusetts received a rating of "high satisfactory" under the lending test in its April 2001 CRA performance evaluation.[32] Examiners stated that the bank's distribution of home mortgage loans to LMI geographies and borrowers was adequate or better in each of the bank's assessment areas. They also noted that the bank participated in a number of state and federal affordable housing programs with flexible underwriting criteria and other features designed to promote home ownership among LMI individuals.

Examiners reported that First Massachusetts's record of making small loans to businesses in LMI census tracts was adequate or better in each of the bank's assessment areas. The bank also made more than $23 million in community development loans during the evaluation period, including loans to the Massachusetts Housing Partnership Fund, which promotes affordable housing and neighborhood development throughout the state.

First Massachusetts received ratings of "low satisfactory" and "high satisfactory" on the investment and service tests, respectively, in the April 2001 evaluation. During the evaluation period, the bank made approximately $11.3 million in qualified investments, a level that examiners described as adequate. Examiners characterized First Massachusetts's distribution of branches as good or excellent in its assessment areas and stated that the bank provided an adequate level of community development services.

Recent CRA Activities of TDB Bank. During 2004, TDB Bank originated or purchased more than 14,000 HMDA-reportable loans totaling approximately $1.7 billion throughout its combined assessment areas in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. In each of those states, TDB Bank made higher percentages of its HMDA-reportable loans to LMI borrowers than the percentages for lenders in the aggregate ("aggregate lenders") in 2004.[33]

To assist first-time and LMI homebuyers, TDB Bank also offers loans insured by the Federal Housing Authority and loans guaranteed by the Department of Veterans Affairs and participates in state housing finance agency programs that offer below-market interest rates and lower-down-payment requirements. Applicants represented that the bank originated more than 2,900 loans totaling more than $275 million through these programs between January 2002 and June 2005.

From January 1, 2004, to December 31, 2004, TDB Bank's percentages of small loans to businesses in LMI and

30. The evaluation period for the lending test was July 1, 1998, through December 31, 2000. The evaluation period for the service and investment tests was September 1, 1998, through July 9, 2001.

31. In this context, "small loans to businesses" refers to loans with original amounts of $1 million or less that are either secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

32. The evaluation period was July 1, 1997, through December 31, 2000, except for community development lending, investments, and services, which were evaluated from August 1, 1997, through April 20, 2001.

33. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

predominantly minority census tracts were higher than or comparable to the percentages for the aggregate lenders in its combined assessment areas.[34] In all its assessment areas across six states, the bank continues to participate in Small Business Administration ("SBA") and state programs focused on lending to small businesses unable to secure conventional financing. Applicants represented that TDB Bank was ranked the largest SBA lender in Maine and Vermont, the second largest SBA lender in New Hampshire, the third largest SBA lender in Massachusetts, and the fifth largest SBA lender in both New York and Connecticut for the twelve-month period ending September 2004. From January 1, 2003, through December 31, 2004, TDB Bank made more than 24,128 small loans to businesses totaling $3.1 billion.

Applicants also represented that TDB Bank made 211 community development loans totaling more than $307 million from January 2002 through June 2005. Applicants stated that this community development lending included loan commitments of $7 million to finance the construction of 108 units of affordable housing in Massachusetts and two $3.6 million loans to a nonprofit affordable housing organization to create and preserve affordable housing in New Hampshire. They noted that the bank made loan commitments totaling almost $4.8 million during this same period to renovate public schools in Maine.

In addition, Applicants represented that TDB Bank's community development investments totaled approximately $100 million from January 2002 through June 2005. Applicants noted that these investments included commitments of more than $72 million to fund low-income housing tax credit projects in Maine, Massachusetts, New Hampshire, and Connecticut. They also indicated that the bank made community development grants totaling more than $7.6 million during the same period to a wide range of community organizations throughout the bank's assessment areas.

C. Hudson United Bank

As noted, Hudson United Bank received an overall "satisfactory" rating in its February 2005 CRA evaluation. The institution received a "high satisfactory" rating under the lending, investment, and service tests. Examiners noted that Hudson United Bank's geographic distribution of loans reflected excellent penetration among retail customers of different income levels and business customers of different sizes.[35] In particular, examiners commended the bank's use of flexible lending programs to enable customers to receive credit when they otherwise would not qualify.

Examiners also praised Hudson United Bank for increasing its portfolio of qualified investments more than 186 percent above its investment levels in the previous evaluation period. During the evaluation period, the bank's qualified investments in its assessment areas totaled $61.5 million. Examiners commended Hudson United Bank for purchasing a significant volume of loans in response to the affordable housing and small business needs of individuals and businesses in the bank's assessment areas.

In addition, examiners noted that Hudson United Bank's retail banking services, including its branches, ATMs, and telephone and online banking, provided customers with very good access to the institution. Examiners also reported that Hudson United Bank provided a relatively high level of community development services to organizations throughout its assessment areas.

D. Branch Closures

One commenter expressed concern about the proposal's possible effect on branch closings.[36] Applicants have stated that they plan to close or consolidate four branches as a result of this proposal but that these actions would not leave any markets without service. In addition, Applicants represented that only one of the branches they plan to close or consolidate as a result of this proposal, TDB Bank's branch in Wallingford, Connecticut, is in an LMI census tract. Applicants stated that the Wallingford branch will combine with a Hudson United Bank branch, located within 700 yards, that offers better service capacity. Applicants also advised that TDB Bank expects to open a de novo branch in an LMI neighborhood in both the Hartford, Connecticut and Boston, Massachusetts Metropolitan Statistical Areas ("MSAs") by early 2007.

Applicants stated that TDB Bank will apply its branch closing policy across the institution after consummation of the acquisition. That policy requires senior and retail management to assess the impact of a closing on employees, customers, corporate clients, and the community at large.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.[37] In addition, the Board notes that the OCC, as the

34. For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

35. A commenter expressed concern that Hudson United Bank had scaled back its home mortgage lending in several cities to avoid reinvestment obligations under the CRA. As noted, Applicants have indicated that TDB Bank will establish goals to improve performance under the CRA in Hudson United Bank's assessment areas.

36. The commenter also expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the limited factors the Board is authorized to consider under the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. *See, e.g., Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

37. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least a 30-day notice and the appropriate federal supervisory agency and customers of the branch with at least a 90-day notice before the date of the proposed branch

appropriate federal supervisor of TDB Bank, will continue to review the bank's branch closing records in the course of conducting CRA performance evaluations.

E. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of Applicants and Hudson United Bancorp in light of public comment received on the proposal. The commenters alleged, based on 2004 HMDA data, that TD Banknorth denied the home mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various MSAs in the New England region.[38] In addition, a commenter alleged that Hudson United Bank made higher-cost loans more frequently to African-American borrowers than to nonminority borrowers.[39] The Board reviewed the HMDA data for 2004 that were reported as follows: (1) by TDB Bank in the six states in its assessment areas, (2) by Hudson United Bank in the four states in its assessment areas, (3) in the MSAs identified by the commenters, and (4) in certain other MSAs.[40]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Hudson United Bank or TDB Bank is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[41] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository institutions of Applicants and Hudson United Bank. In the fair lending reviews conducted in conjunction with the CRA evaluations discussed above, examiners noted no substantive violations of applicable fair lending laws by TDB Bank or Hudson United Bank. In addition, the Board has consulted with the OCC, the primary federal supervisor of TDB Bank, and the FDIC, the primary federal supervisor of Hudson United Bank.

The record also indicates that Applicants have taken steps to ensure compliance with fair lending laws and other consumer protection laws. Applicants have indicated that TDB Bank's corporate compliance program includes regulatory monitoring, issue and implementation management, complaint tracking, computer-based compliance training, and frequent reports to business-line managers and the Board Risk Committee of TDB Bank's board of directors. To ensure compliance with fair lending laws, TDB Bank has developed a comprehensive review program overseen by a fair lending manager, who has responsibility for reviewing all marketing materials, lending policies and procedures, and for conducting fair lending file reviews annually. Applicants also reported that TDB Bank's fair lending file review includes comparative file analysis of underwriting, pricing, overrides, and exceptions for targeted products. This review includes an annual analysis of TDB Bank's HMDA data to identify any fair lending issues. Such issues are entered into a corporate-compliance database for tracking, resolution, and follow-up. Applicants have stated that every component of TDB Bank's existing compliance programs would be carried over into Hudson United Bank's operations and that additional compliance staff would be hired to help ensure their implementation.

The Board also has considered the HMDA data in light of other information, including the Applicants' CRA lending programs and the overall performance records of the subsidiary banks of Applicants and Hudson United Bancorp under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record,[42]

closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

38. A commenter expressed concern that TDB Bank failed to adequately reinvest in minority communities and that the bank lagged its competitors in home mortgage lending to minority individuals and in minority census tracts throughout its assessment areas.

39. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

40. The Board also reviewed the data for the Portland, Maine MSA, which is TDB Bank's home market, and for the Hartford and New Haven, Connecticut MSAs, which are served by Hudson United Bank.

41. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

42. One commenter requested that the Board condition its approval of the proposal on TD's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that

including reports of examination of the CRA records of the institutions involved, information provided by the Applicants, public comments on the proposal, and confidential supervisory information. The Board notes that the proposal would offer the customers of Hudson United Bancorp a wider array of banking products and services, including access to TDB Bank's more extensive branch network. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[43] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[44] The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the 15th calendar day after 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, effective January 13, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Olson and Kohn. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., J.P.Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the Applicants and the programs that they have in place to serve the credit needs of their CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by TD under this factor, the Board similarly will review TD's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

43. Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why the written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

44. One commenter also requested that the Board extend the comment period and delay action on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter has had ample opportunity to submit its views and has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is warranted.

Appendix A

BANKING MARKETS IN WHICH APPLICANTS AND HUDSON UNITED BANCORP COMPETE DIRECTLY

Metro New York

Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

Hartford, Connecticut

This definition is based on the Hartford Ranally Metro Area. It includes Andover, Ashford, Avon, Barkhamsled, Berlin, Bloomfield, Bolton, Bristol City, Broad Brook, Burlington, Canton, Centerbrook, Chaplin, Chester, Colchester, Colebrook, Collinsville, Columbia, Coventry, Cromwell, Deep River, Durham, East Granby, East Haddam, East Hampton, East Hartford, East Windsor, Eastford, Ellington, Enfield, Essex, Farmington, Forestville, Glastonbury, Granby, Haddam, Hampton, Hartford City, Hartland, Hebron, Higganum, Kensington, Lebanon, Manchester, Mansfield, Marlborough, Middlefield, Middletown City, Moodus, New

Britain City, New Hartford, Newington, North Windham, Old Saybrook, Plainville, Plantsville, Plymouth, Poquonock, Portland, Rockville City, Rocky Hill, Scotland, Simsbury, Somers, South Glastonbury, South Windsor, Southington, Southingtonboro, Stafford, Stafford Springs, Storrs, Storrs Mansfield, Suffield, Terryville, Thompsonville, Tolland, Union, Unionville, Vernon, Vernon-Rockville, Warehouse Point, Weatogue, West Hartford, West Suffield, West Willington, Wethersfield, Willimantic City, Willington, Winchester, Windham, Windsor, Windsor Locks, and Winsted City.

New Haven, Connecticut

The New Haven Ranally Metro Area and the town of Westbrook.

Appendix B

MARKET DATA FOR BANKING MARKETS

Highly Concentrated Banking Markets

Hartford, Connecticut

TD operates the fourth largest depository institution in the market, controlling deposits of $1.8 billion, which represent 7 percent of market deposits. Hudson United Bancorp operates the 20th largest depository institution in the market, controlling deposits of approximately $145 million, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would continue to operate the fourth largest depository institution in the market, controlling deposits of approximately $1.9 billion, which represent approximately 8 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase 8 points, to 2468.

Moderately Concentrated Banking Markets

Metro New York

TD operates the eighth largest depository institution in the market, controlling deposits of $24.2 billion, which represent 3 percent of market deposits. Hudson United Bancorp operates the 24th largest depository institution in the market, controlling deposits of approximately $4.4 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would remain the eighth largest depository institution in the market, controlling deposits of approximately $28.6 billion, which represent 4 percent of market deposits. Two hundred fifty-four depository institutions would remain in the banking market. The HHI would increase 3 points, to 1040.

New Haven, Connecticut

TD operates the 12th largest depository institution in the market, controlling deposits of $80 million, which represent less than 1 percent of market deposits. Hudson United Bancorp operates the seventh largest depository institution in the market, controlling deposits of approximately $769 million, which represent 8 percent of market deposits. After the proposed acquisition, TD would become the seventh largest depository institution in the market, controlling deposits of approximately $849 million, which represent approximately 9 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 12 points, to 1351.

Whitney Holding Corporation New Orleans, Louisiana

Order Approving the Acquisition of a Bank Holding Company

Whitney Holding Corporation ("Whitney"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire First National Bancshares, Inc. ("Bancshares") and its subsidiary bank, 1st National Bank & Trust ("1st Bank"), both of Bradenton, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 600 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Whitney, with total consolidated assets of $10.1 billion, controls Whitney National Bank ("Whitney Bank"), also of New Orleans, with branches in Alabama, Florida, Louisiana, Mississippi, and Texas. Whitney is the third largest depository organization in Louisiana, controlling deposits of approximately $4.8 billion, which represent approximately 8.4 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[2] In Florida, Whitney is the 43rd largest depository organization, controlling deposits of approximately $860.3 million, which represent less than 1 percent of state deposits.

Bancshares, with total consolidated assets of approximately $378.7 million, operates one subsidiary bank, 1st Bank, with branches only in Florida. Bancshares is the 93rd largest depository organization in Florida, controlling deposits of approximately $292.4 million, which represent less than 1 percent of state deposits. On consummation of the proposal, Whitney would become the 35th largest depository organization in Florida, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of state deposits.

1. 12 U.S.C. § 1842.

2. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 23, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Whitney is Louisiana,[3] and 1st Bank is located in Florida.[4]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[5] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

Whitney and Bancshares do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, publicly reported and other financial information, information provided by Whitney, and public comment received on the proposal. The Board also has considered these factors in light of the effect that Hurricane Katrina had on the Gulf Coast region and its impact on Whitney's resources and future prospects.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors. Whitney, Bancshares, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board believes that Whitney has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination cash purchase and share exchange. The cash portion of the transaction would be funded from Whitney's general corporate resources.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Whitney, Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law.[7] Whitney, Bancshares, and their subsidiary depository institutions are

3. 12 U.S.C. § 1842(d). Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

4. For purposes of section 3(d), the Board considers a bank to be located in states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

5. 12 U.S.C. § 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). Whitney is well capitalized and well managed, as defined by applicable law. 1st Bank has been in existence and operated for the minimum period of time required by Florida law. On consummation of the proposal, Whitney would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Florida. *See* Fla. Stat. Ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

6. 12 U.S.C. § 1842(c)(1).

7. A commenter who opposed the proposal expressed concern about Whitney Bank's relationship with a rent-to-own company, which is an unaffiliated, nontraditional provider of financial services. As a general matter, the activities of this type of business are permissible, and such businesses are licensed by the states where they operate. Whitney Bank has implemented a policy for its commercial credit facilities to finance companies or other consumer lenders to fund consumer loans. This policy provides for an evaluation of the practices of such borrowers to identify any potentially predatory lending practices and for ongoing monitoring and management of relationships with such borrowers.

considered to be well managed. The Board also has considered Whitney's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[8] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[9]

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of the subsidiary depository institutions of Whitney and Bancshares, data reported by Whitney Bank and 1st Bank under the Home Mortgage Disclosure Act ("HMDA"),[10] other information provided by Whitney, confidential supervisory information, and public comment received on the proposal. The Board also has consulted with the Office of the Comptroller of the Currency ("OCC") regarding Whitney's efforts to revitalize and stabilize the communities it serves that were affected by Hurricane Katrina. A commenter alleged, based on 2004 HMDA data, that Whitney Bank and 1st Bank engaged in discriminatory treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[11]

Whitney Bank received an overall "outstanding" rating at its most recent CRA evaluation by the OCC, as of January 6, 2003. 1st Bank received an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of March 4, 2002. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current CRA policies, procedures, and programs at 1st Bank.

B. HMDA and Fair Lending Records

The Board has carefully considered the lending record and HMDA data of Whitney Bank and 1st Bank in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Whitney Bank and 1st Bank disproportionately denied applications for HMDA-reportable loans by minority applicants in several Metropolitan Statistical Areas ("MSAs"). The Board reviewed HMDA data for 2004 reported by Whitney Bank in MSAs in Alabama, Florida, Louisiana, Mississippi, and Texas and for 1st Bank in the MSA in Florida that includes its assessment area.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Whitney Bank or 1st Bank is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[12] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that reflect on-site evaluations of compliance by Whitney Bank and 1st Bank with fair lending laws and the CRA performance records of Whitney Bank and 1st Bank. In the fair lending reviews that were conducted in conjunction with the banks' most recent CRA performance evaluations, examiners noted no substantive violations of applicable fair lending laws.

8. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

9. 12 U.S.C. § 2903.

10. 12 U.S.C. § 2801 et seq.

11. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

12. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

The record also indicates that Whitney has taken steps to ensure compliance with fair lending and other consumer protection laws. Whitney represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, Whitney represented that it performs a review of all denials of HMDA-reportable purchase money loans and a two-level review of all other HMDA-reportable denials of loans. Whitney also represented that its fair lending policy includes a comparative file review of all HMDA-reportable loan denials for minorities. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current fair lending policies, procedures, and programs at 1st Bank.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs of Whitney and Bancshares and the overall performance records of the subsidiary banks of Whitney and Bancshares under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Whitney, comments received on the proposal, and confidential supervisory information. Whitney represented that the proposal would benefit Bancshares customers by providing access to an expanded ATM network and a broader array of products and services, including additional mortgage services, loan and checking account programs for low-income consumers, and international banking and cash management services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[13] The Board's approval is specifically conditioned on compliance by Whitney with the conditions imposed in this order and the commitments made in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 7, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Bank Hapoalim, B.M.
Tel Aviv, Israel

Arison Holdings (1998) Ltd.
Tel Aviv, Israel

Israel Salt Industries Ltd.
Atlit, Israel

Order Approving Notice to Engage in a Nonbanking Activity

Bank Hapoalim, B.M. ("Bank Hapoalim"), Arison Holdings (1998) Ltd. ("Arison"), and Israel Salt Industries Ltd. ("Israel Salt") (collectively, "Notificants"),[1] foreign

13. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

1. Arison and Israel Salt own 16.5 percent and 7 percent, respectively, of Bank Hapoalim and are parties to a shareholder agreement among

banking organizations subject to the provisions of the Bank Holding Company Act ("BHC Act"),[2] have requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[3] and section 225.24 of the Board's Regulation Y[4] to acquire all the voting shares of Investec (US) Incorporated ("Investec"), New York, New York. Investec would be acquired through Notificants' wholly owned subsidiaries, Zohar Hashemesh Le'Hashkaot Ltd., also of Tel Aviv, and Hapoalim U.S.A. Holding Company, Inc., also of New York. As a result, Notificants and their subsidiaries would engage in the United States in the following activities:

(1) providing financial and investment advisory services, in accordance with section 225.28(b)(6) of Regulation Y;[5]
(2) providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, in accordance with section 225.28(b)(7) of Regulation Y;[6] and
(3) underwriting and dealing in government obligations and money market instruments that state member banks may underwrite or deal in under 12 U.S.C. §§ 24 and 335 and engaging as principal in investing and trading activities, in accordance with section 225.28(b)(8) of Regulation Y.[7]

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (70 *Federal Register* 71,304 (2005)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Bank Hapoalim, with consolidated assets of more than $60 billion, is the largest banking organization headquartered in Israel. In the United States, Bank Hapoalim maintains branches in New York, Chicago, and Miami and a representative office in Miami. Investec is a securities broker–dealer and a member of the New York Stock Exchange, Inc. and NASD.

The Board has determined by regulation that acting as a financial or investment advisor, providing agency transactional services for customer investments, and engaging in investment transactions as principal are activities closely related to banking for purposes of section 4(c)(8) of the BHC Act. Notificants have committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities. To approve the notice, the Board also must determine that the acquisition of Investec by Notificants can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.[8]

As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on those resources.[9] The Board has considered, among other things, information provided by Bank Hapoalim, public comment,[10] confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information in assessing the financial and managerial strength of Bank Hapoalim.

In evaluating the financial factors of this proposal, the Board has considered a number of factors, including capital adequacy and earnings performance. Bank Hapoalim's capital ratios exceed the minimum levels that would be required by the Basel Capital Accord and are considered equivalent to the capital that would be required of a U.S. banking organization. Moreover, consummation of this proposal would not have a significant impact on the financial condition of Bank Hapoalim. Based on its review, the Board finds that Notificants have sufficient financial resources to effect the proposal.

In addition, the Board has carefully considered the managerial resources of Bank Hapoalim, the supervisory experiences of the relevant banking supervisory agencies with Bank Hapoalim, and Bank Hapoalim's record of compliance with applicable U.S. banking laws.[11] The Board

the owners of 29 percent of the voting shares of Bank Hapoalim. Under the agreement, Arison and Israel Salt each have the power under certain circumstances to control the voting of all the shares held by the parties to the agreement. As a result, Arison and Israel Salt each is considered to control Bank Hapoalim, and each institution has joined in the filing of the notice.

2. As a foreign bank operating branches in the United States, Bank Hapoalim, and any company that controls Bank Hapoalim, is subject to the BHC Act by operation of section 8(a) of the International Banking Act of 1978 (12 U.S.C. § 3106(a)).

3. 12 U.S.C. §§ 1843(c)(8) and 1843(j).

4. 12 CFR 225.24.

5. 12 CFR 225.28(b)(6).

6. 12 CFR 225.28(b)(7).

7. 12 CFR 225.28(b)(8).

8. 12 U.S.C. § 1843(j)(2)(A).

9. 12 CFR 225.26.

10. A commenter expressed concern about Israel's anti-money-laundering policies and procedures based on (1) a report dated June 22, 2000, by the Financial Action Task Force ("FATF"), an intergovernmental body that develops and promotes policies to combat money laundering, and (2) an advisory issued by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). These matters were cited in the Board's order approving Notificants' application to become bank holding companies. *See* 87 *Federal Reserve Bulletin* 327 n.11 (2001). In June 2002, the FATF recognized that Israel had addressed the deficiencies identified in its 2000 report. FinCEN withdrew its advisory in July 2002, noting that Israel "now has in place a counter-money-laundering system that generally meets international standards." FinCEN Advisory Withdrawal Issue 17A.

11. The commenter criticized Bank Hapoalim's record under the Community Reinvestment Act ("CRA") (12 U.S.C. § 2901 et seq.) based on a CRA evaluation as of June 30, 1997, and a news report from 1993 on the CRA records of foreign banks generally, including Bank Hapoalim. The CRA does not provide for consideration of a notificant's CRA performance record in the evaluation of a notice under section 4 of the BHC Act. The Board notes that Bank Hapoalim's insured New York branch received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of June 9, 2003.

has also consulted with home country authorities responsible for supervising Bank Hapoalim concerning the proposal and the managerial resources of Notificants[12] and reviewed reports of examination from the appropriate federal and state supervisors of the U.S. operations of Bank Hapoalim that assessed its managerial resources. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of Notificants are consistent with approval.

The Board has also considered carefully the competitive effects of the proposal in light of all the facts of record. Because Bank Hapoalim does not currently engage in the proposed activities in the United States, the proposal would result in no loss of competition. Moreover, there are numerous existing and potential competitors in the industry. In addition, the market for the proposed services is regional or national in scope. Based on all the facts of record, the Board concludes that Bank Hapoalim's proposed activities would have a de minimis effect on competition for the relevant nonbanking activities.

The Board expects that the proposed activities would result in benefits to the public by enhancing Bank Hapoalim's ability to serve its customers. These customers will also benefit from the convenience and efficiency of being able to use the services of a broker–dealer affiliated with Bank Hapoalim.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal discussed above. Accordingly, based on all the facts of record, the Board has determined that the balance of the public-benefits factor that it must consider under section 4(j) of the BHC Act is consistent with approval of the proposal.

Based on the foregoing, the Board has determined that the notice should be, and hereby is, approved.[13] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Notificants with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[14] and to the Board's authority to require such modification or termination of the activities of the Notificants or any of their subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of these actions, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

This 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 the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 10, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Société Générale
Paris, France

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

Société Générale, a foreign bank that is treated as a financial holding company ("FHC") for purposes of the Bank Holding Company Act ("BHC Act"),[1] has requested the Board's approval under section 4 of the BHC Act and the Board's Regulation Y to engage in physical commodity

12. The commenter also expressed concern about the proposal based on news reports of investigations by Israeli authorities into allegations of money laundering at Bank Hapoalim. As a matter of practice and policy, the Board generally has not tied consideration of a proposal to the scheduling or completion of an investigation if, as in this case, the applicant or notificant has an overall satisfactory record of performance and the issues being reviewed can be resolved in the examination and supervisory process. *See* 62 *Federal Register* 9290 (1997) (Preamble to the Board's Regulation Y). The Board has consulted with the Bank of Israel, Bank Hapoalim's home country supervisor, about the measures that Bank Hapoalim has taken to strengthen controls to prevent the bank from being used for money laundering or other illicit activities.

13. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

14. 12 CFR 225.7 and 225.25(c).

1. 12 U.S.C. § 3106.

trading in the United States.[2] Société Générale currently conducts physical commodity trading and related activities outside the United States.[3]

Regulation Y authorizes a bank holding company ("BHC") to engage as principal in derivative contracts based on financial and nonfinancial assets ("Commodity Derivatives"). Under Regulation Y, a BHC may engage in such activities involving Commodity Derivatives subject to certain restrictions that are designed to limit the BHC's activity to trading and investing in financial instruments rather than dealing directly in physical nonfinancial commodities ("Permissible Commodity Derivatives Activities"). Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

The BHC Act, as amended by the Gramm-Leach-Bliley Act ("GLB Act"), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.[4] The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.[5] Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.[6]

In addition, the BHC Act permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.[7] This authority is intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature but that is meaningfully connected to a financial activity in a manner that complements the financial activity.[8] The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board's prior approval under section 4(j) of the BHC Act.[9]

Société Générale regularly engages in Permissible Commodity Derivatives Activities based on a variety of commodities and physical commodity transactions outside the United States and, through SGE, engages in limited physical commodities activities in the United States pursuant to authority under Regulation K.[10] Société Générale plans to expand its physical commodity transactions operations in the United States and, therefore, has requested that the Board permit it to engage in physical commodity trading activities in the United States involving commodities such as natural gas, crude oil, and electricity and to take and make delivery of physical commodities to settle Commodity Derivatives ("Commodity Trading Activities").[11] The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in Commodity Derivatives based on that commodity.[12] In light of the foregoing and all other facts of record, the Board believes that Commodity Trading Activities are complementary to the Permissible Commodity Derivatives Activities of Société Générale.

To authorize Société Générale to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the U.S. financial system generally.[13] In addition, the Board must determine that the performance of Commodity Trading Activities by Société Générale "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."[14]

Approval of the proposal would likely benefit Société Générale's customers by enhancing Société Générale's ability to provide efficiently a full range of commodity-related services. Approving Commodity Trading Activities for Société Générale also would enable it to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in those markets.

2. 12 U.S.C. § 1843; 12 CFR Part 225.

3. Société Générale will enter into physical commodity trades in the United States through its indirect, wholly owned nonbanking subsidiary, Société Générale Energie (USA) Corp. ("SGE"), New York, New York. SGE currently engages in some physical commodities activities in the United States, pursuant to authority under Regulation K, that are related to the foreign physical commodities activities of its parent company, Société Générale Energie (S.A.). *See* 12 CFR 211.23(f)(5).

4. 12 U.S.C. § 1843(c)(8).

5. The Board determined by regulation before November 12, 1999, that engaging as principal in Commodity Derivatives Activities, subject to certain restrictions, was closely related to banking. Accordingly, engaging as principal in Permissible Commodity Derivatives Activities is a financial activity for purposes of the BHC Act. *See* 12 U.S.C. § 1843(k)(4)(F).

6. 12 U.S.C. § 1843(k)(1)(A).

7. 12 U.S.C. § 1843(k)(1)(B).

8. *See* 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) ("It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.").

9. 12 U.S.C. § 1843(j).

10. 12 CFR 211.23(f)(5).

11. Société Générale has committed that on receiving approval from the Board to conduct Commodity Trading Activities in the United States as an activity complementary to a financial activity, it will conduct such activities pursuant to section 4 authority only, consistent with the limitations placed by the Board on such activities.

12. *Deutsche Bank AG*, 92 *Federal Reserve Bulletin* C54 (2006); *JPMorgan Chase & Co.*, 92 *Federal Reserve Bulletin* C57 (2006); *Barclays Bank PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in Commodity Derivatives based on Brent crude oil.

13. 12 U.S.C. § 1843(k)(1)(B).

14. 12 U.S.C. § 1843(j)(2)(A).

The Board has evaluated the financial resources of Société Générale and its subsidiaries. Société Générale's capital levels exceed the minimum levels that would be required under the Basel Capital Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization.

Based on all the facts of record, the Board believes that Société Générale has the managerial expertise and internal control framework to manage adequately the risks of taking and making delivery of physical commodities as proposed. The Board notes that Société Générale has established and maintained policies for monitoring, measuring, and controlling the credit, market, settlement, reputational, legal, and operational risks involved in its Commodity Trading Activities. These policies address key areas, such as counterparty-credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of Commodity Trading Activities. Société Générale has integrated the risk management of Commodity Trading Activities into its overall risk-management framework.

As a condition of this order, to limit the potential safety and soundness risks of Commodity Trading Activities, the market value of commodities held by Société Générale as a result of Commodity Trading Activities must not exceed 5 percent of Société Générale's consolidated tier 1 capital (as calculated under its home country standard).[15] Société Générale also must notify the Federal Reserve Bank of New York if the market value of commodities held by Société Générale as a result of its Commodity Trading Activities exceeds 4 percent of its tier 1 capital.

In addition, Société Générale may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or that have been specifically approved by the Board.[16] This requirement is designed to prevent Société Générale from becoming involved in dealing in finished goods and other items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of Société Générale to additional risks, including storage, transportation, legal, and environmental risks, Société Générale would not be authorized (i) to own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) to process, refine, store, or otherwise alter commodities in the United States. In conducting its Commodity Trading Activities, Société Générale has committed to use appropriate storage and transportation facilities owned and operated by third parties.[17]

Société Générale and its Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

Permitting Société Générale to engage in the limited amount and types of Commodity Trading Activities described above, on the terms described in this order, would not appear to pose a substantial risk to Société Générale, depository institutions, or the U.S. financial system generally. Through its existing authority to engage in Permissible Commodity Derivatives Activities, Société Générale already may incur the price risk associated with commodities. Permitting Société Générale to buy and sell commodities in the spot market or physically settle Commodity Derivatives would not appear to increase significantly its potential exposure to commodity-price risk.

For these reasons, and based on Société Générale's policies and procedures for monitoring and controlling the risks of Commodity Trading Activities, the Board concludes that consummation of the proposal would not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that would outweigh any potential adverse effects.

Based on all the facts of record, including the representations and commitments made to the Board by Société Générale in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y, including those in section 225.7,[18] and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the

15. Société Générale would be required to include in this 5 percent limit the market value of any commodities it holds as a result of a failure of reasonable efforts to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y (12 CFR 225.28(b)(8)(ii)(B)).

16. The particular commodity derivative contract that Société Générale takes to physical settlement need not be exchange traded, but (in the absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of CFTC-authorized commodity contracts. *See* Commodity Futures Trading Commission, *FY 2004 Annual Report to Congress* 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

17. Approving Commodity Trading Activities as a complementary activity, subject to limits and conditions, would not in any way restrict the existing authority of Société Générale to deal in foreign exchange, precious metals, or any other bank-eligible commodity.

18. 12 CFR 225.7.

notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective March 15, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER SECTIONS 3 AND 4 OF THE BANK HOLDING COMPANY ACT

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies

BB&T Corporation ("BB&T"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Main Street Banks, Inc. ("Main Street"), Atlanta, and its subsidiary bank, Main Street Bank, Covington, both of Georgia. BB&T also has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[2] and section 225.28(b)(14) of the Board's Regulation Y[3] to acquire Main Street's subsidiary, MSB Payroll Solutions, LLC ("MSB Data"), Alpharetta, Georgia, and thereby engage in permissible data-processing activities.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 3094 (2006)). The time for filing comments has expired, and the Board has considered the application and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

BB&T, with total consolidated assets of approximately $109.2 billion, is the 17th largest depository organization in the United States.[5] BB&T operates subsidiary insured depository institutions in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, Tennessee, West Virginia, and the District of Columbia. In Georgia, BB&T is the sixth largest depository organization, controlling deposits of $4.7 billion, which represent 3.2 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").

Main Street, with total consolidated assets of approximately $2.4 billion, operates one depository institution, Main Street Bank, which has branches only in Georgia. Main Street Bank is the ninth largest insured depository institution in Georgia, controlling deposits of $1.7 billion, which represent approximately 1.2 percent of state deposits.

On consummation of this proposal, BB&T would remain the 17th largest insured depository organization in the United States, with total consolidated assets of approximately $111.9 billion. BB&T would become the fifth largest depository organization in Georgia, controlling deposits of approximately $6.3 billion, which represent approximately 4.3 percent of state deposits.[6]

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of BB&T is North Carolina,[7] and Main Street Bank is located in Georgia.[8]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[9] In light of all the facts of record, the Board is permitted to approve the proposal under this provision.

1. 12 U.S.C. § 1842.
2. 12 U.S.C. §§ 1843(c)(8) and 1843(j).
3. 12 CFR 225.28(b)(14).
4. In addition, BB&T proposes to acquire Main Street's nonbanking insurance agency and underwriting subsidiary in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).
5. Asset and nationwide ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 24, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
6. Branch Banking and Trust Company ("BB&T Bank"), Winston-Salem, North Carolina, a subsidiary bank of BB&T, has received approval from the Federal Deposit Insurance Corporation ("FDIC") to merge with Main Street Bank, with BB&T Bank as the survivor. BB&T has indicated that it anticipates consummating that merger approximately four months after acquiring Main Street.
7. A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).
8. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).
9. *See* 12 U.S.C. § 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). BB&T is adequately capitalized and adequately managed, as defined by applicable law. Main Street Bank has been in existence and operated for the minimum period of time required by applicable state law (three years). *See* Ga. Code Ann. § 7-1-608(a)(2). On consummation of the proposal, BB&T would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States. BB&T would also control less than 30 percent of total deposits in Georgia. All other requirements of section 3(d) would be met on consummation of the proposal.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[10]

BB&T and Main Street compete directly in the Atlanta Area and the Athens Area banking markets in Georgia.[11] The Board has reviewed carefully the competitive effects of the proposal in both banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by BB&T and Main Street,[12] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[13] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in both banking markets. After consummation, each market would remain unconcentrated, as measured by the HHI. In addition, the increase in concentration would be small, and numerous competitors would remain in each market.[14]

The DOJ also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the transaction likely would not have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta Area or Athens Area banking markets or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by BB&T, and public comments received on the proposal.[15]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of factors in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the proposal under the financial factors. BB&T, all its subsidiary banks, and Main Street Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that BB&T has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined

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10. 12 U.S.C. § 1842(c)(1).

11. These banking markets are described in Appendix A.

12. Deposit and market share data are as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

13. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

14. The effect of the proposal on the concentration of banking resources in each market is described in Appendix B.

15. A commenter expressed concern about BB&T's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. BB&T has stated that it does not focus on marketing credit services to such nontraditional providers and that it makes loans to those firms under the same terms, circumstances, and due diligence procedures applicable to BB&T's other small business borrowers. BB&T has also represented that it does not play any role in the lending practices, credit review, or other business practices of those firms.

organization. The Board has reviewed the examination records of BB&T, Main Street, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. BB&T, Main Street, and their subsidiary depository institutions are considered to be well managed. The Board also has considered BB&T's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[16] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[17]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of BB&T's subsidiary banks and Main Street Bank, data reported by BB&T under the Home Mortgage Disclosure Act ("HMDA"),[18] other information provided by BB&T, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data, that BB&T engaged in discriminatory treatment of minority individuals in its home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[19]

BB&T's largest subsidiary bank, as measured by total deposits, is BB&T Bank.[20] The bank received an "outstanding" rating by the FDIC, at its most recent CRA performance evaluation, as of December 20, 2004. BB&T's remaining subsidiary banks all received "satisfactory" ratings at their most recent CRA evaluations.[21] Main Street Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 14, 2004. BB&T has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from Main Street after the merger of BB&T Bank and Main Street Bank.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of BB&T in light of public comment about its record of lending to minorities. A commenter alleged, based primarily on 2004 HMDA data, that BB&T had disproportionately denied applications for HMDA-reportable loans by African-American and Latino applicants. The commenter also asserted that BB&T made higher-cost loans[22] more frequently to African Americans and Latinos than to nonminorities.[23] The Board has analyzed the 2004 HMDA data reported by BB&T's subsidiary banks in the Metropolitan Statistical Areas ("MSAs") of Atlanta-Sandy Springs-Marietta, Charlotte-Gastonia-Concord, Durham, Raleigh-Cary, Washington-Arlington-Alexandria, and Winston-Salem; and in their assessment areas statewide in Georgia, Kentucky, Maryland, and North Carolina.[24]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic

16. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).
17. 12 U.S.C. § 2903.
18. 12 U.S.C. § 2801 et seq.

19. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620, 36,640 (2001).
20. As of December 31, 2005, BB&T Bank accounted for approximately 67.2 percent of the total domestic deposits of BB&T's four subsidiary banks.
21. Appendix C lists the most recent CRA ratings of BB&T's other subsidiary banks.
22. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).
23. The commenter also expressed concern about referrals of loan applicants to Lendmark Financial Services ("LFS"), a nonbank subsidiary of BB&T that makes subprime loans. BB&T has represented that it might refer to LFS applications denied by a BB&T subsidiary bank that do not meet the bank's underwriting guidelines. Before making a referral, however, these applications undergo an internal second-review procedure. In addition, BB&T notes that LFS has a policy to refer applicants who meet the Freddie Mac underwriting guidelines to BB&T's subsidiary banks.
24. In addition, the Board analyzed 2004 HMDA data reported by LFS in the Charlotte-Gastonia-Concord MSA and statewide in North Carolina.

groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not BB&T or its subsidiaries are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[25] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by BB&T's subsidiary banks with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of those banks, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that BB&T has taken steps to ensure compliance with fair lending and other consumer protection laws. BB&T employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, BB&T monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets, and by conducting a more extensive internal comparative file review when merited. Finally, BB&T provides fair lending training to its lending personnel, including training to help ensure that loan originators consistently disseminate credit-assistance information to applicants.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of each of BB&T's subsidiary banks. Their established efforts and records demonstrate that BB&T is active in helping to meet the credit needs of its entire communities.

C. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BB&T, comments received on the proposal, and confidential supervisory information. BB&T represented that the proposed transaction would provide Main Street customers with expanded products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

NONBANKING ACTIVITIES

As noted, BB&T also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to engage in data-processing activities through the acquisition of MSB Data, which provides payroll services to small businesses. The Board has determined by regulation that financial and banking data-processing activities are permissible for a bank holding company under Regulation Y,[26] and BB&T has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.

To approve this notice, the Board must also determine that the performance of the proposed activities by BB&T "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[27] As part of its evaluation of these factors, the Board has considered the financial and managerial resources of BB&T and Main Street and their subsidiaries, and the effect of the proposed transaction on their resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has carefully considered the competitive effects of BB&T's proposed acquisition of MSB Data in light of all the facts of record. BB&T and Main Street both engage in activities related to data processing. The market for the activity is regional or national in scope and unconcentrated. The record in this case also indicates that there are numerous providers of these services. Accordingly, the Board concludes that BB&T's acquisition of MSB Data would not have a significantly adverse effect on competition in any relevant market.

The acquisition of MSB Data by BB&T would benefit the public by allowing BB&T to offer expanded payroll products and services to customers in the Atlanta area. After consummation, BB&T intends to merge MSB Data with and into BB&T's data-processing subsidiary, BB&T Payroll Services, Inc. BB&T represented that this merger would provide customers of MSB Data with access to BB&T's more advanced technology and software systems on which to run their payroll systems and expanded support for the payroll services that are offered. Customers also

25. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

26. 12 CFR 225.28(b)(14).

27. *See* 12 U.S.C. § 1843(j)(2)(A).

would have access to additional payroll products and services, such as payroll cards and a secure online payroll service.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor under section 4(j)(2) of the BHC Act is consistent with approval.[28]

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application and notice should be, and hereby are, approved.[29] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by BB&T with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[30] and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed banking acquisitions may not be consummated before the 15th calendar day after the effective date of this order, and no part of the proposal may 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 the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 27, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

28. A commenter asserted that the Board should, in the context of the current proposal, review BB&T's recently announced plans to acquire the assets of FSB Financial Ltd. ("FSB"), Arlington, Texas, a nonbanking company that purchases automobile-loan portfolios. The FSB acquisition is not related to the current proposal. Moreover, if the FSB acquisition is consummated under authority of section 4(k) of the BHC Act, the acquisition would not require prior approval of the Federal Reserve System. BB&T would require prior Federal Reserve System approval if the acquisition were proposed under sections 4(c)(8) and 4(j) of the BHC Act, and the transaction would be reviewed in light of the requirements and standards discussed above.

29. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

30. 12 CFR 225.7 and 225.25(c).

Appendix A

GEORGIA BANKING MARKETS IN WHICH BB&T AND MAIN STREET COMPETE DIRECTLY

Athens Area

Clarke, Jackson, Madison, Oconee, and Oglethorpe counties; and Barrow County, excluding the cities of Auburn and Winder.

Atlanta Area

Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County, excluding the town of Clermont; the towns of Auburn and Winder in Barrow County; and the town of Luthersville in Meriwether County.

Appendix B

MARKET DATA FOR GEORGIA BANKING MARKETS

Athens Area

BB&T operates the 17th largest depository institution in the Athens Area banking market, controlling deposits of $47.4 million, which represent 1.5 percent of market deposits. Main Street operates the 11th largest depository

institution in the market, controlling deposits of approximately $106.9 million, which represent 3.3 percent of market deposits. After consummation of the proposal, BB&T would become the eighth largest depository organization in the market, controlling deposits of approximately $154.3 million, which represent approximately 4.8 percent of market deposits. The HHI would increase 10 points, to 888. Twenty-two bank and thrift competitors would remain in the banking market.

Atlanta Area

BB&T operates the sixth largest depository institution in the Atlanta Area banking market, controlling deposits of $2.1 billion, which represent 2.4 percent of market deposits. Main Street operates the seventh largest depository institution in the market, controlling deposits of approximately $1.6 billion, which represent 1.8 percent of market deposits. After consummation of the proposal, BB&T would become the fifth largest depository organization in the market, controlling deposits of approximately $3.7 billion, which represent approximately 4.1 percent of market deposits. The HHI would increase 8 points, to 1557. One hundred and eight bank and thrift competitors would remain in the banking market.

Appendix C

CRA PERFORMANCE EVALUATIONS OF BB&T'S BANKS

Bank	CRA Rating	Date	Supervisor
Branch Banking and Trust Company, Winston-Salem, North Carolina	Outstanding	December 2004	FDIC
Branch Banking and Trust Company of South Carolina, Greenville, South Carolina	Satisfactory	December 2004	FDIC
Branch Banking and Trust Company of Virginia, Richmond, Virginia	Satisfactory	December 2004	FDIC
BB&T Bankcard Corporation, Columbus, Georgia	Satisfactory	May 2005	FDIC

Marshall & Ilsley Corporation Milwaukee, Wisconsin

Order Approving the Merger of Bank Holding Companies

Marshall & Ilsley Corporation ("M&I"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Gold Banc Corporation, Inc. ("Gold Banc") and its subsidiary bank, Gold Bank, both of Leawood, Kansas.[2] M&I also has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[3] and sections 225.28(b)(5), (b)(6), (b)(7), and (b)(8) of the Board's Regulation Y[4] to acquire the nonbanking subsidiaries of Gold Banc and thereby engage in permissible investment advisory, securities brokerage, underwriting, and trust activities. In addition, M&I's subsidiary bank, M&I Marshall & Ilsley Bank ("M&I Bank"), Milwaukee, Wisconsin, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[5] to merge with Gold Bank, with M&I Bank as the surviving entity. M&I Bank has also applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at Gold Bank's main office and branch locations.[6]

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (70 *Federal Register* 72,433 (2005)) and in local newspapers in accordance with relevant statutes and the Board's Rules of Procedure.[7] As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the Board has considered the applications and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&I, with total consolidated assets of approximately $46.3 billion, operates four subsidiary insured depository institutions in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. In Wisconsin, M&I is the largest depository organization, controlling deposits of approximately $18.3 billion, which represent 18.1 percent

1. 12 U.S.C. § 1842.

2. The Board also approved today a separate application by M&I to acquire Trustcorp Financial, Inc., St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company, Clayton, both of Missouri, under section 3 of the BHC Act. *See Marshall & Ilsley Corporation*, 92 *Federal Reserve Bulletin* C79 (2006).

3. 12 U.S.C. §§ 4(c)(8) and 4(j).

4. 12 CFR 225.28 (b)(5)–(b)(8).

5. 12 U.S.C. § 1828(c).

6. 12 U.S.C. §§ 321 and 1831u. These branches are listed in the appendix.

7. 12 CFR 262.3(b).

of the total amount of deposits of insured depository institutions in the state ("state deposits").[8] In Florida, M&I is the 287th largest depository organization, controlling deposits of approximately $37 million, which represent less than 1 percent of state deposits. In Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.7 percent of state deposits.

Gold Banc, with total consolidated assets of approximately $4.2 billion, operates one depository institution, Gold Bank, which has branches in Florida, Kansas, Missouri, and Oklahoma. Gold Banc is the fifth largest depository organization in Kansas, controlling deposits of approximately $1.5 billion, which represent 3.1 percent of state deposits. In Florida, Gold Banc is the 44th largest depository organization, controlling deposits of approximately $829 million. In Missouri, Gold Banc is the 36th largest depository organization, controlling deposits of approximately $394.4 million.

On consummation of the proposals, M&I would have consolidated assets of $50.5 billion. In Florida, M&I would become the 42nd largest depository organization, controlling deposits of $866 million, which represent less than 1 percent of state deposits. In Missouri, M&I would become the seventh largest depository organization, controlling deposits of $2 billion, which represent 2.2 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[9] For purposes of the BHC Act, the home state of M&I is Wisconsin,[10] and Gold Bank is located in Florida, Kansas, Missouri, and Oklahoma.[11]

Section 44 of the Federal Deposit Insurance Act ("FDI Act") authorizes banks with different home states to merge under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.[12] For purposes of section 44 of the FDI Act, the home state of M&I Bank is Wisconsin, and the home state of Gold Bank is Kansas.[13] Neither Wisconsin nor Kansas has a law prohibiting merger transactions involving out-of-state banks applicable to the proposals.[14]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.[15] In light of all the facts of record, the Board is permitted to approve the proposals under both statutes.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. These acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposals are clearly outweighed in the public interest by the probable effect of the proposals in meeting the convenience and needs of the community to be served.[16]

M&I and Gold Banc do not compete in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL AND MANAGERIAL RESOURCES AND FUTURE PROSPECTS

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and depository

8. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through January 23, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

9. 12 U.S.C. § 1842(d).

10. Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

11. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in states in which the bank is headquartered or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A)–(d)(2)(B).

12. 12 U.S.C. § 1831u.

13. Under section 44 of the FDI Act, a state member bank's home state is the state where it is chartered (12 U.S.C. § 1831u(g)(4)).

14. In 1997, the Kansas State bank commissioner issued an order specifically authorizing Kansas banks to engage in interstate merger transactions. *See* State of Kan. State Bank Comm'r, *Special Order 1997-2*, (May 30, 1997).

15. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B); 12 U.S.C. § 1831u(a)–(b). M&I and M&I Bank are adequately capitalized and adequately managed, as defined by applicable law. Gold Bank has been in existence and operated for the minimum period of time required by applicable state law. *See* Fla. Stat. § 628.295 (three years); Kan. Stat. Ann. § 9-541 (five years); and Mo. Rev. Statutes § 362.077 (five years). Oklahoma does not have a minimum age requirement applicable to the proposals. On consummation of the proposals, M&I and M&I Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. M&I and M&I Bank also would control less than 30 percent of the total amount of deposits of insured depository institutions in each relevant state. *See* Fla. Stat. § 628.295(8); Mo. Rev. Statutes § 362.915. All other requirements of sections 3(d) and 44 would be met on consummation of the proposals.

16. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

institutions involved in the proposals and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state banking supervisors of the organizations involved in the proposals, publicly reported and other financial information, information provided by M&I, and public comment on the proposals.[17]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board carefully considered the proposals under the financial factors. M&I and each of its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposals. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposals. The proposal to acquire Gold Banc is structured as a partial share exchange and partial cash purchase, and M&I will fund the cash portion by incurring long-term debt.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of M&I, Gold Banc, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. M&I, Gold Banc, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposals, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposals are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act and the Bank Merger Act, the Board also must consider the effects of the proposals on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of M&I and Gold Banc, data reported by M&I and Gold Banc under the Home Mortgage Disclosure Act ("HMDA"),[20] other information provided by M&I and Gold Banc, confidential supervisory information, and public comment received on the proposals. The Board received two comments on the proposals. One commenter alleged, based primarily on 2004 HMDA data, that M&I, through its subsidiary depository institutions and nonbank lending subsidiary, and Gold Bank engaged in discriminatory treatment of minority individuals in their home mortgage lending. The other commenter contended that M&I Bank provided a low number of home mortgage loans to African Americans in the Milwaukee-Waukesha Primary Metropolitan Statistical Area ("PMSA") and that Gold Bank's amount of home mortgage lending to LMI borrowers in Kansas City was insufficient.[21] This commenter also expressed concern that M&I Bank's investments in LMI communities have been limited in nature and should be expanded.[22]

17. A commenter expressed concern about relationships of M&I, Gold Banc, and their subsidiaries with unaffiliated alternative-financial-service providers. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. M&I stated that one of the relationships referenced by the commenter no longer exists and that any current relationships with such providers of nontraditional financial services are limited to extensions of credit to those businesses. M&I also stated that loans to those businesses represent less than 1 percent of the loan portfolios of M&I and Gold Banc and would not have a material impact on the financial or managerial resources of the organization.

18. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

21. The commenter also criticized M&I Bank's home mortgage lending to LMI borrowers in Kansas City. The Board notes that no portion of the Kansas City Metropolitan Statistical Area ("MSA") has been a part of M&I Bank's assessment area.

22. The commenter stated that some homeowner counselors had advised that M&I Bank's policies include a "skip pay" feature for delinquent borrowers but that the bank rarely allowed that feature to be exercised. M&I responded that this "skip pay" feature is not an option in collecting a debt from a delinquent borrower. Rather, it is a promotional program for certain M&I Bank loans that allows delinquent borrowers to miss a payment. M&I stated, however, that the bank offers delinquent installment loan borrowers the option to defer a payment if necessary, with a corresponding extension of the loan term to account for the missed payment.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[23]

M&I Bank, M&I's largest subsidiary depository institution as measured by total deposits, received an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 11, 2003 ("2003 CRA Evaluation"). All M&I's other subsidiary depository institutions received "satisfactory" ratings at their most recent CRA performance evaluations.[24] Gold Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Kansas City, as of January 24, 2005 ("2005 Gold Bank CRA Evaluation").

M&I represented that it will implement its CRA policies, procedures, and programs throughout the combined organization. This implementation will be carried out by local and regional CRA committees with coordinated oversight from M&I's corporate CRA committee, which is the current model for M&I's CRA program.[25]

B. CRA Performance of M&I Bank

As noted, M&I Bank received an "outstanding" overall CRA performance rating in the 2003 CRA Evaluation.[26] Under the lending test, M&I Bank received an overall rating of "high satisfactory," and examiners commended M&I Bank for having a generally strong distribution of loans among borrowers of different income levels and a high level of community development lending in both Wisconsin and Minnesota. Examiners also commended the bank's extensive use of innovative or flexible lending practices in meeting the credit needs of its assessment areas. In M&I Bank's Wisconsin assessment area, the bank also received a "high satisfactory" rating for the lending test, and examiners commended the bank's strong responsiveness to community credit needs, particularly for its distribution of loans to borrowers of different income levels and to business and farms of different sizes.

In the Milwaukee-Waukesha PMSA, examiners considered the geographic distribution of M&I Bank's HMDA-reportable, small business, and small farm lending to be adequate. Examiners noted that the percentage of the bank's total number of home improvement loans in LMI geographies exceeded the percentages for lenders in the aggregate ("aggregate lenders") during the evaluation period.[27] Although the percentages of the bank's total number of home purchase and home refinance loans in LMI census tracts in the Milwaukee-Waukesha PMSA fell below the percentages for the aggregate lenders, examiners noted that the bank's geographic distribution of such loans had significantly improved since 2001. They concluded that the bank's lending levels in the Milwaukee-Waukesha PMSA were not unreasonable, because owner-occupied housing units in such census tracts represented only 14.9 percent of total housing units, and the bank faced strong competition from other lenders.[28]

In the 2003 CRA Evaluation, M&I Bank received "outstanding" ratings under the investment test overall and for its assessment areas in Wisconsin. Examiners reported that the bank made qualified investments totaling $7.9 million and charitable donations totaling more than $1.2 million during the evaluation period. Examiners commended the bank for focusing its investment efforts on areas that demonstrated the greatest need, such as the bank's assessment areas in the Milwaukee-Waukesha PMSA and the Madison MSA.

M&I represented that, from August 2003 to July 2005, M&I Bank made approximately $15.7 million in qualified investments and grants in the bank's assessment areas, including investments of approximately $5.3 million in the Milwaukee area, which represented a significant increase since the 2003 CRA Evaluation. In addition, as noted by a commenter, M&I CDC received the "Vision Award" from the Milwaukee Awards for Neighborhood

23. *See Interagency Questions and Answers Regarding Community Reinvestment*, 71 *Federal Register* 12,424 and 36,639 (2001).

24. Southwest Bank of St. Louis received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of August 11, 2003. M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

25. M&I has stated that it will retain Gold Banc's Community Development Officer to maintain connections in the communities that Gold Banc currently serves.

26. In the 2003 CRA Evaluation, examiners included the lending of M&I Mortgage Corp. ("M&I Mortgage"), M&I FSB's nationwide mortgage subsidiary, in its evaluation of M&I Bank's performance under the CRA lending test. Examiners also included the lending of M&I Community Development Corporation ("M&I CDC"), a subsidiary of M&I, in the evaluation of M&I Bank's community development lending activity under the CRA lending test. In addition, the investments of M&I CDC and Marshall & Ilsley Foundation ("M&I Foundation"), another subsidiary of M&I, were included in the evaluation of M&I Bank's performance under the investment test. M&I Bank, M&I CDC, and M&I Foundation are collectively referred to as "M&I Bank." The evaluation period for HMDA-reportable, small business, and small farm loans was January 1, 2001, through December 31, 2002. The evaluation period for community development lending was August 1, 2001, through July 31, 2003. The evaluation period for the investment and services tests was August 1, 2001, through July 31, 2003.

27. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

28. A commenter commended M&I Bank's small-business lending in the Milwaukee area in 2004, noting that the bank exceeded the performance of its peers in making small-business loans and lending to small businesses in LMI census tracts.

Development Innovation and the Local Initiatives Support Corporation in 2004 for its investments in affordable housing.

In the 2003 CRA Evaluation, M&I Bank also received an "outstanding" rating for the service test, based on its distribution of branches and ATMs, accessibility of delivery systems, record of opening and closing branch offices, and innovativeness of products and services. Examiners noted that approximately 12 percent of M&I Bank's branches and 16 percent of its ATMs were in LMI census tracts.[29] Examiners commended the bank for having an "excellent" level of community development services and for providing support to various organizations within its combined assessment area, including providing seminars and consulting services for first-time homebuyers, facilitating affordable housing, and supporting organizations that assist LMI families, small businesses, and small farm owners.

C. CRA Performance of Gold Bank

As noted previously, Gold Bank received an overall "satisfactory" rating in the 2005 Gold Bank CRA Evaluation.[30] Under the lending test, examiners gave Gold Bank a "high satisfactory" rating and commended the bank's geographic loan distribution, noting that the overall geographic distribution of HMDA-reportable and small business loans reflected a favorable penetration in LMI census tracts across the bank's assessment areas. They also found that the bank's overall distribution of loans among borrowers of different income levels was good and consistently exceeded the performance of the aggregate lenders in the majority of the bank's assessment areas. Examiners also found that Gold Bank's community-development lending performance was adequate and generally responsive to assessment-area credit needs.

In the Kansas City MSA, Gold Bank received an "outstanding" rating on the lending test. Examiners commended the bank's "excellent" responsiveness to assessment area credit needs, geographic distribution of loans, and distribution of loans among individuals of different income levels. Examiners reported that the percentage of the bank's home purchase loans in LMI census tracts in 2003 significantly exceeded the percentage for the aggregate lenders.

Gold Bank received a "high satisfactory" rating on the investment test in the 2005 Gold Bank CRA Evaluation, with examiners particularly commending the bank's performance in the Kansas City MSA. Examiners concluded that the bank exhibited adequate responsiveness to community development needs in the Kansas City MSA through its donation and grant activity. During the review period, the bank provided 39 qualified investments totaling $8.1 million, including 34 grants and donations.[31]

Gold Bank received a "low satisfactory" rating on the service test. Examiners reported that the bank's offices were generally accessible to all portions of its assessment areas, including LMI geographies, although branches and ATMs were predominantly located in middle- and upper-income areas.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Gold Banc in light of public comment received on the proposals. A commenter alleged, based primarily on 2004 HMDA data, that M&I Bank, M&I Mortgage, and M&I FSB denied the home mortgage and refinance applications of minority applicants more frequently than those of nonminority applicants and made higher-cost loans more frequently to minority borrowers than nonminority borrowers nationwide in the Milwaukee and St. Louis MSAs, and statewide in Missouri, Ohio, and Wisconsin.[32] The same commenter also alleged that Gold Bank denied home mortgage applications of African-American and Latino borrowers more frequently than nonminority applicants in the Kansas City MSA. Another commenter expressed concern that the amount of mortgage lending by M&I Bank to African Americans in the Milwaukee MSA area lagged behind the performance of the aggregate lenders.

The Board has analyzed 2004 HMDA data reported by M&I Bank, M&I Mortgage, M&I FSB, and their affiliates nationwide and in their primary assessment areas, including their assessment areas in the Milwaukee-Waukesha PMSA; the MSAs of Appleton, Oshkosh-Neenah, Lake County-Kenosha County, Madison, and St. Louis; and statewide in Arizona, Illinois, Minnesota, Missouri, Nevada, Ohio, and Wisconsin. In addition, the Board has

29. A commenter expressed appreciation for M&I Bank's active presence in some of Milwaukee's lowest-income communities and its participation in economic development organizations.

30. The evaluation period for HMDA-reportable, small business, and small farm loans was from January 1, 2003, through September 30, 2004. The evaluation period for community development loans and the service and investment tests was from October 28, 2002, through January 24, 2005. Gold Bank's performance in its Kansas City multistate MSA assessment area ("Kansas City MSA") received significantly greater weight from examiners, because a majority of the bank's total deposits and loans were concentrated in that assessment area.

31. A commenter criticized Gold Bank's investment-performance record and investment rating because of credit Gold Bank received in its 2005 CRA Evaluation from the Kansas City Reserve Bank for making an investment in multifamily housing revenue bonds that were ultimately intended to benefit LMI residents. The Board has consulted with the Kansas City Reserve Bank on this matter. Through no fault of Gold Bank, the bonds were called and no multifamily housing was constructed. Gold Banc made various, timely public disclosures regarding the impairment of the bonds and also timely notified the Kansas City Reserve Bank. The Board notes that M&I represented that it would implement its CRA policies, procedures, and programs, including its CRA investment programs, throughout the areas served by Gold Bank after consummation of the proposals.

32. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

analyzed 2004 HMDA data reported by Gold Bank in its assessment areas in the Kansas City MSA and statewide in Kansas, Missouri, and Oklahoma.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not M&I or Gold Banc is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[33] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by M&I and Gold Banc with fair lending laws. The Board also consulted with the OTS, the primary regulator of M&I FSB, and considered the compliance examination records of M&I's and Gold Banc's subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by any of M&I's or Gold Banc's subsidiary depository institutions.

The record also indicates that M&I, Gold Banc, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure compliance with fair lending and other consumer protection laws. M&I represented that it has centralized programs in place to monitor and manage compliance that feature periodic reviews of all consumer lending programs, the tracking of applicable laws and regulations, ongoing compliance-risk analyses, the development of programs to train personnel involved in consumer lending, and oversight of the creation and use of consumer lending forms for its depository and lending institutions. M&I also represented that it has ongoing, comprehensive training programs to ensure that regulatory requirements and policies are updated to reflect changes in law and internal policies or procedures and are clearly communicated to personnel. In addition, M&I represented that its internal audit department periodically performs independent testing and validation of the compliance performance of M&I's various business units to ensure compliance with fair lending and other consumer protection laws and to measure the effectiveness of internal controls. After consummation of the proposed transaction, M&I stated that it would implement its centralized compliance-related policies and procedures across the combined organization, thereby ensuring that all areas have the same compliance monitoring and independent testing processes. In addition, critical functions, such as underwriting of consumer and mortgage loans, also would be performed centrally to provide consistent application of policies and procedures across the organization.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs of M&I and Gold Banc and the overall CRA performance records of their subsidiary depository and lending institutions. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

E. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record,[34] including reports of examination of the CRA records of the institutions involved, information provided by M&I and Gold Banc, comments received on the proposals, and confidential supervisory information. M&I represented that the proposals would provide customers of Gold Bank with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

NONBANKING ACTIVITIES

M&I also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Gold Banc's nonbanking

33. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

34. One commenter requested that the Board condition its approval of the proposals on certain community reinvestment and other commitments by M&I. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., JPMorgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005); *The Toronto-Dominion Bank*, 92 *Federal Reserve Bulletin* C100 (2006). In this case, as in past cases, the Board has focused instead on the demonstrated CRA performance records of M&I's subsidiaries and the programs that they have in place to serve the credit needs of their assessment areas when the Board reviewed the proposals under the convenience and needs factor. In reviewing future applications by M&I under this factor, the Board similarly will review the actual CRA performance records of M&I's subsidiaries and the programs they have in place to meet the credit needs of their communities at that time.

subsidiaries, Gold Capital Management, Inc. ("Gold Capital") and Gold Trust Company ("Gold Trust").[35] Gold Capital engages in investment advisory, securities brokerage, and government securities underwriting activities. Gold Trust is a nondepository trust company engaged in trust services.

The Board has determined by regulation that financial and investment advisory services, securities brokerage services, underwriting government obligations, and trust company services are permissible for bank holding companies under Regulation Y.[36] M&I has committed to conduct these activities in accordance with the Board's regulations and orders for bank holding companies engaged in these activities.

To approve this notice, the Board must determine that M&I's acquisition of Gold Capital and Gold Trust and the performance of the proposed activities "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[37] As part of its evaluation of these factors, the Board has considered the financial and managerial resources of M&I, its subsidiaries, and the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that the financial and managerial considerations are consistent with approval of the notice.

The Board has considered the competitive effects of M&I's proposed acquisition of Gold Capital and Gold Trust in light of all the facts of record. Gold Capital engages in nonbanking activities through its offices in Kansas and Gold Bank's retail branches in Florida, Kansas, Missouri, and Oklahoma. M&I engages in similar nonbanking activities through the offices of its nonbanking subsidiary companies[38] and at the branches of its banking subsidiaries in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. Gold Trust also provides its trust services at Gold Bank's branches, and M&I provides trust services through Marshall & Ilsley Trust Company National Association at its offices in Indianapolis, Indiana, and at the branches and offices of M&I's subsidiary banks. The record indicates that the markets for these activities, which include investment advisory, securities brokerage, government securities underwriting, and trust services, are regional or national in scope and that the markets are unconcentrated with numerous competitors. Accordingly, the Board concludes that M&I's acquisition of Gold Capital and Gold Trust would have a de minimis effect on competition for these nonbanking activities in any relevant market.

In addition, the Board has reviewed carefully the public benefits of the proposed acquisition of Gold Banc. The proposals would allow M&I to provide an expanded range of trust and investment products and services to Gold Banc's customers, including trust and administrative services for retirement plans, secured working-capital lending, leasing, and data-processing services. In addition, the proposals would enable M&I to offer an expanded physical presence to its own customers through Gold Banc's network.

Based on all of the facts of record, the Board has determined that consummation of the nonbanking proposal can reasonably be expected to produce public benefits that would outweigh possible adverse effects under the standard of review in section 4(j)(2) of the BHC Act.

BRANCHES

As previously noted, M&I Bank has also applied under section 9 of the FRA to establish branches at the locations listed in the appendix. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and the Board's Regulation H and finds those factors to be consistent with approval.[39]

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.[40] In reaching its conclusion, the

35. M&I also would acquire Gold Banc's remaining nonbanking activities and businesses, such as Gold Capital's insurance agency services, broker–dealer activities, and distribution and management services for open-end investment companies, and Gold Merchant Banc, Inc., a subsidiary of Gold Banc that engages in merchant banking activities, under section 4(k) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y 12 U.S.C. § 1843(k)(4)(H); 12 CFR 225.87; 12 CFR Subpart J.

36. *See* 12 CFR 225.28(b)(5)–(b)(8).

37. *See* 12 U.S.C. § 1843(j)(2)(A).

38. M&I Brokerage Services, Inc., which provides securities brokerage and investment advisory services, has an office in Milwaukee.

39. 12 U.S.C. § 322; 12 CFR 208.6(b).

40. A commenter requested that the Board hold a public hearing or meeting on the proposals. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). The Bank Merger Act and the FRA do not require the Board to hold a public hearing or meeting. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered carefully in acting on the proposals. The request fails to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or

Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&I with the conditions imposed in this order and the commitments made to the Board in connection with the applications and notice. The Board's approval of the nonbanking aspects of the proposals also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[41] and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed banking acquisitions may not be consummated before the 15th calendar day after the effective date of this order, and no part of the proposal may 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 the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 13, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

MAIN OFFICE AND BRANCHES TO BE ACQUIRED BY M&I

Florida

Charlotte County
1777 Tamiami Trail, Murdock

Hillsborough County
301 North Tamiami Trail, Ruskin
601 North Ashley Drive, Tampa

Manatee County
2525 Manatee Avenue, West Bradenton
5503 Manatee Avenue, West Bradenton
4502 Cortez Road, West Bradenton
4115 U.S. Highway 301 East, Ellenton
1301 8th Avenue West, Palmetto
6821 15th Street East, Sarasota

Sarasota County
1201 South Beneva Road, Sarasota
240 South Pineapple Avenue, Sarasota

Kansas

Crawford County
417 North Broadway, Pittsburg
Fourth and Walnut Streets, Pittsburg

Johnson County
8840 State Line, Leawood
11301 Nall, Leawood
1511 West 101st Terrace, Lenexa
15203 West 119th Street, Olathe
9529 Antioch Road, Overland Park
12080 Blue Valley Parkway, Overland Park
6333 Long, Shawnee
7225 Renner Road, Shawnee
21900 Shawnee Mission Parkway, Shawnee

Missouri

Buchanan County
2211 North Belt Highway, Saint Joseph
4305 Frederick Boulevard, Saint Joseph

Clay County
105 North Stewart Court, Suite 100, Liberty

Jackson County
18800 East Highway 40, Independence
800 West 47th Street, Kansas City
1201 North West Briarcliff Parkway, Kansas City

Oklahoma

Tulsa County
2500 West Edison Street, Tulsa
11032 South Memorial, Tulsa
5120 South Garnett, Tulsa

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Banco Latinoamericano de Exportaciones S.A.
Panama City, Republic of Panama

Order Approving Establishment of a Representative Office

Banco Latinoamericano de Exportaciones S.A. ("Bank"), Panama City, Republic of Panama, a foreign bank within

warranted in this case. Accordingly, the request for a public hearing or meeting on the proposals is denied.

41. 12 CFR 225.7 and 225.25(c).

the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, April 15, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately $3.2 billion,[1] is the third largest bank in Panama and focuses on the provision of trade finance services.[2] Bank operates representative offices in Argentina, Brazil, and Mexico. In the United States, Bank operates an agency in New York, New York.

The proposed representative office would act as a liaison between Bank's head office in Panama and its existing and prospective customers in the United States. The office would engage in representative functions in connection with the products and services offered by Bank, solicit new business, provide information to U.S.-based companies about conducting business in Latin America, and perform preliminary and servicing steps in connection with lending.

The IBA and Regulation K require that the Board, in acting on an application by a foreign bank to establish a representative office, take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. §§ 3107 and 3105(d)(2); 12 CFR 211.24(d)(2)).[3] The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)). The Board will consider that the supervision standard has been met where it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.[4] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications, because representative offices may not engage in banking activities (12 CFR 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

Bank has provided the following information regarding home country supervision. Bank is supervised by the Superintendency of Banks of the Republic of Panama ("Superintendency"). The Superintendency is responsible for the regulation, supervision, and examination of financial institutions operating in Panama. The Superintendency implements legislation concerning capital adequacy, liquidity, asset classification, and large credit and foreign-currency exposures. The Superintendency has the authority to impose remedial measures, including civil money penalties, against banks that violate Panamanian banking laws and regulations.

The Superintendency supervises and regulates Bank through a combination of on-site examinations and off-site monitoring. On-site examinations are conducted annually and cover the Bank's overall financial condition, capital adequacy, asset quality, corporate governance, and compliance with the law. Off-site monitoring of Bank is conducted by the Superintendency through the review of required weekly, monthly, quarterly, and annual reports. Bank is also subject to quarterly external audits.[5] These audits cover internal controls, risk management, asset quality, and the preparation of financial statements.

Based on all the facts of record, including the information above, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The Superintendency has no objection to the establishment of the proposed representative office.

1. Data are as of December 31, 2005.

2. Bank was established by central banks in the region to finance trade throughout Latin America. Bank has three classes of shares. The ownership of the first class of shares is restricted to central banks or state-owned financial institutions in Latin America. Other financial institutions may hold the second class of shares. The third class of shares is publicly traded on the New York Stock Exchange.

3. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

4. *See, e.g., Banco Financiera Comercial Hondurena, S.A.*, 91 *Federal Reserve Bulletin* 444 (2005); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); and *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001); *see also Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Komercni Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); and *Commercial Bank Ion Tiriac, S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

5. External auditors are subject to standards established by the Superintendency.

With respect to the financial and managerial resources of Bank, taking into consideration its record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank has capital that exceeds the Basel minimums. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for it to ensure compliance with U.S. law.

Panama has enacted laws based on the general recommendations of the Financial Action Task Force. Panama is a member of the Caribbean Financial Action Task Force and participates in other international fora that address the prevention of money laundering.[6] Money laundering is a criminal offense in Panama, and banks are required to establish internal policies and procedures for the detection and prevention of money laundering. The Superintendency requires banks to adopt know-your-customer policies, report suspicious transactions to Panama's Financial Intelligence Unit, and maintain records. Bank states that it has established anti-money-laundering policies and procedures, which include the implementation of know-your-customer policies, suspicious-activity-reporting procedures, and related training programs and manuals. These policies and procedures are reviewed by the Superintendency and by Bank's internal and external auditors.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Superintendency may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.[7] Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[8] For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 27, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Banco Popular Español, S.A. Madrid, Spain

Order Approving Establishment of a Representative Office

Banco Popular Español, S.A. ("Bank"), Madrid, Spain, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. §3107(a)) to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, July 29, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately $88.3 billion,[1] is the lead bank of the third largest commercial banking group in Spain and provides wholesale and retail banking services through a network of branches in

6. Panama is a party to the 1988 UN Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the UN International Convention Against Transnational Organized Crime, and the UN International Convention for the Suppression of the Financing of Terrorism. Panama is also a member of the Organization of American States Inter-American Drug Abuse Control Commission.

7. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. *See* 12 CFR 265.7(d)(12).

8. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Office of Financial Regulation, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. Unless otherwise indicated, data are as of December 31, 2004.

Spain, Portugal, and France.[2] Bank also has representative offices in Asia, Latin America, Canada, and elsewhere in Europe.

The proposed representative office would serve as a liaison between Bank's existing and prospective customers in Spain and the United States. The office would also promote the Bank's services to potential customers in the United States and Latin America, provide information to customers concerning their accounts, inform U.S.- and Spanish-owned businesses of business opportunities existing in Spain, and receive applications for extensions of credit and other banking services on behalf of Bank.

The IBA and Regulation K require that the Board, in acting on an application by a foreign bank to establish a representative office, take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. § 3105(d)(2); 12 CFR 211.24(d)(2)).[3] The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a consolidated basis.[4] Bank is supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR. 211.24(c)(2)) have also been taken into account. The Bank of Spain has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration its record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Bank of Spain may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and the terms

2. Bank also owns controlling interests in ten bank subsidiaries and owns nonbank subsidiaries that engage in activities related to securities and mutual funds, asset management, insurance, leasing, factoring, and venture capital.

3. In assessing the supervision standard, the Board considers, among other of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

4. *See Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Banco Pastor, S.A.*, 87 *Federal Reserve Bulletin* 555 (2001); *Caja de Ahorros de Valencia, Castellón y Alicante*, 84 *Federal Reserve Bulletin* 231 (1998); *Banco Exterior de España S.A.*, 81 *Federal Reserve Bulletin* 616 (1995); *Corporación Bancária de España*, 81 *Federal Reserve Bulletin* 598 (1995); *Banco Santander S.A.*, 79 *Federal Reserve Bulletin* 622 (1993); *Banco de Sabadell S.A.*, 79 *Federal Reserve Bulletin* 366 (1993).

and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.[5] Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[6] For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective February 8, 2006.

Robert deV. Frierson
Deputy Secretary of the Board

Caja de Ahorros de Galicia, Caixa Galicia A Coruña, Spain

Order Approving Establishment of an Agency

Caja de Ahorros de Galicia, Caixa Galicia ("Bank"), A Coruña, Spain, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. §3105(d)) to establish an agency in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami (*Miami Daily Business Review*, July 28, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, a savings bank with total assets of approximately $42 billion,[1] is the 11th largest bank in Spain.[2] Bank provides wholesale and retail banking services through more than 700 branches throughout Spain. Bank also engages through its subsidiaries in real estate, insurance, venture capital, information technology, transportation, and utilities services, as well as manufacturing and energy-related activities. Outside Spain, Bank operates branches in Portugal and Switzerland and representative offices in France, England, Switzerland, Mexico, Argentina, and Venezuela. Bank currently does not have any operations in the United States.

The proposed agency would offer deposit and investment management services, largely for Latin American customers. The agency would also provide corporate banking and foreign trade services to companies.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. §3105(d)(2); 12 CFR 211.24).[3] The Board also considers additional standards set forth in the IBA and Regulation K (12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. *See* 12 CFR 265.7(d)(12).

6. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Office of Financial Regulation, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. Asset data are as of June 30, 2005.

2. Spanish savings banks are generally organized as mutual entities and do not have shareholders. Bank's operations are controlled and governed by a general assembly and a board of directors. The 160-member general assembly includes representatives of the municipalities in which Bank operates (25 percent); Bank's depositors (40 percent); representatives designated by 34 regional civic organizations (25 percent); and Bank's employees (10 percent). Bank's board of directors is composed of 21 board members, proportionally representing the entities comprising the general assembly.

3. In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

consolidated basis.[4] Bank is supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)). The Bank of Spain has no objection to the establishment of the proposed agency.

Spain's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. In addition, Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with those recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Spain, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish an agency in Miami, Florida, is hereby approved.[5] Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.[6] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective March 20, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Caja de Ahorros del Mediterráneo Alicante, Spain

Order Approving Establishment of an Agency

Caja de Ahorros del Mediterráneo ("Bank"), a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. § 3105(d)) to establish an agency in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, October 21, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of approximately $54 billion,[1] is

4. *See Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Caixa de Aforros de Vigo*, 88 *Federal Reserve Bulletin* 132 (2002).

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

6. The Board's authority to approve the establishment of the proposed agency parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida Department of Financial Services to license the proposed agency of Bank in accordance with any terms or conditions that it may impose.

1. Asset and ranking data are as of September 30, 2005.

the fifth largest savings bank in Spain.[2] Bank is the top-tier company of CAM, which is the ninth largest banking organization in Spain. CAM provides a broad range of banking, financial, and other services primarily in Spain. Bank maintains representative offices in seven countries and operates several nonbank subsidiaries in the Cayman Islands that issue bonds. Bank does not have any operations in the United States and would be a qualifying foreign banking organization under Regulation K.

The Miami agency would offer commercial banking, private banking, and correspondent banking services targeted primarily at Spanish customers. The agency also would coordinate CAM's access to U.S. capital markets.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 CFR 211.24).[3] The Board also considers additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a consolidated basis.[4] Bank is supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)). The Bank of Spain has no objection to the establishment of the proposed agency.

Spain's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. In addition, Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Spain, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank and its top-tier parent have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and its top-tier parent have committed to cooperate

2. Spanish savings banks are generally organized as mutual entities and do not have shareholders. Bank's operations are controlled and governed by a general assembly, a board of directors, and a control commission. The 180-member general assembly includes representatives of the municipalities in which Bank operates (24 percent); Bank's depositors (36 percent); representatives designated by the parliament of the community of Valencia and other communities in which the founding entities of Caja de Ahorros del Mediterráneo ("CAM") are located (27 percent); and Bank's employees (13 percent). Bank's board of directors is composed of 20 board members, proportionally representing the entities comprising the general assembly. Bank's ten-member control commission overseas the board of directors and is the administrator of elections.

3. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

4. *See Caja de Ahorros de Galicia, Caixa Galic*, 92 *Federal Reserve Bulletin* C132 (2006); *Banco Popular Español, S.A.*, 92 *Federal Reserve Bulletin* C130 (2006); *Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Banco Pastor, S.A.*, 87 *Federal Reserve Bulletin* 555 (2001); *Caja de Ahorros de Valencia, Castellón y Alicante*, 84 *Federal Reserve Bulletin* 231 (1998); *Banco Exterior de España S.A.*, 81 *Federal Reserve Bulletin* 616 (1995); *Corporación Bancária de España*, 81 *Federal Reserve Bulletin* 598 (1995); *Banco Santander S.A.*, 79 *Federal Reserve Bulletin* 622 (1993); and *Banco de Sabadell S.A.*, 79 *Federal Reserve Bulletin* 366 (1993).

with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish an agency in Miami, Florida, is hereby approved.[5] Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.[6] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. §1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective March 30, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Kreditanstalt für Wiederaufbau Frankfurt, Germany

Order Approving Establishment of a Representative Office

Kreditanstalt für Wiederaufbau, ("Bank"), Frankfurt, Germany, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. §3107(a)) to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York (*The New York Times*, July 27, 2005), and the time for filing comments has expired.

Bank, with total consolidated assets of approximately $445 billion, is the seventh largest bank in Germany.[1] As a government-owned development bank,[2] Bank engages primarily in lending and financing activities in furtherance of public sector initiatives, such as providing loans for housing, small businesses, and municipal infrastructure, and provides various other services, such as disbursing German government loans and grants to developing countries and providing advisory services in connection with privatizations. Bank also engages in export and project finance through a division of the Bank known as IPEX-Bank.[3] It has representative offices in Brazil, China, Thailand, and Turkey that primarily serve its IPEX-Bank division. In the United States, Bank operates KfW International Finance, Inc., Wilmington, Delaware, a funding vehicle established to access U.S. capital markets.

The proposed representative office primarily would act as a liaison with existing and potential customers and conduct market research for the IPEX-Bank division of Bank. Additionally, the proposed representative office would support Bank's activities with developing countries by acting as a liaison with multinational organizations located in the United States, such as the United Nations, the World Bank, and the International Monetary Fund.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board shall take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. §3107(a)(2); 12 CFR 211.24(d)(2)). The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)).[4] The

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

6. The Board's authority to approve the establishment of the proposed agency parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the Florida Office of Financial Regulation to license the proposed agency of Bank in accordance with any terms or conditions that it may impose.

1. Asset data are as of December 31, 2004.

2. The federal government of Germany owns 80 percent of the shares of Bank. The remaining 20 percent of Bank's shares is owned by various state governments in Germany.

3. Bank intends to divest the IPEX-Bank division by 2008. The European Commissioner for Competition determined that the IPEX-Bank division engages in activities that are inconsistent with Bank's status as a government-owned development bank.

4. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated

Board will consider that the supervision standard has been met where it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.[5] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications, because representative offices may not engage in banking activities (12 C.F.R. 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered the following information. The Bundesanstalt für Finanzdiestleistungsaufsicht ("BaFin") is the primary regulator of commercial banks in Germany, and the Board has previously considered the supervisory regime in Germany for commercial banks.[6] Bank is not considered a commercial bank under German law. Rather, it is a development bank established pursuant to a special statute, and its primary regulator is the Federal Ministry of Finance ("MoF"). Although it is exempt from many of the legal provisions that govern commercial banks, Bank has voluntarily subjected itself to the guidelines that BaFin has established for commercial banks with respect to lending and trading activities, and internal audit, and as noted below, compliance with these guidelines is subject to annual audit. Bank is required by law to maintain minimum capital of €3.75 billion, and is prohibited from distributing profits. The MoF has authority to adopt all measures necessary to ensure that Bank's business conforms with all applicable laws.

The MoF exercises its supervision in consultation with the Federal Ministry of Economics and Labor. The Ministers of Finance and of Economics and Labor alternate as chairmen and deputy chairmen of Bank's supervisory board. The MoF may at any time request on-site examinations by third parties or conduct examinations itself, and such examinations can encompass all business areas, including subsidiaries and foreign offices. MoF officials meet with Bank officials at least biweekly, including, on occasion, at Bank's foreign offices, to discuss Bank's strategy, new fields of activity, new products, and related issues.

The MoF also monitors Bank's condition through a review of required regulatory reports. These include quarterly financial reports and risk reports, annual audited consolidated financial statements that are filed with a report from the external auditor, results of internal audit reviews, and regular reports regarding risk analysis and measures taken to prevent money laundering.

Bank is subject to an annual external audit by auditors appointed by the MoF. The scope of the external audit includes the bank's consolidated financial statements, internal controls, including controls to prevent money laundering, and compliance with BaFin's guidelines for lending, trading activities, and internal audit. Inasmuch as Bank is a government-owned entity, the Federal Court of Auditors also has the discretion to audit Bank's financial statements. The results of such audits are reported to the upper and lower houses of parliament and to the MoF.

Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The MoF has authorized Bank to establish the proposed office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Germany is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, or other illicit activities. Money laundering is a criminal offense in Germany, and Bank is subject to laws that require it to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout its worldwide operations. Bank has policies and procedures to comply with these laws and regulations, which include reporting suspicious transactions promptly to the German Financial Intelligence Unit and other appropriate law enforcement authorities.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant

supervision. No single factor is essential, and other elements may inform the Board's determination.

5. *See, e.g., Banco Financiera Comercial Hondureña, S.A.*, 91 *Federal Reserve Bulletin* 444 (2005); *Nacional Financiera, S.N.C.*, 91 *Federal Reserve Bulletin* 295 (2005); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin 558 (2001); see also Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Komercni Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); *Commercial Bank Ion Tiriac, S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

6. *See, e.g., Deutsche Genossenschafts-Hypothekenbank AG*, 92 *Federal Reserve Bulletin* C61 (2006).

government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the MoF may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.[7] Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.[8] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings against Bank and its affiliates under 12 U.S.C. § 1818.

By order, approved pursuant to authority delegated by the Board, effective January 3, 2006.

JENNIFER J. JOHNSON
Secretary of the Board

7. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

8. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York or its agent, the New York State Banking Department ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

FINAL ENFORCEMENT DECISIONS ISSUED BY THE BOARD

IN THE MATTER OF A NOTICE TO PROHIBIT FURTHER PARTICIPATION AGAINST

Oyeacholem Moseri, Former Employee,

First North American National Bank, Kennesaw, Georgia (Closed)

Docket No. OCC-AA-EC-05-72

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("the FDI Act") in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Oyeacholem Moseri ("Respondent"), from further participation in the affairs of any financial institution based on actions he took while employed at First North American National Bank, Kennesaw, Georgia (the "Bank"). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision ("Recommended Decision") of Administrative Law Judge Ann Z. Cook (the "ALJ"), and orders the issuance of the attached Order of Prohibition.

I. Statement of the Case

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges (12 U.S.C. § 1818(e)(4)). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified *misconduct*, including a violation of law or regulation, an unsafe or unsound practice, or a breach of

fiduciary duty; (2) that the conduct had a specified *effect*, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution (12 U.S.C. § 1818(e)(1)(A)–(C)).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intent to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice (12 CFR 19.19(a) and 263.19(a)). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer (12 CFR 19.19(c)(1) and 263.19(c)(1)).

B. Procedural History

On August 31, 2005, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation and Notice of Assessment of a Civil Money Penalty ("Notice") that sought, *inter alia*, an order of prohibition against Respondent based on his conduct while employed at the Bank. The Notice directed Respondent to file a written answer within 20 days of the date of service of the Notice in accordance with 12 CFR 19.19(a) and (b), and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The Notice was served in accordance with the OCC rules by overnight delivery, and was signed for by an individual named "Moseri." In addition, on September 22, 2005, the OCC served the notice upon Respondent's relative and co-resident, Jane Moseri, at Respondent's personal residence. Nonetheless, Respondent failed to file an answer within the 20-day period or thereafter.

On November 23, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On November 29, 2005, the ALJ issued an Order to Show Cause, providing Respondent until December 19, 2005, to file an answer to the Notice and to show good cause for having failed to do so previously. To date, Respondent has not filed any reply to the Order to Show Cause or answered the Notice.

C. Respondent's Actions

The Notice alleges that Respondent was employed as a collections officer for Bank. His sole responsibility was to help Bank collect funds from delinquent credit card account holders by telephoning customers whose accounts were on a Bank-generated list of delinquent accounts. Respondent had no responsibility over nondelinquent accounts, nor did he have permission to view or alter any information contained in the records of nondelinquent account holders. Nonetheless, Respondent improperly viewed the personal account records of more than 600 customers whose accounts were nondelinquent. Further, during the period August–September 2000, Respondent improperly viewed and altered the personal account records of at least 11 additional customers whose accounts were also nondelinquent. These alterations, detailed in the ALJ's Recommended Decision, included changing the address and telephone number of nondelinquent accounts to Respondent's personal residence and other addresses, the issuance and activation of new cards to some of those accounts, and illegitimate charges to two of those cards totaling $1,359.74.

II. Discussion

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice" (12 CFR 19.19(c)). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer to the Notice despite notice to him of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The allegations in the Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It was a breach of fiduciary duty, unsafe and unsound practice, and violation of law or regulation, for Respondent to view nondelinquent credit card account holder information; alter account addresses and telephone numbers in such accounts; and request (or cause to be requested) new or replacement credit cards to be issued to some of the altered accounts. Respondent's actions resulted in loss to the Bank and financial gain to the Respondent, in that he incurred (or caused to be incurred) illegitimate charges totaling at least $1,359.74 on two of the altered accounts. Finally, such actions also exhibit personal dishonesty and willful disregard for the safety and soundness of the Bank.

Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 23rd day of March, 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

In the Matter of a Notice to Prohibit Further Participation Against

Oyeacholem Moseri,
Former Employee,

First North American National Bank,
Kennesaw, Georgia (Closed)

Docket No. OCC-AA-EC-05-72

ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against OYEACHOLEM MOSERI ("Moseri"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), of First North American National Bank, Kennesaw, Georgia.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the FDI Act (12 U.S.C. § 1818(e)(7)(B)), Moseri is hereby prohibited:
   (a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;
   (b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));
   (c) from violating any voting agreement previously approved by any federal banking agency; or
   (d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).
2. Any violation of this Order shall separately subject Moseri to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).
3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board.

This Order shall become effective at the expiration of 30 days after service is made.

By Order of the Board of Governors, this 23rd day of March, 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Robert deV. Frierson
Deputy Secretary of the Board

In the Matter of

Jean Peyrelevade,
A former institution-affiliated party of

CREDIT LYONNAIS, S.A.,
Paris, France

Docket Nos. 03-041-CMP-I, 03-041-B-I, 03-041-E-I

ORDER TO CEASE AND DESIST ISSUED UPON CONSENT

WHEREAS, pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. section 1818(b)), the Board of Governors of the Federal Reserve System (the "Board of Governors") issues this consent Order to Cease and Desist (the "Order") against Jean Peyrelevade ("Peyrelevade"), a former institution-affiliated party, as defined in Sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. sections 1813(u) and 1818(b)(4)), of Credit Lyonnais, S.A., Paris, France ("Credit Lyonnais"), a foreign bank;

WHEREAS, the Board of Governors, on December 18, 2003, issued a combined Notice of Charges and of Hearing, Notice of Assessment of Civil Money Penalties, and Notice of Intent to Prohibit (the "December 18, 2003, Notice") against Peyrelevade. The December 18, 2003, Notice alleges that Peyrelevade participated in violations of law and regulation and engaged in unsafe and unsound practices with respect to alleged violations by Credit Lyonnais in connection with its alleged acquisition and retention of indirect control of voting shares of the successor to the Executive Life Insurance Company of California. Peyrelevade has denied the allegations;

WHEREAS, Peyrelevade and the United States Attorney for the Central District of California have entered into a plea agreement in accordance with the principles of *North Carolina v. Alford*, 400 U.S. 25 (1970) and *United States v.*

Alber, 56 F.3d 1106 (9th Cir. 1995) related to certain matters set forth in the December 18, 2003, Notice which, if accepted by the United States District Court for the Central District of California, will result in Peyrelevade being precluded from participating in the conduct of the affairs of an insured depository institution in the United States pursuant to 12 U.S.C. section 1829 and paying a fine of $500,000;

WHEREAS, pursuant to the provisions of this Order, Peyrelevade has agreed to certain limitations and restrictions regarding his participation in the conduct of the affairs of foreign banks in the United States;

WHEREAS, this Order resolves the proceedings initiated by the December 18, 2003, Notice; and

WHEREAS, by affixing his signature hereunder, Peyrelevade has consented to the issuance of this Order by the Board of Governors, has agreed to comply with each and every provision of this Order, and has waived any and all rights he might otherwise have pursuant to 12 U.S.C. section 1818 or 12 C.F.R. Part 263, or otherwise (a) to a hearing for the purpose of taking evidence with respect to any matter implied or set forth in the December 18, 2003 Notice or herein; (b) to obtain judicial review of this Order or any provision hereof; and (c) to challenge or contest in any manner the basis, issuance, validity, effectiveness, or enforceability of this Order or any provisions hereof.

NOW, THEREFORE, before the introduction of any testimony or adjudication of, or finding on, any issue of fact or law implied herein, and without this Order constituting an admission by Peyrelevade of any allegation made or implied by the Board of Governors in connection with this proceeding, and solely for the purpose of settlement of this proceeding and to avoid protracted or extended proceedings:

IT IS HEREBY ORDERED, pursuant to section 8(b) of the FDI Act that:

1. Peyrelevade shall not, directly or indirectly, violate the Bank Holding Company Act 12 U.S.C. section 1841 et seq., as amended (the "BHC Act") or any rules or regulations issued pursuant thereto.
2. Without the prior written approval of the Board of Governors and the appropriate federal banking agency, Peyrelevade shall not serve or function as an officer, director, employee, or agent of any United States branch or agency, United States commercial lending company, or other United States subsidiary of a foreign bank that is subject to the provisions of 12 U.S.C. section 3106(a).
3. Without the prior approval of the Board of Governors and the appropriate federal banking agency, while serving as an officer, director, or employee outside of the United States of a foreign bank that is subject to 12 U.S.C. section 3106(a), or any subsidiary of a foreign bank that is subject to 12 U.S.C. section 3106(a) (collectively, a "Foreign Banking Organization"), Peyrelevade shall not:
   (a) assume direct reporting responsibility for the management of any United States branch, agency, or United States commercial lending company or other United States subsidiary of a Foreign Banking Organization;
   (b) participate, directly or indirectly, in any audit of any United States branch, agency, or United States commercial lending company or other United States subsidiary of a Foreign Banking Organization, or participate in any review of or response to such an audit, *provided that*, Peyrelevade may provide information to persons conducting such audits upon the request of such persons; and
   (c) participate in any manner in any decision by a Foreign Banking Organization with respect to the acquisition or retention by the Foreign Banking Organization of 5 percent or more of the voting shares of any United States company, unless he:
      (i) consults experienced outside counsel to advise him on the implications of the acquisition or retention under the BHC Act, and makes full disclosure to such counsel on all material aspects of the transaction that may affect its treatment under the BHC Act;
      (ii) notifies the Board of Governors in writing of his involvement in the transaction before it is completed, separate from any other notification or application requirements applicable to the Foreign Banking Organization; and
      (iii) promptly thereafter produces to the Board of Governors, upon request, all documentation describing the terms of the proposed transaction and his role in it.
4. Within ten days of this Order, Peyrelevade shall designate an agent in the United States acceptable to the Board of Governors with respect to the service of process in connection with the enforcement of this Order.
5. Peyrelevade irrevocably consents to the jurisdiction of the Board of Governors with respect to any aspect of this Order or any violation thereof.
6. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors or any other U.S. federal or state agency or department from taking any other action affecting Peyrelevade; *provided, however*, the Board of Governors shall take no further action against Peyrelevade based on or with respect to: (i) any matters set forth in the December 18, 2003 Notice; (ii) any of the "Specified Acts or Omissions," attached as Exhibit B to the Plea Agreement; or (iii) any facts encompassed in the allegations recited in the Order to Cease and Desist and Order of Assessment of Civil Money Penalty issued by the Board of Governors against Credit Lyonnais, dated December 18, 2003.
7. This Order shall become effective upon the acceptance of the Plea Agreement by the United States District Court for the Central District of California. In the event that the Plea Agreement is rejected by the United States District Court for the Central District of California, this Order shall be null and void and shall not be

construed as an admission of guilt, liability, or any alleged factual matter referenced herein nor as a waiver of any potential defense that otherwise might be available to Peyrelevade. In the event that this Order becomes effective, each provision of this Order shall remain effective and enforceable until stayed, modified, terminated or suspended by the Board of Governors. Peyrelevade may apply to the Board of Governors to have this Order terminated, modified, or amended.

8. No amendment to the provisions of this Order shall be effective unless made in writing by the Board of Governors and Peyrelevade.
9. No representations, either oral or written, except those provisions as set forth herein, were made to induce any of the parties to agree to the provisions as set forth herein.
10. All communications regarding this Order shall be addressed to:
    (a) Richard M. Ashton
    Deputy General Counsel
    Board of Governors of the Federal Reserve System
    20th and C Streets, NW
    Washington, DC 20551

    (b) Mr. Robert A. O'Sullivan
    Senior Vice President
    Federal Reserve Bank of New York
    33 Liberty Street
    New York, NY 10045

    (c) Mr. Jean Peyrelevade
    c/o John L. Douglas and
    John E. Stephenson, Jr.
    Alston & Bird LLP
    1201 W. Peachtree Street
    Atlanta, GA 30309-3424

By Order of the Board of Governors of the Federal Reserve System, effective this 19th day of January 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

JENNIFER J. JOHNSON
Secretary of the Board

(signed)
Jean Peyrelevade

Legal Developments: Second Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies

BB&T Corporation ("BB&T"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with First Citizens Bancorp ("First Citizens"), Cleveland, and acquire its subsidiary banks: The Bank/First Citizens Bank, Cleveland ("First Citizens Bank"); The Home Bank of Tennessee, Maryville ("Home Bank-Maryville"); and The Home Bank, Ducktown ("Home Bank-Ducktown"), all of Tennessee.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 20,401 (2006)). 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 3 of the BHC Act.

BB&T, with total consolidated assets of approximately $110 billion, is the 17th largest depository organization in the United States.[2] BB&T operates subsidiary-insured depository institutions in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. In Tennessee, BB&T is the eighth largest depository organization, controlling deposits of approximately $1.3 billion. BB&T is the third largest depository organization in North Carolina, controlling deposits of approximately $23.7 billion, and the fifth largest depository organization in Georgia, controlling deposits of approximately $6.3 billion.

First Citizens, with total consolidated assets of approximately $719.8 million, operates subsidiary-insured depository institutions in Tennessee, North Carolina, and Georgia. In Tennessee, First Citizens is the 22nd largest depository organization, controlling deposits of approximately $518.1 million. First Citizens is the 95th largest depository organization in North Carolina, controlling deposits of approximately $25.1 million, and the 70th largest depository organization in Georgia, controlling deposits of approximately $240.1 million.

On consummation of this proposal, and after accounting for the proposed divestiture, BB&T would remain the 17th largest insured depository organization in the United States, with total consolidated assets of approximately $110.7 billion. In Tennessee, BB&T would become the seventh largest depository organization, controlling deposits of approximately $1.8 billion, which represent approximately 1.9 percent of the total amount of deposits of insured depository institutions in the state ("state deposits"). BB&T would remain the third largest depository organization in North Carolina, controlling deposits of approximately $23.7 billion, which represent approximately 12.9 percent of state deposits. In Georgia, BB&T would remain the fifth largest depository organization, controlling deposits of approximately $6.6 billion, which represent approximately 4.5 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of BB&T is North Carolina,[3] and First Citizens is located in Tennessee, North Carolina, and Georgia.[4]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that the

1. 12 U.S.C. § 1842.

2. Asset and nationwide ranking data are as of March 31, 2006. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through May 11, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

4. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[5] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

BB&T and First Citizens compete directly in six banking markets in Tennessee, North Carolina, and Georgia.[7] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by BB&T and First Citizens,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] other characteristics of the markets, and commitments made by BB&T to divest a branch.

A. Banking Market With Divestiture

In the Blue Ridge area, Georgia-Tennessee banking market ("Blue Ridge Market"), BB&T is the second largest depository organization, controlling deposits of $103.7 million, which represent 22.1 percent of market deposits. First Citizens is the third largest depository organization in the market, with four branches that control deposits of $63.7 million, which represent 13.6 percent of market deposits. To reduce the potential adverse effects on competition in the Blue Ridge Market, BB&T has committed to divest one branch with at least $29 million in deposits to an out-of-market banking organization.[10] On consummation of the proposed merger and after accounting for the proposed divestiture, BB&T would remain the second largest depository institution in the market, controlling deposits of approximately $138.3 million, representing 29.5 percent of market deposits. The HHI would increase 235 points to 3297.

In reviewing the competitive effects of the proposal in the Blue Ridge Market, the Board also has considered carefully whether other factors mitigate the competitive effects of the proposal. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in the market.[11]

Several factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Blue Ridge Market. After consummation of the proposal and the proposed divestiture to an out-of-market competitor, seven insured depository institutions would continue to operate in the market.[12] In addition, the Blue Ridge Market has been attractive for entry, as indicated by the de novo entry of three commercial banking organizations in the past four years, and appears likely to remain attractive for entry. For

5. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). BB&T is adequately capitalized and adequately managed, as defined by applicable law. First Citizens Bank, Home Bank-Maryville, and Home Bank-Ducktown have been in existence and operated for the minimum period of time required by applicable state laws (three years). On consummation of the proposal, BB&T would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Tennessee, North Carolina, and Georgia respectively. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

6. 12 U.S.C. § 1842(c)(1).

7. These banking markets are described in Appendix A.

8. Deposit and market share data are as of June 30, 2005, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

10. BB&T has committed that it will execute, before consummation of the proposed merger, a sales agreement with an out-of-market banking organization. BB&T also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, BB&T has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branch to an independent trustee who will be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable by the Board. *See BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

11. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

12. The market also has one credit union that operates two street-level branches, and its membership is open to all residents in the market.

example, Fannin County, Georgia, has more than twice the amount of deposits compared to the median nonmetropolitan county in the state.[13] The rate of population growth of Fannin County, moreover, is twice the rate for similar nonmetropolitan counties in Georgia.

B. Banking Markets Without Divestitures

Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds of the DOJ Guidelines in the other five banking markets where BB&T and First Citizens' subsidiary banks compete directly.[14] After consummation, four of the banking markets would remain moderately concentrated[15] and one banking market would remain highly concentrated,[16] as measured by the HHI. In each of the five banking markets, the increase in market concentration would be small, and numerous competitors would remain.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that, in light of the proposed divestiture, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the six banking markets where BB&T and First Citizens compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by BB&T, and public comments received on the proposal.[17]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of factors in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. BB&T, all its subsidiary banks, and all the subsidiary banks of First Citizens are well capitalized and would remain so on consummation of the proposal. Based on its review of these factors, the Board finds that BB&T has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of BB&T, First Citizens, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. BB&T, First Citizens, and their subsidiary depository institutions are considered to be well managed. The Board also has considered BB&T's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with

13. Fannin County comprises 95.5 percent of the Blue Ridge Market by population.

14. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

15. The moderately concentrated markets are the Athens, Cleveland, Knoxville, and Sevierville banking markets, all in Tennessee.

16. The Cherokee and Clay counties banking market in North Carolina would remain highly concentrated.

17. A commenter reiterated the concern it expressed in BB&T's proposal to acquire Main Street Banks, Inc. ("Main Street Proposal") about BB&T's relationships with unaffiliated pawn shops and other nontraditional providers of financial services, without presenting any new material facts or alleging any violations of law. In approving the Main Street Proposal, the Board considered the commenter's concern and recently reviewed BB&T's relationships with nontraditional providers of financial services. *BB&T Corporation*, 92 *Federal Reserve Bulletin* C116, n.15 (2006). As noted in the Main Street Order, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate.

approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe-and-sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of BB&T's and First Citizens' subsidiary banks, data reported by BB&T under the Home Mortgage Disclosure Act ("HMDA"),[20] other information provided by BB&T, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2005 HMDA data reported by BB&T for its assessment areas in North Carolina, that BB&T engaged in discriminatory treatment of minority individuals in its home mortgage lending.[21]

A. CRA Performance Evaluations

is provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[22]

BB&T's largest subsidiary bank, as measured by total deposits, is Branch Banking and Trust Company, also in Winston-Salem, North Carolina.[23] The bank received an "outstanding" rating by the Federal Deposit Insurance Corporation ("FDIC") at its most recent CRA performance evaluation, as of December 20, 2004. BB&T's remaining subsidiary banks all received "satisfactory" ratings at their most recent CRA evaluations.[24] In addition, each of First Citizens' subsidiary banks received "satisfactory" ratings at its most recent CRA performance evaluation by the FDIC or the Office of Thrift Supervision.[25] BB&T has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from First Citizens after the merger of Branch Banking and Trust Company and First Citizens' subsidiary banks.

B. HMDA and Fair Lending Record

The Board has considered carefully the lending record of BB&T's subsidiary banks and nonbank mortgage lenders in light of public comment about their record of lending to minorities. The commenter asserted, based on 2005 HMDA data, that BB&T made higher-cost loans[26] in North Carolina more frequently to African Americans and Hispanics than to nonminorities.[27] The Board notes that these data are preliminary and will not be finalized for analysis until fall 2006.

Although the preliminary 2005 HMDA data for BB&T's subsidiary banks and nonbank mortgage lenders indicate that a greater percentage of higher priced loans were made to African-American or Hispanic borrowers relative to nonminority borrowers, HMDA data provide an insufficient basis by themselves on which to conclude whether BB&T or its subsidiaries are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis.[28] HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[29] HMDA data, therefore, provide

18. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

21. The commenter, without presenting any new material facts or alleging any violations of law, also reiterated its comments in the Main Street Proposal about (1) referrals of loan applicants by BB&T's subsidiary banks to Lendmark Financial Services, a nonbank subsidiary of BB&T that primarily engages in subprime mortgage lending, and (2) BB&T's acquisition under section 4(k) of the BHC Act of FSB Financial, Ltd., a nonbanking company that purchases automobile loan portfolios. The Board hereby reaffirms and adopts the facts and conclusions detailed in the Main Street Order related to such comments. *See* Main Street Order at n.23 and n.28 (2006).

22. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

23. As of December 31, 2005, Branch Banking and Trust Company accounted for approximately 67.1 percent of the total domestic deposits of BB&T's four subsidiary banks.

24. Appendix C lists the most recent CRA ratings of BB&T's other subsidiary banks.

25. Home Bank-Ducktown was a savings association until its conversion to a state nonmember bank on December 30, 2004.

26. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

27. The comments have been forwarded to the FDIC, the primary regulator for BB&T's subsidiary banks, for its consideration in the context of evaluating the banks for compliance with the fair lending laws and regulations.

28. The Board reviewed 2004 and preliminary 2005 HMDA data reported by BB&T's subsidiaries, including data for North Carolina.

29. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons

an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of BB&T's subsidiary banks.[30] In addition, the record indicates that BB&T has taken steps to ensure compliance with fair lending and other consumer protection laws. BB&T employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, BB&T monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets and by conducting a more extensive internal comparative file review when merited. Finally, BB&T provides fair lending training to its lending personnel, including training to help ensure that loan originators consistently disseminate credit-assistance information to applicants.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of each of BB&T's subsidiary banks. Based on all the facts of record, the Board concludes that BB&T's established efforts and record demonstrate that BB&T is active in helping to meet the credit needs of its entire communities.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BB&T, comments received on the proposal, and confidential supervisory information. BB&T represented that the proposed transaction would provide First Citizens' customers with expanded products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.[31]

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by BB&T with the conditions imposed in this order and the commitments made to the Board in connection with the application, including the divestiture commitment discussed above. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 12, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

BANKING MARKETS IN WHICH BB&T AND FIRST CITIZENS COMPETE DIRECTLY

Athens Area, Tennessee

McMinn, Meigs, and Monroe counties and the town of Delano in Polk County.

Cleveland Area, Tennessee

Bradley County and the towns of Benton and Ocoee in Polk County.

Knoxville Area, Tennessee

Anderson, Knox, Loudon, Roane, and Union counties and the portion of Blount County northwest of Chilhowee

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most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

30. *See* Main Street Order.

31. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

Mountain; the towns of Chestnut Hill, Dandridge, Dumplin, Friends Station, Hodges, New Market, and Strawberry Plains in Jefferson County; the towns of Harriman and Oliver Springs in Morgan County; the towns of Seymour and Kodak in Sevier County; and the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs in Grainger County.

Sevierville Area, Tennessee

Sevier County, excluding the towns of Seymour and Kodak, and the portion of Blount County southeast of Chilhowee Mountain.

Cherokee and Clay Counties, North Carolina

Cherokee and Clay Counties.

Blue Ridge Area, Georgia-Tennessee

Fannin County in Georgia and the towns of Ducktown and Copperhill in Polk County, Tennessee.

Appendix B

MARKET DATA FOR TENNESSEE AND NORTH CAROLINA BANKING MARKETS

Athens Area, Tennessee

BB&T operates the second largest depository institution in the Athens area banking market, controlling deposits of $175.1 million, which represent 14.4 percent of market deposits. First Citizens operates the 13th largest depository institution in the market, controlling deposits of approximately $13.9 million, which represent 1.1 percent of market deposits. After consummation of the proposal, BB&T would remain the second largest depository organization in the market, controlling deposits of approximately $188.9 million, which represent approximately 15.6 percent of market deposits. The HHI would increase 33 points to 1398. Fourteen insured depository institutions would remain in the banking market.

Cleveland Area, Tennessee

BB&T operates the tenth largest depository institution in the Cleveland area banking market, controlling deposits of $8.4 million, which represent less than 1 percent of market deposits. First Citizens operates the largest depository institution in the market, controlling deposits of approximately $318.8 million, which represent 23.8 percent of market deposits. After consummation of the proposal, BB&T would become the largest depository organization in the market, controlling deposits of approximately $327.2 million, which represent approximately 24.5 percent of market deposits. The HHI would increase 30 points to 1616. Eleven insured depository institutions would remain in the banking market.

Knoxville Area, Tennessee

BB&T operates the fourth largest depository institution in the Knoxville area banking market, controlling deposits of $678.2 million, which represent 7.2 percent of market deposits. First Citizens operates the 18th largest depository institution in the market, controlling deposits of approximately $83.8 million, which represent less than 1 percent of market deposits. After consummation of the proposal, BB&T would remain the fourth largest depository organization in the market, controlling deposits of approximately $761.9 million, which represent approximately 8.1 percent of market deposits. The HHI would increase 13 points to 1274. Thirty-three insured depository institutions would remain in the banking market.

Sevierville Area, Tennessee

BB&T operates the fifth largest depository institution in the Sevierville area banking market, controlling deposits of $123.6 million, which represent 8.9 percent of market deposits. First Citizens operates the eighth largest depository institution in the market, controlling deposits of approximately $13.1 million, which represent less than 1 percent of market deposits. After consummation of the proposal, BB&T would remain the fifth largest depository organization in the market, controlling deposits of approximately $136.7 million, which represent approximately 9.9 percent of market deposits. The HHI would increase 16 points to 1782. Ten insured depository institutions would remain in the banking market.

Cherokee and Clay Counties, North Carolina

BB&T operates the sixth largest depository institution in the Cherokee and Clay counties banking market, controlling deposits of $17.6 million, which represent 3.5 percent of market deposits. First Citizens operates the fifth largest depository institution in the market, controlling deposits of approximately $25.1 million, which represent 5 percent of market deposits. After consummation of the proposal, BB&T would become the fifth largest depository organization in the market, controlling deposits of approximately $42.7 million, which represent approximately 8.5 percent of market deposits. The HHI would increase 35 points to 2956. Six insured depository institutions would remain in the banking market.

Appendix C

CRA PERFORMANCE EVALUATIONS OF BB&T'S BANKS

Bank	CRA Rating	Date	Supervisor
1. Branch Banking and Trust Company, Winston-Salem, North Carolina	Outstanding	December 2004	FDIC
2. Branch Banking and Trust Company of South Carolina, Greenville, South Carolina	Satisfactory	December 2004	FDIC
3. Branch Banking and Trust Company of Virginia, Richmond, Virginia	Satisfactory	December 2004	FDIC
4. BB&T Bankcard Corporation, Columbus, Georgia	Satisfactory	May 2005	FDIC
5. Main Street Bank, Covington, Georgia	Satisfactory	December 2004	FDIC

Orders Issued Under Section 4 of the Bank Holding Company Act

Banco Latinoamericano de Exportaciones, S.A.
Panama City, Republic of Panama

Order Approving Notice to Engage in Nonbanking Activities

Banco Latinoamericano de Exportaciones, S.A. ("Bank"), a foreign banking organization subject to the Bank Holding Company Act ("BHC Act"),[1] has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[2] and section 225.24 of the Board's Regulation Y[3] to act as a certification authority in connection with financial and nonfinancial transactions and engage in related data-processing activities. Bank proposes to engage in these activities by entering into an agreement with IdenTrust, Inc. ("IdenTrust"), New York, New York. The agreement will be assigned to a wholly owned, indirect subsidiary of the Bank currently in organization, Clavex, LLC ("Clavex").

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (71 *Federal Register* 8858 (2006)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Bank, with total consolidated assets of approximately $3.2 billion, is the third largest bank in Panama. In the United States, Bank maintains an agency in New York, New York, and has received approval to establish a representative office in Miami, Florida.

The proposed activities would be undertaken within the IdenTrust system in which IdenTrust serves as a central rulemaking and coordinating body for a global network of institutions that act as digital certification authorities. Certification authorities verify or authenticate the identity of customers conducting financial and nonfinancial transactions over the Internet and other "open" electronic networks. To provide these services, IdenTrust and its network of participating financial institutions use digital signatures created with encryption technology. These digital signatures uniquely identify participants in the IdenTrust system who send signed messages over electronic networks. Certification authorities issue digital certificates that certify that the digital signature is uniquely associated with a particular message sender so that the message recipient can be assured of the identity of its trading partner.

As a certification authority, Clavex would provide the technical systems and support necessary for banks to verify and authenticate the identity of customers conducting electronic transactions and to register digital certificates to customers. Clavex would provide these services to Bank as well as to other banks in Puerto Rico, Mexico, the Caribbean, Central America, and South America that enter into contracts with Clavex.[4] Bank, and any other banks to which Clavex may provide services, would be responsible for performing the due diligence on customers that request digital credentials, a role referred to as "registration authority." Bank and other registration authorities would register the digital certificates issued to their customers, and Clavex would maintain a database of all certificates issued through its registration authorities. Clavex would also provide registration authorities with the software and hardware required to use the IdenTrust system.

1. As a foreign bank operating an agency in the United States, Bank is subject to the BHC Act by operation of section 8(a) of the International Banking Act of 1978 (12 U.S.C. § 3106(a)).

2. 12 U.S.C. §§ 1843(c)(8) and 1843(j).

3. 12 CFR 225.24.

4. These banks would also have to enter into agreements with IdenTrust to participate in the IdenTrust system.

The Board has previously determined by order or regulation that acting as a certification authority in connection with financial and nonfinancial transactions[5] and data processing[6] are activities closely related to banking for purposes of section 4(c)(8) of the BHC Act. The proposed activities are consistent with those that have been approved by the Board. In addition, Bank has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.[7]

To approve the notice, the Board also must determine that the proposal can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.[8] As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on those resources.[9] The Board has considered, among other things, information provided by Bank, confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information in assessing the financial and managerial strength of Bank.

In evaluating the financial factors of this proposal, the Board has considered a number of factors, including capital adequacy and earnings performance. Bank's capital ratios exceed the minimum levels that would be required by the Basel Capital Accord and are considered equivalent to the capital that would be required of a U.S. banking organization. Moreover, consummation of this proposal would not have a significant impact on the financial condition of Bank. Based on its review of the record, the Board finds that Bank has sufficient financial resources to effect the proposal.

In addition, the Board has carefully considered the managerial resources of Bank, the supervisory experiences of the relevant banking supervisory agencies with Bank, and Bank's record of compliance with applicable U.S. banking laws. The Board has also reviewed reports of examination from the appropriate supervisors of the U.S. operations of Bank that assessed its managerial resources. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of Bank are consistent with approval.

The Board has also considered carefully the competitive effects of the proposal in light of all the facts of record. Bank does not currently act as a certification authority. In addition, the Board notes that the IdenTrust system is structured so that its participants would remain free to compete with each other in providing certification authority and related services to customers. Based on all the facts of record, the Board concludes that Bank's proposed activities are not likely to have any adverse competitive effects.

The Board expects that the proposed activities would result in benefits to the public by enhancing Bank's ability to serve its customers. The certification authority activity would facilitate customers' ability to conduct commercial transactions over the Internet and other "open" electronic networks. These customers will also benefit from the broader array of products and services Bank will be able to offer and from the ability to purchase such products and services on a regional basis.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits that it must consider under section 4(j)(2) of the BHC Act is consistent with approval.

Based on the foregoing, the Board has determined that the notice should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[10] and to the Board's authority to require such modification or termination of the activities of Bank or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of these actions, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

This 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 the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 8, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

5. *See Bayerische Hypo- und Vereinsbank AG*, 86 *Federal Reserve Bulletin* 56 (2000) ("Bayerische Order").
6. 12 CFR 225.28(b)(14).
7. *See* Bayerische Order.
8. 12 U.S.C. § 1843(j)(2)(A).
9. 12 CFR 225.26.
10. 12 CFR 225.7 and 225.25(c).

Banco Santander Central Hispano, S.A. Madrid, Spain

Order Approving the Acquisition of Shares of Savings Associations

Banco Santander Central Hispano, S.A. ("Santander"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire up to 24.99 percent of the voting shares of Sovereign Bancorp, Inc. ("Sovereign") and to control Sovereign[2] and its subsidiary savings association, Sovereign Bank, both of Wyomissing, Pennsylvania, and Independence Community Bank Corp. ("Independence") and its subsidiary savings bank, Independence Community Bank ("Independence Bank"),[3] both of Brooklyn, New York. For purposes of the BHC Act, the Board finds that Santander would control Sovereign and, thus, Sovereign would become a nonbanking subsidiary of Santander.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (70 *Federal Register* 74,816 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act.

Santander, with total consolidated assets equivalent to approximately $939 billion, is the 19th largest banking organization in the world and the largest banking organization in Spain.[5] Santander engages in a broad range of banking and financial services worldwide through an extensive network of offices and subsidiaries. Santander, with total consolidated assets of approximately $61 billion in the United States, operates one U.S. subsidiary-insured depository institution in Puerto Rico only, Banco Santander Puerto Rico ("BSPR"), San Juan. BSPR controls $5.6 billion in deposits, which represent less than 1 percent of total deposits in insured depository institutions in the United States ("total U.S. deposits").[6] Santander also operates branches in New York, New York, and Stamford, Connecticut, and an Edge corporation in Miami, Florida.[7]

Sovereign, with total consolidated assets of approximately $64 billion, is the 28th largest depository organization in the United States.[8] Sovereign operates one insured depository institution, Sovereign Bank, with offices in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island. Sovereign Bank controls approximately $36 billion in deposits, which represents less than 1 percent of total U.S. deposits.

Independence, with total consolidated assets of approximately $19 billion, is the 62nd largest depository organization in the United States. Independence operates one insured depository institution with offices in New York and New Jersey that controls deposits of approximately $16 billion, which represent less than 1 percent of total U.S. deposits.

On consummation of the proposal, Santander would have total U.S. assets of approximately $144 billion. Santander would control deposits of approximately $58 billion, representing less than 1 percent of total U.S. deposits.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[9] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. Santander and Sovereign have committed to conform all the activities of Sovereign Bank and Independence Bank to those permissible under section 4(c)(8) of the BHC Act and Regulation Y.[10]

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposed acquisition of Sovereign, Independence, and their subsidiary savings associations "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of

1. 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

2. Pursuant to its investment agreement with Sovereign, Santander would acquire 19.8 percent of Sovereign's common stock outstanding on the transaction closing date and would have the right to purchase additional shares not to exceed in the aggregate 24.99 percent of Sovereign common stock. Pursuant to sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and (j)) and section 225.24 of the Board's Regulation Y (12 CFR 225.24), Santander is required to obtain the Board's prior approval to acquire additional shares that would result in Santander controlling more than 24.99 percent of any class of Sovereign's voting shares.

3. Independence Bank is a state-chartered savings bank deemed to be a savings association under section 10(l) of the Home Owners' Loan Act and under the BHC Act. *See* 12 U.S.C. §§ 1467a(l) and 1841(j).

4. Immediately following Santander's acquisition of a controlling interest in Sovereign, Sovereign proposes to acquire all of Independence's voting shares. Santander's acquisition of an indirect controlling interest in Independence Bank is also subject to approval by the New York State Banking Department ("NYSBD"), and Sovereign's acquisition of Independence Bank is subject to approvals by the Office of Thrift Supervision ("OTS") and the NYSBD. Sovereign has reported its intent to merge Independence Bank into Sovereign Bank several months after acquiring Independence. That merger would be subject to approval by the OTS under the Bank Merger Act.

5. Asset data and rankings are as of December 31, 2004, and are based on the exchange rate then in effect.

6. Deposit data are as of June 30, 2005. In this context, the term "insured depository institution" includes insured commercial banks, savings associations, and savings banks.

7. Edge corporations are organized under section 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.).

8. Domestic asset and ranking data are as of December 31, 2005.

9. 12 CFR 225.28(b)(4)(ii).

10. Santander has committed that it will use its best efforts to cause Sovereign to, and Sovereign has committed that it will, conform its direct and indirect nonbanking activities and investments, including by divestiture if necessary, to the requirements of the BHC Act within two years of consummation of the proposal.

interests, or unsound banking practices."[11] As part of its evaluation of a proposal under the public interest factors, the Board reviews the financial and managerial resources of the companies involved, as well as the effect of the proposal on competition in the relevant market and the public benefits of the proposal.[12] In acting on notices to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13]

The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information, publicly reported financial and other information, and public comments submitted on the proposal.[14] The Board also has consulted with, and considered information provided by, the primary home-country supervisor of Santander and various federal and state supervisory agencies, including the Federal Deposit Insurance Corporation ("FDIC"), the OTS, the NYSBD, and the Securities and Exchange Commission ("SEC").

COMPETITIVE CONSIDERATIONS

As part of the Board's consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record. Sovereign and Independence control insured depository institutions that engage in retail operations in the Metro New York banking market (the "New York banking market").[15] In the New York banking market, Santander operates only two uninsured branches that do not engage in retail banking operations. In weighing the competitive factors, the Board has also taken into account Sovereign's proposal to acquire Independence. The Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in depository institutions in the market ("market deposits") controlled by Sovereign and Independence;[16] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines");[17] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation, the New York banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[18]

Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effect on competition or on the concentration of banking resources in the New York banking market or in any other relevant banking market.

FINANCIAL AND MANAGERIAL RESOURCES

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of Santander, Sovereign, Independence, and their subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Santander,

11. 12 U.S.C. § 1843(j)(2)(A).

12. *See* 12 CFR 225.26; *see, e.g., BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

13. 12 U.S.C. § 2901 et seq.

14. The Board received comments objecting to the proposal from an investment advisor to a mutual fund family that controls 4.9 percent of Sovereign's voting shares and from two other commenters. The commenters primarily expressed concern about the managerial resources of Santander or Sovereign, the financial resources of Sovereign, or the manner in which the proposal was developed.

15. The New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties in New Jersey; Monroe and Pike counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

16. Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through April 26, 2006), and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). Because control of the deposits of Sovereign Bank and Independence Bank would be acquired by a commercial banking organization, these deposits are included at 100 percent in the calculation of the post-consummation share of market deposits. *See, e.g., First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990).

17. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice 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 is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

18. Sovereign operates the 29th largest depository institution in the New York banking market, controlling deposits of $6.5 billion, which represent less than 1 percent of market deposits. Independence operates the 20th largest depository institution in the New York banking market, controlling deposits of approximately $10 billion, which represent less than 1 percent of market deposits. After consummation of the proposal, Santander would become the eighth largest depository organization in the market, controlling deposits of approximately $17 billion, which represent approximately 2 percent of market deposits. The HHI would decrease 19 points to 1034. Two hundred and sixty-four bank and thrift institution competitors would remain in the market.

and public comments received on the proposal.[19] The Board also has consulted with the Bank of Spain, which is responsible for the supervision and regulation of Spanish financial institutions.

In evaluating financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary-insured depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial resources of the organizations involved in the proposal. The capital levels of Santander would continue to exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, Sovereign, Independence, and their subsidiary savings associations and the U.S. subsidiary depository institution of Santander[20] are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Santander has sufficient financial resources to effect the proposal.[21] The proposed transaction is structured as a cash purchase, and Santander will use available resources to fund the transaction.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization.[22] The Board has reviewed the examination records of Santander's U.S. operations and of Sovereign, Independence, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations.[23] In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws.[24] Santander, Sovereign, Independence, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Santander's plans for implementing the proposal, including the proposed management after consummation.[25]

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19. Some commenters objected to the proposal because Sovereign's shareholders were not afforded an opportunity to vote on Santander's proposed investment in Sovereign, and they disagreed with Sovereign's decision to postpone its annual shareholder meeting. The commenters also alleged that Sovereign's board of directors breached its fiduciary duty by agreeing to the proposed transaction with Santander. These are matters of state law and may be raised before a court with the authority to provide commenters with adequate relief, if deemed appropriate. The Board also notes that the New York Stock Exchange ("NYSE") has determined that Sovereign's proposed issuance of shares to effect the transaction would not trigger NYSE's rules requiring shareholder approval of change of control transactions. The Board has consulted with the SEC about this matter. The Board has also consulted with the SEC about a commenter's allegations that Sovereign made false or misleading disclosures in statements filed with the SEC.

20. Santander BanCorp ("SBC"), San Juan, an intermediate bank holding company through which Santander holds BSPR, has restated financial statements for the years 2000–2004 after concluding that some transactions booked as mortgage loan purchases or sales during those years did not meet accounting requirements for treatment as sales. SBC also delayed issuing its annual report for 2005 pending its review of similar transactions executed in 2005. SBC has indicated that the restatements lower its cumulative net income by less than 1 percent during the covered period. The Board has considered the corrective actions Santander and SBC have taken with respect to this matter. The Board has broad supervisory authority under the banking laws to address these matters, if warranted, in the examination and supervisory process. The Board also has consulted with the SEC about this matter.

21. A commenter questioned whether Santander has sufficient financial resources to offer to purchase additional shares of Sovereign if required to do so under Pennsylvania law. Pennsylvania corporate law generally affords dissenting shareholders a right to demand fair value for their shares when a person or a group of persons acting in concert acquires 20 percent or more of the voting shares of a registered corporation. *See* 15 Pa. Cons. Stat. § 2541 et seq. The commenter requested that the Board delay action on the proposal pending the outcome of a lawsuit brought by a dissenting minority shareholder of Sovereign to enforce this demand right and other litigation related to the proposal. Santander represented that all lawsuits related to the proposed transaction have been dismissed. The Board also notes that certain recent amendments to a relevant Pennsylvania statutory provision appear to clarify that the proposal would not trigger the dissenting shareholders' right under Pennsylvania corporate law. *See* 15 Pa. Cons. Stat. § 2543(b)(2)(vii) (added by Senate Bill 595).

A commenter also objected to the pricing of the transactions. The price of a transaction or the consideration received by shareholders is not, by itself, within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

22. The Board has previously determined that Santander is subject to comprehensive consolidated supervision by the Bank of Spain. *See, e.g., Banco Santander, S.A.*, 85 *Federal Reserve Bulletin* 441 (1999).

23. A commenter expressed concern about Santander's ability to share information for purposes of complying with applicable U.S. anti-money-laundering laws. The Board has reviewed confidential supervisory information on the policies, procedures, and practices of Santander's U.S. operations for complying with the Bank Secrecy Act and other U.S. anti-money-laundering laws. Further, the Board notes that Santander has committed to make available to the Board information on the operations of Santander and any of its affiliates that the Board deems necessary to determine and enforce compliance with applicable laws.

24. The commenter also expressed concern based on a news article discussing a fine imposed by the U.K. Financial Services Authority ("FSA") on Abbey National PLC ("Abbey"), London, United Kingdom, a foreign bank subsidiary of Santander. The Board notes that the activities of Santander and its affiliates in the United Kingdom are subject to the supervision of the FSA and the requirements of U.K. law. Santander has represented that the fine imposed by the FSA on Abbey was due to actions that occurred before Santander acquired Abbey.

25. A commenter expressed concern about Sovereign's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. Santander represented that Sovereign does not focus on marketing credit services

Based on all the facts of record, the Board has concluded that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.[26]

CRA PERFORMANCE RECORDS

As previously noted, the Board considers the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire a savings association. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe-and-sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[27]

As provided in the CRA, the Board has evaluated the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[28]

BSPR received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of August 9, 2005. Sovereign Bank received an "outstanding" rating at its most recent CRA performance evaluation by the OTS, as of March 11, 2005, and Independence Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of November 3, 2003. Santander has represented that Sovereign intends to implement Sovereign Bank's CRA program at Independence Bank.

Based on a review of the entire record, and for the reasons discussed above, the Board concludes that the CRA performance records of the relevant depository institutions are consistent with approval.

OTHER CONSIDERATIONS

The Board also has carefully considered the lending record and data reported by Sovereign Bank and Independence Bank under the Home Mortgage Disclosure Act ("HMDA")[29] in light of public comment about their record of lending to minorities. A commenter opposed the proposal and alleged, based on 2004 HMDA data, that those institutions engaged in discriminatory treatment of minority individuals in their home-mortgage lending operations.[30] The commenter asserted that Sovereign Bank and Independence Bank made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.[31] The commenter also alleged that Sovereign Bank and Independence Bank disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants. The Board has analyzed 2004 HMDA data reported by Sovereign Bank and Independence Bank in their primary assessment areas.[32]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Sovereign Bank or Independence Bank is excluding or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[33] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes

to such nontraditional providers and generally does not have extensive commercial loan relationships with such providers. Santander also has represented that Sovereign does not play any role in the lending practices, credit review, or other business practices of those firms.

26. A commenter expressed concern that Santander did not expressly state in its application that it would serve as a source of strength to Sovereign. The Board expects a bank holding company to serve as a source of financial and managerial strength to the insured depository institutions that it controls.

27. 12 U.S.C. § 2903.

28. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

29. 12 U.S.C. § 2801 et seq.

30. The commenter also expressed concerns about Santander's acquisition of Island Finance Puerto Rico, Inc. ("Island Finance"), an entity engaged in subprime lending. As a general matter, the activities of the consumer finance business identified by the commenter are permissible, and the commenter did not provide evidence that Santander or Island Finance had originated, purchased, or securitized "predatory" loans or otherwise engaged in abusive lending practices.

31. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

32. The commenter also alleged that Sovereign Bank and Independence Bank engaged in discriminatory lending based on a review of the prices and numbers of loans extended to African-American and Hispanic borrowers as compared to nonminority borrowers in 2005. The commenter based this allegation on 2005 HMDA data derived from loan application registers that it obtained from the savings associations. These data are preliminary, and 2005 data for lenders in the aggregate are not yet available. *See Frequently Asked Questions About the New HMDA Data*, page 2 (April 3, 2006), available at www.federalreserve.gov/boarddocs/press/bcreg/2006.

33. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe-and-sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Sovereign Bank and Independence Bank with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of Sovereign Bank and Independence Bank, examiners noted no substantive violations of applicable fair lending laws. The Board has also forwarded the comments to, and consulted with, the OTS and the FDIC about the fair-lending and consumer-protection compliance records of Sovereign Bank and Independence Bank respectively.

The record also indicates that Sovereign has taken steps to ensure compliance with fair lending and other consumer protection laws. Santander represented that Sovereign's consumer and mortgage lending units have second-review policies for loan applications that would otherwise be denied, and that Sovereign's compliance training program features online programs, including proficiency testing, and seminars taught by compliance staff or trade association employees. Santander has represented that Sovereign intends to implement its consumer compliance program at Independence Bank after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of Sovereign Bank and Independence Bank. These established efforts and records demonstrate that Sovereign and Independence are active in helping to meet the credit needs of their entire communities.

PUBLIC BENEFITS

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses currently served by Sovereign. They would be able to draw on Santander's global experience in retail banking and experience with Spanish-speaking customers, particularly as Sovereign expands in New York City, which has a large and increasing Hispanic population. In addition, it is expected that Santander's technological expertise will enhance Sovereign's ability to deliver existing and new banking products.

Based on all the facts of record, the Board concludes that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved.[34] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.[35] The Board's approval is specifically conditioned on compliance by Santander and Sovereign with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[36] and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law. The acquisition 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 New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective May 25, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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34. Two commenters requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application if a meeting or hearing is necessary or appropriate to provide an opportunity for testimony (12 CFR 262.3(i)(2)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The requests fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. Moreover, the commenters' requests fail to demonstrate why their written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

35. A commenter expressed concern about the expansion of foreign banks in the United States. The Board notes that the International Banking Act of 1978 (12 U.S.C. § 3101 et seq.) and the BHC Act provide the general legal framework under which foreign banks may enter and conduct banking activities in the United States.

36. 12 CFR 225.7 and 225.25(c).

Orders Issued Under Sections 3 and 4 of the Bank Holding Company Act

M&P Community Bancshares, Inc., 401(k) Employee Stock Ownership Plan Newport, Arkansas

Order Approving the Formation of a Bank Holding Company and Determination on a Financial Holding Company Election

M&P Community Bancshares, Inc., 401(k) Employee Stock Ownership Plan ("Applicant") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by acquiring an additional 1.63 percent, for a total of 26.58 percent, of the voting shares of M&P Community Bancshares, Inc. ("M&P BHC"), Newport, a financial holding company within the meaning of the BHC Act, and to acquire control of Merchants & Planters Bank ("M&P Bank"), Newport, and Greers Ferry Lake State Bank ("GFLS Bank"), Heber Springs, all of Arkansas. Applicant also has filed an election to become a financial holding company pursuant to section 4(*l*) of the BHC Act and section 225.82 of the Board's Regulation Y.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 933 (2006)). 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 3 of the BHC Act.

Applicant is an employee stock ownership plan ("ESOP") organized under section 4975(e)(7) of the Internal Revenue Service Code.[3] Applicant has an underlying trust that is organized on behalf of the employees of M&P BHC, M&P Bank, and GFLS Bank and invests in the shares of M&P BHC.

M&P BHC, with total consolidated assets of approximately $199 million, is the 50th largest depository organization in Arkansas, controlling deposits of approximately $170 million.[4] M&P BHC operates two subsidiary depository institutions with branches only in Arkansas, M&P Bank and GFLS Bank, and several nonbanking subsidiaries.[5]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

Applicant does not currently control any depository institution, and the proposal would not result in an expansion of M&P BHC. Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state banking supervisors of the organizations involved, financial and other information provided by Applicant, and public comment on the proposal.[7]

In evaluating financial factors in BHC Act proposals involving an ESOP, the Board reviews the financial condition of the ESOP as well as the related bank holding company and its subsidiaries. The Board considers a variety of measures in this evaluation, including the financial obligations and cash flow of the ESOP, and the capital

1. 12 U.S.C. § 1842.
2. 12 U.S.C. § 1843(*l*); 12 CFR 225.82(f).
3. 26 U.S.C. § 4975(e)(7).
4. State deposit data are as of June 30, 2005, and ranking data reflect mergers consummated before April 26, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
5. Applicant proposes to acquire indirectly the shares of the nonbanking subsidiaries of M&P BHC in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y (12 U.S.C. § 1843(k); 12 CFR 225.87).
6. 12 U.S.C. § 1842(c)(1).
7. One commenter, a minority shareholder of M&P BHC ("Commenter"), alleged that M&P BHC's management has engaged in self-dealing and breached its fiduciary duties. In particular, Commenter questioned the valuation of M&P BHC stock in connection with certain stock transactions involving the company's management officials and has filed a shareholder derivative suit involving these allegations in an Arkansas court against M&P BHC's board of directors. Management has denied any wrongdoing or breach of fiduciary duty in the pending lawsuit, and the matter is currently under review in the appropriate legal forum. The Board does not have authority to resolve this dispute. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). Moreover, action on this proposal would not interfere with the court's ability to resolve the pending litigation.

adequacy, asset quality, and earnings performance of the banking organization. In assessing financial factors, the Board has considered capital adequacy to be especially important. The Board also evaluates the financial effects of the proposed transaction on the condition of the organization, including the organization's capital position, earnings prospects, and the impact of the proposed funding of the transaction. M&P BHC and each of its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Applicant has sufficient financial resources to effect the proposal and that the financial resources of M&P BHC and its subsidiaries would not be adversely affected by the proposal. The proposed transaction is structured as a cash purchase.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of M&P BHC and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. The Board notes that the three trustees of Applicant's underlying trust are outside directors of M&P BHC. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organization and its record of compliance with applicable banking law. M&P BHC and its subsidiary depository institutions are considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Applicant and the institutions involved are consistent with approval, as are the other supervisory factors under the BHC Act.[8]

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[9] M&P Bank, M&P BHC's lead bank, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 2002. GFLS Bank also received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of August 2002.

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved and confidential supervisory information. Based on all the facts of record, the Board concludes that the considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

FINANCIAL HOLDING COMPANY DECLARATION

As noted, Applicant has also filed with the Board an election to become a financial holding company pursuant to section 4(*l*) of the BHC Act and section 225.82 of Regulation Y. Applicant has certified that all depository institutions controlled by M&P BHC are well capitalized and well managed and will remain so on consummation of the proposal. Applicant has also provided all the information requested under Regulation Y.

The Board has reviewed the examination rating received by each insured depository institution controlled by M&P BHC under the CRA and other relevant examinations and information. Based on all the facts of record, the Board has determined that the election to become a financial holding company will become effective on Applicant's consummation of the proposed share acquisition.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicant with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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

8. Commenter expressed concern about the managerial resources of M&P BHC. In addition to the stock valuation and fiduciary duty concerns discussed above, Commenter asserted that M&P BHC's management may have acquired shares of the company through Applicant in a manner that would have required applications to the Board for prior approval under the BHC Act. The Board has considered this allegation in the context of all the facts of record regarding the management of M&P BHC, and it has reviewed information provided by both Commenter and Applicant, as well as confidential supervisory information about the ownership and transfer of M&P BHC shares. The record does not support a finding that Applicant previously acquired more than 24.9 percent of M&P BHC in violation of the BHC Act. Commenter also asserted that the organization's management mishandled a relationship with a delinquent business-loan customer. The Board has reviewed confidential examination reports about this lending relationship. In addition, the Board forwarded these comments to, and consulted with, both the Federal Deposit Insurance Corporation ("FDIC") and the Arkansas State Bank Department, the primary supervisors of M&P BHC's subsidiary depository institutions, about Commenter's allegations concerning the management of M&P BHC and its operation of the subsidiary depository institutions. As noted above, M&P BHC and its subsidiary depository institutions are considered to be well managed.

9. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective May 23, 2006.

Voting for this action: Chairman Bernanke and Governors Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Legal Developments: Third Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

Fédération Nationale du Crédit Agricole
Paris, France

SAS Rue La Boétie
Paris, France

Order Approving the Formation of Bank Holding Companies and Acquisition of a Bank

Fédération Nationale du Crédit Agricole ("FNCA") and SAS Rue La Boétie ("Boetie") (together "Applicants") have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become bank holding companies and thereby retain control indirectly of Espirito Santo Bank ("ES Bank"), Miami, Florida, through their subsidiary, Crédit Agricole S.A. ("Credit Agricole"), Paris, France, a foreign bank that is a bank holding company within the meaning of the BHC Act.[2]

Applicants filed to become bank holding companies in compliance with commitments made by Boetie in connection with a temporary exemption from certain filing requirements of the BHC Act granted under section 4(c)(9) of the BHC Act in 2003.[3] The Board granted that exemption in conjunction with Credit Agricole's proposed acquisition of Crédit Lyonnais ("Credit Lyonnais"), another French bank also in Paris, to allow Boetie and Credit Agricole to acquire Credit Lyonnais's U.S. nonbanking subsidiaries subject to the condition that Boetie seek approval from the Board under section 3 of the BHC Act to become a bank holding company. FNCA, an unincorporated association that became Boetie's parent, later joined Boetie's application.

Approximately 40 regional cooperative banks ("Regional Banks") directly owned more than 90 percent of the shares of Credit Agricole before the formation of Boetie and the subsequent acquisition of Credit Lyonnais. Boetie was formed in connection with Credit Agricole's public offering of shares undertaken, in part, to facilitate its acquisitions.[4] In connection with the share issuance by Credit Agricole, the Regional Banks sought to consolidate their ownership interest in Credit Agricole and transferred their shares to Boetie.[5] Boetie, which currently holds approximately 55 percent of Credit Agricole's voting shares, votes the shares of Credit Agricole in order to maintain the Regional Banks' control of Credit Agricole. FNCA acts as a consultative and representative body for the Regional Banks.

FNCA, Boetie, Credit Agricole, and Calyon, S.A. ("Calyon"),[6] Paris, a wholly owned French bank subsidiary of Credit Agricole (jointly, "FHC electors"), have also filed elections to become and be treated as financial holding companies pursuant to section 4(k) and (*l*) of the BHC Act and section 225.82 and 225.91 of the Board's Regulation Y.[7]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (68 *Federal Register* 34,608). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

1. 12 U.S.C. § 1842.

2. Credit Agricole controls indirectly more than 25 percent of the voting shares of Banco Espirito Santo, S.A., Lisbon, Portugal.

3. 12 U.S.C. § 1843(c)(9). Section 4(c)(9) of the BHC Act provides that the Board may grant to foreign companies exemptions from the provisions of section 4 of the act, provided such exemptions are not substantially at variance with the purposes of the BHC Act and are in the public interest.

4. Credit Agricole was formerly known as Caisse Nationale de Credit Agricole.

5. Credit Agricole supports, coordinates, and supervises the operations of the Regional Banks and approximately 2600 local cooperative banks, which operate a retail branch network in France. FNCA, Boetie, Credit Agricole, and the regional and local cooperative banks together comprise the Credit Agricole Group. Boetie and FNCA engage in no activities in the United States except through Credit Agricole.

6. Calyon is the successor to Crédit Agricole Indosuez, S.A., Paris, France.

7. *See* 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82 and 225.91. FHC electors have provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that these elections to become and be treated as financial holding companies are effective as of the date of this order. ES Bank and applicable foreign banks are well capitalized and well managed in accordance with the applicable provisions of Regulation Y. *See* 12 CFR 225.90 and 225.2.

Credit Agricole, with total consolidated assets of approximately $913 billion, is the largest bank in France.[8] Credit Agricole conducts banking and nonbanking operations in the United States indirectly through Calyon and Credit Lyonnais, a wholly owned subsidiary of Credit Agricole. Calyon operates branches in New York, Chicago, and Los Angeles and representative offices in Houston and Dallas. Credit Lyonnais operates a representative office in New York and an agency in Miami. ES Bank, the U.S. subsidiary bank of Banco Espirito Santo, S.A., is an indirect subsidiary of Credit Agricole.[9] Banco Espirito Santo, S.A. also operates a branch in New York. Calyon engages through subsidiaries in the United States in a broad range of permissible nonbanking activities, including securities and futures trading, leasing, financing, brokerage, and financial consulting activities.[10]

ES Bank has total assets of approximately $409 million and has one office in Miami. ES Bank is the 87th largest insured depository organization in Florida, controlling deposits of approximately $301 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[11]

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by Applicants and public comment on the proposal. The Board also has consulted with the Commission Bancaire, which has primary responsibility for the supervision and regulation of French banks, including Credit Agricole.

In evaluating the financial factors in proposals involving new bank holding companies, the Board reviews the financial condition of the applicants and the target depository institutions. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of this proposal. France's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). The capital ratios of Credit Agricole and Applicants' foreign subsidiary banks with U.S. banking operations would continue to exceed the minimum levels that would be required under the Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization. In this regard, Applicants' subsidiary banks with U.S. banking operations are well capitalized. The Board also has considered the financial resources of Applicants and other organizations involved in the proposal. Based on its review of these factors, the Board finds that the financial factors of the proposal are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and the combined organization.[12] The Board has reviewed the examination records of ES Bank and the U.S. banking operations of the organizations involved in the proposal, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with ES Bank and the U.S. banking operations of organizations involved in the proposal and their records of compliance with applicable banking law, including compliance with anti-money-laundering laws.[13] Furthermore, the Board has consulted with the Commission Bancaire about Applicants and about the managerial resources of Credit Agricole, including its compliance with applicable laws and regulations.[14] Credit Agricole and

8. French asset and ranking data are as of December 31, 2004, and these data are based on the exchange rate then in effect. Domestic assets are as of June 30, 2006, and deposit data and rankings are as of June 30, 2005.

9. Credit Agricole also is deemed to control indirectly Banca Intesa S.p.A., Milan, Italy, which operates a branch in New York.

10. Calyon Securities, Inc., New York, New York, a U.S. subsidiary of Calyon, engages in certain securities underwriting and dealing activities that are permissible for a bank holding company that has financial-holding-company status. Boetie and Credit Agricole have engaged in these activities indirectly under the temporary authority of section 4(c)(9) of the BHC Act described above.

11. In this context, depository institutions include commercial banks, savings banks, and savings associations.

12. A commenter asserted that Boetie violated the BHC Act by acquiring the voting shares of Credit Agricole before submitting the proposal to the Board for approval. In addition, the commenter complained that Boetie and Credit Agricole violated the BHC Act through the acquisition of all the shares of Credit Lyonnais in 2003 without the Board's prior approval for the acquisition of Credit Lyonnais's nonbanking operations. The commenter asserted that the Board lacked authority to waive the BHC Act's application filing requirements with respect to such transactions and inappropriately shielded such transactions from comment. As noted above, Boetie and Credit Agricole have operated the U.S. subsidiaries under the temporary authority granted by the Board under section 4(c)(9) of the BHC Act, which does not provide for public notice.

13. A commenter cited various news and congressional reports from 2003 through 2005 regarding allegations that ES Bank concealed assets and money laundering in connection with accounts held for the benefit of certain international individuals, including former Chilean President Augusto Pinochet. According to those reports, ES Bank's relationship with the Pinochet family ended in January 2000. As noted above, the Board has considered the assessments of the Federal Deposit Insurance Corporation ("FDIC"), ES Bank's primary federal supervisor, of the bank's compliance with anti-money-laundering laws in confidential reports of examination.

14. Three commenters expressed concern about Credit Agricole's managerial record in light of past enforcement matters, including an enforcement action concerning alleged false representations by Credit Lyonnais in connection with its investment in Executive Life, a failed California insurer. The Board notes that there is no evidence or allegation that Credit Agricole was involved in any manner in the

Applicants' subsidiary banks with U.S. banking operations are considered to be well managed.[15] Based on all the facts of record, the Board has concluded that considerations relating to the managerial resources[16] and future prospects of the organizations involved in the proposal are consistent with approval.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[17] As noted, the Commission Bancaire is the primary supervisor of French banks, including Credit Agricole. The Board has previously determined in orders approving applications[18] filed under the International Banking Act and the BHC Act involving Credit Agricole, that Credit Agricole is subject to comprehensive supervision on a consolidated basis by its home country supervisor.[19] Based on all the facts of record, the Board has concluded that Credit Agricole continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.[20]

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[21] The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and have communicated with relevant government authorities concerning access to information.

In addition, Applicants have committed that, to the extent not prohibited by applicable law, each will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable their affiliates to make any such information available to the Board. In light of these commitments, the Board has concluded that Applicants have provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would

matters that resulted in the issuance of the enforcement action against Credit Lyonnais. Moreover, this conduct occurred before Credit Lyonnais became a subsidiary of Credit Agricole in 2003. In January 2004, Credit Agricole and Credit Lyonnais agreed to a consent order that was jointly issued by the Board and the Commission Bancaire that called for the organization to enhance its global compliance programs and provided for close cooperation between the Board and the Commission Bancaire to ensure that the terms of the consent order were met. The Board has considered Credit Agricole's actions to comply with the consent order. *See* Order to Cease and Desist and Civil Money Penalty, December 18, 2003, between Credit Lyonnais and the Board; Order Issued upon Consent, January 8, 2004, among Credit Agricole, Credit Lyonnais, the Commission Bancaire, and the Board.

In addition, a commenter cited news reports about fines imposed by the Tokyo Stock Exchange and the Japanese Securities Dealers Association against Credit Agricole Indosuez's securities brokerage subsidiary in Japan in 2003. Credit Agricole subsequently implemented a Global Enhanced Compliance Program designed to ensure compliance with regulatory requirements in various jurisdictions in which Credit Agricole operates. As noted, the Board consulted with the Commission Bancaire about Credit Agricole's compliance with applicable laws and regulations.

15. *See* 12 CFR 225.90(c).

16. A commenter alleged Credit Agricole and Credit Lyonnais are signatories to international human rights and environmental agreements and that the organizations have exhibited a lack of environmental and human rights standards. The Board notes that such matters are not within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

17. *See* 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

18. *See Caisse Nationale de Crédit Agricole*, 86 *Federal Reserve Bulletin* 412 (2000); *Crédit Agricole Indosuez*, 83 *Federal Reserve Bulletin* 1025 (1997); *Caisse Nationale de Crédit Agricole*, 81 *Federal Reserve Bulletin* 1055 (1995).

19. The Board has previously determined that Banco Espirito Santo, S.A. and Banca Intesa S.p.A. are subject to comprehensive supervision on a consolidated basis. *See E.S. Control Holding S.A. et al.*, 86 *Federal Reserve Bulletin* 418 (2000); *Banca Intesa S.p.A.*, 86 *Federal Reserve Bulletin* 433 (2000). Calyon has also been determined to be subject to comprehensive supervision on a consolidated basis. *See Calyon, S.A.*, 92 *Federal Reserve Bulletin* C197 (2006). Credit Lyonnais has not previously been determined to be subject to comprehensive supervision on a consolidated basis. Credit Lyonnais is supervised by the Commission Bancaire on substantially the same terms and conditions as Credit Agricole, Calyon, and other French banks previously reviewed by the Board. *See, e.g., BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (2005); *Société Générale*, 87 *Federal Reserve Bulletin* 353 (2001). Therefore, the Board has concluded that Credit Lyonnais is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

20. Boetie and FNCA are considered to be part of the Credit Agricole Group. Therefore, the Commission Bancaire has access to the financial statements of Boetie and FNCA and may monitor relationships between those entities and Credit Agricole.

21. *See* 12 U.S.C. § 1842(c)(3)(a).

substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[22] The applications result from a reorganization of shareholder interests in Credit Agricole, which had no effect, adverse or otherwise, on competition in the marketplace. Based on all the facts of record, the Board concludes that the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[23] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[24]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of ES Bank, data reported by ES Bank under the Home Mortgage Disclosure Act ("HMDA"),[25] other information provided by Applicants, confidential supervisory information, and public comment received on the proposal. A commenter criticized ES Bank's responsiveness to the credit needs of LMI borrowers and communities. The commenter also expressed concern, based on 2001 and 2002 HMDA data, about the lack of home mortgage applications by African Americans to ES Bank.

A. CRA Performance Evaluation

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[26]

ES Bank received a "satisfactory" rating at its most recent CRA performance evaluation from the FDIC, as of September 26, 2003 ("2003 Evaluation").[27] Applicants have no plans to alter the CRA program of ES Bank.

ES Bank, the only subsidiary of Applicants that is subject to the CRA, is a wholesale bank for CRA evaluation purposes. Examiners noted in the 2003 Evaluation that as a wholesale bank, ES Bank does not have the business infrastructure to directly serve the credit and banking service needs of typical retail customers, including LMI individuals and small businesses, and that the bank must satisfy its CRA obligations through community development activities.

In the 2003 Evaluation, examiners characterized ES Bank's community development lending as satisfactory overall. Examiners stated that during the evaluation period,[28] ES Bank exhibited a good record of community development lending and had been responsive in meeting the needs of its assessment area, including financing projects for affordable housing, revitalization, and social services to low-income people. During the evaluation period, ES Bank originated seven community development loans totaling $5.1 million. Examiners described bank officers as proactive in identifying qualifying loans in a highly competitive environment for community development loans and noted that the officers had taken a leadership role in some loans. Examiners noted that ES Bank demonstrated flexibility during the evaluation period by helping to initiate a loan consortium to finance low-income housing acquisitions and construction in its assessment area.

ES Bank has represented that it continues to respond to the needs of its assessment area through community development lending activities since the 2003 Evaluation. From January 2004 through May 2006, ES Bank originated more than $10.1 million in community development loans in its assessment area. As an example, ES Bank represented that the bank approved a $4.5 million loan in 2006 to finance an apartment building in an LMI census tract, which will be converted into condominiums and sold at substantially lower prices than new construction units.

Examiners characterized ES Bank's performance under the investment test in its assessment area as satisfactory. During the evaluation period, ES Bank made qualified investments and donations totaling more than $2.6 million. Examiners noted that ES Bank's investment and donation activities demonstrated a good effort by the bank to serve the needs of its assessment area, particularly in

22. 12 U.S.C. § 1842(c)(1).
23. 12 U.S.C. § 2901 et seq.
24. 12 U.S.C. § 2903.
25. 12 U.S.C. § 2801 et seq.

26. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,640 (2001).
27. A commenter criticized ES Bank's record of small business lending and home mortgage lending to LMI borrowers and in LMI communities. Examiners evaluate the record of community development of ES Bank and other wholesale banks through review of community development loans, qualified investments, or community development services. *See* 12 CFR 345.25(a).
28. The evaluation period was August 29, 2000, through September 26, 2003.

light of very strong competition for qualified investments in the assessment area. ES Bank represented that it has made more than $1 million in qualified investments since the 2003 Evaluation.

In the 2003 Evaluation, examiners noted that ES Bank had provided community development services that were generally responsive in supporting community development needs. During the evaluation period, bank officers provided financial services education to a local school and technical assistance to nine nonprofit organizations. ES Bank has continued to provide community development services in its assessment area since the 2003 Evaluation.

B. HMDA Data and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of ES Bank in light of the public comments received on the proposal. A commenter expressed concern, based on 2001 and 2002 HMDA data, that ES Bank lacked home mortgage applications by African-American borrowers. The Board has reviewed the HMDA data from 2001 through 2005 that were reported by ES Bank in the Miami, Florida Metropolitan Statistical Area, which comprises the bank's assessment area.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not ES Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[29] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and has taken into account other information, including examination reports that provide on-site evaluations of compliance by ES Bank with fair lending laws. In the fair lending review conducted by the FDIC in conjunction with the bank's CRA evaluation in 2003, examiners noted no substantive violations of provisions of applicable fair lending laws. The Board also consulted with the FDIC about the concerns expressed by commenters.[30]

The record also indicates that ES Bank has taken steps designed to ensure compliance with fair lending and other consumer protection laws. Applicants represented that ES Bank has implemented fair lending policies, procedures, and training programs, including annual compliance training for all consumer lending department personnel on the prevention of illegal prescreening and on discouragement or exclusion of credit applicants. Formal lending policies address significant criteria for loan approvals by the bank's senior management or loan committee. Applicants also represented that ES Bank's fair lending policies and procedures are designed to ensure that loan officers price loans uniformly and avoid illegal discrimination and that current and proposed lending activities and customer complaints are reviewed. In addition, Applicants represented that ES Bank provides for an independent review of the lending activities of the bank to ensure all lending practices are in full compliance with all laws, regulations, and internal policies and procedures. Applicants further stated that an independent consulting firm audits these efforts annually and that those results are provided to the Internal Audit Committee of the Board of Directors and the bank's Compliance Department and Legal Department. Applicants do not plan to implement significant changes to ES Bank's compliance policies and programs.

The Board also has considered the HMDA data in light of other information, including ES Bank's CRA community development activities and the overall performance records of ES Bank under the CRA. These established efforts demonstrate that the institution is active in helping to meet the credit needs of its entire community.

C. Conclusion on Convenience and Needs and CRA Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the

29. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

30. A commenter questioned the veracity of ES Bank's reporting of no denials of home mortgage applications in 2001 and 2002 and generally alleged that the bank prescreened its home mortgage applications. Specifically, the commenter contended that ES Bank violated HMDA by not accurately reporting its home mortgage applications and violated the Equal Credit Opportunity Act ("ECOA") (15 U.S.C. § 1691 et seq.) by not providing adverse action notices when required. ES Bank has represented that it reported no denials because it is a wholesale bank engaged primarily in international private banking and that its residential mortgages are generally extended as an accommodation to private banking customers where a mortgage loan approval would be expected. The commenter also questioned ES Bank's characterization of loans generated by brokers as accommodation loans. Applicants represented that ES Bank began using two licensed mortgage brokers in 2001 in an effort to increase its loan portfolio during a period when internal referrals had slowed. Applicants also represented that ES Bank's brokers referred a small number of mortgage loans to the bank in 2005. The Board has consulted with the FDIC, the primary federal supervisor of ES Bank, about the bank's record of compliance with HMDA and ECOA in connection with this matter.

institutions involved, information provided by Applicants, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.[31] In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.[32] The Board's approval is specifically conditioned on compliance by Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective September 8, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

31. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing or meeting on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

32. A commenter also requested that the Board extend the comment period. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. In the Board's view, the commenter has had ample opportunity to submit its views and, in fact, has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is warranted.

First National Bank Group, Inc. Edinburg, Texas

Order Approving the Acquisition of Shares of a Bank Holding Company

First National Bank Group, Inc. ("First National"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire up to 9.9 percent of the voting shares of Southside Bancshares, Incorporated ("Southside"), Tyler, Texas, and thereby acquire an indirect interest in Southside Delaware Financial Corporation, Dover, Delaware, and Southside's subsidiary bank, Southside Bank, also of Tyler.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 28,865 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First National, with total consolidated assets of $3.3 billion, is the 22nd largest depository organization in Texas, controlling deposits of $2.4 billion, which represent less than 1 percent of total deposits of insured depository institutions in Texas ("state deposits").[3] Southside, with total consolidated assets of $1.8 billion, is the 36th largest depository organization in Texas, controlling deposits of $1 billion. If First National were deemed to control Southside on consummation of the proposal, First National would become the 14th largest depository organization in Texas, controlling deposits of approximately $3.4 billion, which would represent 1 percent of state deposits.

The Board received a comment from Southside questioning First National's stated intention to make a passive investment in Southside and expressing concerns about the management of First National. The Board has considered carefully Southside's comments in light of the factors it must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company.[4] The requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank, however, suggests that Congress

1. 12 U.S.C. § 1842.

2. First National currently owns 4.91 percent of Southside's voting shares and proposes to acquire the additional voting shares through purchases on the open market.

3. Asset data are as of March 31, 2006, and statewide deposit and ranking data are as of June 30, 2005.

4. *See, e.g., Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*") (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *GB Bancorporation*, 83 *Federal Reserve Bulletin* 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks.[5] On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[6]

First National has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over Southside or Southside Bank. In support of its stated intention, First National has agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.[7] For example, First National has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Southside or any of its subsidiaries; not to seek or accept representation on the board of directors of Southside or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with Southside or any of its subsidiaries. First National also has committed not to attempt to influence the dividend policies, loan decisions, or operations of Southside or any of its subsidiaries. Moreover, the BHC Act prohibits First National from acquiring additional shares of Southside or attempting to exercise a controlling influence over Southside without the Board's prior approval.

The Board has adequate supervisory authority to monitor compliance by First National with the commitments and the ability to take enforcement action against First National if it violates any of the commitments.[8] The Board also has authority to initiate a control proceeding against First National if facts presented later indicate that First National or any of its subsidiaries or affiliates in fact controls or exercises a controlling influence over Southside for purposes of the BHC Act.[9] Based on these considerations and all other facts of record, the Board has concluded that First National would not acquire control of, or have the ability to exercise a controlling influence over, Southside through the proposed acquisition of voting shares.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has considered carefully these factors in light of all the facts of record, including among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, publicly reported and other financial information, information provided by First National, and public comment received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.[10]

Based on its review of the financial factors, the Board finds that First National has sufficient resources to effect the proposal. First National and its subsidiary bank are well capitalized and would remain so on consummation of this proposal. The proposed transaction is structured as a share purchase, and the consideration to be received by Southside's shareholders would be funded from First National's existing liquid assets.

The Board also has considered the managerial resources of the organizations involved in the proposed transaction. The Board has reviewed the examination records of First National, Southside, and Southside Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. First National, Southside, and Southside Bank are considered to be well managed.

Southside expressed concerns about the management of First National that relate to First National's proposal in 2004 to acquire a controlling interest in Alamo Corporation of Texas ("Alamo") (the "Alamo Proposal").[11] Southside has alleged that in the Alamo Proposal, First National

5. *See* 12 U.S.C. § 1842(a)(3).

6. *See, e.g., Brookline*; *North Fork Bancorporation, Inc.*, 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

7. *See, e.g., Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). These commitments are set forth in the appendix.

8. *See* 12 U.S.C. § 1818(b)(1).

9. *See* 12 U.S.C. § 1841(a)(2)(C).

10. As previously noted, the proposal provides that First National would acquire only up to 9.9 percent of Southside. Under these circumstances, the financial statements of Southside and First National would not be consolidated.

11. In 2004, First National applied to the Board for prior approval to acquire up to 14.99 percent of the voting shares of Alamo and to control Alamo. *See First National Bank Group, Inc.*, 91 *Federal Reserve Bulletin* 71 (2005). Alamo claimed that First National, in conjunction with its president and a First National shareholder, acted together to acquire more than 5 percent of Alamo's shares without the Board's prior approval. *Id.* at 72. The Board reviewed all the facts of record and concluded that the shares of First National and its president should not be aggregated with the shareholder's shares. Accordingly, the Board determined that First National did not violate the BHC Act and approved the proposal. First National did not acquire up to 14.99 percent of Alamo's shares and subsequently divested its entire shareholding in Alamo.

acquired shares of Alamo in violation of the BHC Act. Alamo made the same allegation in its comments on the Alamo Proposal. In approving the Alamo Proposal, the Board considered this allegation in light of the record and found no violation of the BHC Act. In considering Southside's reiteration of this claim, the Board has reviewed the information provided by Southside and First National and confidential supervisory information, and has found no new facts that would support modifying the Board's previous findings and determinations in the Alamo Proposal.[12]

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of First National, Southside, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[13]

First National and Southside do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[14] The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of First National's and Southside's subsidiary banks, other information provided by First National, and confidential supervisory information. First National Bank received an "outstanding" rating at its most recent CRA evaluation by the Office of the Comptroller of the Currency, as of October 7, 2002. Southside Bank also received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of August 1, 2004. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by First National with the conditions imposed in this order and the commitments made to the Board in connection with the application. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The acquisition of Southside's voting shares may not be consummated before the 15th calendar day after 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 Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 11, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix

In connection with its application to acquire up to 9.9 percent of Southside, First National committed that it will not:

In this proposal, Southside alleges that the same shareholder identified by Alamo acted as a nominee purchaser for First National in acquiring the shares of Alamo and that the shareholder subsequently sold those shares to First National shortly after the Board approved the Alamo Proposal. First National denied Southside's allegations and stated that there was no agreement, oral or written, between First National's management and this shareholder to purchase his shares.

12. Southside also claimed that in connection with the Alamo Proposal, First National purchased shares of Alamo through a tender offer that did not comply with applicable federal securities laws. In addition, Southside alleged that First National made improper comments about Alamo and its management to Alamo shareholders in connection with the tender offer. First National commenced a tender offer for shares of Alamo stock on or about March 28, 2005. Southside alleged that First National made several stock purchases before the March 28 tender offer, that those purchases constituted a tender offer, and that First National did not comply with applicable federal securities laws in connection with those purchases. First National represented that the individuals who sold their shares to First National before March 28, 2005, approached First National and that all those transactions were individually negotiated. The Securities and Exchange Commission ("SEC") has the authority to investigate and adjudicate any violations of federal securities laws. The Board has consulted with the SEC regarding Southside's allegation.

13. 12 U.S.C. § 1842(c)(1).

14. 12 U.S.C. § 2901 et seq.

(1) exercise or attempt to exercise a controlling influence over the management or policies of Southside or any of its subsidiaries;
(2) seek or accept representation on the board of directors of Southside or any of its subsidiaries;
(3) serve, have, or seek to have any employee or representative serve as an officer, agent, or employee of Southside;
(4) take any action causing Southside to become a subsidiary of First National;
(5) acquire or retain shares that would cause the combined interests of First National and its officers, directors, and affiliates to equal or exceed 25 percent of the outstanding shares of any class of voting securities of Southside;
(6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Southside or any of its subsidiaries;
(7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Southside;
(8) attempt to influence the dividend policies; loan, credit, or investment decisions or policies of Southside; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or hours of operation, etc.); or any similar activities of Southside or its subsidiaries;
(9) dispose or threaten to dispose of shares of Southside as a condition of specific action or nonaction by Southside; or
(10) enter into any other banking or nonbanking transactions with Southside or any of its subsidiaries, except that First National may establish and maintain deposit accounts with any depository institution subsidiary of Southside, provided that the aggregate balance of all such accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Southside.

Glacier Bancorp, Inc. Kalispell, Montana

Order Approving the Acquisition of a Bank Holding Company

Glacier Bancorp, Inc. ("Glacier"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Citizens Development Company ("Citizens"), Billings, and its subsidiary banks: First Citizens Bank of Billings, Billings; First National Bank of Lewistown, Lewistown; Western Bank of Chinook National Association, Chinook; First Citizens Bank, National Association, Columbia Falls; and Citizens State Bank, Hamilton, all of Montana.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 29,967 (2006)). 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 3 of the BHC Act.

Glacier, with total consolidated assets of $4 billion, is the second largest depository organization in Montana, controlling deposits of $1.5 billion, which represent 11.8 percent of total deposits of insured depository institutions in Montana ("state deposits").[2] Glacier operates ten subsidiary-insured depository institutions in Idaho, Utah, Washington, Wyoming, and Montana.

Citizens, a small bank holding company with banking assets of approximately $411 million, operates five subsidiary-insured depository institutions in Montana. Citizens is the eighth largest depository organization in the state, controlling deposits of approximately $349.8 million.

On consummation of this proposal, and after accounting for the proposed divestiture, Glacier would remain the second largest depository organization in Montana, controlling deposits of approximately $1.8 billion, which represent approximately 14.6 percent of state deposits.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[3] The Board has carefully considered the competitive effects of the proposal in light of all the facts of record.

A. Geographic Banking Market

Glacier and Citizens compete directly in the Kalispell, Missoula, Lewistown, and Billings banking markets in Montana.[4] Glacier contends that the Lewistown banking market, as delineated by the Federal Reserve Bank of Minneapolis ("Reserve Bank"),[5] does not reflect the true nature of banking competition in Lewistown and that the relevant geographic market for analysis should be expanded to include the Great Falls banking market.[6] Glacier bases its contention on the commercial interaction and ease of

1. 12 U.S.C. § 1842.

2. Asset data are as of June 30, 2006, and statewide deposit and ranking data are as of June 30, 2005, and are adjusted for subsequent acquisitions. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. 12 U.S.C. § 1842(c)(1).

4. These banking markets are described in Appendix A.

5. The Lewistown banking market is defined as Fergus and Petroleum counties in Montana. Lewistown is in Fergus County.

6. The Great Falls banking market includes Teton, Cascade, Judith Basin, Glacier, Toole, and Pondera counties and the Fort Benton and Geraldine divisions of Chouteau County, all in Montana.

access between the cities of Lewistown and Great Falls.[7]

In defining the relevant geographic market, the Board and the courts have consistently found that the relevant geographic market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where customers can practicably turn for alternatives.[8] In reviewing Glacier's contention, the Board has considered a number of factors to identify the economically integrated area that represents the appropriate local geographic banking market encompassing Lewistown for purposes of analyzing the proposal's competitive effects.[9] Both Glacier and the Reserve Bank conducted surveys to ascertain whether the residents of Lewistown and Great Falls, the primary population centers in the two markets, would turn to the other for alternative banking services.[10] The Board reviewed those surveys in light of all the evidence in the record, including information provided by local financial institutions, the state of Montana, and other publicly available information.

The Board reviewed the geographic proximity of Lewistown and Great Falls and the commuting data between those cities. The data, as Glacier acknowledged in its application, indicate that there is little commuting between Great Falls and Lewistown, cities that are approximately 100 miles apart. According to data collected by the U.S. Census Bureau in 2000, there is virtually no worker commuting between Great Falls and Lewistown. Moreover, the survey conducted by Glacier indicated that there is limited travel for shopping and other services between the two areas. According to its survey, although 37 percent of Lewistown residents surveyed travel to Great Falls at least once a month, only 9 percent travel to Great Falls twice a month or more. Additionally, the survey conducted by the Reserve Bank supports the conclusion that there is little travel between Lewistown and Great Falls.

Relevant banking data also support the Reserve Bank's definition of the Lewistown banking market as the relevant geographic market. Of the Lewistown residents surveyed by Glacier, 95 percent had their primary banking relationship with a financial institution in Lewistown, and only 4 percent used any banking services in Great Falls. The survey also indicated that 65 percent of respondents believed it would be difficult or very difficult to bank in Great Falls and 79 percent indicated that they would not take advantage of better rates on banking products in Great Falls. In addition, lending information that financial institutions are required to report under the Community Reinvestment Act ("CRA")[11] and the Home Mortgage Disclosure Act[12] indicates that lending in Fergus County, where Lewistown is located, by financial institutions located outside the county was de minimis in comparison to lending by institutions with offices in the county.[13] Based on the foregoing and a careful review of all the facts of record, the Board reaffirms that the relevant geographic market within which to evaluate the competitive effects of this proposal is the Lewistown banking market as currently defined by the Reserve Bank.[14]

B. Competitive Effects in Banking Markets

The Board has reviewed carefully the competitive effects of the proposal in the Lewistown banking market and in the other three banking markets where Glacier and Citizens compete directly in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by Glacier and Citizens,[15] the concentration level of market deposits and the increase in that level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[16]

7. Glacier argues that a substantial number of Lewistown residents travel to Great Falls to obtain consumer goods and services from large national retailers that are not available in Lewistown. Glacier also notes that Great Falls and Lewistown are included in the same telephone directory and that Lewistown is served by Great Falls television and radio stations. In addition, Glacier notes that Great Falls has a large airport, colleges, and medical facilities.

8. *See United States v. Phillipsburg National Bank*, 399 U.S. 350 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1970); *Brown Shoe Co. v. United States*, 370 U.S. 294, 336–337 (1962). *See also First York Ban Corp*, 88 *Federal Reserve Bulletin* 251, 251 (2002); *First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998); *First Union Corporation*, 83 *Federal Reserve Bulletin* 1012, 1013–14 (1997); *Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239, 241 (1996); and *Wyoming Bancorporation*, 68 *Federal Reserve Bulletin* 313, 314 (1982).

9. In delineating the relevant geographic market in which to assess the competitive effects of a bank merger or acquisition, the Board reviews population density; worker commuting patterns; the usage and availability of banking products; advertising patterns of financial institutions; the presence of shopping, employment, and other necessities; and other indicia of economic integration and transmission of competitive forces among banks. *See, e.g., First Security Corporation*, 86 *Federal Reserve Bulletin* 122 (2000); *Pennbancorp*, 69 *Federal Reserve Bulletin* 548 (1983).

10. An independent market research company conducted Glacier's survey.

11. 12 U.S.C. § 2901 et seq.

12. 12 U.S.C. § 2801 et seq.

13. A geographic market must represent a fair intermediate delineation, which avoids the indefensible extremes of drawing the market either too expansively or too narrowly based on the banking preferences of a few customers. *Philadelphia National Bank*, 374 U.S. at 320–21.

14. Glacier cites a previous determination by the Board to expand the Great Falls banking market by including several counties north of Great Falls to support its contention that Lewistown should be part of the Great Falls banking market. *Norwest Corporation*, 80 *Federal Reserve Bulletin* 455 (1994). The Board has reviewed the record of that application and notes that greater economic integration existed between the communities north of Great Falls and Great Falls than, on this application record, exists between Lewistown and Great Falls.

15. Deposit and market data are as of June 30, 2005. No thrift institutions operate in the Billings, Kalispell, Lewistown, or Missoula banking markets.

16. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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

other characteristics of the markets, and commitments made by Glacier to divest its operations in the Lewistown banking market.

Banking Market with Divestiture. In the Lewistown banking market, Glacier is the fourth largest depository organization, controlling deposits of $24 million, which represent 12.1 percent of market deposits. Citizens' subsidiary, First National Bank of Lewistown, is the largest depository institution in the market, controlling deposits of $72.1 million, which represent 36.3 percent of market deposits. On consummation and without the proposed divestiture, the HHI in this market would increase 879 points, from 2564 to 3443, and the pro forma market share of the combined entity would be 48.4 percent.

To reduce the potential adverse effects on competition in the Lewistown banking market, Glacier has committed to divest the Lewistown branch of its subsidiary, Western Security Bank, to a purchaser that the Board determines to be competitively suitable.[17] On consummation of the proposal and after accounting for the proposed divestiture, Glacier would become the largest depository institution in the market, controlling deposits of approximately $72.1 million, which represent 36.3 percent of market deposits. The HHI would not increase more than 167 points to 2731, and such an increase would be within the DOJ Guidelines.

In reviewing the competitive effects of the proposal in the Lewistown banking market, the Board also has considered carefully whether other factors mitigate the competitive effects of the proposal.[18] On consummation of the proposal and the proposed divestiture to a competitively suitable banking organization, at least four insured depository institutions would continue to operate in the market, and two institutions other than Glacier would each hold more than 10 percent of market deposits. Furthermore, the proposed divestiture would reduce the resulting increase in Glacier's market share by a substantial amount, approximately one-third, and would produce a new entrant or significantly enhance the market share of a small in-market competitor.

Banking Markets without Divestitures. Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Billings, Kalispell, and Missoula banking markets where Glacier's and Citizens' subsidiary banks also compete directly.[19] On consummation, all three banking markets would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in each banking market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that, in light of the proposed divestiture, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the four banking markets where Glacier and Citizens compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to

is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

17. Glacier has committed that before consummation of the proposed acquisition, it will execute an agreement for the proposed divestiture in the Lewistown banking market, consistent with this order. Glacier also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Glacier has committed that if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branch to an independent trustee who will be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable by the Board. *See BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

18. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in the market. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

19. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial factors of the proposal with respect to Glacier, Citizens, and their subsidiary banks. In light of all the facts of record, the Board has concluded that the capital levels of the relevant organizations are consistent with the Board's Capital Adequacy Guidelines. Based on its review of the record, the Board also believes that Glacier has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and partial cash purchase that will be funded with the proceeds from issuances of common stock and trust preferred securities.

The Board also has considered the managerial resources of Glacier, Citizens, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. The Board also has considered Glacier's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA. All of Glacier's banks received "outstanding" or "satisfactory" ratings at their most recent CRA performance evaluations by the banks' primary federal supervisors. Citizens' banks all received "satisfactory" ratings at their most recent CRA performance evaluations. After consummation of the proposal, Glacier plans to implement its CRA policies at Citizens' banks. Glacier has represented that the proposal will expand lending capacity and the products and services available to consumers where the banks operate, while maintaining local decision making and a community focus. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Glacier with the conditions imposed in this order and the commitments made to the Board in connection with the application, including the divestiture commitment discussed above. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Minneapolis, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 14, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix A

Montana Banking Markets in Which Glacier and Citizens Compete Directly

Billings

Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Treasure, Carbon, and Big Horn counties.

Kalispell

Lincoln and Flathead counties; Big Fork-Swan River division and the northern portion of Flathead division in Lake County that includes the communities of Polson, Finley Point, Big Arm, Elmo, and Dayton.

Lewistown

Fergus and Petroleum counties.

Missoula

Missoula County; Superior and Alberton divisions in Mineral County; Helmville and the western half of the Avon-Elliston division in Powell County; the southern half of Flathead division in Sanders County; the southern portion

of Flathead division in Lake County that includes the communities of Pablo, Ronan, Kicking Horse, Charlo, Post Creek, Moiese, St. Ignatius, Ravalli, and Arlee; Drummond division in Granite County; and Ravalli County, excluding the eastern portion of Sula-Edwards division.

Appendix B

MARKET DATA FOR MONTANA BANKING MARKETS

Billings

Glacier operates the sixth largest depository institution in the Billings banking market, controlling deposits of $193.3 million, which represent 8.3 percent of market deposits. Citizens operates the seventh largest depository institution in the market, controlling deposits of approximately $146 million, which represent 6.2 percent of market deposits. After consummation of the proposal, Glacier would become the second largest depository organization in the market, controlling deposits of approximately $339.3 million, which represent approximately 14.5 percent of market deposits. The HHI would increase 103 points to 1454. Sixteen insured depository institutions would remain in the banking market.

Kalispell

Glacier operates the largest depository institution in the Kalispell banking market, controlling deposits of $370.1 million, which represent 26.7 percent of market deposits. Citizens operates the ninth largest depository institution in the market, controlling deposits of approximately $41.4 million, which represent 3 percent of market deposits. After consummation of the proposal, Glacier would remain the largest depository organization in the market, controlling deposits of approximately $411.5 million, which represent approximately 29.7 percent of market deposits. The HHI would increase 160 points to 1684. Fifteen insured depository institutions would remain in the banking market.

Missoula

Glacier operates the second largest depository institution in the Missoula banking market, controlling deposits of $345.1 million, which represent 17.8 percent of market deposits. Citizens operates the tenth largest depository institution in the market, controlling deposits of approximately $62.6 million, which represent 3.2 percent of market deposits. After consummation of the proposal, Glacier would remain the second largest depository organization in the market, controlling deposits of approximately $407.6 million, which represent approximately 21.0 percent of market deposits. The HHI would increase 115 points to 1276. Eighteen insured depository institutions would remain in the banking market.

Juniata Valley Financial Corp. Mifflintown, Pennsylvania

Order Approving the Acquisition of a Bank

Juniata Valley Financial Corp. ("Juniata"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire 39.2 percent of the outstanding voting shares of The First National Bank of Liverpool ("Liverpool Bank"), Liverpool, Pennsylvania.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 28,335 (2006)). 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 3 of the BHC Act.

Juniata, with total consolidated assets of approximately $410.6 million, operates one depository institution, The Juniata Valley Bank ("Juniata Bank"), also in Mifflintown. Juniata Bank is the 77th largest insured depository institution in Pennsylvania, controlling deposits of approximately $341.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3]

Liverpool Bank is the 236th largest insured depository institution in Pennsylvania, controlling deposits of approximately $30 million. On consummation of the proposal, Juniata would become the 70th largest depository organization in Pennsylvania, controlling deposits of approximately $372 million, which represent less than 1 percent of state deposits.

The majority of Liverpool Bank's board of directors ("Commenters") opposes the proposal and has submitted comments to the Board urging denial on several grounds.[4] The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, regardless of whether they are supported or opposed by the management of the institutions to be acquired.[5] Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the BHC Act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and

1. 12 U.S.C. § 1842.

2. Juniata entered into an agreement to acquire 39.2 percent of the bank's outstanding common shares from a trust that is the single largest shareholder of Liverpool Bank.

3. Asset and deposit data are as of June 30, 2005, and ranking data take into account mergers and acquisitions to July 25, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Three directors, one of whom represents the interest of the trust ("Selling Director"), did not join the comment.

5. *See Cathay General Bancorp*, 92 *Federal Reserve Bulletin* C19 (2006) ("*Cathay*"); *Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 94 (2004) ("*Central Pacific*"); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) ("*North Fork*"); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 259 (1988) ("*BONY*").

future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.[6]

In considering these factors, the Board is mindful of the potential adverse effects that contested acquisitions might have on the financial and managerial resources of the company to be acquired and the acquiring organization. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board's discretion under the BHC Act.[7]

As explained below, the Board has carefully considered the statutory criteria in light of all the comments and information provided by Commenters and the responses submitted by Juniata.[8] The Board also has carefully considered all other information available, including information accumulated in the application process, supervisory information of the Board and other agencies, and relevant examination reports. In considering the statutory factors, particularly the effect of the proposal on the financial and managerial resources of Juniata, the Board has reviewed financial information, including the terms and cost of the proposal and the resources that Juniata proposes to devote to the transaction.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[9]

Juniata Bank and Liverpool Bank compete directly in the Harrisburg, Pennsylvania banking market ("Harrisburg banking market"), which is defined as Cumberland, Dauphin, Juniata, Lebanon, and Perry counties, all in Pennsylvania. Commenters contended that the relevant geographic market for reviewing this transaction should be Liverpool and the surrounding area that includes the portion of Perry County bordered by the Susquehanna River, the Juniata River, and Juniata County ("Proposed Market"). Commenters have asserted that the Proposed Market is the relevant market because the area is isolated from the rest of the Harrisburg banking market, particularly in the absence of a bridge near Liverpool to cross to the Dauphin County side of the Susquehanna River.

In reviewing this contention, the Board has considered the geographic proximity of the Harrisburg banking market's population centers and the worker commuting data from the 2000 census, which indicate that more than 60 percent of the labor force residing in Perry County commute to work in either Cumberland or Dauphin County. Residents of the Proposed Market also have highway access to Cumberland County and to Dauphin County over a bridge across the Susquehanna River.[10] In addition, small-business lending data submitted by depository institutions in 2005 under the Community Reinvestment Act ("CRA") regulations of the federal supervisory agencies indicate that approximately 22 percent of the total volume of small-business loans made to businesses in Perry County were made by depository institutions without a branch in the county but with branches elsewhere in the Harrisburg banking market. These and a number of other factors indicate that the Harrisburg banking market, which includes Liverpool, is the appropriate local geographic banking market for purposes of analyzing the competitive effects of this proposal.

The Board has reviewed carefully the competitive effects of the proposal in the Harrisburg banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Juniata Bank and Liverpool Bank,[11] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice

6. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates, or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. *See* 12 U.S.C. § 1842(c).

7. *See Cathay; Central Pacific; FleetBoston Financial Corporation*, 86 *Federal Reserve Bulletin* 751, 752 (2000); *North Fork*; *BONY*.

8. Commenters expressed concern that Juniata would be able to control Liverpool Bank after consummation of the proposal and requested that the Board require Juniata to enter into passivity commitments if the Board approves the proposal. In cases when a bank holding company proposes to acquire between 5 percent and 25 percent of a class of voting shares of a bank or bank holding company without being deemed to control such entity, the Board has relied on certain commitments to ensure that the investing bank holding company would be unable to exercise a controlling influence over the bank or bank holding company involved in the proposal. *See* 12 U.S.C. § 1841(a)(2)(C); *see also S&T Bancorp, Inc.*, 91 *Federal Reserve Bulletin* 74 (2005); *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996). Providing such commitments is not appropriate in this case, however, because Juniata would own more than 25 percent of the voting shares of Liverpool Bank and, therefore, would be deemed by the BHC Act to control the bank. *See* 12 U.S.C. § 1841(a)(2)(A).

9. 12 U.S.C. § 1842(c)(1).

10. The bridge is approximately 15 miles south of Liverpool.

11. Deposit and market share data are as of June 30, 2005, taking into account mergers and acquisitions as of July 25, 2006, and reflect 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, e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

Merger Guidelines ("DOJ Guidelines"),[12] other characteristics of the market, and public comment on the proposal.[13]

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Harrisburg banking market. On consummation, the Harrisburg banking market would remain unconcentrated, and numerous competitors would remain in the market.[14]

The DOJ also has reviewed the competitive effects of the proposal and advised the Board that consummation of the proposal likely would not have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Juniata and Liverpool Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the applicant, and public comments received on the proposal.[15]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. Juniata, Juniata Bank, and Liverpool Bank are all well capitalized and would remain so on consummation of the proposal.[16] Based on its review of the record, the Board also believes that Juniata has sufficient financial resources to effect the proposal. The proposed transaction initially would be funded with debt that is expected to be repaid by a dividend from Juniata Bank.

The Board also has considered the managerial resources of Juniata, Juniata Bank, and Liverpool Bank.[17] The Board

12. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

13. Commenters asserted that the competitive factors the Board must consider should weigh against approval because consummation of the proposed transaction would not have a pro-competitive effect. In particular, Commenters expressed concern that the acquisition would eliminate the possibility of de novo expansion by Juniata into the Liverpool community. Section 3(c)(1) of the BHC Act, the provision applicable to the competitive considerations in this proposal, does not require evidence of pro-competitive effects as a condition for approval. Rather, it prohibits the Board from approving a proposal that would result in or would further a monopoly and permits the Board to approve a proposal that substantially lessens competition only if such effects are clearly outweighed by the convenience and needs of the community to be served.

14. Juniata operates the 13th largest depository institution in the Harrisburg banking market, controlling deposits of $179.7 million, which represent 2 percent of market deposits. Liverpool Bank is the 28th largest depository institution in the market, controlling deposits of approximately $30 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Juniata would operate the 11th largest depository institution in the market, controlling deposits of approximately $209.7 million, which represent 2.3 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase 1 point to 787.

15. Commenters expressed concern that by entering into an agreement to sell the shares, the Selling Director might not have properly discharged his fiduciary duties to shareholders of Liverpool Bank. Juniata represented that the trust offered to sell the shares to Liverpool Bank before offering the shares to Juniata but that the trust could not reach an agreement with the bank. In addition, Commenters expressed concern that both the proposed sale price for the shares and the size of Juniata's proposed ownership would have a negative effect on the value of Liverpool Bank's shares. The Board notes that the courts have concluded that the limited jurisdiction to review applications under the BHC Act does not authorize the Board to consider matters relating only to corporate governance and the proper compensation of shareholders. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). These matters involve state and federal securities laws and state corporate law that may be raised before a court with the authority to provide shareholders with adequate relief, if appropriate.

16. Commenters expressed concern that because the proposal would cause Liverpool Bank to lose its status as an "S-corporation," the proposal would have a negative impact on Liverpool Bank's capital. The Board notes that Liverpool Bank would remain well capitalized on consummation of the proposal.

17. Commenters have requested that the Board consider Pennsylvania Business Corporation Law, which discourages contested takeovers of Pennsylvania corporations, in evaluating this proposal. Liverpool

has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations.[18] In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Juniata, Juniata Bank, and Liverpool Bank are all considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.[19] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[20]

The Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant depository institutions, other information provided by Juniata, and public comment received on the proposal.[21] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[22]

Juniata Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Deposit Insurance Corporation, as of October 1, 2003. Liverpool Bank received an overall rating of "outstanding" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of July 29, 2002. Juniata has represented that its purchase of shares is for investment purposes and currently has proposed no changes to the CRA programs at Liverpool Bank.

Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[23] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance

Bank has not adopted the relevant provisions of Pennsylvania law as part of its corporate governance practices, and those provisions of state law, therefore, are not applicable in this case. In addition, Juniata has represented that it currently intends to hold the shares of Liverpool Bank for investment purposes only.

18. Commenters contended that this proposal would violate the Depository Institution Management Interlocks Act (12 U.S.C. § 3201) ("Interlocks Act") because Juniata, which would be able to elect three directors to Liverpool Bank's board, operates a bank (Juniata Bank) in the same community as Liverpool Bank. Under the Interlocks Act and the Board's Regulation L (12 CFR 212 et seq.), the prohibition against interlocking management officials for banks in the same community does not apply to institutions that are affiliates. Juniata and Liverpool Bank would be affiliates under the Interlocks Act because Juniata would own more than 25 percent of the bank's voting shares, thereby making Liverpool Bank a subsidiary of Juniata. *See* 12 U.S.C. §§ 3201(3)(A) and 1841(d). Accordingly, a management official interlock between Juniata and Liverpool Bank would not be prohibited under the Interlocks Act.

19. 12 U.S.C. § 2901 et seq.

20. 12 U.S.C. § 2903.

21. Commenters contended that Juniata plans to acquire all of Liverpool Bank and expressed concern that the consequences of such an acquisition could include loss of services and local jobs as part of a cost-savings initiative. Juniata has represented that its ownership interest in Liverpool Bank would be for purposes of investment and has not indicated that it would attempt to change the services provided by Liverpool Bank. In addition, the Board notes that the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community and does not extend to the effect of a proposed acquisition on employment in a community. *See, e.g., Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996). Moreover, if Juniata proposes to acquire additional shares of Liverpool Bank in the future, Federal Reserve System approval would be required. In such a case, the Federal Reserve System would have to evaluate the effects of the proposal on the convenience and needs of the communities to be served at that time, as required by the BHC Act.

22. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,640 (2001).

23. Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully Commenters' request in light of all the facts of record. In the Board's view, Commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. Commenters' request fails to demonstrate why written comments do not present their views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting is denied.

by Juniata with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Philadelphia, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 11, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Passumpsic Bancorp
St. Johnsbury, Vermont

Order Approving the Merger of Bank Holding Companies

Passumpsic Bancorp ("Passumpsic"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with The Siwooganock Holding Company, Inc. ("Siwooganock") and acquire its subsidiary bank, Siwooganock Bank ("Siwooganock Bank"), and Siwooganock's ownership of 10 percent of the voting shares of The Lancaster National Bank ("Lancaster Bank"), all of Lancaster, New Hampshire.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 42,092 (2006)). 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 3 of the BHC Act.

Passumpsic, with total banking assets of approximately $426 million, operates one depository institution, Passumpsic Bank, with branches in Vermont and New Hampshire. Passumpsic Bank is the 35th largest insured depository institution in New Hampshire, controlling deposits of approximately $20 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[3]

Siwooganock, with total banking assets of approximately $78 million, operates one depository institution, Siwooganock Bank, in New Hampshire. Siwooganock Bank is the 31st largest insured depository institution in New Hampshire, controlling deposits of approximately $64 million. On consummation of the proposed transaction, Passumpsic would be the 30th largest depository organization in New Hampshire, controlling $84 million in deposits, which represent less than 1 percent of state deposits.

Lancaster Bank, with total assets of approximately $56 million, is the 32nd largest insured depository institution in New Hampshire, controlling deposits of approximately $51 million, which represent less than 1 percent of state deposits. If Passumpsic were deemed to control Lancaster on consummation of the proposal,[4] Passumpsic would become the 28th largest banking organization in New Hampshire, controlling approximately $135 million in deposits, which would represent less than 1 percent of state deposits.

Siwooganock's investment in Lancaster Bank has been a passive investment, and Siwooganock has complied with certain commitments previously relied on by the Board in determining that an investing bank holding company would not exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments"). Passumpsic has stated that it does not propose to control or exercise a controlling influence over Lancaster Bank and that its indirect investment in Lancaster Bank would also be a passive investment. In this light, Passumpsic has provided the Passivity Commitments to the Board.[5] For example, Passumpsic has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Lancaster Bank or any of its subsidiaries; not to seek or accept representation on the board of directors of Lancaster Bank or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with Lancaster Bank or any of its subsidiaries. Passumpsic also has committed not to attempt to influence the dividend policies, loan

1. 12 U.S.C. § 1842.

2. Passumpsic proposes to merge Siwooganock Bank into Passumpsic's subsidiary bank, Passumpsic Savings Bank ("Passumpsic Bank"), St. Johnsbury, Vermont. Passumpsic has filed applications with the Federal Deposit Insurance Corporation ("FDIC") for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) and with the bank commissioners of Vermont and New Hampshire for approval under applicable state laws.

3. Asset data are as of June 30, 2006; statewide deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity through June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks. *See* 12 U.S.C § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. *See, e.g., Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

5. The commitments made by Passumpsic are set forth in the appendix.

decisions, or operations of Lancaster Bank or any of its subsidiaries.

Based on these considerations and all the other facts of record, the Board has concluded that Passumpsic would not acquire control of, or have the ability to exercise a controlling influence over, Lancaster Bank through the proposed indirect acquisition of the bank's voting shares. The Board notes that the BHC Act would require Passumpsic to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of Lancaster Bank or attempt to exercise a controlling influence over Lancaster Bank.[6]

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Passumpsic is Vermont,[7] and Siwooganock is located in New Hampshire.[8]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[9] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[10]

Passumpsic Bank, Siwooganock Bank, and Lancaster Bank compete directly in the Littleton banking market.[11] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Passumpsic Bank, Siwooganock Bank, and Lancaster Bank;[12] the concentration level of market deposits and the increase in the level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines");[13] other characteristics of the market; and the Passivity Commitments made by Passumpsic with respect to Lancaster Bank.

Passumpsic Bank is the sixth largest depository institution in the market, controlling $20 million in deposits, which represent 5.4 percent of market deposits. Siwooganock Bank is the second largest depository institution in the market, controlling $64 million in deposits, which represent 17 percent of market deposits. Lancaster Bank is the fifth largest depository institution in the market, controlling $51 million in deposits, which represent 14 percent of market deposits. If considered a combined organization on consummation of the proposal, Passumpsic, Siwooganock,

6. *See, e.g., Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991).

7. A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

8. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

9. *See* 12 U.S.C. § 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Passumpsic is adequately capitalized and adequately managed, as defined by applicable law. Neither New Hampshire nor Vermont has any state age laws within the meaning of 12 U.S.C. § 1842(d)(1)(B). On consummation of the proposal, Passumpsic would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States and less than 30 percent of total deposits in New Hampshire. All other requirements of section 3(d) would be met on consummation of the proposal.

10. 12 U.S.C. § 1842(c)(1).

11. The Littleton banking market includes the towns of Bethlehem, Easton, Franconia, Landaff, Lisbon, Littleton, Lyman, Monroe, and Sugar Hill in Grafton County, New Hampshire; the towns of Carroll, Dalton, Groveton, Jefferson, Lancaster, Northumberland, Stratford, and Whitefield in Coos County, New Hampshire; and the towns of Brunswick, Granby, Guildhall, Lunenburg, and Maidstone in Essex County, Vermont.

12. Deposit and market share data are as of June 30, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, with one exception. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). The Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991). The deposits of one thrift in the banking market have been included at 100 percent because that thrift is actively engaged in commercial lending. The Board has previously stated that it may weigh the deposits of savings associations at 100 percent when competition from the savings association approximates that of a commercial bank. *See, e.g., Fifth Third Bancorp*, 87 *Federal Reserve Bulletin* 330, 334 (2001).

13. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

and Lancaster Bank would be the largest depository organization in the Littleton banking market, controlling $135 million in deposits, which would represent approximately 37 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Littleton banking market would increase 343 points to 2509.[14]

Consummation of the proposal would raise competitive issues in the Littleton banking market if Passumpsic acquired control of Lancaster Bank. As discussed above, Passumpsic does not intend to control the bank, and the Board has concluded that the proposal, including the Passivity Commitments, would not result in Passumpsic controlling or exercising a controlling influence over Lancaster Bank. Such a conclusion, however, does not end the Board's inquiry under the competitive considerations in the BHC Act. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.[15] The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.[16]

The Board has concluded, after careful analysis of the record, that no significant reduction in competition is likely to result from Passumpsic's proposed investment in Lancaster Bank. The record shows that Passumpsic intends to be a passive investor and that there will be no officer or director interlocks between Passumpsic and Lancaster Bank. There is no evidence that Passumpsic, by virtue of holding 10 percent of the voting shares of Lancaster Bank, would have access to confidential information that would enable it to engage in anticompetitive behavior with respect to Lancaster Bank.[17] Moreover, Passumpsic has committed not to exercise a controlling influence over Lancaster Bank and, therefore, may neither direct Lancaster Bank to act in coordination with Passumpsic nor acquire nonpublic financial information from Lancaster that would permit Passumpsic to act in a manner that reduces competition.

The Board notes that additional factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Littleton banking market. In addition to Passumpsic, Siwooganock, and Lancaster Bank, five other bank and thrift competitors, including two competitors, each with market shares of at least 15 percent, provide additional sources of banking services to the market. The Board also notes that the market includes three community credit unions with broad fields of membership that include most of the residents in the market, offer a wide range of consumer banking products, and operate street-level branches with drive-up service lanes.[18]

The DOJ also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Accordingly, in light of all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board also evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board expects

14. If only Passumpsic Bank and Siwooganock Bank were considered as a combined organization, the HHI for the Littleton banking market would increase 191 points to 1864. Although the banking market would become highly concentrated, the proposal would be consistent with Board precedent and DOJ Guidelines in this banking market. Passumpsic would become the second largest depository organization in this market, controlling $84 million in deposits, which would represent 22.4 percent of market deposits.

15. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

16. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995); *Sun Banks* at 244.

17. The Board recognizes that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In this case, no such information sharing currently takes place, and there are no legal, contractual, or statutory provisions that would allow any access to financial information of Lancaster Bank beyond the information already available to shareholders with a less than 5 percent interest.

18. The Board previously has considered competition from certain active credit unions as a mitigating factor. *See Capital City Group, Inc.*, 91 *Federal Reserve Bulletin* 418 (2005); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004). If Passumpsic, Siwooganock, and Lancaster Bank were considered as a combined organization on consummation of the proposal, the HHI for the Littleton banking market would increase 323 points to 2366 when three of the market's credit unions are weighted at 50 percent.

banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines.

The Board has carefully considered the financial factors of the proposal. Passumpsic Bank is well capitalized, and both Passumpsic and Passumpsic Bank would be well capitalized on consummation of the proposal. Based on its review of the record, the Board also finds that Passumpsic has sufficient financial resources to effect the proposal and that the financial resources of Passumpsic and its subsidiaries would not be adversely affected by the proposal. The proposed transaction would be funded by a dividend from Passumpsic Bank.

The Board also has considered the managerial resources of Passumpsic, Siwooganock, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Passumpsic, Siwooganock, and their subsidiary banks are considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Passumpsic and the institutions involved are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[19] Passumpsic Bank and Siwooganock Bank received "satisfactory" ratings at their most recent examinations for CRA performance by the FDIC, as of September 7, 2004, and July 21, 2003, respectively. Lancaster Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 13, 2001. The proposal would allow Passumpsic to offer a broader array of financial products and services over an expanded geographic area, including affordable housing programs, accounts with low- or no-balance requirements, no-cost electronic banking services, and electronic transfer accounts. Based on all the facts of record, the Board concludes that the considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

19. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Passumpsic with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 15, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin. Absent and not voting: Governor Bies.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix

Passumpsic Bancorp ("Passumpsic"), St. Johnsbury, Vermont, commits that Passumpsic will not, without the prior approval of the Federal Reserve, directly or indirectly:

(1) exercise or attempt to exercise a controlling influence over the management or policies of The Lancaster National Bank ("Lancaster Bank"), Lancaster, New Hampshire, or any of its subsidiaries;
(2) seek or accept representation on the board of directors of Lancaster Bank or any of its subsidiaries;
(3) have or seek to have any employee or representative serve as an officer, agent, or employee of Lancaster Bank or any of its subsidiaries;
(4) take any action that would cause Lancaster Bank or any of its subsidiaries to become a subsidiary of Passumpsic or any of Passumpsic's subsidiaries;
(5) acquire or retain shares that would cause the combined interests of Passumpsic and any of Passumpsic's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of Lancaster Bank or any of its subsidiaries;
(6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or the board of directors of Lancaster Bank or any of its subsidiaries;
(7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Lancaster Bank or any of its subsidiaries;
(8) attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies;

the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of Lancaster Bank or any of its subsidiaries;

(9) dispose or threaten to dispose of shares of Lancaster Bank or any of its subsidiaries as a condition of specific action or nonaction by Lancaster Bank or any of its subsidiaries; or

(10) enter into any banking or nonbanking transactions with Lancaster Bank or any of its subsidiaries, except that Passumpsic may establish and maintain deposit accounts with any depository institution subsidiary of Lancaster Bank, provided that the aggregate balance of all such accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Lancaster Bank or any of its subsidiaries.

Trustmark Corporation
Jackson, Mississippi

Order Approving the Merger of Bank Holding Companies

Trustmark Corporation ("Trustmark"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with Republic Bancshares of Texas, Inc. ("Republic") and acquire its subsidiary bank, Republic National Bank ("Republic Bank"), both of Houston, Texas.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 30,680 (2006)). 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 3 of the BHC Act.

Trustmark, with total consolidated assets of approximately $8.2 billion, is the 110th largest depository organization in the United States.[3] Trustmark operates subsidiary-insured depository institutions in Florida, Mississippi, Tennessee, and Texas. In Texas, Trustmark is the 195th largest depository organization, controlling deposits of approximately $139 million.

Republic, with total consolidated assets of approximately $654 million, operates one subsidiary-insured depository institution in Texas. Republic is the 64th largest depository organization in the state, controlling deposits of approximately $541 million.

On consummation of this proposal, Trustmark would become the 104th largest insured depository organization in the United States, with total consolidated assets of approximately $8.9 billion. In Texas, Trustmark would become the 54th largest depository organization, controlling deposits of approximately $680 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Trustmark is Mississippi,[4] and Republic is located in Texas.[5]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[6] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

1. 12 U.S.C. § 1842.

2. Trustmark's lead subsidiary bank, Trustmark National Bank ("Trustmark Bank"), also of Jackson, has filed an application with the Office of the Comptroller of the Currency ("OCC") to merge Republic Bank into Trustmark Bank pursuant to the Bank Merger Act (12 U.S.C. § 1828(c)).

3. Asset data are as of March 31, 2006, and nationwide ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through May 5, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

5. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7), 1842(d)(1)(A) and (d)(2)(B)).

6. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). Trustmark is adequately capitalized and adequately managed, as defined by applicable law. Republic Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Trustmark would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Texas. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

7. 12 U.S.C. § 1842(c)(1).

Trustmark and Republic compete directly in the Houston, Texas banking market ("Houston Market").[8] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Trustmark and Republic,[9] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[10] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines. After consummation, the Houston Market would remain highly concentrated as measured by the HHI, with no increase in concentration, and numerous competitors would remain in the market.[11]

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Houston Market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Trustmark, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of factors in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. Trustmark, both of its subsidiary banks, and Republic Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of these factors, the Board finds that Trustmark has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Trustmark, Republic, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Trustmark, Republic, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Trustmark's plans for implementing the

8. The Houston Market is defined as the Houston-Sugar Land-Baytown Metropolitan Statistical Area ("MSA"), which includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties, all in Texas.

9. Deposit and market share data are as of June 30, 2005, reflect merger activity through May 5, 2006, and 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

10. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

11. In the Houston Market, Trustmark is the 50th largest depository organization, controlling deposits of $139 million, which represent less than 1 percent of market deposits. Republic is the 22nd largest depository organization in the market, controlling deposits of $541 million, which represent less than 1 percent of market deposits. On consummation of the proposed merger, Trustmark would become the 20th largest depository institution in the Houston Market, controlling deposits of approximately $680 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2161, and 106 competitors would remain in the market.

proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[13]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Trustmark's and Republic's subsidiary banks, data reported by Trustmark under the Home Mortgage Disclosure Act ("HMDA"),[14] other information provided by Trustmark, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data reported by Trustmark for its Jackson, Mississippi, and Memphis, Tennessee assessment areas, that Trustmark engaged in discriminatory treatment of minority individuals in its home mortgage lending.[15]

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

Trustmark Bank, Trustmark's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating from the OCC at its most recent CRA performance evaluation, as of November 2, 1998.[17] Trustmark's other subsidiary bank, Somerville Bank & Trust Company ("Somerville Bank"), Somerville, Tennessee, received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC") at its most recent CRA evaluation, as of September 23, 2002. In addition, Republic Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of November 4, 2005. Trustmark has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from Republic after the merger of Trustmark Bank and Republic Bank.

B. HMDA and Fair Lending Record

The Board has considered carefully the lending records of Trustmark's subsidiary banks in light of public comment about their records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Trustmark had disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants in the Memphis, Tennessee, MSA and African-American applicants in the Jackson, Mississippi, MSA. The commenter also asserted, based on 2004 HMDA data, that Trustmark made higher-cost loans[18] in the Jackson MSA more frequently to African Americans than to nonminorities.[19]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Trustmark or its subsidiaries are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis.[20] The Board recognizes that HMDA data alone, even with the recent addition of pricing information,

12. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

13. 12 U.S.C. § 2903.

14. 12 U.S.C. § 2801 et seq.

15. The commenter expressed concern about Trustmark's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate when so required. Trustmark has stated that it makes loans to such nontraditional providers under the same terms, circumstances, and due diligence procedures as are applicable to Trustmark's other small business borrowers. Trustmark has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

17. As of March 31, 2006, Trustmark Bank accounted for approximately 97.5 percent of the total domestic deposits of Trustmark's two subsidiary banks.

18. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

19. The comments have been forwarded to the OCC, the primary federal supervisor of Trustmark Bank, for its consideration in the context of evaluating the bank for compliance with fair lending laws and regulations.

20. The Board analyzed the 2004 and preliminary 2005 HMDA data reported by Trustmark Bank in the Jackson and Memphis MSAs and in

provide only limited information about the covered loans.[21] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Trustmark's subsidiary banks with fair lending laws.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of Trustmark's subsidiary banks. In addition, the record indicates that Trustmark has taken steps to ensure compliance with fair lending and other consumer protection laws. Trustmark employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, Trustmark monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets and by conducting a more extensive internal comparative file review when merited. Trustmark also provides annual fair lending training to all its lending personnel.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of Trustmark's subsidiary banks. Based on all the facts of record, the Board concludes that Trustmark's established efforts and record demonstrate that Trustmark is active in helping to meet the credit needs of all of its communities.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Trustmark, comments received on the proposal, and confidential supervisory information. Trustmark has represented that the proposed transaction would provide Republic's customers with expanded products and services. Based on a review of the entire record and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.[22]

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Trustmark with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 3, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Kohn, Kroszner, and Warsh.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

its statewide assessment areas in Tennessee, Florida, Louisiana, Mississippi, and Texas.

21. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

22. The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

ORDER ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Wachovia Corporation
Charlotte, North Carolina

Order Approving Acquisition of Savings Associations and Other Nonbanking Companies

Wachovia Corporation ("Wachovia"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[1] and section 225.24 of the Board's Regulation Y[2] to acquire Golden West Financial Corporation ("Golden West"), Oakland, California, and its subsidiary savings associations, World Savings Bank, FSB ("World Savings"), Oakland, California, and World Savings Bank, FSB (Texas) ("World Savings-TX"), Houston, Texas.[3] In addition, Wachovia has requested the Board's approval to acquire indirectly certain nonbanking subsidiaries of Golden West and World Savings and thereby engage in credit extension, trust company, investment advisory, and securities brokerage activities in accordance with section 4(c)(8) of the BHC Act and section 225.28(b) of the Board's Regulation Y.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 40,122 (2006)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Wachovia, with total consolidated assets of approximately $553.6 billion, is the third largest depository organization in the United States, controlling deposits of approximately $308.7 billion, which represent approximately 4.8 percent of the total amount of deposits of insured depository institutions in the United States.[5] Wachovia operates two insured subsidiary depository institutions, Wachovia Bank, National Association ("Wachovia Bank"), Charlotte, North Carolina, and Wachovia Bank of Delaware, National Association ("Wachovia Bank-DE"), Wilmington, Delaware, in 16 states and the District of Columbia.[6]

Golden West, with total consolidated assets of approximately $128.8 billion, is the tenth largest depository organization in the United States, controlling deposits of approximately $62.6 billion, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in the United States. Golden West operates World Savings and World Savings-TX in ten states.[7]

On consummation of this proposal, Wachovia would remain the third largest depository organization in the United States, with total consolidated assets of approximately $682.4 billion. Wachovia would control deposits of approximately $371 billion, which represent approximately 5.8 percent of the total amount of deposits of insured depository institutions in the United States.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company and the other nonbanking activities for which Wachovia has requested approval are closely related to banking for purposes of section 4(c)(8) of the BHC Act.[8] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.[9] Wachovia has represented that Golden West already conducts its activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing the conduct of these activities by bank holding companies. Wachovia has committed that the activities of World Savings, World Savings-TX, and the other nonbanking subsidiaries that it proposes to acquire will be limited to those activities that are permissible for bank holding companies under section 4(c)(8).

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[10] As part of its evaluation under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the

1. 12 U.S.C. §§ 1843(c)(8) and 1843(j).

2. 12 CFR 225.24.

3. Wachovia plans to merge Golden West into Wachovia, with World Savings and World Savings-TX each becoming a subsidiary savings association of Wachovia. World Savings-TX is currently a wholly owned subsidiary of World Savings, and Wachovia has committed to revise that structure so that World Savings-TX will not be a subsidiary of any insured depository institution.

4. *See* Appendix A for a listing of these subsidiaries and their activities. Wachovia also proposes to acquire Golden West's subsidiary, World Savings Insurance Agency, Inc., San Leandro, California, in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

5. Nationwide asset data are as of June 30, 2006. Nationwide deposit and ranking data are as of June 30, 2005, and reflect merger activity through August 9, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. Wachovia's subsidiary banks operate in Alabama, California, Connecticut, Delaware, Florida, Georgia, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

7. Golden West's subsidiary savings associations operate in Arizona, California, Colorado, Florida, Illinois, Kansas, Nevada, New Jersey, New York, and Texas.

8. 12 CFR 225.28(b)(1), (2), 4(ii), (5), (6), and (7)(i).

9. 12 CFR 225.28(b)(4)(ii). *See, e.g., Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485, 486 (2002); *The Banc Corporation*, 85 *Federal Reserve Bulletin* 269, 270 (1999).

10. *See* 12 U.S.C. § 1843(j)(2)(A).

public benefits of the proposal.[11] In acting on notices to acquire savings associations, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12]

The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information, publicly reported financial information, and public comments submitted on the proposal.[13] The Board also has consulted with, and considered information provided by, the Office of the Comptroller of the Currency ("OCC"), the primary federal supervisor of Wachovia's subsidiary depository institutions, and the Office of Thrift Supervision ("OTS"), the primary federal supervisor of Golden West and its subsidiary savings associations.

COMPETITIVE CONSIDERATIONS

The Board has considered carefully the competitive effects of Wachovia's acquisition of Golden West, including the acquisition of World Savings and World Savings-TX, and of the other Golden West nonbanking subsidiaries in light of all of the facts of record.

A. Acquisition of Savings Associations

Wachovia and Golden West have subsidiary depository institutions that compete directly in 26 banking markets in California, Florida, New Jersey, New York, and Texas.[14] The Board has reviewed carefully the competitive effects of the proposal in each of these relevant banking markets in light of all the facts of record, including public comment on the proposal. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in each market ("market deposits") controlled by Wachovia and Golden West,[15] the concentration levels of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[16] and other characteristics of the markets.

1. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 24 of the 26 banking markets.[17] Of these 24 banking markets, 3 banking markets would remain unconcentrated; 20 markets would remain moderately concentrated; and 1 market would remain highly concentrated, without an increase in market concentration as measured by the HHI.[18] Numerous competitors would remain in each of the 24 banking markets.

2. Two Banking Markets Warranting Special Scrutiny

Wachovia and Golden West compete directly in two banking markets that warrant a detailed review: Punta Gorda Area and Indian River County, both in Florida. In these markets, the concentration levels on consummation would exceed the DOJ Guidelines or the resulting market share would be significant.

For these markets, the Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.[19] The Board has identified factors that indicate the proposal would not have a significantly adverse impact on competition, despite the post-consummation increases in the HHIs and market shares in both markets.

11. 12 CFR 225.26; *see, e.g., BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

12. 12 U.S.C. § 2901 et seq.

13. The Board received more than 200 comments supporting the transaction and approximately ten comments expressing concern about various aspects of the proposal.

14. These banking markets are described in Appendix B.

15. State deposit and market share data are as of June 30, 2005, adjusted to reflect subsequent mergers and acquisitions through August 9, 2006, and are based on calculations in which the deposits of thrift institutions, including World Savings and World Savings-TX, 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, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

16. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") 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 is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

17. The effect of the proposal on the concentration of banking resources in these 24 markets is described in Appendix B. One commenter alleged that the proposal exceeded DOJ Guidelines in three of the 26 banking markets, including the two markets discussed in the order and the West Palm Beach Area, Florida banking market. As described in Appendix B, the competitive impact of the proposal in the West Palm Beach Area market is within the DOJ Guidelines.

18. In making these calculations, the Board weighted the current market deposits of savings associations, including World Savings and World Savings-TX, at 50 percent. In the post-consummation calculations, the market deposits of World Savings and World Savings-TX are weighted at 100 percent because they would be controlled by a commercial banking organization.

19. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

Punta Gorda Area. In the Punta Gorda Area banking market,[20] the HHI would slightly exceed the DOJ Guidelines on consummation. Wachovia is the largest depository institution in the market, controlling deposits of approximately $780.5 million, which represent 25.5 percent of market deposits. Golden West is the eighth largest depository institution in the market, controlling deposits of approximately $183.9 million, which on a 50-percent weighted basis represent 3 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository organization in the market, controlling deposits of approximately $964.4 million, which represent approximately 30.6 percent of market deposits. The HHI would increase 222 points to 1836.

Several factors indicate that the increase in concentration in the Punta Gorda Area banking market, as measured by the HHI, overstates the potential anticompetitive effect of the proposal in the market. After consummation of the proposal, 14 other depository institution competitors would remain in the market. In addition, the second and third largest bank competitors in the market would control approximately 21 percent and 16 percent, respectively, of market deposits.

In addition, significant recent entries in the Punta Gorda Area banking market evidence the market's attractiveness for entry. The Board notes that two depository institutions have entered the market de novo since June 2005.[21] Other factors indicate that the market remains attractive for entry. From 2002 to 2005, the annualized percentage increase in total deposits in the market exceeded both the annualized average percentage increase in total deposits statewide and the average annualized percentage deposit increase for all Florida metropolitan areas. Furthermore, during that time period, the annualized percentage increase in population in the market exceeded that of the state and its metropolitan areas.

Indian River County. In the Indian River County banking market,[22] the HHI would also exceed the DOJ Guidelines on consummation. Wachovia is the largest depository institution in the market, controlling deposits of approximately $1 billion, which represent 30.5 percent of market deposits. Golden West is the seventh largest depository institution in the market, controlling deposits of approximately $367.6 million, which on a 50-percent weighted basis represent 5.6 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository organization in the market, controlling deposits of approximately $1.4 billion, which represent approximately 39.4 percent of market deposits. The HHI would increase 538 points to 2041.

A number of factors indicate that the increase in concentration in the Indian River banking market, as measured by the HHI, overstates the potential anticompetitive effects in the market. After consummation of the proposal, 14 other depository institution competitors would remain in the market. In addition, the second and third largest bank competitors in the market would each control approximately 12 percent of market deposits.

The Board also has considered the competitive influence of an active community credit union that offers a wide range of consumer banking products. The Indian River Federal Credit Union ("Indian River FCU") controls approximately $57 million in deposits in the Indian River County banking market. Almost all residents in the banking market are eligible for membership in this credit union, which operates street-level branches with drive-up service lanes.[23] The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

In addition, the record of significant recent entry into the Indian River County banking market evidences the market's attractiveness for entry. In particular, the Board notes that two depository institutions have entered the market de novo since June 2005.[24] Other factors indicate that the Indian River County banking market remains attractive for entry. For example, from 2002 to 2005, the annualized percentage increase in total market deposits in the Indian River County banking market exceeded the annualized average percentage increase in total deposits for Florida metropolitan markets and the annualized percentage increase in total deposits nationwide and for Florida statewide during that time period. The market's annualized percentage increase in

20. The Punta Gorda Area banking market is defined as the portion of Charlotte County that is east of the harbor at the Myakka River and the portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte), all in Florida.

21. The deposit data used to calculate market deposits are as of June 30, 2005, and accordingly do not include these institutions.

22. The Indian River County banking market is defined as Indian River County, Florida.

23. The Board previously has considered the competitive influence of certain active credit unions as a mitigating factor. *See F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004). If the deposits of the Indian River FCU are weighted at 50 percent, Wachovia would be the largest of 17 depository institutions in the market, with approximately 30.2 percent of market deposits, and Golden West would be the seventh largest depository institution in the market, controlling approximately 5.5 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository institution in the market with deposits of approximately $1.4 billion or approximately 39.1 percent of market deposits. The HHI would increase 530 points to 2009.

24. For the reasons noted above, the deposits of these institutions have not been included in calculating market deposits.

The Board also notes that National City Corporation ("National City"), Cleveland, Ohio, is seeking Board approval to acquire Harbor Florida Bancshares Inc. and its subsidiary thrift, Harbor Federal Savings Bank ("Harbor FSB"), both of Fort Pierce, Florida. This transaction, if approved and consummated, would significantly reduce any potential anticompetitive effects of the transaction in the market. Harbor FSB controls $352.9 million of deposits in the market, representing 5.3 percent of 50-percent weighted market deposits, making it the eighth largest depository institution in the market. If National City were to consummate its proposed acquisition of Harbor FSB before Wachovia acquires Golden West, the HHI in the market would increase 480 points to 1890 as a result of the Golden West acquisition.

population and per capita income exceeded the annualized percentage increase in population and the per capita income nationwide and for Florida statewide.

B. Other Nonbanking Activities

The Board also has carefully considered the competitive effects of Wachovia's proposed acquisition of Golden West's other nonbanking subsidiaries in light of all the facts of record. Wachovia and Golden West both engage in credit extension, trust company, investment advisory, and securities brokerage activities. The markets for these activities are regional or national in scope and unconcentrated, and there are numerous providers of these services. Accordingly, the Board concludes that Wachovia's acquisition of Golden West's other nonbanking subsidiaries would not have a significantly adverse effect on competition in any relevant market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also reviewed the probable competitive effects of the proposal, including the acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries of Golden West and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market, including the Punta Gorda Area and Indian River County banking markets, or in any relevant market for the other proposed banking activities. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction, including the acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries of the Golden West organization, would not have a significantly adverse effect on competition or on the concentration of resources in the Punta Gorda Area or Indian River County banking markets, in any other relevant banking market, or in any relevant market for the other proposed nonbanking activities. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of Wachovia, Golden West, and their subsidiaries. The Board also has reviewed the effect that the transaction would have on those resources in light of all facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Wachovia and Golden West, and public comments received on the proposal.

In evaluating financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary-insured depository institutions and the organizations' nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of the proposal. Wachovia, Golden West, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.[25] Based on its review of the record, the Board also finds that Wachovia has sufficient financial resources to effect the proposal. The proposed acquisition is structured as a combined cash purchase and share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Wachovia, Golden West, and their subsidiary depository institutions, including assessments of their management,[26] risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws.[27] Wachovia, Golden West, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Wachovia's plans

25. Several commenters expressed concern about the financial impact of World Savings' adjustable-rate and nontraditional mortgage lending activities on the combined organization, asserting that interest rate increases and other economic uncertainties would increase the probability of borrower default. The Board has reviewed the anticipated capital levels, financial resources, and risk-management systems of the combined organization and World Savings' record of managing its mortgage portfolio in its consideration of the financial and managerial factors of this proposal. The Board also has consulted with the OTS about World Savings' lending products and activities, including the institution's risk-management programs.

26. A commenter alleged that Wachovia's board of directors and management officials lacked ethnic diversity. The Board notes that the racial, ethnic, or gender compositions of a banking organization's management are not factors that the Board is permitted to consider under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

27. A commenter expressed concern about Wachovia's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states in which they operate when so required. Wachovia stated that it makes loans to these types of nontraditional providers under terms, circumstances, and due-diligence procedures that are more stringent than those it applies to other borrowers.

for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

RECORDS OF PERFORMANCE UNDER THE CRA

The Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a proposed acquisition of any insured depository institution, including a savings association.[28] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[29]

In response to the Board's request for public comment on this proposal, several comments were submitted expressing concern about Wachovia's and Golden West's records of lending to LMI or minority individuals and in LMI or predominantly minority communities.[30] Some commenters who opposed the proposal alleged that Wachovia has not provided adequate banking services or products to minorities and communities in California and other areas.[31] These commenters criticized Wachovia's proposed community development plan for California as too small relative to the size of similar commitments by other financial institutions.

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Wachovia's and Golden West's subsidiary depository institutions, data reported under the Home Mortgage Disclosure Act ("HMDA")[32] by the subsidiaries of Wachovia and Golden West that engage in home mortgage lending, other information provided by Wachovia and Golden West, confidential supervisory information, and public comment received on the proposal.[33]

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[34]

Wachovia Bank, Wachovia's lead subsidiary bank, received an "outstanding" rating from the OCC at its most recent CRA performance evaluation, as of June 30, 2003.[35] World Savings also received an "outstanding" rating at its most recent CRA performance evaluation by the OTS, as of August 15, 2005.[36]

Wachovia has represented that it will generally continue the current CRA and consumer compliance programs of Wachovia's and Golden West's subsidiary depository institutions after consummation and will integrate successful programs and products from both organizations.

CRA Performance of Wachovia Bank. In addition to the overall "outstanding" rating that Wachovia Bank received at its most recent CRA performance evaluation,[37] the bank received separate overall "outstanding" or "satisfactory" ratings in all multistate metropolitan statistical areas ("MSAs") and states reviewed by the OCC.[38] The examiners reported that the bank had excellent levels of community development lending, investment, and services in most

28. 12 CFR 228.11(a)(3)(iv).

29. 12 U.S.C. § 2903.

30. Commenters expressed concerns about the appropriateness of adjustable-rate and "nontraditional" mortgage products currently offered by World Savings for certain LMI and minority borrowers. The commenters stated that consumers in California may not fully understand the consequences of these mortgage products and that these mortgage products increase chances of default. The Board has consulted with the OTS about World Savings' mortgage products. Additionally, the Board and the other federal bank supervisors have issued final guidance on these mortgage products, including disclosure of relevant information to customers. Interagency press release, "Federal Financial Regulatory Agencies Issue Final Guidance on Nontraditional Mortgage Product Risks" (September 29, 2006), www.federalreserve.gov/BoardDocs/Press/bcreg/2006/20060929/default.htm. The Board expects Wachovia to offer its products in a manner consistent with this guidance and any future guidance on this issue.

31. Wachovia began operations in California in March 2006, after its acquisition of Westcorp and its subsidiary savings association, Western Financial Bank, FSB, both of Irvine.

32. 12 U.S.C. § 2801 et seq.

33. The Board received more than 200 comments supporting the proposed transaction. These commenters stated that Wachovia and Golden West have been responsive to the needs of their communities through innovative mortgage products designed for LMI borrowers and have provided significant financial, technical, and personnel support for community development projects.

34. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

35. Wachovia's other subsidiary bank, Wachovia Bank-DE, also received an "outstanding" rating from the OCC at its most recent CRA evaluation, as of December 31, 2002.

36. Golden West's other subsidiary thrift, World Savings-TX, also received an "outstanding" rating at its most recent CRA evaluation by the OTS, as of August 15, 2005.

37. The evaluation period for home mortgage, small business, and small farm lending was January 1, 2001, through December 31, 2002. Community development activities were considered through June 30, 2003, and included community development lending from September 30, 2000, when Wachovia was doing business as First Union Corporation.

38. Full-scope evaluations were conducted in Wachovia Bank's assessment areas in the Augusta-Aiken (GA-SC), Charlotte-Gastonia-Rock Hill (NC-SC), Newburgh (NY-PA), Philadelphia (PA-NJ), and Washington (DC-MD-VA-WV) MSAs. Full-scope evaluations were also conducted in other select MSAs in Connecticut, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Limited-scope evaluations were conducted in other relevant MSAs in those states.

full-scope assessment areas and demonstrated creativity and innovation in its loan products, investments, and services.

Examiners rated Wachovia Bank "outstanding" or "high satisfactory" under the lending test in all MSAs and states reviewed, based on a review of the bank's housing-related loans reported under HMDA, small loans to businesses and small loans to farms, and qualified community development loans.[39] Examiners stated that Wachovia Bank's lending reflected adequate responsiveness to community credit needs and adequate distribution among different geographies and income levels throughout its assessment areas.[40] Examiners found that Wachovia Bank offered a variety of flexible mortgage loan products that addressed the credit needs of LMI geographies and individuals. They noted that Wachovia Bank enhanced its flexible mortgage product program by partnering with approximately 170 not-for-profit community organizations throughout its various assessment areas to provide homebuyer counseling for LMI loan applicants.

Examiners generally characterized Wachovia Bank's distribution of small loans to businesses in each of its primary assessment areas as either excellent or good. In assessing the bank's small loans to businesses, examiners focused on the distribution of loans among geographies of differing income levels and, in particular, on loans to businesses in LMI areas. For example, the examiners favorably noted that Wachovia Bank made small loans to businesses totaling approximately $709 million in the Charlotte-Gastonia-Rock Hill MSA, with 22.7 percent of the total number of those loans to businesses in LMI geographies, and $907 million in that type of loan in the Washington, D.C. MSA, with 19.8 percent of the total number of those loans to businesses in LMI geographies.

Examiners also noted that Wachovia Bank's community development lending in its assessment areas often had a significant positive impact on its overall rating under the lending test in those areas. In commending the bank's level of community development lending, examiners specifically noted that the bank's community development loans during its evaluation period totaled $27 million in the Augusta-Aiken MSA, $181 million in the Charlotte-Gastonia-Rock Hill MSA, and $114 million in the Washington, D.C., MSA.

Examiners rated Wachovia Bank "outstanding" or "high satisfactory" under the investment test in all but one of the MSAs and states reviewed in the performance evaluation. Examiners noted, for example, that Wachovia's total qualified investments included $46 million in North Carolina, $114 million in Florida, and $116 million in the Washington, D.C., MSA during the evaluation period. Examiners found that Low Income Housing Tax Credits ("LIHTCs") were an integral part of the bank's investment program in most of its assessment areas.

Examiners rated Wachovia Bank "outstanding" or "high satisfactory" under the service test in all MSAs and states reviewed. Examiners concluded that the bank's distribution of branch offices and ATMs was satisfactory and easily accessible to geographies and individuals of different income levels. In addition, examiners noted several financial literacy programs that Wachovia offers customers, many of which were focused on LMI communities and individuals.

Wachovia represented that it has maintained a high level of community reinvestment activity since its last CRA performance evaluation. For example, Wachovia stated that, in its assessment areas in 2005, it provided approximately $12 million in small loans to businesses, more than $25 billion in community development loans and investments, and training for more than 22,000 low-income families and individuals in money-management and computer skills. Wachovia has actively participated in the New Market Tax Credit ("NMTC") and LIHTC programs, receiving $383 million in NMTC allocations since 2003 and investing $3 billion in LIHTCs, as of May 2006. It also stated that it has made $55 million in various direct investments in community and economic development partnerships and financial institutions in 2005.

CRA Performance of World Savings. As noted above, World Savings received an overall "outstanding" rating from the OTS at its last performance evaluation.[41] Examiners stated that World Savings had an excellent record of meeting the credit and deposit needs of its assessment areas.[42] The institution's overall CRA rating was primarily based on its performance in California where the majority of deposit operations and lending activity were

39. "Small loans to businesses" are loans with original amounts of $1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. "Small loans to farms" are farm or agricultural loans with original amounts of $500,000 or less that are secured by farmland or finance agricultural production, and other loans to farmers.

40. One commenter specifically criticized Wachovia Bank's amount of lending to LMI individuals in Philadelphia. Examiners stated that Wachovia Bank's lending levels reflected adequate responsiveness to the credit needs of the Philadelphia MSA. During the evaluation period, the bank originated more than 34 percent of its total number of home-purchase loans in the MSA to LMI individuals. In addition, the bank originated $2 billion in home-mortgage loans, with 19 percent of the total number of those loans in the MSA's LMI geographies. The bank also made $2 billion in small loans to businesses in the Philadelphia MSA, with 12.7 percent of the total number of those loans to businesses in the MSA's LMI geographies. Examiners specifically commended Wachovia Bank's community development lending in the Philadelphia MSA, which totaled $154 million during the evaluation period.

Wachovia also represented that in 2005, it provided more than $160 million in investments that supported affordable housing and city schools and made $6.4 million in community grants to nonprofit organizations in the Philadelphia MSA. The bank also originated $193 million in home-mortgage loans to LMI borrowers in the Philadelphia MSA.

41. The evaluation period was from July 1, 2001, through December 31, 2004.

42. Ratings were based on full-scope evaluations conducted in 41 assessment areas in California, Florida, Colorado, Texas, Arizona, New Jersey, Kansas, Illinois, and Nevada, and in the New York-Northern New Jersey-Long Island (NY-NJ-PA) MSA ("NYC MSA"), and on limited-scope evaluations of other assessment areas in the relevant states.

conducted during the evaluation period.[43]

World Savings received an overall "outstanding" rating for its lending performance, and "outstanding" or "high satisfactory" ratings for lending in six of nine states reviewed, as well as in the NYC MSA.[44] It originated approximately $99 billion in mortgage loans in its assessment areas during the evaluation period. Examiners noted that World Savings' lending record reflected excellent geographic distribution throughout its assessment areas, particularly in California, and good distribution among borrowers of different income levels. World Savings originated approximately $15 billion in mortgage loans in LMI geographies in its assessment areas. Examiners particularly commended the institution's loan distribution to LMI areas in California, Colorado, Illinois, and Texas.

Examiners concluded that World Savings was a leader in making community development loans in California and Colorado. They noted that World Savings made significant contributions to the advancement of affordable housing through its direct multifamily lending as well as through its lending to affordable housing consortia. Examiners also stated that World Savings made extensive use of innovative loan programs and flexible lending practices to serve the credit needs of its assessment area. In addition to offering special loan programs and alternative underwriting guidelines tailored to LMI applicants, World Savings provided approximately $25 million in interest-rate concessions and fee waivers to borrowers during the evaluation period.

Under the investment test, World Savings received an overall "outstanding" rating. At year-end 2004, World Savings held qualifying investments totaling more then $400 million, primarily in mortgage-backed securities secured by loans to LMI borrowers.

World Savings received an overall "outstanding" rating under the service test. Examiners found that World Savings provided services that were tailored to the convenience and needs of its assessment areas, particularly LMI geographies and individuals. Examiners also noted that World Savings was a leader in providing community development services in its California assessment areas. These services include its participation in the Federal Home Loan Bank's Affordable Housing Program Direct Subsidy grant program and the provision of technical, financial, and managerial expertise to housing and other organizations that are related to community development.

B. Community Development Plan

As part of the proposed merger, Wachovia announced a $150 billion community development plan for California. Several commenters expressed concerns about the community development plan, arguing that the size of the plan is too small relative to the size of similar commitments made by other financial organizations, and recommended approval only if the plan was subject to conditions suggested by the commenters. Some commenters who opposed the proposal also alleged that Wachovia's plan did not address the diversity and community reinvestment needs of California communities.[45]

The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.[46] As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.[47] Moreover, the Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization.[48]

In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas. In reviewing future applications by Wachovia under this factor, the Board similarly will review Wachovia's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at the time of such review.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Wachovia, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record and for the reasons discussed above, the Board has concluded that considerations relating to the CRA performance records of the relevant depository institutions are consistent with approval.

OTHER CONSIDERATIONS

In light of public comments received on the proposal, the Board has carefully considered the fair lending records and HMDA data of Wachovia Bank and World Savings in its evaluation of the public interest factors. Commenters alleged, based on 2005 HMDA data, that Wachovia Bank

43. World Savings specializes in adjustable-rate, single-family residential mortgage originations, which are held in portfolio or securitized. Examiners based their review on World Savings' 1–4 family residential and multifamily residential loan products.

44. World Savings received a "low satisfactory" rating for lending performance in Kansas, Nevada, and New Jersey, based on low levels of community development lending and the bank's level of loan originations in LMI geographies in its assessment areas.

45. Commenters also alleged that Wachovia has not been responsive to California community groups and has failed to work with local government in addressing California's needs.

46. *See, e.g., Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 233 (2004); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485, 488 n.18 (2002).

47. *See Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005); *J.P. Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Bank of America Corporation, supra.*; *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 858 (1998).

48. *See, e.g., Fleet Financial Group, Inc.*, 85 *Federal Reserve Bulletin* 747 (1999).

and World Savings denied the home mortgage loan applications of African-American, Hispanic, and other minority borrowers more frequently than those of nonminority applicants in various states. A commenter also alleged that Wachovia Bank and World Savings made higher-cost loans[49] more frequently to African-American and Hispanic borrowers than to nonminority borrowers.[50] The Board reviewed the 2004 and 2005 HMDA data reported by Wachovia Bank and World Savings.[51]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Wachovia Bank or World Savings is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[52] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Wachovia Bank and World Savings with fair lending laws.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of Wachovia Bank and World Savings. In addition, the record indicates that both institutions have taken steps to ensure compliance with fair lending and other consumer protection laws. Wachovia Bank monitors its compliance with fair lending laws through file reviews, mystery shopping programs, and call-monitoring activities. Wachovia Bank also employs an internal second-review process for home loan applications that would otherwise be denied and reviews its fair lending program quarterly to ensure effectiveness. World Savings employs similar compliance techniques, such as internal audits, file reviews, and statistical analyses of its lending activities.

Based on all the facts of record, the Board has concluded that considerations relating to the fair lending records and HMDA data of Wachovia and World Savings are consistent with approval under section 4 of the BHC Act.

PUBLIC BENEFITS

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers currently served by Golden West. Wachovia's proposed acquisition of Golden West would allow Wachovia to offer a wider array of mortgage and other banking products to the existing customers of Golden West, including LMI borrowers who currently have access only to the limited scope of World Savings' mortgage products. World Savings' customers who currently have limited ATM access will benefit from the combined organization's extensive network of more than 5,200 ATMs. Customers will also benefit from Wachovia's online banking functionalities not previously available to them, including bill payment, Spanish language capabilities, and online functions for loans and deposit accounts. Further, customers of Golden West's other nonbanking subsidiaries will benefit from the expanded range of products and services offered through Wachovia's nonbanking subsidiaries, such as trust services, securities brokerage, investment banking, and asset-management services, as well as a broad array of lending and credit instruments available to individual and corporate customers.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources,

49. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

50. One commenter also alleged that World Savings directs customers to low- or no-documentation loan products as a means to exaggerate the customer's income and places the customers in loan products that exceed their ability to repay, which ultimately results in foreclosures. According to information provided by Wachovia and Golden West, World Savings requires low- or no-documentation on 90 percent of the loan applications it processes and uses the same underwriting standards for all applications. As of June 30, 2006, publicly available data indicate that World Savings' nonperforming assets represented only 0.37 percent of its total assets, which compares favorably to the aggregate percentage of nonperforming assets to total assets of all savings institutions.

51. The Board reviewed the 2004 HMDA data reported by Wachovia Bank, Wachovia-DE; Wachovia Mortgage Company; and Wachovia's subsidiaries, SouthTrust Bank and SouthTrust Mortgage Company (acquired by Wachovia in January 2005), in their statewide assessment areas in California, Delaware, New Jersey, New York, North Carolina, Pennsylvania, and Texas. HMDA data reported by Wachovia Bank, Wachovia-DE, Wachovia Mortgage Company, and SouthTrust Mortgage Company in 2005 were reviewed for the same areas. In addition, the Board reviewed the 2004 and 2005 HMDA data reported by World Savings in its statewide assessment areas in New York and California.

52. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

decreased or unfair competition, conflicts of interest, or unsound banking practices. Based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the notice should be, and hereby is, approved.[53] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Wachovia with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[54] and to the Board's authority to require such modification or termination of the activities of Wachovia or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

This 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 the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 29, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

53. Several commenters requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public hearing or meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing or meeting. In addition, the requests fail to demonstrate why the written comments do not present the commenters' views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

54. 12 CFR 225.7 and 225.25(c).

Appendix A

Other Nonbanking Subsidiaries of Golden West to Be Acquired under Section 4 of the BHC Act

(1) World Mortgage Investors, Inc., Rockville, Maryland; World Mortgage Company, WLC Company, and GWFC, LP, all of Oakland, California; and World Loan Company, San Antonio, Texas; and thereby engage in extending credit and in activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, in accordance with sections 225.28(b)(1) and (2) of Regulation Y (12 CFR 225.28(b)(1) and (2));

(2) Golden West Savings Association Service Company, Oakland, California, and thereby engage in activities performed by a trust company, in accordance with section 225.28(b)(5) of Regulation Y (12 CFR 225.28(b)(5)).

(3) Atlas Advisers, Inc., San Leandro, California, and thereby engage in investment advisory activities, in accordance with section 225.28(b)(6) of Regulation Y (12 CFR 225.28(b)(6)); and

(4) Atlas Securities, Inc., San Leandro, California, and thereby provide securities brokerage services, in accordance with section 225.28(b)(7)(i) of Regulation Y (12 CFR 225.28(b)(7)(i)).

Appendix B

OTHER WACHOVIA AND GOLDEN WEST BANKING MARKETS AND MARKET DATA

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
FLORIDA BANKING MARKETS						
Beverly Hills Area—Citrus County excluding the town of Citrus Springs						
Wachovia Pre-Consummation	8	61.3 mil.	3.2	1478	–25	12
Golden West	7	124.8 mil.	3.2	1478	–25	12
Wachovia Post-Consummation	5	186.1 mil.	9.3	1478	–25	12
Brevard County—Brevard County						
Wachovia Pre-Consummation	1	1.7 bil.	26.6	1559	83	19
Golden West	16	138 mil.	1.1	1559	83	19
Wachovia Post-Consummation	1	1.8 bil.	28.5	1559	83	19
Daytona Beach Area—Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County						
Wachovia Pre-Consummation	1	1.8 bil.	25.5	1667	68	22
Golden West	13	132.4 mil.	1.0	1667	68	22
Wachovia Post-Consummation	1	1.9 bil.	27.1	1667	68	22
Fort Myers Area—Lee County excluding Gasparilla Island, and the town of Immokalee in Collier County						
Wachovia Pre-Consummation	2	1.9 bil.	18.1	1191	89	32
Golden West	15	346.9 mil.	1.7	1191	89	32
Wachovia Post-Consummation	1	2.2 bil.	21.1	1191	89	32
Fort Pierce Area—St. Lucie County and Martin County, excluding the towns of Indiantown and Hobe Sound						
Wachovia Pre-Consummation	5	748.3 mil.	11.9	1425	101	18
Golden West	8	437.6 mil.	3.5	1425	101	18
Wachovia Post-Consummation	2	1.2 bil.	18.2	1425	101	18
Fort Walton Beach Area—Okaloosa and Walton Counties and the town of Ponce de Leon in Holmes County						
Wachovia Pre-Consummation	8	198.8 mil.	4.7	999	2	23
Golden West	17	91.4 mil.	1.1	999	2	23
Wachovia Post-Consummation	5	290.2 mil.	6.7	999	2	23
Miami-Fort Lauderdale Area—Broward and Dade Counties						
Wachovia Pre-Consummation	2	18 bil.	18.9	1048	48	97
Golden West	20	1.6 bil.	0.8	1048	48	97
Wachovia Post-Consummation	2	19.6 bil.	20.4	1048	48	97
Naples Area—Collier County, excluding the town of Immokalee						
Wachovia Pre-Consummation	3	1.2 bil.	13.3	1250	50	34
Golden West	12	281.4 mil.	1.5	1250	50	34
Wachovia Post-Consummation	3	1.5 bil.	16.1	1250	50	34

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
North Lake and Sumter Area—Sumter and Lake Counties, excluding the census-designated place of Astor and the cities of Clermont and Groveland, all in Lake County						
Wachovia Pre-Consummation	4	461.9 mil.	12.3	1408	51	15
Golden West	10	145.8 mil.	1.9	1408	51	15
Wachovia Post-Consummation	3	607.7 mil.	15.8	1408	51	15
Ocala Area—Marion County and the town of Citrus Springs in Citrus County						
Wachovia Pre-Consummation	4	601.3 mil.	14.3	1463	86	20
Golden West	9	207 mil.	2.5	1463	86	20
Wachovia Post-Consummation	2	808.3 mil.	18.8	1463	86	20
Sarasota Area—Manatee and Sarasota Counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); and the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West and Placido), and Gasparilla Island (the town of Boca Grande) in Lee County						
Wachovia Pre-Consummation	2	2.4 bil.	15.4	1305	123	43
Golden West	8	873.6 mil.	2.8	1305	123	43
Wachovia Post-Consummation	2	3.3 bil.	20.5	1305	123	43
Tampa Bay Area—Hernando, Hillsborough, Pinellas, and Pasco Counties						
Wachovia Pre-Consummation	2	7.6 bil.	18.9	1540	109	65
Golden West	7	1.7 bil.	2.1	1540	109	65
Wachovia Post-Consummation	2	9.3 bil.	22.7	1540	109	65
West Palm Beach Area—Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County						
Wachovia Pre-Consummation	1	7.4 bil.	26.8	1697	306	62
Golden West	7	2 bil.	3.7	1697	306	62
Wachovia Post-Consummation	1	9.5 bil.	32.9	1697	306	62
TEXAS BANKING MARKETS						
Austin—The Austin MSA (Bastrop, Caldwell, Hays, Travis, and Williamson Counties)						
Wachovia Pre-Consummation	41	23.9 mil.	.2	1079	–26	62
Golden West	11	464.8 mil.	1.6	1079	–26	62
Wachovia Post-Consummation	7	488.7 mil.	3.2	1079	–26	62

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Dallas—Dallas County; the southeastern quadrant of Denton County (including the cities of Denton and Lewisville); the southwestern quadrant of Collin County (including the towns of McKinney and Plano); Rockwall County; the communities of Forney and Terrell in Kaufman County; and the towns of Midlothian, Waxahachie, and Ferris in Ellis County						
Wachovia Pre-Consummation	24	397.8 mil.	.6	1398	–19	121
Golden West	19	1 bil.	.8	1398	–19	121
Wachovia Post-Consummation	6	1.4 bil.	2.3	1398	–19	121
Fort Worth—The Fort Worth-Arlington Metropolitan Division (Tarrant, Johnson, Parker, and Wise Counties)						
Wachovia Pre-Consummation	16	159.7 mil.	1.1	978	–7	61
Golden West	28	155.4 mil.	.5	978	–7	61
Wachovia Post-Consummation	8	315.1 mil.	2.1	978	–7	61
Houston—The Houston-Sugar Land-Baytown MSA, (Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties)						
Wachovia Pre-Consummation	19	621.6 mil.	.7	2302	–63	85
Golden West	11	3 bil.	1.6	2302	–63	85
Wachovia Post-Consummation	5	3.6 bil.	3.9	2302	–63	85
San Antonio—Bexar, Comal, Guadalupe, Kendall, and Wilson Counties						
Wachovia Pre-Consummation	14	149.9 mil.	1.0	1358	–12	45
Golden West	20	166.8 mil.	.6	1358	–12	45
Wachovia Post-Consummation	9	316.7 mil.	2.1	1358	–12	45
CALIFORNIA BANKING MARKETS						
Hesperia-Apple Valley-Victorville—The Hesperia-Apple Valley-Victorville RMA; the city of Helendale, the community of Lucerne Valley, the town of Phelan, and the census-designated place of Wrightwood, all in San Bernadino County						
Wachovia Pre-Consummation	9	66.3 mil.	3.5	1374	–2	13
Golden West	7	169.8 mil.	4.5	1374	–2	13
Wachovia Post-Consummation	4	236.2 mil.	12.0	1374	–2	13
Los Angeles—The Los Angeles RMA; the town of Acton in Los Angeles County; and the census-designated place of Rosamond in Kern County						
Wachovia Pre-Consummation	24	2 bil.	.8	887	–17	153
Golden West	11	9 bil.	1.9	887	–17	153
Wachovia Post-Consummation	6	11 bil.	4.4	887	–17	153

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Riverside-San Bernadino—The Riverside-San Bernadino Metropolitan Area, including the Riverside-San Bernadino RMA and the towns of Banning, Beaumont, and Nuevo in Riverside County						
Wachovia Pre-Consummation	23	60.5 mil.	.5	1556	–25	36
Golden West	14	216.8 mil.	.9	1556	–25	36
Wachovia Post-Consummation	11	277.3 mil.	2.4	1556	–25	36
San Diego—The San Diego RMA and the towns of Camp Pendleton and Pine Valley in San Diego County						
Wachovia Pre-Consummation	19	214.5 mil.	.5	1072	–28	66
Golden West	10	1.7 bil.	2.1	1072	–28	66
Wachovia Post-Consummation	8	1.9 bil.	4.6	1072	–28	66
BANKING MARKETS IN CONNECTICUT, NEW JERSEY, NEW YORK, AND PENNSYLVANIA						
Metropolitan New York-New Jersey—Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and the northern portions of Mercer County, all in New Jersey; Monroe and Pike County in Pennsylvania; Fairfield County and portions of Litchfield and New Haven Counties in Connecticut						
Wachovia Pre-Consummation	6	32.9 bil.	4.4	1212	2	282
Golden West	39	2.8 bil.	.2	1212	2	282
Wachovia Post-Consummation	6	35.5 bil.	4.8	1212	2	282
Philadelphia and South Jersey—Burlington, Camden, Gloucester, and Salem Counties, all in New Jersey; and Bucks, Chester, Delaware, Montgomery Counties, all in Pennsylvania						
Wachovia Pre-Consummation	1	20.9 bil.	22.5	1064	5	120
Golden West	82	123.2 mil.	.1	1064	5	120
Wachovia Post-Consummation	1	21 bil.	22.6	1064	5	120

NOTE: Data are as of June 30, 2005. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits, including those controlled by Golden West, weighted at 50 percent pre-consummation, but with Golden West's deposits weighted at 100 percent in the post-consummation figures.

Data for the Punta Gorda Area and Indian River County banking markets are discussed in the order.

ORDER ISSUED UNDER FEDERAL RESERVE ACT

Citizens First State Bank of Walnut Walnut, Illinois

Order Approving Establishment of a Branch

Citizens First State Bank of Walnut ("Citizens"), a state member bank, has requested the Board's approval under section 9 of the Federal Reserve Act ("Act")[1] to establish a branch at 9226 2125 North Avenue, Manlius, Illinois.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[2] The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Citizens is the 455th largest depository institution in Illinois, controlling approximately $49.8 million in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.[3] Citizens currently operates three branches in Bureau County, Illinois, which includes Manlius.

Under section 9(3) of the Act,[4] a state member bank must obtain Board approval before establishing any branch. Section 9(4) of the Act requires that, when acting on a branch application, the Board consider the financial condition of the applying bank, the general character of its management, and whether its corporate powers are consistent with the purposes of the Act.[5] Under the Board's regulations implementing section 9(4),[6] the factors that the Board must consider in acting on branch applications include: (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; and (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA").[7]

The Board has carefully considered the application in light of these factors and public comment received from a bank holding company that competes with Citizens and owns the only existing branch in Manlius. The commenter asserted that the demographic and economic characteristics of the community would not support the profitable operation of another branch in the community, that the proposal might weaken the financial condition of one or both banks, and that the proposal could ultimately diminish the banking options available to the citizens in the community.

In considering the financial history and condition, future earnings prospects, and capital adequacy of Citizens, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, and information provided by Citizens and the commenter. Citizens is well capitalized and would remain so on consummation of the proposal. The Board also has reviewed Citizens' business plan and financial projections for the branch, including the projections for deposits, income, and costs. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Citizens are consistent with approval of the proposal.

In considering Citizens' managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Citizens and the bank's record of compliance with applicable banking law, including anti-money-laundering laws, and has reviewed the proposed management of the branch. Citizens is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Citizens' management is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received, and the bank's performance under the CRA. Citizens received a "satisfactory" rating by the Federal Reserve Bank of Chicago ("Reserve Bank") at its most recent CRA performance evaluation, as of April 28, 2003.[8] The Board generally considers the entry of a new competitor in a community to be a positive factor when assessing the effect of a proposal on the convenience and needs of the community because new entry provides additional alternatives to consumers and businesses. Citizens has represented that the proposed branch would provide residents of the Manlius area with another convenient source of banking services through extended service hours and the presence at the branch of an officer with loan approval authority.[9] For these reasons and based on a review of the entire record, the Board concludes that the

1. 12 U.S.C. §321 et seq.
2. 12 CFR 262.3(b).
3. Statewide ranking and deposit data are as of June 30, 2005, and reflect mergers as of June 8, 2006.
4. 12 U.S.C. §321 and 12 CFR 208.6(b).
5. 12 U.S.C. §322.
6. 12 CFR 208.6(b).
7. 12 U.S.C. §2901 et seq.
8. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,640 (2001).
9. The commenter has speculated that consummation of this proposal could lead to one or both banks having to close its branch in Manlius, resulting in fewer banking services in the community. In reviewing this proposal, the Board has considered the comments in light of Citizens' plans and projections for the proposed branch, as well as its financial and managerial resources. The Board also has reviewed the deposit and demographic data for the village of Manlius and for Bureau County. The data indicate modest declines in popula-

convenience and needs considerations and Citizens' record of performance under the CRA are consistent with approval of the proposal.

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on Citizens' compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective August 9, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Calyon, S.A.
Paris, France

Order Approving Establishment of a Branch

Calyon, S.A. ("Bank"),[1] a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. §3105(d)) to establish a branch in Los Angeles, California. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States. Bank previously received approval to file an application for approval of this branch after-the-fact.[2]

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Los Angeles (*Los Angeles Times*, November 1, 2004). The time for filing comments has expired, and all comments received have been considered.

Bank is a direct subsidiary of Crédit Agricole S.A. ("Credit Agricole"), Paris,[3] the lead bank for the Crédit Agricole Group, which provides a wide range of banking and financial services to retail and corporate customers throughout the world and is the largest banking group in France with assets of approximately $913 billion.[4] SAS Rue La Boétie ("Boetie"), also in Paris, holds approximately 55 percent of the shares of Credit Agricole.[5] The Fédération Nationale du Crédit Agricole ("FNCA"), also in Paris, controls Boetie.[6] In the United States, Credit Agricole conducts banking operations through offices of Bank; through another French bank subsidiary, Credit Lyonnais; and through Espirito Santo Bank, Miami, Florida, the U.S. bank subsidiary of Banco Espirito Santo, S.A., Lisbon, Portugal.[7] The Crédit Agricole Group also operates a number of nonbank subsidiaries in the United States. Bank is a qualifying foreign banking organization under Regulation K (12 CFR 211.23(b)).

Bank assumed the operations of the Los Angeles branch of Credit Lyonnais in connection with a corporate reorganization in which Bank also acquired Credit Lyonnais's branches in Chicago, Illinois, and New York, New York. No change in the activities of the branch occurred as a result of the reorganization. The branch markets Bank's commercial lending products and functions primarily as a loan production office for the bank's New York branch.

Bank's home state is New York, and Bank proposes to continue to operate its branch in California. Under section 5(a)(2) of the IBA (12 U.S.C. §3103(a)), a foreign bank, with the approval of the Board and the appropriate state banking supervisor, may establish and operate a state-licensed branch outside the home state of the foreign bank to the extent a state bank with the same home state as the foreign bank could do so under section 44 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. §1831u). Bank acquired all the assets and liabilities of the Credit Lyonnais branch in Los Angeles as part of its

tion from 2000–2005, but they also show consistent moderate growth in deposits during the same time period.

1. Calyon is the successor to Crédit Agricole Indosuez, S.A., Paris, France.

2. In May 2004, Bank acquired certain assets and liabilities of Crédit Lyonnais ("Credit Lyonnais"), also in Paris, including all the assets and liabilities of the Credit Lyonnais branch in Los Angeles. Bank received temporary authority to establish and operate the Los Angeles branch before an application was filed and acted on in accordance with section 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)). *See* Board letter dated April 15, 2004, to Michael Bradfield, Esq. With this application, Bank seeks permanent authority to establish and operate the branch in Los Angeles.

3. Credit Agricole holds 95.3 percent of Bank's shares.

4. Asset data are as of December 31, 2004.

5. The remainder of Credit Agricole's shares are held by members of the public.

6. Credit Agricole supports, coordinates, and supervises the operations of approximately 40 regional cooperative banks (Caisses Régionales or "Caisses") and approximately 2600 local cooperative banks, which operate a retail branch network in France. FNCA, Boetie, Credit Agricole, and the regional and local cooperative banks together comprise the Crédit Agricole Group. In connection with a public offering of shares by Credit Agricole, the Caisses established a wholly owned holding company, Boetie, in 2001 and transferred their shares of Credit Agricole to it. Boetie holds and votes the shares of Credit Agricole to maintain the Caisses' control of Credit Agricole. FNCA, an unincorporated association, acts as a consultative and representative body for the Caisses. *See also Fédération Nationale du Crédit Agricole et al.*, 92 *Federal Reserve Bulletin* C159 (2006).

7. Credit Agricole also is deemed to control Banca Intesa S.p.A, Milan, Italy, which operates a branch in New York.

assumption of the wholesale business assets and liabilities of Credit Lyonnais under provisions of French commercial law. This transaction constituted an interstate merger transaction as defined in the FDI Act. Section 44(a) of the FDI Act permits the approval of a merger transaction under the Bank Merger Act between state banks with different home states, provided that neither state has elected to prohibit interstate merger transactions pursuant to section 44(a)(2) of the FDI Act. New York and California both permit interstate merger transactions. Accordingly, the proposed interstate merger transaction would be permitted under section 44 of the FDI Act, and the Board is permitted to approve the establishment by Bank of the branch outside its home state of New York if the remaining criteria of section 5(a) of the IBA are met. The Board has determined that the additional conditions specified in section 5(a)(3) of the IBA are satisfied.[8]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. §3105(d)(2); 12 CFR 211.24(c)(1)).[9] The Board also may consider additional standards set forth in the IBA and Regulation K (12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined that Bank and Credit Agricole are subject to comprehensive supervision or regulation on a consolidated basis by their home country supervisor, the Commission Bancaire.[10] Bank and Credit Agricole remain supervised by the Commission Bancaire on substantially the same terms and conditions. Based on all the facts of record, it has been determined that Bank and Credit Agricole are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)) have also been taken into account. The Commission Bancaire has no objection to the establishment of the proposed branch.

France's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

France is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with those recommendations, France has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in France, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations. Bank's compliance with applicable laws and regulations is monitored by Bank's internal auditors and the Commission Bancaire.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank, Boetie, and FNCA have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank, Boetie, and FNCA have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, the Commission Bancaire may share information on Bank's operations with other supervisors, including the Board,

8. Section 5(a)(3) of the IBA requires that certain conditions of section 44 of the FDI Act be met in order for the Board to approve an interstate banking transaction. *See* 12 U.S.C. §3103(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. §§1831u(b)(1), (b)(3), and (b)(4)). The Board has determined that Bank is in compliance with state filing requirements. Community reinvestment considerations are also consistent with approval. Bank and Credit Lyonnais were both adequately capitalized as of the date the application was filed, and Bank would continue to be at least adequately capitalized and adequately managed on consummation of this proposal. The Board has determined, after consultation with the Secretary of the Treasury, that the financial resources of Bank are equivalent to those required for a domestic bank to receive approval for interstate branching under section 44 of the FDI Act.

9. In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk-asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

10. *See Caisse Nationale de Crédit Agricole*, 81 *Federal Reserve Bulletin* 1055 (1995). *See also, Crédit Agricole Indosuez*, 83 *Federal Reserve Bulletin* 1025 (1997); *Caisse Nationale de Crédit Agricole*, 86 *Federal Reserve Bulletin* 412 (2000).

subject to certain conditions. In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, the Board has determined that Bank's application to establish a branch should be, and hereby is, approved. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[11] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective September 8, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

The International Commercial Bank of China Co., Ltd. Taipei, Taiwan

Order Approving Establishment of U.S. Branches

The International Commercial Bank of China Co., Ltd. ("Bank"), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under sections 5(a) and 7(d) of the IBA[1] to establish branches in Los Angeles and San Jose, California, and New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers of general circulation in New York, New York (*The New York Post*, May 10, 2006), Los Angeles, California (*Los Angeles Daily News*, May 10, 2006), and San Jose, California (*San Jose Mercury News*, May 10, 2006). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of $36 billion, is the eighth largest commercial bank in Taiwan.[2] Bank is wholly owned by Mega Financial Holding Company ("Mega"), Taipei, Taiwan. Mega's largest shareholders are the national government and governmental agencies of Taiwan (controlling 18.3 percent of shares) and Chinatrust Financial Holding Company, Ltd., Taipei, Taiwan (controlling 18 percent of shares).[3] Bank provides a variety of banking services to retail and corporate customers directly and through two subsidiary banks and branches in 15 countries.[4] In the United States, Bank operates a limited federal branch in Los Angeles, California, a full-service state branch in Chicago, Illinois, and a state agency in New York, New York. Bank is a qualifying foreign banking organization under Regulation K.[5]

In addition to Bank, Mega wholly owns Chiao Tung Bank Co., Ltd. ("CTB"), Taiwan's 14th largest bank. CTB operates a full-service state branch in San Jose, California, and a state agency in New York, New York.

As part of a corporate reorganization of Mega, Bank and CTB will merge, with Bank as survivor. Bank would assume CTB's San Jose full-service branch and New York agency. In New York, Bank proposes to combine the operations of CTB's agency with the operations of Bank's existing New York agency and to upgrade the combined New York agency to a full-service branch. It also proposes to convert its Los Angeles limited branch from a federal to a state license and to upgrade it to a full-service branch. According to Bank, the full-service branches would enable it to better serve the needs of its customers who do business in the United States. The branches also would coordinate Bank's access to U.S. capital markets.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor.[6] The Board also

11. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of California to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of California to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. §§ 3103(a), 3105(d).

2. Asset data are as of March 31, 2006.

3. Mega's remaining shares are widely held, with no shareholder or group of shareholders controlling more than 5 percent of shares.

4. Bank's subsidiary banks are International Commercial Bank of Cathay, Toronto, Canada, and The International Commercial Bank of China Public Co., Ltd., Bangkok, Thailand. In addition to the United States, Bank operates branches in Australia, France, Hong Kong, Japan, Malaysia, the Netherlands, Panama, the Philippines, Singapore, and Vietnam. Bank also maintains representative offices in the United Kingdom and Bahrain.

5. 12 CFR 211.23(b).

6. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive,

considers additional standards set forth in the IBA and Regulation K.[7]

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Taiwan, that those banks were subject to home country supervision on a consolidated basis.[8] Bank is supervised by the Financial Supervisory Commission ("FSC") on substantially the same terms and conditions as those other banks.[9] Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.[10]

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K.[11] The FSC has no objection to Bank's establishment of the proposed branches.

Taiwan's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. In addition, Bank has established controls and procedures for the proposed offices to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Taiwan is a founding member of the Asia Pacific Group on Money Laundering and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Taiwan has enacted laws and regulations to deter money laundering. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank and Mega have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and Mega have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and Mega have provided adequate assurances of access to any necessary information that the Board may request.

Establishment of an Interstate Branch. The IBA establishes criteria that must be met before the Board can approve the establishment of a branch outside the foreign bank's home state. Bank's home state is New York. Bank proposes to establish by merger a full-service branch in San Jose, California, CTB's home state. Under section 5(a) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act"),[12] a foreign bank, with the approval of the Board and the Office of the Comptroller of the Currency or the appropriate state banking supervisor, may establish and operate a branch in any state outside its home state to the extent that a bank with the same home state as the foreign bank could do so under section 44 of the Federal Deposit Insurance Act ("FDI Act"). Section 44 of the FDI Act permits approval of a merger transaction under the Bank Merger Act between banks with different home states, provided that neither state has elected to prohibit interstate

consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk-asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

7. 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

8. *See SinoPac Holdings*, 88 *Federal Reserve Bulletin* 307 (2002); *Chinatrust Financial Holding Company, Ltd.*, 88 *Federal Reserve Bulletin* 303 (2002); *E. Sun Commercial Bank Limited*, 86 *Federal Reserve Bulletin* 238 (2000); *Chinatrust Commercial Bank, Ltd.*, 84 *Federal Reserve Bulletin* 1121 (1998); *Land Bank of Taiwan*, 83 *Federal Reserve Bulletin* 336 (1997); *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995).

9. The FSC, Taiwan's umbrella supervisory agency for financial institutions, is composed of financial regulators formerly housed in the Ministry of Finance, Central Bank of China, and China Deposit Insurance Corporation. The FSC began operations in July 2004.

10. As a financial holding company under Taiwanese law, Mega is supervised by the FSC and is subject to prudential restrictions on capital adequacy and transactions with affiliates. The FSC may require the submission of consolidated financial statements, review transactions between the financial holding company and its subsidiaries, and send internal or outside independent auditors to audit and inspect the operations and the financial records of the financial holding company or any of its subsidiaries. The FSC also may take measures to ensure the safety and soundness of the organization.

11. *See* 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

12. 12 U.S.C. §3103(a).

merger transactions.[13] New York and California statutes both permit interstate merger transactions. All other applicable requirements have been met by the proposal.[14]

The Board has determined that all of the other criteria referred to in section 5(a)(3) of the IBA,[15] including the criteria in section 7(d) of the IBA, have been met. In view of all the facts of record, the Board is permitted to approve the establishment of an interstate branch by Bank under section 5(a) of the IBA.

Section 5(a)(7) of the IBA provides that a foreign bank may upgrade an existing limited branch outside its home state to a full-service branch if the limited branch has been in operation since September 28, 1994, and the host state permits the establishment of a full-service branch.[16] As noted above, Bank's home state is New York. Bank's Los Angeles branch was established in 1984, and California law permits foreign banks to operate full-service wholesale branches.[17] Accordingly, the Board has determined that Bank may upgrade the Los Angeles branch to a full-service wholesale branch, provided that the California Department of Financial Institutions approves the transactions.

Upgrade of the New York Agency to a Full-Service Branch. Bank currently operates an agency in New York. Because New York is Bank's home state, there is no federal restriction that would preclude the upgrading of that office to a full-service branch. Accordingly, the Board has determined that Bank may upgrade the New York agency to a full-service wholesale branch, provided that the New York State Banking Department approves the transactions.

Based on the foregoing and all the facts of record, Bank's application to establish the proposed branches is hereby approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application and with the conditions in this order.[18] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective August 18, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Taiwan Cooperative Bank
Taipei, Taiwan

Order Approving Establishment of Branches

Taiwan Cooperative Bank ("TCB"), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA[1] to establish state-licensed branches in Los Angeles, California, and Seattle, Washington. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

TCB acquired the branches in connection with its merger with Farmers Bank of China ("Farmers"), also in Taipei, on May 1, 2006.[2] Regulation K defines the establishment of an office to include the assumption of the operations of an existing office through a merger with another foreign

13. 12 U.S.C. § 1831u.

14. Section 5(a) of the IBA requires that certain conditions of section 44 of the FDI Act be met in order for the Board to approve an interstate banking transaction. *See* 12 U.S.C. § 3103(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. §§ 1831u(b)(1), (b)(3), and (b)(4)). The Board has determined that Bank is in compliance with state filing requirements. Community reinvestment considerations are also consistent with approval. Both Bank and CTB were adequately capitalized as of the date the application was filed, and, on consummation of this proposal, Bank would continue to be adequately capitalized and adequately managed. The Board has determined, after consultation with the Secretary of the Treasury, that the financial resources of Bank are equivalent to those required for a domestic bank to receive approval for interstate branching under section 44 of the FDI Act.

15. The Riegle-Neal Act provides that a bank resulting from an interstate merger may, with Board approval and subject to certain requirements, retain and operate as a branch any office that any bank involved in the merger transaction was operating as a main office or branch immediately before the merger transaction. *See* 12 U.S.C. § 1831u(d)(1). In this case, all the applicable statutory requirements are met. Therefore, Bank may retain and operate the state-licensed branch outside New York currently being operated by CTB, provided the criteria in section 5(a)(3) of the IBA have been met.

16. 12 U.S.C. § 3103(a)(7).

17. Cal. Fin. Code §§ 1701, 1750 (West 2006).

18. The Board's authority to approve the establishment of the proposed branches parallels the continuing authority of California and New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of those states to license the proposed offices of Bank in accordance with any terms or conditions that they may impose.

1. 12 U.S.C. § 3105(d).

2. On April 28, 2006, the General Counsel, after consulting with the director of Banking Supervision and Regulation, approved under delegated authority TCB's request to use the after-the-fact application procedures outlined in section 211.24(a)(6) of Regulation K, 12 CFR 211.24(a)(6), to establish branch offices in the United States after TCB's merger with Farmers.

Farmers' application to establish the Los Angeles office was approved by the Board in 1995 as a limited branch. *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995). Accordingly, it is prohibited from accepting deposits from sources other than those permitted pursuant to section 5 of the IBA and section 25A of the Federal Reserve Act (12 U.S.C. § 3103). The Seattle office was established in 1990 as a federally licensed branch, and its conversion to a state license was approved on June 3, 2006.

bank.[3] Accordingly, TCB, as the survivor of the merger, must obtain the approval of the Board to assume the operations of Farmers' existing U.S. offices.

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers of general circulation in Los Angeles and Seattle (*Los Angeles Times* and *Seattle Times*, March 29, 2006). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the IBA.

TCB, with total assets of $74 billion, is the largest bank in Taiwan.[4] The Taiwanese government partially privatized TCB in 2005 but remains the largest shareholder with 43.17 percent of its voting securities. TCB provides a broad range of banking, financial, and other services primarily in Taiwan. TCB maintains representative offices in Hong Kong and Beijing and operates several nonbank subsidiaries. Other than the branches that are the subject of this proposal, TCB does not have any operations in the United States. TCB would be a qualifying foreign banking organization under Regulation K.[5]

TCB has assumed the businesses and operations of Farmers' U.S. branches. The Los Angeles and Seattle branches' primary activities are providing commercial and real estate lending to the Taiwanese community in the United States and facilitating trade transactions between the United States and Asia.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor.[6] The Board also considers additional standards set forth in the IBA and Regulation K.[7]

As noted above, TCB engages directly in the business of banking outside of the United States. TCB also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Taiwan, including Farmers, that those banks were subject to home country supervision on a consolidated basis.[8] TCB is supervised by the Financial Supervisory Commission ("FSC") on substantially the same terms and conditions as the other banking organizations approved.[9] Based on all the facts of record, it has been determined that TCB is subject to comprehensive supervision on a consolidated basis by its home country supervisor. The FSC has no objection to the proposal.

Taiwan's risk-based capital standards are consistent with those established by the Basel Capital Accord. TCB's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of TCB also are considered consistent with approval, and TCB appears to have the experience and capacity to support the proposed branches. In addition, TCB has established controls and procedures for the proposed branches to ensure compliance with U.S. law and for its operations in general.

Taiwan is a founding member of the Asia/Pacific Group on Money Laundering and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Taiwan has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. TCB has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about TCB's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TCB operates and has communicated with relevant government authorities regarding access to information. TCB has committed to make available to the Board such information on the operations of TCB and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of

3. 12 CFR 211.21(l)(2).

4. Asset data are as of June 30, 2006.

5. 12 CFR 211.23(b).

6. 12 U.S.C. §3105(d)(2); 12 CFR 211.24(c)(1). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk-asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

7. 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

8. *See SinoPac Holdings*, 88 *Federal Reserve Bulletin* 307 (2002); *Chinatrust Financial Holding Company, Ltd.*, 88 *Federal Reserve Bulletin* 303 (2002); *E. Sun Commercial Bank Limited*, 86 *Federal Reserve Bulletin* 238 (2000); *Chinatrust Commercial Bank, Ltd.*, 84 *Federal Reserve Bulletin* 1121 (1998); *Land Bank of Taiwan*, 83 *Federal Reserve Bulletin* 336 (1997); *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995).

9. The FSC, Taiwan's umbrella supervisory agency for financial institutions, is composed of financial regulators formerly housed in the Ministry of Finance, Central Bank of China, and China Deposit Insurance Corporation. The FSC began operations in July 2004.

such information to the Board may be prohibited by law or otherwise, TCB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that TCB has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, TCB's application to establish branches in Los Angeles and Seattle is hereby approved.[10] Should any restrictions on access to information on the operations or activities of TCB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by TCB or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of TCB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by TCB with the commitments made in connection with this application and with the conditions in this order.[11] The commitments and conditions referred to above are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under 12 U.S.C. § 1818 against TCB and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective August 15, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

10. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

11. The Board's authority to approve the establishment of the proposed branches parallels the continuing authority of California and Washington to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the California Department of Financial Institutions or Washington State Department of Financial Institutions to license the proposed branches of TCB in accordance with any terms or conditions that they may impose.

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