

FEDERAL RESERVE SYSTEM

The Wakashio Bank, Limited
Tokyo, Japan

Order Approving the Formation of a Bank Holding Company

The Wakashio Bank, Limited, Tokyo, Japan (“Wakashio”), has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842) to become a bank holding company by merging with its affiliate, Sumitomo Mitsui Banking Corporation, also in Tokyo (“SMBC”), and by acquiring Manufacturers Bank, Los Angeles, California (“Bank”).¹

Wakashio does not propose to expand the banking or nonbanking operations of SMBC in the United States or to acquire or control any additional U.S. banks.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 Federal Register 5640 (2003)). 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.

SMBC, with total consolidated assets equivalent to \$857.1 billion, ranks fourth among the world’s commercial banks by assets.³ Bank, SMBC’s subsidiary depository institution, has total consolidated assets of \$1.1 billion and

¹ The merger of Wakashio and SMBC is scheduled to take place on March 17, 2003. Wakashio would be the surviving entity and would be renamed Sumitomo Mitsui Banking Corporation (“New SMBC”). Before the merger, Sumitomo Mitsui Financial Group, Inc., also in Tokyo (“SMFG”) and the parent holding company of Wakashio and SMBC, plans to transfer ownership of Bank from SMBC to SMFG. SMFG has committed to promptly transfer Bank to New SMBC in accordance with required approvals and applicable waiting periods.

² The Board has separately approved Wakashio’s application to acquire the U.S. branches of SMBC. See The Wakashio Bank, Limited (Order dated March 14, 2003).

³ Asset and ranking data are as of September 30, 2002.

controls deposits of \$825.8 million, representing less than 1 percent of total deposits of insured depository institutions in California.⁴ Wakashio has total assets of \$4 billion and controls no U.S. depository institutions.⁵

Factors Reviewed by the Board

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of a bank.⁶ These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved; the convenience and needs of the community to be served, including the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”);⁷ the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws; and, in the case of applications involving a foreign bank, whether the bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.⁸

The Board has considered these factors in light of a record that includes information provided by Wakashio, SMFG, and SMBC; confidential supervisory and examination information from various federal agencies; and publicly reported financial and other information. The Board also has considered

⁴ Asset, deposit, and state ranking data are as of June 30, 2002. In this context, depository institutions include commercial banks, savings associations, and savings banks.

⁵ Asset data are as of September 30, 2002.

⁶ A commenter has questioned the permissibility of a recently announced investment by The Goldman Sachs Group, Inc., New York, New York, in SMFG. The Board has previously reviewed this transaction and has not found that the proposal would cause Goldman to control SMFG for purposes of the BHC Act.

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ See 12 U.S.C. § 1842(c).

information from the Financial Services Agency of Japan (“FSA”), the primary home country supervisor of SMBC. The Board notes that the FSA has issued a preliminary approval of the proposed restructuring. In addition, the Board has considered all comments received on the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. 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 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.⁹ This proposal represents an internal reorganization of existing operations and would not result in either an expansion of operations or an acquisition of an additional bank in the United States. Based on all the facts of record, the Board concludes 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.

Financial and Managerial Considerations

The Board has carefully considered the financial and managerial resources and future prospects of Wakashio, SMBC, and Bank and the effect the proposed transaction would have on such resources in light of all the facts of record, which include the examination records of Bank. The Board has also consulted with the FSA. The transaction confers some accounting and regulatory benefits in Japan under standards applied by the FSA.

No expansion or restructuring of existing U.S. operations would result from the proposed reorganization. In addition, the proposal would not materially

⁹ 12 U.S.C. § 1842(c)(1).

affect the management of SMBC's operations, including its subsidiary insured depository institution, in the United States. The corporate reorganization would be effected through the exchange of shares. No debt would be issued by Wakashio, SMBC, or any of its subsidiaries as part of the transactions that would effect the reorganization. This transaction results in no substantive change in the capital of SMBC.

In this light, and based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of Wakashio, SMBC, and Bank are consistent with approval.

Convenience and Needs Factor

The Board has carefully considered the effects of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including a comment received on the proposal, information on the performance under the CRA of the relevant subsidiary insured depository institution received from the Federal Deposit Insurance Corporation ("FDIC"), publicly available data, and information submitted by Wakashio. As noted above, the U.S. operations of SMBC and Bank would remain unaffected by the proposed reorganization.

The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates an institution's record of performance in light of examinations by the appropriate federal supervisor. 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.¹⁰

Bank received a "satisfactory" rating at its most recent CRA performance evaluation by its primary federal supervisor, the FDIC, as of October 22, 2001.¹¹

In reviewing the effect of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered all the facts of record, including the views of the commenter,¹² Wakashio's response, and reports

¹⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹¹ The commenter noted that Bank received a "low satisfactory" rating in its performance evaluation under the investment test. Although examiners determined that Bank had not acted in a leadership role relative to community development investments, they considered its investments to be responsive to the needs identified in Bank's assessment areas, including those neighborhoods designated as low- and moderate-income. Wakashio states that Bank has substantially improved its community development investments since the date of the last evaluation, noting that Bank currently has approximately \$8.3 million in community development investments. These investments include \$5 million in a CRA-qualified fund investment that closed in December 2002.

¹² The commenter also noted that the section of the examination addressing the lending test stated that the distribution of small business loans reflected poor dispersion among businesses with gross annual revenue of \$1 million or less. Bank has defined its business strategy as serving manufacturers, distributors, wholesalers, importers, and commercial real estate developers that have revenues of more than \$5 million and require loans of more than \$1 million. The examiners noted that Bank's business lending was well distributed in its assessment area and that almost half of the loans originated in its Los Angeles and Orange County assessment areas were made to businesses in low- and moderate- income census tracts. The examiners also stated that Bank's low loan penetration among small businesses was given less weight in the bank's overall rating because of its primary target market and business strategy.

of examinations of Bank's CRA performance. Based on the review of the entire record and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance record of the relevant depository institution, is consistent with approval.

Other Supervisory Considerations

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.¹³ The Board previously determined, in applications under the International Banking Act and the BHC Act, that certain Japanese commercial banks were subject to comprehensive consolidated supervision by their home country supervisor.¹⁴ In this case, the Board has

Examiners rated Bank "high satisfactory" under the lending test, in part because they concluded that it had an outstanding record of originating and maintaining community development loans, and they described the bank as a leader in community development lending.

¹³ 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank that has applied 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 or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank's overall financial condition and its compliance with law and regulation. See 12 C.F.R. 211.24(c)(1).

¹⁴ See The Sumitomo Bank, Limited, 82 Federal Reserve Bulletin 369 (1996); Mizuho Holdings, Inc., 86 Federal Reserve Bulletin 776 (2000); UJF Holdings, Inc., 87 Federal Reserve Bulletin 270 (2001); and Mitsubishi Tokyo Financial Group, Inc., 87 Federal Reserve Bulletin 349 (2001).

determined that on consummation of the transaction, New SMBC would be supervised on substantially the same terms and conditions as these banks.

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.¹⁵ The Board has reviewed the restrictions on disclosure in jurisdictions where Wakashio would have material operations and has communicated with relevant government authorities concerning access to information. Wakashio has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of New SMBC and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Wakashio also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make any such information available to the Board. In light of these commitments, the Board has concluded that Wakashio 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.

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. 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

¹⁵ See 12 U.S.C. § 1842(c)(3)(A).

statutes. The Board's approval is specifically conditioned on compliance by Wakashio, SMBC, SMFG, and New SMBC with all the representations and commitments made in connection with the application, with the conditions stated or referred to in this order, and on the receipt by Wakashio of all necessary regulatory approvals. These representations, 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 banking transaction shall not be consummated before the fifteenth calendar day after the effective date of this order, and the transaction 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 by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁶ effective March 14, 2003.

Robert deV. Frierson
Deputy Secretary of the Board

¹⁶ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

FEDERAL RESERVE SYSTEM

The Wakashio Bank, Limited
Tokyo, Japan

Order Approving Establishment of Branches

The Wakashio Bank, Limited, Tokyo, Japan (“Wakashio”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA (12 U.S.C. § 3105(d)) to establish branches in Los Angeles and San Francisco, California, and New York, New York.¹ The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the Board’s approval to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Los Angeles, California (*Los Angeles Times*, January 21, 2003); San Francisco, California (*San Francisco Chronicle*, January 21, 2003); and New York, New York (*New York Times*, January 28, 2003). The time for filing comments has expired, and all comments have been considered.²

¹ The Board has separately approved Wakashio’s application to become a bank holding company with respect to Manufacturers Bank, Los Angeles, California. *See The Wakashio Bank, Limited* (Order dated March 14, 2003) (“Section 3 Order”).

² One comment was received. *See* Section 3 Order for a discussion of the concerns expressed by the commenter.

Wakashio, with consolidated assets of approximately \$4 billion,³ is a community bank that serves individuals and small businesses in the Tokyo metropolitan area. Wakashio was a subsidiary of Sumitomo Mitsui Banking Corporation (“SMBC”), also in Tokyo.⁴ As part of an internal reorganization on January 17, 2003, Wakashio became a direct subsidiary of Sumitomo Mitsui Financial Group (“SMFG”), the top-tier holding company of SMBC.⁵ SMBC plans to merge with and into Wakashio, with Wakashio as the surviving entity.⁶

SMBC has three branches in the United States that offer general commercial banking services for Japanese and U.S. corporate customers. On the merger of SMBC into Wakashio, New SMBC would acquire these branches.

The proposed branches would continue the operations and activities of the former SMBC branches. The transaction confers some accounting and regulatory benefits in Japan under standards applied by the Financial Services Agency of Japan (“FSA”). No expansion or restructuring of existing U.S. operations would result from the proposed reorganization. In addition, the proposal would not materially affect the management of SMBC’s operations, including its subsidiary insured depository institution, in the United States. The corporate reorganization would be effected through the exchange of shares. No debt would be issued by Wakashio, SMBC, or any of its subsidiaries as part of the transactions that would effect the reorganization. This transaction results in no substantive change in the capital of SMBC.

³ Asset data are as of September 30, 2002. Dollar amounts are converted from Japanese yen at ¥121.65 = US \$1.

⁴ SMBC, with total consolidated assets equivalent to \$857.1 billion, ranks fourth among the world’s commercial banks by assets.

⁵ SMFG was formed in December 2002.

In order to approve an application by a foreign bank to establish branches in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant engages directly in the business of banking outside of the United States and has furnished to the Board the information it needs to assess the application adequately. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 C.F.R. 211.24).⁷ The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)).

As noted above, Wakashio engages directly in the business of banking outside the United States. Wakashio also has provided the Board with information necessary to assess the relevant issues in the application. The Board has previously determined, in applications under the IBA and Bank Holding Company Act (“BHCA”), that certain Japanese commercial banks were subject to

⁶ Wakashio would be renamed Sumitomo Mitsui Banking Corporation (“New SMBC”) on consummation of the merger.

⁷ In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

comprehensive consolidated supervision by their home country supervisor.⁸ In this case, the Board has determined that on consummation of the transaction, New SMBC would be supervised on substantially the same terms and conditions as these banks.

Based on all the facts of record, the Board has determined that New SMBC would be subject to comprehensive supervision on a consolidated basis by its home country supervisor after consummation of the proposal.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)) have also been taken into account. The FSA has no objection to the establishment of the proposed branches.

Japan has enacted laws, and the FSA has promulgated implementing regulations, designed to prevent money laundering. The laws and regulations require financial institutions, including savings banks, to establish and implement policies, procedures, and controls for preventing and detecting money laundering and to report certain cash transactions and suspicious transactions to appropriate authorities. Compliance with applicable laws and regulations is monitored by the FSA and the institution's external auditors. Wakashio has policies and procedures to comply with these laws and regulations.

Financial factors are considered consistent with approval of this non-expansionary reorganization. Managerial resources of Wakashio also are considered consistent with approval, and Wakashio appears to have the experience and capacity to support the proposed branches. In addition, Wakashio has established controls and procedures for the proposed branches to ensure

⁸ *See* The Sumitomo Bank, Limited, 82 Federal Reserve Bulletin 369 (1996); Mizuho Holdings, Inc., 86 Federal Reserve Bulletin 776 (2000); UJF Holdings, Inc., 87 Federal Reserve Bulletin 270 (2001); and Mitsubishi Tokyo Financial Group, Inc., 87 Federal Reserve Bulletin 349 (2001).

compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

With respect to access to information about Wakashio's operations, the restrictions on disclosure in relevant jurisdictions in which Wakashio operates have been reviewed and the relevant government authorities have been communicated with regarding access to information. Wakashio has committed to make available to the Board such information on the operations of New SMBC and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHCA, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Wakashio has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the FSA may share information on Wakashio's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that Wakashio has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Wakashio, and the terms and conditions set forth in this order, Wakashio's application to establish branches is hereby approved. Should any restrictions on access to information on the operations or activities of New SMBC and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by New SMBC or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of New SMBC's direct or indirect activities in the United States. Approval of this

application also is specifically conditioned on compliance by New SMBC with the commitments made in connection with the application and with the conditions in this order.⁹ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against New SMBC and its affiliates.

By order of the Board of Governors,¹⁰ effective March 14, 2003.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁹ The authority to approve the establishment of the proposed branches parallels the continuing authority of the States of California and New York to license offices of a foreign bank. The approval of this application does not supplant the authority of those states or their agents, the California Department of Financial Institutions or the New York State Banking Department (“Departments”), to license the proposed offices of New SMBC in accordance with any terms or conditions that the Departments may impose.

¹⁰ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.