

## FEDERAL RESERVE SYSTEM

S&T Bancorp, Inc.  
Indiana, Pennsylvania

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

S&T Bancorp, Inc. (“S&T”), a financial 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 acquire up to 9.9 percent of the voting shares of IBT Bancorp, Inc. (“IBT”), and thereby indirectly acquire an interest in IBT's subsidiary bank, Irwin Bank & Trust Company (“Irwin Bank”), both in Irwin, Pennsylvania.<sup>1</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 Federal Register 57,462 (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.

S&T, with consolidated assets of \$2.8 billion, is the 18th largest banking organization in Pennsylvania, controlling deposits of \$1.9 billion, which represents 1.1 percent of total deposits in banking organizations in the state (“state deposits”).<sup>2</sup> IBT, with consolidated assets of \$609 million, is the 52<sup>nd</sup> largest banking organization in Pennsylvania, controlling \$450.4 million in deposits, which

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<sup>1</sup> S&T owns 4.1 percent of IBT’s voting shares. S&T proposes to acquire the additional voting shares of IBT through a cash purchase or series of purchases on the open market.

<sup>2</sup> Asset data for S&T are as of September 30, 2003. Deposit and ranking data are as of June 30, 2002.

represents less than 1 percent of state deposits.<sup>3</sup> If S&T were deemed to control IBT after the proposed acquisition, S&T would become the 16<sup>th</sup> largest banking organization in Pennsylvania, controlling approximately \$2.4 billion in deposits, which would represent 1.3 percent of state deposits.

The Board received a comment from IBT objecting to the proposal on the grounds that the proposed investment would adversely affect the financial and managerial resources of IBT and competition in the banking market where the subsidiary banks of S&T and IBT compete. The Board has considered carefully IBT's comment in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company.<sup>4</sup> However, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks.<sup>5</sup> On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.<sup>6</sup>

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<sup>3</sup> Asset data for IBT are as of June 30, 2003. Deposit data and ranking data are as of June 30, 2002.

<sup>4</sup> See, e.g., Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000) ("Brookline"); North Fork Bancorporation, Inc., 81 Federal Reserve Bulletin 734 (1995); First Piedmont Corp., 59 Federal Reserve Bulletin 456, 457 (1973).

<sup>5</sup> See 12 U.S.C. § 1842(a)(3).

<sup>6</sup> See, e.g., Brookline (acquisition of up to 9.9 percent of the voting shares of a bank holding company); GB Bancorporation, 83 Federal Reserve Bulletin 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank); Mansura Bancshares, Inc., 79 Federal Reserve Bulletin 37 (1993) ("Mansura") (acquisition of

IBT asserts that the proposal constitutes a controlling investment in IBT and would enable S&T to influence the affairs of Irwin Bank. Because S&T would not control 25 percent or more of the outstanding shares of any class of voting securities of IBT or Irwin Bank and would not be able to elect a majority of directors of IBT or Irwin Bank, S&T could only be deemed to control IBT or Irwin Bank for purposes of the BHC Act if the Board determines that S&T, by virtue of its proposed investment, would be able to exercise a controlling influence over the management or policies of IBT or Irwin Bank.

S&T has stated that the acquisition is intended as a passive investment and that it does not propose to control IBT or Irwin Bank. S&T has agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.<sup>7</sup> For example, S&T has committed not to exercise or attempt to exercise a controlling influence over the management or policies of IBT or any of its subsidiaries; not to seek or accept representation on the board of directors of IBT or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with IBT or any of its subsidiaries. S&T also has committed not to attempt to influence the dividend policies, loan decisions, or operations of IBT or any of its subsidiaries. Moreover, the BHC Act prohibits S&T from acquiring additional shares of IBT or attempting to exercise a controlling influence over IBT without the Board's prior approval.

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9.7 percent of the voting shares of a bank holding company).

<sup>7</sup> See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996); First Community Bancshares, Inc., 77 Federal Reserve Bulletin 50 (1991). These commitments are set forth in the Appendix.

IBT asserts that the commitments are insufficient to prevent S&T from exercising a controlling influence over IBT. IBT notes that, after completing the proposed acquisition of voting shares, S&T would be the largest shareholder of IBT, and that S&T's interest in IBT would exceed the combined interests of all the members of IBT's board of directors.

The Board, however, concludes, based on past experience, that the commitments made by S&T in connection with this application are sufficient to prevent S&T from exercising a controlling influence over IBT. The Board has adequate supervisory authority to monitor compliance by S&T with the commitments, and the ability to take enforcement action against S&T if it violates any of the commitments or exercises a controlling influence over IBT.<sup>8</sup> The Board also has authority to initiate a control proceeding against S&T if facts presented later indicate that S&T or any of its subsidiaries or affiliates in fact controls IBT for purposes of the BHC Act.<sup>9</sup> Based on these considerations and all other facts of record, the Board has concluded that S&T would not acquire control of, or the ability to exercise a controlling influence over, IBT through the proposed acquisition of voting shares.

#### Competitive Considerations

In considering an application under section 3 of the BHC Act, the Board is required to evaluate a number of factors, including the competitive effects of the proposal. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.<sup>10</sup> The Board has found that noncontrolling interests in directly

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<sup>8</sup> See 12 U.S.C. § 1818(b)(1).

<sup>9</sup> See 12 U.S.C. § 1841(a)(2)(C).

<sup>10</sup> See, e.g., SunTrust Banks, Inc., 76 Federal Reserve Bulletin 542 (1990); First State Corp., 76 Federal Reserve Bulletin 376, 379 (1990); Sun Banks, Inc.,

competing depository institutions may raise serious questions under the BHC Act, and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.<sup>11</sup>

S&T and IBT compete directly in the Pittsburgh, Pennsylvania, banking market.<sup>12</sup> S&T is the ninth largest depository institution<sup>13</sup> in the Pittsburgh banking market, controlling \$649.6 million in deposits, which represents 1.6 percent of total deposits in depository institutions in the market (“market deposits”).<sup>14</sup> IBT is the 14<sup>th</sup> largest depository institution in the Pittsburgh banking market, controlling \$343.7 million in deposits, which represents less than 1 percent of market deposits. If considered a combined banking organization on consummation of the proposal,

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71 Federal Reserve Bulletin 243 (1985) (“Sun Banks”).

<sup>11</sup> See, e.g., BOK Financial Corp., 81 Federal Reserve Bulletin 1052, 1053-54 (1995); Mansura at 38; Sun Banks at 244.

<sup>12</sup> The Pittsburgh banking market is defined as all of Allegheny, Beaver, and Washington Counties; Westmoreland County except St. Clair Township; South Buffalo, Gilpin, Parks, and Kiskiminetas Townships in Armstrong County; Muddy Creek, Lancaster, Jackson, Forward, Penn, Jefferson, Winfield, Middlesex, Clinton, Cranberry, Adams, and Buffalo Townships in Butler County; Washington, Jefferson, Perry, Lower Tyrone, Upper Tyrone, Bullskin, and Salt Lick Townships in Fayette County; Conemaugh, Burrell, and West Wheatfield Townships in Indiana County; and Little Beaver, New Beaver, Wayne, and Perry Townships in Lawrence County, all in Pennsylvania.

<sup>13</sup> In this context, depository institutions include commercial banks, savings banks, and savings associations. Market share data are based on calculations that include the deposits of thrift institutions 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, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (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, 55 (1991).

<sup>14</sup> Market deposit data are as of June 30, 2002, and reflect mergers and acquisitions through September 2, 2003.

S&T and IBT would become the eighth largest depository institution in the Pittsburgh banking market, controlling approximately \$993.4 million in deposits, which would represent 2.5 percent of market deposits. The Herfindahl-Hirschman Index (“HHI”) for the Pittsburgh banking market would increase 3 points to 1,537, and numerous competitors would remain in the market.<sup>15</sup>

IBT asserts that S&T’s ownership of 9.9 percent of IBT’s voting shares would provide S&T with the ability to influence the affairs of Irwin Bank, with a resulting adverse effect on competition. The Board concludes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influence over IBT reduce the potential adverse effects of the proposal. Moreover, the Board notes that in light of the above analysis of the Pittsburgh banking market, if S&T and IBT were viewed as a combined organization on consummation of the proposal, the elimination of competition between the two entities would not appear to lessen substantially competition in any relevant banking market. The Department of Justice has also reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market.

Accordingly, in light of all the facts of record, the Board has concluded that competitive considerations are consistent with approval of the

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<sup>15</sup> Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is between 1000 and 1800 is considered 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 thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

proposal.

#### Other Factors

The Board also is required under section 3(c) of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks concerned. IBT contends that S&T's investment would distract the attention of IBT's management from the operation of IBT and Irwin Bank, cause customer confusion about the continued independence of Irwin Bank, and adversely affect the price of IBT's shares.<sup>16</sup> The Board believes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influence over IBT reduce the potential adverse effects of the proposal. As noted above, S&T has committed that it will not attempt to influence the operations or activities, or the dividend, loan, or credit policies of IBT. No evidence has been presented to show that the purchase of shares of IBT on the open market by S&T would adversely affect the financial condition of IBT or S&T. The Board notes that S&T is well capitalized and would remain so on consummation of the proposal. Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of S&T, IBT, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act. In addition, considerations relating to the convenience and needs of the communities to be served, including the records of performance of the institutions

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<sup>16</sup> IBT also contends that the proposal might create the perception that it is a candidate for acquisition. The Board is limited under the BHC Act to the consideration of factors specified in the Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10<sup>th</sup> Cir. 1973). The potential effect of a proposal on the behavior of others in the market is not among the factors the Board is charged with considering under the BHC Act or other applicable statutes. The Board also notes that IBT has stated publicly its intention to maintain the independence of Irwin Bank as a local community bank.

involved under the Community Reinvestment Act, 12 U.S.C. § 2901 et seq. (“CRA”), are consistent with approval of the application.<sup>17</sup>

### Conclusion

Based on the foregoing and all other facts of record, the Board has determined that this application should be, and hereby is, approved. In reaching this 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. The Board’s approval is specifically conditioned on compliance by S&T with all representations and commitments made in connection with this application, including the commitments discussed in this order. These representations and commitments 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 IBT’s voting shares shall not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended

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<sup>17</sup> S&T’s lead subsidiary bank, S&T Bank, also in Indiana, and Irwin Bank each received “satisfactory” ratings at their most recent examinations for CRA performance by the Federal Deposit Insurance Corporation, as of January 1, 2003, and August 1, 2001, respectively.

for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>18</sup> effective November 25, 2003.

(signed)

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Jennifer J. Johnson  
Secretary of the Board

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<sup>18</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, and Bernanke. Absent and not voting: Governors Bies and Kohn.

## APPENDIX

As part of this proposal, S&T Bancorp, Inc. (“S&T”), Indiana, Pennsylvania, commits that S&T will not, without the prior approval of the Federal Reserve, directly or indirectly:

- (1) Exercise or attempt to exercise a controlling influence over the management or policies of IBT Bancorp, Inc. (“IBT”) or any of its subsidiaries;
- (2) Seek or accept representation on the board of directors of IBT or any of its subsidiaries;
- (3) Have or seek to have any employee or representative serve as an officer, agent, or employee of IBT or any of its subsidiaries;
- (4) Take any action that would cause IBT or any of its subsidiaries to become a subsidiary of S&T, or any of S&T’s subsidiaries;
- (5) Acquire or retain shares that would cause the combined interests of S&T and any of S&T’s subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of IBT or any of its subsidiaries;
- (6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of IBT or any of its subsidiaries;
- (7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of IBT or any of its subsidiaries;
- (8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of IBT or any of its subsidiaries;
- (9) Dispose or threaten to dispose of shares of IBT or any of its subsidiaries as a condition of specific action or nonaction by IBT or any of its subsidiaries;  
or

- (10) Enter into any banking or nonbanking transactions with IBT or any of its subsidiaries, except for the following:
- S&T may establish and maintain deposit accounts with any depository institution subsidiaries of IBT, provided that the aggregate balance of all such accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with IBT or any of its subsidiaries.
  - Irwin Bank and Trust Company (“Irwin Bank”), Irwin, Pennsylvania, and S&T Bank, Indiana, Pennsylvania, may continue to sell loan participations to each other, provided that the aggregate balance of such loan participations purchased by Irwin Bank from S&T Bank does not exceed 5 percent of Irwin Bank’s total loans outstanding, and provided further, that the aggregate of any such loan participations sold by Irwin Bank to S&T Bank does not exceed 5 percent of Irwin Bank’s total loans outstanding.