

FEDERAL RESERVE SYSTEM

Chinatrust Financial Holding Company, Ltd.
Taipei, Taiwan

Order Approving the Formation of a Bank Holding Company

Chinatrust Financial Holding Company, Ltd. (In Formation) ("CFHC") has requested the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) ("BHC Act") to become a bank holding company by indirectly acquiring Chinatrust Bank (U.S.A.), Torrance, California ("Chinatrust USA"), as a result of acquiring all the voting shares of Chinatrust Commercial Bank, Ltd., also in Taipei ("CCB"), a registered bank holding company under the BHC Act and a foreign bank within the meaning of the International Banking Act ("IBA").¹ CFHC would be formed under the laws of Taiwan for the purpose of acquiring CCB.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (67 Federal Register 2662 (2002)). The time for filing comments has expired, and the Board has considered the proposal

¹ CCB indirectly owns all the shares of Chinatrust USA through a wholly owned subsidiary, China Trust Holdings Corp., New York, New York ("Holdings"). Holdings is a registered bank holding company.

² CFHC would be formed under the Financial Holding Company Law of Taiwan ("FHCL"), which was promulgated July 9, 2001, and became effective November 1, 2001. The formation would be effected through an exchange of shares with CCB. CFHC's corporate existence would begin on consummation of the exchange of shares, and CCB would be a direct, wholly owned subsidiary of CFHC. The transaction would not affect CCB's U.S. operations.

and all comments received in light of the factors set forth in section 3 of the BHC Act.

CCB, with total consolidated assets of \$26 billion, is the ninth largest bank in Taiwan. In the United States, CCB operates Chinatrust USA, which has branches in California, Maryland, New Jersey, and New York, and a loan production office in the State of Washington. CCB also maintains a state-licensed branch in New York, New York. Chinatrust USA is the 58th largest banking organization in California, controlling total deposits of \$780.9 million, representing less than 1 percent of total deposits in depository institutions in the state.³ After consummation of the proposal, CFHC's only assets and operations would consist of CCB's assets and operations.

Competitive Considerations

The BHC Act prohibits the Board from approving any proposal under section 3 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.⁴

The proposal involves only the formation of a top-tier holding company under Taiwan law and does not involve the acquisition of a second bank

³ Deposit and ranking data are as of June 30, 2001. In this context, depository institutions include commercial banks, savings banks, and savings associations.

⁴ 12 U.S.C. § 1842(c).

in the United States. Accordingly, based on all the facts of record, the Board concludes that consummation of the proposal would not have any significantly adverse effects 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

The BHC Act requires that the Board, in acting on an application, consider the financial and managerial resources and future prospects of the companies and banks involved in a bank acquisition proposal, the effect the proposed transaction would have on such resources, and other supervisory factors. In assessing the financial and managerial strength of CFHC and its affiliates, the Board has reviewed information from the home country authority responsible for supervising CCB and CFHC concerning the proposal and the condition of the parties; confidential financial information from CCB and CFHC; reports of examination from the appropriate federal and state supervisors of CCB's branch office and Chinatrust USA assessing the financial and managerial resources of the organization's U.S. operations; and publicly reported and other financial information, as well as public comments received on the proposal.⁵

⁵ The Board received one comment on the proposal that cited press reports about the activities of CCB, its affiliates, and companies owned or controlled by officers or directors of CCB or their relatives. The issues raised in these press reports included investments in offshore companies made to avoid taxes in Taiwan or to engage in stock speculation outside Taiwan, and other financial and nonfinancial issues concerning the entities previously noted. In addition, the press reports described a credit rating agency's decision in August 2001 to downgrade the outlook on CCB's counterparty credit ratings. The press reports also noted allegations of underreporting of nonperforming loans by financial institutions generally in Taiwan. The Board has considered this information in the context of

The proposal is a corporate reorganization that involves only an exchange of shares. On consummation, CCB's capital levels would 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 under similar circumstances. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the organization involved are consistent with approval.

Under section 3 of the BHC Act, 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.”⁶ The Board previously has determined that CCB is subject to comprehensive consolidated supervision by its home country supervisors.⁷ No material changes have occurred in the manner of CCB's supervision that would alter the Board’s previous determination. Based on all the

the supervisory and other information noted above, including information from the relevant home country authorities.

⁶ 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 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank may be considered subject to consolidated supervision 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 foreign bank, including the relationships of the bank to its affiliates, to assess the foreign bank’s overall financial condition and compliance with law and regulation. See 12 C.F.R. 211.24(c)(1)(ii).

⁷ See Chinatrust Commercial Bank, Ltd., 84 Federal Reserve Bulletin 1121 (1998). Pursuant to delegated authority, the Federal Reserve Bank of New York ("Reserve Bank") approved CCB's application to acquire Chinatrust USA. See letter dated April 18, 2001, from the Reserve Bank to Barbara Mendelson, Esq.

facts of record, the Board has concluded that CCB continues to be subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisors.⁸

The BHC Act also requires the Board to determine that CFHC 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.⁹ The Board has reviewed the restrictions on disclosure in jurisdictions where CFHC would have material operations and has communicated with relevant government authorities concerning access to information. CCB has committed that it will make available to the Board such information on its operations and the operations of any of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. CCB also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it to make such information available to the Board. CFHC, CCB's ultimate parent under the terms of the proposal, is in

⁸ Regarding the supervision of the new parent company of CCB, the Board has considered that the parent, CFHC, would be subject to supervision by the Ministry of Finance ("Ministry"). Under the FHCL, the supervisor of a financial holding company in Taiwan is the competent authority designated in the Taiwan Banking Law, which at present is the Ministry. The FHCL contains prudential restrictions on transactions with affiliates and imposes capital adequacy requirements on financial holding companies. The Ministry may order a financial holding company and its subsidiaries to provide financial statements, transaction information, or other related data for inspection, and may 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.

⁹ See 12 U.S.C. § 1842(c)(3)(A).

formation and, consequently, has not yet provided assurances of access to information. The Board's action on this proposal is subject to the condition that, immediately on its formation, CFHC will provide the Board with commitments as prescribed by the Board with respect to access to information and consent to jurisdiction. In light of the commitments provided by CCB, the condition stated above, and other facts of record, the Board has concluded that CFHC has 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.

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 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 local communities in which they operate, consistent with safe and sound operation, and requires the appropriate federal 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 expansion proposals. The Board has considered carefully the convenience and needs factor and the CRA performance

¹⁰ 12 U.S.C. § 2901 et seq.

record of Chinatrust USA in light of all the facts of record, including the public comment noted above.¹¹

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations by the appropriate federal supervisor of the CRA performance record of the relevant institution. An institution's most recent CRA performance record of the relevant 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.¹²

Chinatrust USA received a "satisfactory" overall rating in the most recent examination of Chinatrust USA's CRA performance by the Federal Deposit Insurance Corporation ("FDIC"), as of May 29, 2001 ("2001 examination").¹³ Examiners found no substantive violations of antidiscrimination laws and, in general, commended Chinatrust USA for originating a high percentage of loans in

¹¹ The commenter criticized Chinatrust USA's 1999 decision to discontinue its consumer loan products in favor of focusing on originating commercial loans; its omission of Bronx County, New York, from its New York/New Jersey assessment area; and its record of lending to small businesses, including in Kings and Bronx Counties, New York. The commenter also criticized Chinatrust USA's foreclosure policies in connection with a newspaper report suggesting that Chinatrust USA was considering foreclosing on property subject to a construction loan to a developer who is now in bankruptcy. This matter would be subject to applicable bankruptcy statutes and proceedings.

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

¹³ The New York State Banking Department also rated Chinatrust USA "satisfactory" in its most recent assessment of Chinatrust USA's record of helping to meet the credit needs of its entire community, as of April 4, 1998, pursuant to

its assessment areas. Examiners also reviewed the assessment areas delineated by Chinatrust USA, including in New York, and concluded that the assessment areas consist of whole census tracts, do not arbitrarily exclude any LMI census tracts, and reflect no illegal discrimination.

A. Lending

Chinatrust USA received a "high satisfactory" rating under the lending test in the 2001 examination, which covered the period from May 1999 through May 2001 ("examination period").¹⁴ Examiners concluded that Chinatrust USA's lending record during the examination period reflected a good response to community credit needs in light of Chinatrust USA's strategy, lending volume, and competition.¹⁵ Examiners noted that the geographic distribution of loans originated by Chinatrust USA reflected a good penetration throughout its assessment areas, and that Chinatrust USA's lending performance in LMI areas in 1999 was favorable compared with the aggregate data of all lenders in Chinatrust USA's delineated communities (the "aggregate").¹⁶

section 28-b of New York Banking Law. See N.Y. Banking Law § 28-b (McKinney 2002).

¹⁴ The small business lending data reviewed in the 2001 examination included all small business loans originated by Chinatrust USA during 1999 and 2000.

¹⁵ Examiners noted that in 1999 Chinatrust USA discontinued offering all types of consumer loan products except as accommodations to existing customers but did not criticize this decision.

¹⁶ Based on information in the 2001 examination, the commenter argued that Chinatrust USA makes only limited use of innovative and flexible lending practices throughout its assessment areas and criticized Chinatrust USA's record for lending in LMI census tracts in its New York/New Jersey assessment area. However, examiners noted that Chinatrust USA offered flexible lending programs that benefited LMI individuals and small businesses throughout its assessment areas and concluded that Chinatrust USA's geographic distribution of loans in its

Examiners reported that Chinatrust USA originated 60 small business loans, totaling approximately \$22.9 million, in LMI census tracts in its assessment areas during the examination period.¹⁷ These small business loans represented more than 33 percent of Chinatrust USA's overall volume of business loans. Examiners observed that Chinatrust USA's level of penetration of small business loans in its assessment areas increased in 2000, and examiners commended Chinatrust USA's efforts to respond to small business credit needs in LMI areas. Examiners also commended Chinatrust USA's dispersion of its business loans among businesses of different sizes, noting that the number and dollar amount of loans to small businesses¹⁸ by Chinatrust USA during 1999 compared favorably with the aggregate in both its Los Angeles, California, and New York/New Jersey assessment areas.¹⁹ Examiners also noted that Chinatrust USA originated 18 community development loans, totaling \$13.3 million, which examiners found to represent an adequate level of community development loans.

New York/New Jersey assessment area reflected good penetration throughout the assessment area.

¹⁷ In this context, "small business loans" refers to loans of less than \$1 million to businesses.

¹⁸ In this context, "loans to small businesses" refers to commercial loans to businesses with gross annual revenues of \$1 million or less.

¹⁹ Examiners noted that Chinatrust USA's levels of lending to small businesses declined in 2000, but attributed the decline to Chinatrust USA's decision to focus its lending strategy primarily on middle-sized businesses.

B. Investment

Chinatrust USA also received a "high satisfactory" rating under the investment test in the 2001 examination. Examiners stated that Chinatrust USA made a significant level of qualified community development investments and grants during the examination period. Examiners observed that the 39 qualified investments by Chinatrust USA, totaling \$6.5 million, approximately doubled the number and volume of qualified investments made by Chinatrust USA during its previous examination period. Examiners concluded that Chinatrust USA's community development investments were responsive to the needs of the communities in its assessment areas, including LMI census tracts.

In the 2001 examination, Chinatrust USA's investment performance in its New York/New Jersey assessment area was considered adequate. Examiners noted that Chinatrust USA made 20 community development investments or grants in the assessment area, totaling approximately \$1.8 million, including a \$700,000 investment commitment to the Community Preservation Corporation ("CPC").²⁰ According to CFHC, these investments by Chinatrust USA included a purchase of almost \$480,000 in mortgage-backed securities guaranteed by government-sponsored entities, with underlying collateral primarily consisting of loans to individuals earning 80 percent or less of the median income in their respective communities.

C. Service

Chinatrust USA received a "high satisfactory" rating under the service test in the 2001 examination. Examiners concluded that Chinatrust USA's banking services and delivery systems, including alternative delivery systems, are

accessible to essentially all portions of Chinatrust USA's community, including LMI areas and individuals, and that Chinatrust USA's business hours are reasonable.

D. Montgomery County Assessment Area

Although Chinatrust USA received a "satisfactory" overall CRA rating, the commenter criticized Chinatrust USA's CRA performance, noting that examiners rated the bank "needs to improve" for Maryland in the 2001 examination. This rating was based on a review of Chinatrust USA's CRA activities in its Montgomery County, Maryland, assessment area.

Since the completion of the examination, Chinatrust USA has prepared an action plan to increase its lending in the assessment area. Chinatrust USA made a draft of this plan available for public comment in late 2001 but received no comments. The FDIC, the primary federal regulator of Chinatrust USA, has reviewed and approved the plan. The Board expects Chinatrust USA to implement its action plan, and has considered its activities in Maryland in the context of its overall CRA rating and the views of the FDIC on the adequacy of the plan for strengthening Chinatrust USA's CRA performance in Maryland.

E. Conclusion on Convenience and Needs

In reviewing the effects of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered the entire record, including the information provided by the commenter and CFHC, evaluations of the CRA performance of Chinatrust USA, and confidential supervisory information. Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to the

²⁰ CPC is a mortgage lender specializing in the financing of housing for LMI families. CFHC has indicated that since the examination, Chinatrust USA has

convenience and needs factor, including the CRA performance record of Chinatrust USA, 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, subject to all the terms and conditions in this order. 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.²¹

The Board's approval is specifically conditioned on compliance by CCB and CFHC with all the conditions set forth in this order and on all the representations and commitments made in connection with this application. The

funded more than 23 percent of its commitment to CPC.

²¹ The commenter also requested that the Board hold a public hearing on the proposal. Section 3(b) 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 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 C.F.R. 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 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 evidence 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.

Board's approval also is conditioned specifically on the Board's receiving access to information on the operations or activities of CFHC and any of its affiliates that the Board determines to be appropriate to determine and enforce compliance by CFHC and its affiliates with applicable federal statutes.²² These representations, 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.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,²³ effective April 19, 2002.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²² In addition, the Board's action on this proposal is subject to the condition that there be no change in the ownership structure of CFHC or its subsidiaries that would result in Chinatrust USA no longer being supervised as a subsidiary of CCB by the appropriate supervisory authority in Taiwan without the prior approval of the Board.

²³ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, and Olson.