

## FEDERAL RESERVE SYSTEM

Independence Bancshares, Inc.  
Independence, Iowa

### Order Approving the Acquisition of a Bank Holding Company

Independence Bancshares, Inc. (“Independence”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3(a)(3) of the BHC Act (12 U.S.C. § 1842(a)(3)) to acquire all the voting shares of Fairbank Bancshares Corporation (“Fairbank”), and thereby acquire Fairbank’s subsidiary bank, Fairbank State Bank (“Bank”), both in Fairbank, Iowa.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 55,941 (2001)). 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.

Independence, the 159th largest banking organization in Iowa, controls two subsidiary banks with total deposits of \$63.5 million,<sup>1</sup> representing less than 1 percent of total deposits in depository institutions in the state (“state deposits”).<sup>2</sup> Fairbank, the 332nd largest banking organization in Iowa, controls one subsidiary bank with total deposits of \$18.4 million, representing less than 1 percent of state deposits. On consummation of the proposal, Independence

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<sup>1</sup> The subsidiary banks of Independence are Northeast Security Bank, Sumner, and Security State Bank, Independence, both in Iowa.

<sup>2</sup> In this context, depository institutions include commercial banks, savings banks, and savings associations. Deposit data are as of June 30, 2001, and have been adjusted to reflect structural changes that have occurred since that time.

would become the 117th largest banking organization in Iowa, controlling deposits of \$81.9 million.

### 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. Section 3 also 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>3</sup>

Independence and Fairbank compete directly in the Buchanan, Iowa, banking market (“Buchanan market”).<sup>4</sup> The Board has reviewed carefully the competitive effects of the proposal in the Buchanan market in light of all the facts of record. In particular, the Board has considered the increase in the concentration of total deposits in depository institutions in the market (“market deposits”) as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),<sup>5</sup> the number of competitors that would remain in the market, and other characteristics of the market.

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<sup>3</sup> See 12 U.S.C. § 1842(c)(1).

<sup>4</sup> The Buchanan market is defined as Buchanan County, Iowa.

<sup>5</sup> Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is more than 1800 is considered to be highly concentrated. 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.

Consummation of the proposal would exceed the DOJ Guidelines in the Buchanan market. Independence is the second largest of nine depository institutions in the market, controlling \$38 million in deposits, representing 14.7 percent of market deposits. Fairbank ranks fifth in the market, controlling \$18.3 million in deposits, representing 7.1 percent of market deposits. After the proposed transaction, Independence would remain the second largest depository institution in the Buchanan market and control \$56.3 million in deposits, representing 21.8 percent of market deposits. The HHI would increase 208 points to 2,861.<sup>6</sup>

In this case, several mitigating factors indicate that the increase in market concentration, as measured by the HHI, is not likely to reflect a significantly adverse effect on competition. After consummation of the proposal, at least eight competitors would remain in the Buchanan market. One competitor would control 46 percent of market deposits and another competitor would control more than 13 percent.

The Buchanan market also appears to be attractive for entry. The averages for Buchanan County exceed the averages for all Iowa non-Metropolitan Statistical Area counties in population per banking office, deposits per banking office, and increase in per capita income. Moreover, Iowa recently amended its branching law to allow unlimited intrastate de novo branching by Iowa state-

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<sup>6</sup> Market share data for the Buchanan market are as of June 30, 2001, 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 WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board has regularly 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).

chartered banks, effective July 1, 2004.<sup>7</sup> Until the new law becomes effective, a state bank may establish up to three new branches anywhere in the state.<sup>8</sup>

The Board concludes that the foregoing considerations, including the number and size of competitors that would remain in the Buchanan market after consummation of the proposal, the structure and attractiveness of that market, and other factors, mitigate the transaction's potential anticompetitive effects. The Board has also considered the views of the Department of Justice and the appropriate banking agencies on the competitive effects of the proposal in the Buchanan market. The Department of Justice has advised the Board that consummation of the proposal is not likely to have any significant adverse competitive effects in the Buchanan market. The Federal Deposit Insurance Corporation ("FDIC") was provided an opportunity to comment and did not object to consummation of the proposal.

Based on these and all the facts of record, the Board concludes that consummation of the proposal is not likely to result in any significantly adverse effects on competition or on the concentration of banking resources in the Buchanan market or any other relevant banking market. On this basis, the Board has determined that the competitive factors are consistent with approval of the proposal.

#### Other Considerations

The BHC Act requires the Board, in acting on an application, to consider the financial and managerial resources and future prospects of the

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<sup>7</sup> See H.F. 222, 79<sup>th</sup> Gen. Assem., 1<sup>st</sup> Sess. (Ia. 2001). Before the amendment, Iowa law prohibited any state bank from establishing a bank office "outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located." See Iowa Code § 524.1202 (2001).

<sup>8</sup> See H.F. 222, 79<sup>th</sup> Gen. Assem., 1<sup>st</sup> Sess. (Ia. 2001).

companies and banks involved, the convenience and needs of the communities to be served, and certain other supervisory factors. The Board has reviewed these factors in light of the record, including supervisory reports of examination assessing the financial and managerial resources of the organizations, and financial information provided by Independence. Based on all the facts of record, the Board concludes that the financial and managerial resources and the future prospects of Independence, Fairbank, and their subsidiary banks are consistent with approval, as are the other supervisory factors the Board must consider under the BHC Act.

In considering the convenience and needs of the communities to be served, the Board has reviewed the records of performance of the subsidiary banks of Independence and Fairbank under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.).<sup>9</sup> Based on all the facts of record, the Board concludes that convenience and needs considerations, including the CRA performance records of the relevant 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 application should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance by Independence with all the commitments made in connection with the proposal. For the purpose of this action, the commitments and conditions relied on by the Board in reaching its decision are deemed to be conditions imposed in writing by the Board in

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<sup>9</sup> The subsidiary banks of Independence and Fairbank received the following ratings at their most recent examinations for CRA performance by their primary federal supervisor: Northeast Security Bank received an "outstanding" rating from the FDIC, as of July 1, 1997; Security State Bank received a "satisfactory" rating from the FDIC, as of June 1, 1997; and Bank received a "satisfactory" rating from the FDIC, as of October 1, 1999.

connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of Bank shall 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 Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>10</sup> effective December 21, 2001.

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>10</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, Gramlich, Bies, and Olson.