

FEDERAL RESERVE BOARD

Allied Irish Banks, p.l.c.
Dublin, Ireland

M&T Bank Corporation
Buffalo, New York

First Empire State Holding Company
Buffalo, New York

Manufacturers and Traders Trust Company
Buffalo, New York

Order Approving the Acquisition of a Bank Holding Company,
Merger of Banks, and Establishment of Branches

Allied Irish Banks, p.l.c. (“Allied Irish”) and its subsidiary, M&T Bank Corporation (“M&T”), bank holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), and First Empire State Holding Company (“First Empire”)¹ (collectively, “Applicants”) have requested the Board’s approval under section 3 of the BHC Act² to acquire Provident Bankshares Corporation (“Provident”) and thereby indirectly acquire Provident’s subsidiary bank, Provident Bank of Maryland (“Provident Bank”), both of Baltimore, Maryland. In addition, M&T’s subsidiary state member bank, Manufacturers and Traders Trust Company (“M&T Bank”), Buffalo, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act³ (“Bank Merger Act”) to merge with Provident Bank, with M&T Bank as the surviving entity.

¹ First Empire also has applied to become a bank holding company in connection with this application. First Empire is a newly formed, wholly owned subsidiary of M&T. M&T proposes to merge Provident into First Empire, with First Empire as the survivor.

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

M&T Bank also has applied under section 9 of the Federal Reserve Act to establish and operate branches at the main office and branches of Provident Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (74 Federal Register 5656 (2009)). 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 Act.

Allied Irish, with total consolidated assets equivalent to approximately \$244 billion, is the second largest depository organization in Ireland and provides a full range of banking, financial, and related services primarily in Ireland, the United Kingdom, and the United States.⁵ Allied Irish operates a branch in New York and through M&T controls two subsidiary banks, M&T Bank and M&T Bank, National Association, Oakfield, New York, which operate in seven states and the District of Columbia.⁶ M&T, with total consolidated assets of \$64.8 billion, is the 23rd largest depository organization in the United States, controlling \$38.4 billion in deposits. M&T is the fifth largest depository organization in Maryland, controlling deposits of approximately \$7.4 billion.

Provident has total consolidated assets of approximately \$6.6 billion, and Provident Bank, Provident's only subsidiary insured depository institution,⁷ operates in Maryland, Pennsylvania, Virginia, and the District of Columbia. Provident is the eighth largest depository organization in Maryland, controlling deposits of approximately \$3.85 billion.

⁴ 12 U.S.C. § 321.

⁵ Asset and nationwide deposit-ranking data are as of December 31, 2008. Statewide deposit and ranking data are as of June 30, 2008, and reflect merger activity through April 16, 2009.

⁶ M&T Bank operates in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. M&T Bank, National Association, operates only in New York.

⁷ For purposes of this order, insured depository institutions include commercial banks, savings banks, and savings associations.

On consummation of the proposal, M&T would become the 21st largest depository organization in the United States, with total consolidated assets of approximately \$71.4 billion. M&T would control deposits of approximately \$43.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, M&T would become the second largest depository organization, controlling deposits of approximately \$11.3 billion, which represent approximately 12 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 bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of M&T is New York,⁸ and Provident is located in Maryland, Pennsylvania, Virginia, and the District of Columbia.⁹

Based on a review of all the facts of record, including 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.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.

⁸ 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.

⁹ 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 1842(d)(2)(B).

¹⁰ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). Applicants are adequately capitalized and adequately managed, as defined by applicable law. Provident Bank has been in existence and operated for the minimum period of time required by Maryland law and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1842(d)(2)(A). Applicants also would control less than 30 percent of,

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 an attempt to monopolize the business of banking in any relevant banking market. Both statutes 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

Applicants and Provident have subsidiary depository institutions that compete directly in three banking markets: Washington, DC-Maryland-Virginia-West Virginia; Baltimore, Maryland-Pennsylvania; and Annapolis, Maryland. 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 banking markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by Applicants’ subsidiary depository institutions and by Provident Bank,¹² the concentration levels of market deposits and the increase in those levels as measured

and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant states. 12 U.S.C. §§ 1842(d)(2)(B)-(D). 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) and 12 U.S.C. § 1828(c)(5).

¹² Deposit and market share data are as of June 30, 2008, adjusted to reflect mergers and acquisitions through March 30, 2009, 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); Provident 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).

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 all three banking markets.¹⁴ On consummation of the proposal, each of the three markets would remain moderately concentrated, as measured by the HHI, and the change in the HHI would be less than 200 points in each market. In addition, numerous competitors would remain in all three banking markets.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal 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. 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 any of the three banking markets where the subsidiary depository institutions of Applicants and Provident compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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 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.

¹⁴ Those banking markets and the effects of the proposal on their concentrations of banking resources are described in the appendix.

Financial, Managerial, and Supervisory Considerations

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 institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors carefully in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Applicants. The Board also has consulted with the Irish Financial Services Regulatory Authority (“Financial Regulator”), the agency with primary responsibility for the supervision and regulation of Irish banks, including Allied Irish.¹⁵

In evaluating the 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 depository institutions 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 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, 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 Allied Irish would continue to exceed the minimum levels that would be required under the Basel Capital Accord

¹⁵ The Central Bank of Ireland was restructured and renamed as the Central Bank and Financial Services Authority of Ireland (“CBFSAI”) in 2003. The Financial Regulator is an autonomous entity within the CBFSAI and has responsibility for financial sector regulation and consumer protection.

and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.¹⁶ In addition, M&T, Provident, and the subsidiary depository institutions involved are well capitalized and would remain so on consummation. 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 share exchange.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, Provident, 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 other relevant banking supervisory agencies, including the Federal Deposit Insurance Corporation (“FDIC”), with the organizations and their records of compliance with applicable banking law and with anti-money laundering laws. 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

¹⁶ The Irish government has announced a plan, subject to certain approvals, to invest up to \$4.9 billion in Allied Irish in exchange for noncumulative preference shares plus warrants. The Minister for Finance would have the right to appoint 25 percent of the board of directors of Allied Irish and would have 25 percent of total ordinary voting rights for change of control proposals and board appointments. The recapitalization program will be funded from the National Pensions Reserve Fund (“Fund”), which is an asset of the Irish government and appears on the government’s balance sheet. The Fund is controlled and managed by the National Pensions Reserve Fund Commission, which is a government agency and performs its functions through another government agency, the National Treasury Management Agency. Because the investment in Allied Irish is being made and managed by the Irish government, and not through a government-owned or government-controlled company, approval is not required under section 3 of the BHC Act for the government’s indirect investment in M&T or Provident.

of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.¹⁷

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.¹⁸ As noted, the Financial Regulator is the primary supervisor of Irish banks, including Allied Irish. The Board previously has determined that Allied Irish is subject to comprehensive supervision on a consolidated basis by its home country supervisor.¹⁹ Based on this finding and all the facts of record, the Board has concluded that Allied Irish continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

¹⁷ Section 3 of the BHC Act also 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. 12 U.S.C. § 1842(c)(3)(A). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Allied Irish operates and has communicated with relevant government authorities concerning access to information. In addition, Allied Irish has committed that, to the extent not prohibited by applicable law, it will 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 International Banking Act, and other applicable federal laws. Allied Irish also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. Based on all the facts of record, the Board has concluded that Allied Irish has provided adequate assurances of access to any appropriate information the Board may request.

¹⁸ 12 U.S.C. § 1843(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).

¹⁹ See, e.g., Allied Irish Banks, p.l.c., 94 Federal Reserve Bulletin C11 (2007).

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger 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”).²⁰ 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.²¹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of M&T Bank and Provident Bank, data reported by M&T under the Home Mortgage Disclosure Act (“HMDA”),²² other information provided by Applicants, confidential supervisory information, and a public comment received on the proposal. The commenter generally commended M&T Bank’s CRA performance record and commitment to community development, but the commenter recommended that M&T Bank strengthen its affordable home mortgage lending product, increase community development and multifamily loans in LMI census tracts, provide more community development loans to not-for-profit organizations, and increase the number of its branches in LMI neighborhoods.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2903.

²² 12 U.S.C. § 2801 et seq.

CRA performance record of the relevant insured depository institution. 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&T Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York (“Reserve Bank”), as of May 12, 2008 (“2008 Evaluation”).²⁴ Provident Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of July 2, 2007.²⁵

In addition to the overall “outstanding” rating that M&T Bank received in the 2008 Evaluation, the bank received separate overall “outstanding” or “satisfactory” ratings in all the states and multistate metropolitan areas reviewed.²⁶ Examiners reported that M&T Bank’s geographic distribution of loans was good. They also stated that the bank’s distribution of loans to borrowers reflected a good penetration among customers of different income levels and to businesses of different revenue sizes.²⁷ In addition, examiners noted that M&T Bank offered a Federal National Mortgage Association

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 74 Federal Register 498 and 527 (2009).

²⁴ M&T’s other bank subsidiary, Manufacturers and Traders Bank, National Association, received a “satisfactory” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of May 26, 2006.

²⁵ Examiners considered home mortgage loans, small business loans, and consumer loans originated during 2005 and 2006. The bank did not originate any small farm loans during the evaluation period.

²⁶ Examiners considered HMDA-related and CRA-reportable small business loans that were originated between January 1, 2006, and December 31, 2007. Examiners also reviewed community development loans, investments, services, and activities pertaining to the service test for the same period.

²⁷ The commenter criticized M&T Bank’s affordable mortgage product, alleging that it is less attractive than such products offered by other banks and that the bank does not have a sufficient number of loan officers who are familiar with New York City’s lower income communities and the housing groups that serve those communities. M&T has represented that the mortgage division of M&T Bank has added full-time originators to its staff who specialize in lending to LMI borrowers to better serve its urban markets.

affordable mortgage product in all its assessment areas that had resulted in the origination of almost 1,000 mortgages totaling \$89 million during the evaluation period.

In the 2008 Evaluation, examiners characterized M&T Bank as a leader in making community development loans in its assessment areas, reporting that the bank made more than 455 community development loans totaling \$1.96 billion during the evaluation period.²⁸ Examiners noted that the bank's community development lending volume generally exceeded similarly situated banks in the New York, Pennsylvania, and Maryland assessment areas.²⁹

In the 2008 Evaluation, examiners rated M&T Bank's overall performance under the investment test as "outstanding." Qualifying community development investments totaled more than \$246 million, representing an increase from its previous evaluation.

In addition, examiners concluded that the bank's performance under the service test was "outstanding." Examiners found that the bank's retail delivery systems were readily accessible to all portions of its assessment areas.³⁰ They reported that

²⁸ The commenter asserted that the bank should commit to make at least 50 percent of its community development loans to not-for-profit borrowers. The CRA does not require banks to provide any particular type of qualified community development loans to meet the credit needs of their communities.

²⁹ These states received full-scope assessments during the 2008 Evaluation.

³⁰ The commenter criticized the fact that M&T Bank's branch network includes New York County (i.e., Manhattan) but excludes Bronx County, one of the area's poorest counties. Examiners reviewed the bank's activities in the New York-Northern New Jersey-Long Island, NY-NJ-PA Multistate Metropolitan Area ("the Multistate Area") and concluded that the bank's retail delivery systems were reasonably accessible to significant portions of the bank's geographies and individuals of different income levels in the Multistate Area. Although the bank does not have any branches in Bronx County, the bank originated 22 HMDA-related loans and 17 small business loans in the county during 2007, representing 8.5 percent and 8.6 percent, respectively, of the bank's HMDA and small business loan volume in the five counties of New York City. In the Multistate Area, M&T Bank originated 132 community development loans totaling \$457 million and made 209 community development investments totaling \$29 million during 2006 and 2007.

20 percent of M&T Bank's branches were in LMI tracts and that 19 percent of the bank's ATMs were in LMI areas, which enhanced the bank's performance under the service test in those communities. Examiners also noted that M&T Bank's customers could use ATMs owned by institutions that had business relationships with the bank without paying a fee and that six of them were in LMI areas. In addition, examiners noted that M&T Bank is a leader in providing community development services throughout its assessment areas, including sponsoring and participating in a significant number of seminars and presentations relating to affordable mortgages, small business assistance, and other banking education. These types of events provided technical assistance and training to LMI individuals, community organizations, small businesses, and housing agencies.

B. Conclusion on Convenience and Needs and CRA Performance

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 Applicants, a public comment received on the proposal, and confidential supervisory information. Applicants represented that the proposal will result in increased credit availability and access to a broader range of financial services for customers of M&T Bank and Provident 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 insured depository institutions 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 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, the Bank Merger Act, the Federal Reserve Act, and the statutory factors it is required to consider when reviewing an application for retaining and operating branches. 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

proposal, 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 fifteenth 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,³¹ effective May 8, 2009.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

³¹ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

Appendix

M&T/Provident Banking Markets Consistent with Board Precedent and DOJ Guidelines						
Data are as of June 30, 2008. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.						
Washington DC-MD-VA-WV – includes the Washington, D.C. Regionally Metropolitan Area (“RMA”), the non-RMA portions of the counties of Calvert, Charles, Frederick, Prince George's and St. Mary's, Maryland, and Fauquier and Loudoun, Virginia; the cities of Alexandria, Fairfax, Falls Church, and Manassas, Virginia; and Jefferson County, West Virginia.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	10	\$2.04B	1.9	1259	3	91
<i>Provident</i>	14	\$1.14B	0.9			
<i>M&T Post-Consummation</i>	8	\$3.18B	2.8			
Baltimore, MD-PA – includes the Baltimore, Maryland RMA, the non-RMA portions of the counties of Harford and Carroll, Maryland (excludes the Washington DC-MD-VA-WV RMA portion); and Baltimore, Maryland.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	2	\$5.2B	12.5	1430	185	73
<i>Provident</i>	5	\$3.1B	7.4			
<i>M&T Post-Consummation</i>	2	\$8.3B	19.9			
Annapolis – includes the Annapolis, Maryland RMA.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	9	\$133M	3.97	1157	3	19
<i>Provident</i>	17	\$16M	0.48			
<i>M&T Post-Consummation</i>	9	\$149M	4.45			