

FEDERAL RESERVE SYSTEM

Old Kent Financial Corporation
Grand Rapids, Michigan

Order Approving Merger of Bank Holding Companies, Merger
of Banks, and Establishment of Branches

Old Kent Financial Corporation (“Old Kent”), 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 (12 U.S.C. § 1842) to merge with Merchants Bancorp, Inc., (“Merchants”), and thereby acquire Merchants’s subsidiary bank, Merchants National Bank of Aurora (“Merchants Bank”), both in Aurora, Illinois. Old Kent Bank, Grand Rapids, Michigan (“Old Kent Bank”), a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) (the “Bank Merger Act”) to merge with Merchants Bank, and to retain and operate branches at the locations of the main office and branches of Merchants Bank.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 66,189 (1999)). As required by the Bank Merger Act and the Board’s Rules of Procedure (12 C.F.R. 262.3(b)), reports on the competitive effects of the merger were requested from the U.S. Attorney General and the other federal banking agencies. The time for filing comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act and the Bank Merger Act.

¹ Old Kent proposes to merge a wholly owned acquisition subsidiary with and into Merchants, with Merchants as the surviving corporation. Immediately thereafter, Merchants would be liquidated and Merchants Bank would be merged with and into Old Kent Bank, with Old Kent Bank as the surviving depository institution.

Old Kent, with total consolidated assets of \$17.7 billion, is the 47th largest commercial banking organization in the United States, controlling less than 1 percent of the total assets of insured commercial banks in the United States.² Old Kent operates in Michigan, Illinois, and Indiana. Old Kent is the seventh largest depository institution in Illinois, controlling deposits of \$4.2 billion, representing approximately 2 percent of total deposits in depository institutions in the state.³

Merchants, with total consolidated assets of \$987.9 million, is the 43rd largest depository institution in Illinois, controlling deposits of \$686.3 million, representing less than 1 percent of total deposits in depository institutions in the state.

After consummation of the proposal, Old Kent would become the 44th largest commercial banking organization in the United States, with total consolidated assets of \$18.7 billion, representing less than 1 percent of total banking assets. Old Kent would become the fifth largest depository institution in Illinois, controlling deposits of \$4.9 billion, representing approximately 2.3 percent of total deposits in 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.⁴ For purposes of the BHC Act, the home state of Old Kent

² All asset data are as of September 30, 1999, and all deposit data are as of June 30, 1998.

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

⁴ 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

is Michigan, and Old Kent proposes to acquire Merchants Bank, which is located in Illinois. 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 Factors

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 be in furtherance of a monopoly. Both the BHC Act and the Bank Merger Act also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal in that banking market 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

Old Kent and Merchants compete directly in the Aurora, Illinois banking market.⁷ Old Kent is the fifth largest depository institution in 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 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Old Kent meets the capital and managerial requirements established under applicable law. Merchants Bank has been in existence and operated for the minimum period of time required by applicable state law. On consummation, Old Kent 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 total deposits held by insured depository institutions in Illinois, the state in which Old Kent and Merchants both operate insured depository institutions. See 205 Ill. Comp. Stat. 5/21.3 (West 1999). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

⁶ See 12 U.S.C. § 1842(c).

⁷ The Aurora banking market is defined as the southern part of Kane County; Plano, Bristol, Oswego, Fox, and Kendall Townships in Kendall County; and Sandwich Township in DeKalb County, all in Illinois.

Aurora banking market, controlling deposits of \$205.6 million, representing approximately 5.7 percent of total deposits in the market (“market deposits”).⁸ Merchants is the second largest depository institution in the Aurora banking market, controlling deposits of \$641.2 million, representing approximately 17.7 percent of market deposits. On consummation of the proposal, Old Kent would become the largest depository institution in the Aurora banking market, controlling \$846.7 million of deposits, representing 23.3 percent of market deposits. The change in market concentration, as measured by the Herfindahl-Hirschman Index (“HHI”), is consistent with prior Board precedent and the Department of Justice Merger Guidelines (“DOJ Guidelines”).⁹

⁸ Market share data are based on calculations that include the deposits of thrift institutions, which include savings banks and savings associations, weighted 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 calculation of market share 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* 26,923 (June 29, 1984)), a market in which the post-merger HHI is more than 1000 and less than 1800 is considered to be moderately 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. On consummation of this proposal, the HHI would increase by 199 points to 1315 and the Aurora banking market would remain moderately concentrated, as measured by the HHI.

The Department of Justice has reviewed the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse competitive effect in the Aurora banking market.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the Aurora banking market or any other relevant banking market.

Other Factors

Both 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 banks involved in the proposal and certain other supervisory factors. The Board has reviewed these factors in light of all the facts of record, including reports of examination, other confidential supervisory information assessing the financial and managerial resources of the organizations, and financial information provided by Old Kent. The Board notes that Old Kent and Merchants and their subsidiary banks currently are well capitalized and are expected to remain so on consummation of the proposal. Based on all the facts of record, the Board concludes that the financial and managerial resources and the future prospects of Old Kent, Merchants, and their respective subsidiary banks, are consistent with approval, as are the other supervisory factors the Board must consider under section 3 of the BHC Act and the Bank Merger Act.

In addition, the Board is required to consider the effect of the proposal on the convenience and needs of the communities to be served. The Board has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including the records of performance of the depository institutions of Old Kent

under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”),¹⁰ the lending records of Old Kent Bank and its subsidiaries, the policies and programs designed to ensure compliance with the fair lending laws, recent data provided by Old Kent’s depository institutions in regulatory reports, confidential supervisory information, and information provided by Old Kent. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor 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. The Board’s approval is specifically conditioned on compliance by Old Kent with all the commitments made in connection with these applications, and on the receipt by Old Kent of all necessary approvals from state regulators. For purposes 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 connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of Merchants shall not be consummated before the fifteenth calendar day following the effective date of this order, or later than

¹⁰ The Interagency Questions and Answers Regarding Community Reinvestment provides that an institution’s most recent CRA performance evaluation is an important and often controlling factor in the consideration of an institution’s CRA record because it represents a detailed evaluation of the institution’s overall record of performance under the CRA by its appropriate federal banking supervisor. 64 Federal Register 23,618 and 23,641 (1999). Old Kent Bank received a “satisfactory” rating at its most recent CRA performance examination by the Federal Reserve Bank of Chicago, as of August 1997. Old Kent Bank, National Association, Jonesville, Michigan, received a “satisfactory” rating at its most recent CRA performance examination by the Office of the Comptroller of the Currency, as of April 1999.

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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors,¹¹ effective January 27, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

¹¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley and Gramlich. Absent and not voting: Governor Meyer.