

FEDERAL RESERVE BOARD

Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja
Valencia, Spain

Banco Financiero y de Ahorros, S.A.
Madrid, Spain

Order Approving the Acquisition of a Bank Holding Company

Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja (“Bancaja”), Valencia, Spain, a foreign banking organization subject to the Bank Holding Company Act (“BHC Act”),¹ and Banco Financiero y de Ahorros, S.A. (“New Bank”), Madrid, Spain, a newly formed foreign bank (collectively, “Applicants”), have requested the Board’s approval under section 3 of the BHC Act² to acquire control of Caja de Ahorros y Monte de Piedad de Madrid (“Caja Madrid”), and thereby indirectly acquire Caja Madrid’s subsidiaries, Caja Madrid Cibeles S.A. (“Cibeles”), both of Madrid; CM Florida Holdings, Inc. (“CM Florida”), Coral Gables, Florida; and City National Bancshares, Inc. (“CNB”) and City National Bank of Florida (“Bank”), both of Miami, Florida. Caja Madrid, Cibeles, CM Florida, and CNB are financial holding companies.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (75 Federal Register 69,666 (2010)). 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.

Bancaja, with total consolidated assets equivalent to \$153 billion, is the sixth largest depository organization in Spain and operates a branch in Miami. New Bank, on a pro forma basis, will have total assets of approximately \$470 billion and will be the third largest banking institution by total assets in Spain.

¹ Bancaja operates a branch in the United States and, therefore, is subject to the BHC Act. 12 U.S.C. §3106(a).

² 12 U.S.C. § 1842.

New Bank was formed as a commercial bank under the laws of Spain in connection with the proposed integration of seven savings banks, or *cajas de ahorros*,³ into a single financial group through a *Sistema Institucional de Protección* (“SIP”). A SIP integrates a group of *cajas de ahorros* into a united economic group headed by a commercial bank while allowing each *caja de ahorros* to maintain the regional approach of its business. The Spanish government and the Bank of Spain have promoted such integration transactions in an effort to consolidate the number of *cajas de ahorros* operating in Spain. New Bank will serve as the central point of governance and the head of the integrated group and, thus, will exercise control over the management and policies of Caja Madrid and each of the other six *cajas de ahorros* in the group.

Caja Madrid will hold approximately 52 percent of the total issued shares of New Bank and will be its largest shareholder. Bancaja will hold approximately 38 percent of the total issued shares of New Bank. Each of the remaining five *cajas de ahorros* will own less than 3 percent of New Bank.⁴

By entering into the integration transaction, New Bank will be eligible to receive funds from the *Fondo de Reestructuración Ordenada Bancaria* (“FROB”), which was created by the Spanish government to support and facilitate integration transactions among Spanish financial institutions. In exchange for the funds, FROB will purchase perpetual convertible preference shares of New Bank that are convertible to voting shares if not redeemed in five years. The five-year period may be extended for two additional years with the approval of the Bank of Spain.

FROB proposes to invest up to €4.465 billion in New Bank. FROB’s investment in New Bank would represent approximately 30 percent of the total equity and

³ *Cajas de ahorros* have no shareholders but are controlled by governing bodies that represent various groups, such as depositors, employees, the local government, and local companies.

⁴ The five *cajas de ahorros* are (1) Caja Insular de Ahorros de Canarias, Las Palmas, (2) Caja de Ahorros y Monte de Piedad de Ávila, Ávila, (3) Caixa d’Estalvis Laietana, Mataró, (4) Caja de Ahorros de Segovia, Segovia, and (5) Caja de Ahorros de la Rioja, Logroño, all of Spain.

if converted to voting shares, would currently represent 30 percent of New Bank's voting shares.

Competitive Considerations

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 markets. 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

Bancaja operates an uninsured branch in Miami. Applicants do not currently control a U.S. insured depository institution. 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.

Financial, Managerial, and Supervisory 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.⁶ The Board has considered these factors in light of all the facts of record, including supervisory and examination information received from the Office of the Comptroller of the Currency ("OCC"), the primary federal supervisor of Bank, and publicly reported and other available information, including information provided by Applicants. The Board also has consulted with the Bank of Spain, the agency with primary responsibility for the supervision and regulation of Spanish banks, including Bancaja and New Bank.

In evaluating the financial factors in proposals involving bank holding companies, the Board reviews the financial condition of the applicants and the target

⁵ 12 U.S.C. § 1842(c)(1).

⁶ 12 U.S.C. § 1842(c)(2) and (3).

depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial factors of the proposal. The capital levels of Bancaja and New Bank 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 this regard, FROB proposes to invest up to €4.465 billion in New Bank, which would substantially enhance the capital and financial strength of New Bank and its affiliated savings banks.⁷ In addition, Bank is 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 Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Bancaja, CM Florida, and Bank, including assessments of their management, risk-management systems, and operations. The Board has also consulted with the Bank of Spain. 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 and with anti-money laundering laws. The Board also has considered Applicants' plans for implementing the proposal, including the proposed management of the organization 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.⁸

⁷ The Board received a comment concerning, among other matters discussed later, the losses that Caja Madrid has suffered in certain foreign investments. Because of FROB's investment of up to €4.465 billion, the Board believes New Bank and Caja Madrid have sufficient financial resources to effect the proposal.

⁸ 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

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.⁹ As noted, the Bank of Spain is the primary supervisor of Spanish banks, including Applicants. The Board previously has determined that Bancaja is subject to comprehensive supervision on a consolidated basis by its home country supervisor.¹⁰ The Board also has determined that other banks in Spain were subject to home country supervision on a consolidated basis.¹¹ New Bank is supervised by the Bank of Spain on substantially the same terms and conditions as Bancaja and those other banks. Based on all the facts of record, the Board has determined that Bancaja continues to be,

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. § 1843(c)(3)(A). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Bancaja and New Bank must, to the extent not prohibited by applicable law, 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, the International Banking Act, and other applicable federal laws. In light of the commitments and conditions in this case, the Board has concluded that Applicants have provided adequate assurances of access to any appropriate information the Board may request.

⁹ 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 regulation. See 12 CFR 211.24(c)(1).

¹⁰ See Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja, 84 Federal Reserve Bulletin 231 (1998).

¹¹ See, e.g., Caja de Ahorros y Monte de Piedad de Madrid, 95 Federal Reserve Bulletin B23 (2009); Caja de Ahorros del Mediterráneo, 92 Federal Reserve Bulletin C133 (2006); Caja de Ahorros de Galicia, Caixa Galicia, 92 Federal Reserve Bulletin C132 (2006); Banco Popular Español S.A., 92 Federal Reserve Bulletin C130 (2006).

and New Bank will be, subject to comprehensive supervision on a consolidated basis by their home country supervisor.

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”).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 neighborhoods.¹³

The Board has considered carefully all the facts of record, including evaluations of the CRA performance record of Bank, other information provided by Applicants, confidential supervisory information, and a public comment received on the proposal. The commenter alleged that Bank has engaged in disparate treatment of minority individuals in home mortgage lending.

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 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.¹⁴

¹² 12 U.S.C. § 1842(c)(2).

¹³ 12 U.S.C. § 2901 et seq.

¹⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11,642 and 11,665 (2010).

Bank received an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of May 18, 2009.¹⁵ Applicants have represented that they do not intend to change Bank’s CRA program on consummation.

A. HMDA and Fair Lending Record

The Board has carefully considered Bank’s fair lending record and Home Mortgage Disclosure Act (“HMDA”) data in light of the public comment contending that Bank denied a disproportionate percentage of loan applications from African Americans in the Miami Metropolitan Statistical Area (“MSA”). The Board has focused its analysis on the 2009 HMDA data reported by Bank.¹⁶

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials 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 Bank is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone 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 lending institutions are obligated to

¹⁵ With the exception of community development loans, the evaluation period for the Lending Test was January 1, 2006, through December 31, 2008. For community development loans, the Investment Test, and the Service Test, the evaluation period was April 6, 2006, the date of the last CRA evaluation, through May 18, 2009.

¹⁶ The Board reviewed HMDA data from the Miami and Ft. Lauderdale MSAs, as well as from Bank’s entire CRA assessment area.

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.

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 Bank's compliance with fair lending laws.

The record of this application, including confidential supervisory information, indicates that Bank has taken steps to ensure compliance with fair lending and other consumer protection laws. The Board also has considered the HMDA data in light of other information, including the overall performance record of Bank under the CRA. Bank's established efforts and its record of performance demonstrate that Bank is active in helping to meet the credit needs of its entire community.

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 record of the institution involved, information provided by Applicants, the comment received on the proposal, and confidential supervisory information. Based on a review of the entire record, the Board has concluded that convenience and needs considerations and the CRA performance record of Bank are consistent with approval of the proposal.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the transaction should be, and hereby is, approved.¹⁸ 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.¹⁹ The Board's approval is specifically

¹⁸ This approval includes any approvals required under section 3 of the BHC Act as a result of the indirect acquisition of shares of Bank by FROB.

¹⁹ 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 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

conditioned on compliance by Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal.²⁰ For purposes of this action, 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 the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors,²¹ effective December 16, 2010.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

acquire a bank if necessary or appropriate to clarify the factual issues related to the application and to provide an opportunity for testimony. 12 CFR 223.16(e), 262.25(d). 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 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.

²⁰ The Board has provided certain temporary exemptions to Bancaja and New Bank under section 4(c)(9) of the BHC Act (12 U.S.C. § 1843(c)(9)), which authorizes the Board to grant exemptions to foreign companies from the nonbanking restrictions of the BHC Act when the exemptions would not be substantially at variance with the purposes of the act and would be in the public interest. See Board letter to Alcides I. Avila, Esq., dated December 16, 2010.

²¹ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Warsh, Duke, Tarullo, and Raskin.