

## FEDERAL RESERVE SYSTEM

Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland  
Utrecht, The Netherlands

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

Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland (“Rabobank”), a foreign banking organization, has requested the Board’s approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) (“BHC Act”) to become a bank holding company by acquiring all the voting shares of VIB Corp (“VIB”), and thereby indirectly acquiring its subsidiary bank, Valley Independent Bank (“Valley Bank”), both in El Centro, California.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (67 Federal Register 58,054 (2002)). 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.

Rabobank, with total consolidated assets of \$367 billion, is one of the largest banking organizations in The Netherlands.<sup>1</sup> Rabobank operates a branch in New York, an agency in Texas, and representative offices in California, Georgia, Illinois, and the District of Columbia. Rabobank also engages through its subsidiaries in a broad range of permissible nonbanking activities in the United States.

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<sup>1</sup> Asset and ranking data for Rabobank are as of June 30, 2002, and are based on the exchange rate then applicable.

VIB, with total consolidated assets of \$1.3 billion, is the 29th largest commercial banking organization in California.<sup>2</sup> Valley Bank, with total assets of \$1.3 billion, controls deposits of \$969 million in California, representing less than 1 percent of total deposits of insured depository institutions in the state. The proposed transaction would be Rabobank's first acquisition of a bank in the United States.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving any proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant 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.<sup>3</sup>

This proposal represents Rabobank's initial entry into retail banking in California. There is no evidence in this case that the transaction would lessen competition or create a monopoly in any relevant market. Based on this and all the facts of record, the Board has determined that competitive factors are consistent with approval.

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<sup>2</sup> Asset and deposit data for VIB and Valley Bank are as of September 30, 2002. Ranking data for VIB and Valley Bank are as of June 30, 2002. In this context, depository institutions include commercial banks, savings banks, and savings associations.

<sup>3</sup> 12 U.S.C. § 1842(c)(1).

### 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 depository institutions under the Community Reinvestment Act (“CRA”).<sup>4</sup> 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.

Rabobank does not currently operate an insured depository institution in the United States that is subject to the CRA. Rabobank has represented that it will maintain and support Valley Bank’s CRA program and that Rabobank’s capacity to provide long-term funding will further enhance these programs. The Board has carefully considered the convenience and needs factor and the CRA performance records of the insured depository institutions involved in light of all the facts of record, including public comments received regarding the proposal and Valley Bank’s record under the CRA.<sup>5</sup>

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<sup>4</sup> 12 U.S.C. § 2901 et seq.

<sup>5</sup> A community group submitted comments opposing the proposal and expressing concerns about the record of VIB in meeting the convenience and needs of the communities it serves. In particular, the commenter criticized VIB’s record of home mortgage and small business lending to LMI and minority borrowers.

### A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations by the appropriate federal supervisors of the relevant insured depository institutions. 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.<sup>6</sup>

VIB's sole subsidiary bank, Valley Bank, received a rating of "satisfactory" from the Federal Reserve Bank of San Francisco at its most recent CRA evaluation, as of February 26, 2001 (the "2001 Evaluation").<sup>7</sup> The Board has carefully reviewed the 2001 Evaluation and has considered confidential supervisory information and other information regarding the CRA performance and fair lending record of Valley Bank since its last CRA performance evaluation.

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<sup>6</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 (2001).

<sup>7</sup> VIB acquired Bank of Stockdale, F.S.B., Bakersfield ("Stockdale Bank"), in January 1999 and Kings River State Bank, Reedley ("KRS Bank"), both in California, in January 2000. KRS Bank and Stockdale Bank were merged into Valley Bank in May 2001, and continue to operate under their original names as divisions of Valley Bank. The CRA programs of KRS Bank and Stockdale Bank have not been evaluated for CRA purposes since their acquisition by VIB. The Board has carefully reviewed the most recent CRA performance evaluations of KRS Bank and Stockdale Bank. KRS Bank received a rating of "satisfactory" from its primary federal supervisor, the Federal Deposit Insurance Corporation ("FDIC"), at its most recent CRA evaluation as of February 10, 1998. Stockdale Bank received a rating of "satisfactory" from its primary federal supervisory, the Office of Thrift Supervision, at its most recent CRA evaluation as of November 12, 1997.

In that evaluation, examiners noted no evidence of prohibited discrimination or other illegal credit practices at Valley Bank, KRS Bank, or Stockdale Bank and found no substantive violations of fair lending laws. Examiners also reviewed the assessment areas delineated by Valley Bank and did not report that these assessment areas were unreasonable or reflected an arbitrary exclusion of LMI areas.

#### B. CRA Performance Record of VIB

Valley Bank received a “high satisfactory” rating under the lending test in the 2001 Evaluation. Valley Bank focuses its lending on agricultural and commercial loans. The 2001 Evaluation noted that as of December 31, 2000, approximately two-thirds of Valley Bank’s loan portfolio (over \$362 million) was composed of commercial and agricultural loans. The 2001 Evaluation stated that Valley Bank had strong lending levels and responded to community credit needs, especially in lending to small businesses.<sup>8</sup> Examiners reported that Valley Bank’s lending record during the period covered by the 2001 Evaluation (the “review period”) demonstrated good penetration throughout its assessment area, including LMI geographies.<sup>9</sup> Valley Bank extended approximately \$47.7 million in small loans to businesses and small farm loans during the review period, of which

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<sup>8</sup> In this context, “loans to small businesses” includes loans to businesses with gross annual revenues of \$1 million or less, and “small loans to businesses” includes loans of \$1 million or less to businesses.

<sup>9</sup> Valley Bank’s assessment areas for the 2001 Evaluation included Imperial, Riverside, and parts of San Diego Counties, all in California. Examiners noted that Valley Bank has a very limited presence in San Diego County. Approximately 98 percent of the small business and small farm loans Valley Bank made in its assessment areas during the review period were originated in Imperial and Riverside Counties.

90 percent by number and 76 percent by dollar volume were in its assessment area.<sup>10</sup> In Imperial and Riverside Counties, approximately 45.5 percent by number and 42.9 percent by dollar volume of Valley Bank's small loans to businesses and small farm loans were made in LMI census tracts. Examiners noted that in both Imperial and Riverside Counties, the majority of Valley Bank's business and farm loans was extended to businesses and farms with gross annual receipts of \$1 million or less.

Rabobank has represented that since the 2001 Evaluation, Valley Bank has originated an additional \$34.5 million of small farm loans and \$138.5 million of small loans to businesses, all in its assessment areas. In addition, the Board analyzed 2000 and 2001 data for Valley Bank's small loans to businesses and loans to small businesses in its assessment area and found that by number and dollar volume, in both minority and LMI census tracts, Valley Bank's lending exceeded that of lenders in the aggregate.

The 2001 Evaluation noted Valley Bank's participation in flexible lending programs aimed at small businesses and LMI individuals who might not qualify for more traditional loan products. Valley Bank, as a Small Business Administration ("SBA") Preferred Lender, originated more than \$10 million of SBA loan products during the review period. In addition, Valley Bank originated more than \$2 million in loans during the review period under the Department of Agriculture's Business & Industry Guarantee Loan Program designed to aid businesses that improve rural economies. Examiners also noted Valley Bank's participation in a lending program for small businesses sponsored by the California Southern Small Business Development Corporation that focuses on

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<sup>10</sup> The review period for the 2001 Evaluation was January 1 through December 31, 2000, for the lending test, while activity under the investment and service tests was reviewed from February 23 to December 31, 2000.

minority-owned, women-owned, and start-up small businesses in Valley Bank's assessment area.<sup>11</sup> Examiners noted that Valley Bank had extended approximately \$2.5 million in community development loans in its assessment areas. These loans benefited various community organizations, including local school districts and affordable housing projects. Rabobank has represented that since the 2001 Evaluation, Valley Bank has originated more than \$60 million in community development loans, including loans to programs that provide affordable housing for agricultural workers and LMI individuals, health care projects, and schools serving low-income families in rural communities. Although Valley Bank is primarily an agricultural and commercial lender, the bank also originated \$1.8 million in home-equity loans during the review period under a loan program it designed to assist LMI homeowners in LMI geographies.

Valley Bank received a "high satisfactory" rating for investment activities in the 2001 Evaluation. Examiners reported that Valley Bank's level of qualified investments had increased more than 200 percent since its previous CRA evaluation and noted that the bank's record of qualified investments and grant activity demonstrated an improved responsiveness to the credit needs and

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<sup>11</sup> The commenter contended that VIB does not participate in any home lending or lending for small businesses programs aimed at minority borrowers. The Board notes that neither the BHC Act nor the CRA require a bank to establish specific types of lending programs or to provide specific types of credit. Rather, the CRA focuses the attention of the banking agencies on encouraging insured depository institutions to help serve the needs of LMI neighborhoods as well as the credit needs of other areas in the community. As noted above, Valley Bank engages primarily in commercial and agricultural lending and does so throughout its community, including LMI areas.

community development initiatives of its assessment areas.<sup>12</sup> The 2001 Evaluation attributed the increase in Valley Bank's qualified investments to the bank's proactive investment strategy. Examiners noted that Valley Bank's qualified investments primarily benefited affordable housing programs, local redevelopment organizations, school districts, and youth programs.

Rabobank has represented that during 2001 and 2002, Valley Bank continued to support the affordable housing needs of its communities and made more than \$11.3 million in qualified investments in LMI housing programs in its assessment area. Rabobank has stated that it would continue to seek out and support long-term qualified investments, including programs supporting affordable housing.

Valley Bank's retail banking and community development services were also reviewed in the 2001 Evaluation. Examiners reported that the bank's retail delivery systems were generally accessible to most portions of its assessment area; more than half of Valley Bank's branches and automated teller machines ("ATMs") were in moderate-income communities. In addition, examiners reported that Valley Bank maintained alternative delivery systems through its 24-hour telephone banking line, informational website, and ATMs that offer services in English or Spanish.<sup>13</sup>

The 2001 Evaluation also noted Valley Bank's involvement in providing numerous community development services to organizations that serve LMI individuals and small businesses. Since then, according to Rabobank,

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<sup>12</sup> The commenter expressed concern about the level of Valley Bank's qualified investment and grant activities and alleged that programs supported by the bank do not address the needs of agricultural workers and LMI or minority individuals.

<sup>13</sup> In the commenter's view, Valley Bank provides inadequate Spanish-language lending and business services.

Valley Bank has developed a Small Business Outreach Program in coordination with the Coachella Valley Mexican American Chamber of Commerce. Through this program, Valley Bank provides certain business and development information in English and Spanish for small businesses in economically disadvantaged areas.

C. HMDA Data and Fair Lending Record

The Board also has carefully considered VIB's lending record in light of comments on data reported under the Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq. ("HMDA"), by its subsidiaries.<sup>14</sup> As noted above, Valley Bank is primarily a commercial and agricultural lender and these types of loans are not reported under HMDA.

In addition to its small business and small farm lending, Valley Bank engages to some extent in HMDA-reportable home mortgage lending. HMDA data for 2000 and 2001 indicate that the percentage of VIB's housing-related loans to Hispanic borrowers and in predominantly minority census tracts lagged that of lenders in the aggregate in the markets reviewed. The HMDA data for these loans also indicate that a disparity exists between VIB's denial rates for Hispanic applicants and its denial rates for nonminority applicants. These disparities generally were higher than the denial disparity ratios<sup>15</sup> for lenders in the aggregate with respect to the total HMDA-reportable loans in Valley Bank's assessment areas.<sup>16</sup>

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<sup>14</sup> The commenter alleged that VIB's 2001 HMDA data indicated that VIB disproportionately excluded and denied Hispanic applicants for home mortgage loans.

<sup>15</sup> The denial disparity ratio compares the denial rate for minority loan applicants with that for nonminority applicants.

<sup>16</sup> These disparities are reflected in the rates of loan applications, originations, and denials.

Although the HMDA data reflect certain disparities, the data do not indicate that VIB is excluding any segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria to ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about covered loans.<sup>17</sup> HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance with fair lending laws by VIB's current and former bank subsidiaries. As previously noted, examiners found no evidence of prohibited discrimination or other substantive violations of the fair lending laws at Valley Bank or its predecessors. Moreover, the Board has reviewed confidential supervisory information and other information about

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<sup>17</sup> 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

Valley Bank's fair lending compliance record since its most recent compliance examination. The Board has also considered the HMDA data in light of the fact that Valley Bank has only limited involvement in housing-related lending and in light of Valley Bank's overall lending and community development lending activities, which show that Valley Bank significantly assists in helping to meet the agricultural and small business credit needs of its entire community. The Board believes that, viewed in light of the entire record, the HMDA data indicate that VIB's record of performance in helping to serve the needs of its communities is consistent with approval of the proposal.

D. Conclusion on Convenience and Needs Considerations

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, all the information provided by the commenter and Rabobank, evaluations of the CRA performance of the subsidiary banks of VIB, and confidential supervisory information.<sup>18</sup> Based on all the facts of record and for reasons discussed above, the Board concludes that considerations relating to the convenience and needs factors including the CRA performance records of the relevant depository institutions, are consistent with approval.

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<sup>18</sup> The commenter urged the Board to condition approval of this proposal on Rabobank entering into a CRA commitment acceptable to the commenter. The Board notes that the CRA requires the Board, in considering an acquisition proposal, to review carefully the actual performance records of the relevant depository institutions in helping to meet the credit needs of the communities. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges concerning future performance under the CRA. Future activities of Rabobank's subsidiary bank will be reviewed by the appropriate federal supervisors in future CRA performance evaluations, and these CRA performance evaluations will be considered by the Board in any subsequent applications by Rabobank to acquire a depository institution.

### Financial, Managerial, and Supervisory Considerations

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal and certain other supervisory factors. Rabobank's capital levels exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. Rabobank will finance the acquisition of VIB with internally available funds and will not incur any additional debt in connection with this transaction. In assessing the financial and managerial strength of Rabobank, the Board has reviewed information provided by Rabobank, confidential supervisory and examination information, and publicly reported and other financial information. In addition, the Board has consulted with relevant supervisory authorities, including those in The Netherlands. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.<sup>19</sup>

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign banking organization unless it is "subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country."<sup>20</sup> The home country

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<sup>19</sup> The commenter alleged that VIB's senior management does not appear to include any minority individuals. The racial or ethnic composition of a bank holding company's management is outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Union Bank of Switzerland, 84 Federal Reserve Bulletin 684 (1998); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10<sup>th</sup> Cir. 1973).

<sup>20</sup> 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standard enumerated in Regulation K to determine whether a foreign bank that has applied

supervisor of Rabobank is De Nederlandsche Bank N.V. (“DNB”), which is responsible for the supervision and regulation of Dutch financial institutions.

In approving previous applications, the Board has determined that Rabobank and other Dutch banks are subject to comprehensive consolidated supervision by the DNB.<sup>21</sup> In this case, the Board finds that DNB supervises Rabobank in substantially the same manner as it supervised other Dutch banks at the time of those previous determinations. Based on this finding and all the facts of record, the Board concludes that Rabobank continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that a foreign bank 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.<sup>22</sup> The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Rabobank operates and has communicated with appropriate government authorities concerning access to information. In addition, Rabobank has committed to make available to the Board such information on the

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under section 3 of the BHC Act is subject to consolidated home country supervision. See 12 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank will be considered to be subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised and regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to affiliates, to assess the bank’s overall financial condition and its compliance with laws and regulations. See 12 C.F.R. 211.24(c)(1).

<sup>21</sup> See Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland, 80 Federal Reserve Bulletin 947 (1994). See, also ING Bank, 85 Federal Reserve Bulletin 448 (1999).

<sup>22</sup> See 12 U.S.C. § 1842(c)(3)(A).

operations of Rabobank and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Rabobank also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable Rabobank and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that Rabobank has provided adequate assurances of access to any appropriate information that the Board may request. Based on these and all the other facts of record, the Board concludes that the supervisory factors it is required to consider are consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposed transaction should be, and hereby is, approved.<sup>23</sup> In

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<sup>23</sup> The commenter requested that the Board hold a public hearing or meeting 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 hearing or meeting 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, commenters have had ample opportunity to submit their views, and the commenter has submitted written comments that have been considered carefully by the Board 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.

reaching its conclusion, the Board has considered all the facts of record that it is required to consider under the BHC Act and other applicable statutes.

The Board's approval is specifically conditioned on compliance by Rabobank with all its commitments made in connection with the application, and specifically Rabobank's commitments on access to information and on the Board's receiving access to information on the operations or activities of Rabobank and any of its affiliates that the Board determines to be appropriate to determine and enforce compliance by Rabobank and its affiliates with applicable federal statutes. If any restrictions on access to information on the operations or activities of Rabobank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Rabobank or its affiliates with applicable federal statutes, the Board may require termination of Rabobank's direct or indirect activities in the United States. All the commitments and conditions on which the Board has relied in granting its approval, including the commitments and conditions specifically described above, are conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The acquisition of VIB 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 Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 12, 2002.<sup>24</sup>

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>24</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.