

## FEDERAL RESERVE SYSTEM

Wachovia Corporation  
Charlotte, North Carolina

### Order Approving the Merger of Financial Holding Companies

Wachovia Corporation (“Wachovia”), 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 to merge with SouthTrust Corporation, Birmingham, Alabama (“SouthTrust”), and to acquire SouthTrust’s subsidiary bank, SouthTrust Bank, also in Birmingham.<sup>1</sup> In addition, Wachovia proposes to acquire SouthTrust International, Inc., also in Birmingham, an agreement corporation subsidiary of SouthTrust of Alabama, pursuant to sections 25 and 25A of the Federal Reserve Act and the Board’s Regulation K.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 43,419 (2004)). 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 and the Federal Reserve Act.

Wachovia, with total consolidated assets of approximately \$418 billion, is the fifth largest insured depository organization in the

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<sup>1</sup> 12 U.S.C. § 1842. Wachovia has also applied to acquire SouthTrust of Alabama, Inc., Birmingham, Alabama (“SouthTrust of Alabama”), an intermediate subsidiary bank holding company of SouthTrust. In addition, Wachovia has requested the Board’s approval to hold and exercise an option to purchase up to 19.5 percent of SouthTrust’s common stock. The option would expire on consummation of the proposal.

<sup>2</sup> 12 U.S.C. §§ 601 et seq. and 611 et seq.; 12 C.F.R. Part 211.

United States, controlling deposits of approximately \$251 billion, which represent approximately 4 percent of the total amount of deposits of insured depository institutions in the United States.<sup>3</sup> Wachovia operates insured depository institutions in Connecticut, Delaware, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Virginia, and the District of Columbia<sup>4</sup> and engages nationwide in numerous nonbanking activities that are permissible under the BHC Act.

SouthTrust, with total consolidated assets of approximately \$53 billion, is the 25<sup>th</sup> largest insured depository organization in the United States, controlling deposits of approximately \$37 billion, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SouthTrust operates depository institutions in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. It also engages in a broad range of permissible nonbanking activities in the United States and abroad.<sup>5</sup>

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<sup>3</sup> Asset data are as of June 30, 2004, and national ranking data are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed through October 4, 2004. Deposit data are as of June 30, 2004, and reflect the unadjusted total of their deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income for June 30, 2004. In this context, the term "insured depository institutions" includes insured commercial banks, savings associations, and savings banks.

<sup>4</sup> Wachovia's subsidiary depository institutions are Wachovia Bank, N.A., Charlotte, North Carolina ("Wachovia Bank"); Wachovia Bank of Delaware, N.A. ("Wachovia Bank-DE") and Wachovia Trust Company, N.A., both in Wilmington, Delaware; and First Union Direct Bank, N.A., Augusta, Georgia.

<sup>5</sup> Wachovia proposes to acquire SouthTrust's domestic and foreign nonbanking subsidiaries, all of which are engaged in permissible activities listed in section 4(k)(4)(A)-(H) of the BHC Act, pursuant to section 4(k) and the post-transaction notice procedures of section 225.87 of Regulation Y.

On consummation of the proposal, Wachovia would become the fourth largest insured depository organization in the United States, with total consolidated assets of approximately \$471 billion and total deposits of approximately \$288 billion, representing approximately 4.6 percent of the total amount of deposits of insured depository institutions in the United States.

#### Factors Governing Board Review of the Transaction

The BHC Act enumerates the factors the Board must consider when reviewing the merger of bank holding companies or the acquisition of banks. 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 in the transaction; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act (“CRA”)<sup>6</sup> of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act. In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits nationwide and in certain individual states, as well as compliance with other provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.<sup>7</sup>

#### Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company’s home state if certain conditions are met. For purposes of the BHC Act, the home state of Wachovia is

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<sup>6</sup> 12 U.S.C. § 2901 et seq.

<sup>7</sup> Pub. L. No. 103-328, 108 Stat. 2338 (1994).

North Carolina,<sup>8</sup> and SouthTrust's subsidiary bank is located in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.<sup>9</sup>

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) are met in this case.<sup>10</sup> In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal 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. It also prohibits the Board from approving a proposed bank acquisition that

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<sup>8</sup> See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

<sup>9</sup> For purposes of section 3(d), the Board considers a bank to be located in states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

<sup>10</sup> See 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). Wachovia is adequately capitalized and adequately managed, as defined by applicable law. On consummation of the proposal, Wachovia and its affiliates would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of total deposits, or the applicable percentage established by state law, in each state in which subsidiary banks of both organizations are located (Florida, Georgia, North Carolina, South Carolina, and Virginia). In addition, SouthTrust Bank has been in existence for more than five years, and all other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effects in meeting the convenience and needs of the community to be served.<sup>11</sup>

Wachovia and SouthTrust have subsidiary depository institutions that compete directly in forty-one banking markets in five states.<sup>12</sup> The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including public comment on the proposal.<sup>13</sup> In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets (“market deposits”) controlled by Wachovia and SouthTrust,<sup>14</sup> the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Guidelines (“DOJ Guidelines”),<sup>15</sup> and

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<sup>11</sup> See 12 U.S.C. § 1842(c)(1).

<sup>12</sup> These banking markets are described in Appendix A.

<sup>13</sup> Two commenters expressed general concerns about the competitive effects of this proposal.

<sup>14</sup> Deposit and market share data are as of June 30, 2003, adjusted to reflect subsequent mergers and acquisitions through July 12, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>15</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger

other characteristics of the markets. In addition, the Board has considered commitments made by Wachovia to the Board to reduce the potential that the proposal would have adverse effects on competition by divesting eighteen SouthTrust Bank branches (the “divestiture branches”), which account for approximately \$592 million in deposits, in four banking markets (the “divestiture markets”).<sup>16</sup>

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 35 banking

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HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

<sup>16</sup> Wachovia has committed that, before consummating the proposed merger, it will execute an agreement for the proposed divestitures in each divestiture market, consistent with this order, with a purchaser determined by the Board to be competitively suitable. Wachovia also has committed to divest total deposits in each of the four divestiture markets of at least the amounts discussed in this order and to complete the divestitures within 180 days after consummation of the proposed merger. In addition, Wachovia has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branches to an independent trustee that will be instructed to sell such branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

markets.<sup>17</sup> Three banking markets would remain unconcentrated;<sup>18</sup> twenty-six banking markets would remain moderately concentrated;<sup>19</sup> and six banking markets would remain highly concentrated,<sup>20</sup> with only modest increases in market concentration as measured by the HHI. Numerous competitors would remain in each of the 35 banking markets.

B. Six Banking Markets in which Special Scrutiny is Appropriate

Wachovia and SouthTrust compete directly in six banking markets that warrant a detailed review: Jacksonville, Polk County, Daytona Beach, and Punta Gorda, all in Florida; and Transylvania and Charlotte-Rock Hill, both in North Carolina. In each of these six markets, the concentration levels on consummation would exceed the DOJ Guidelines or the resulting market share would be significant.

For each of these six markets, the Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate

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<sup>17</sup> The effects of the proposal on the concentration of banking resources are described in banking markets without divestitures in Appendix B and in banking markets with divestitures in Appendix C.

<sup>18</sup> The unconcentrated banking markets are: Fort Walton Beach and Miami-Fort Lauderdale, both in Florida; and Athens, Georgia.

<sup>19</sup> The moderately concentrated banking markets without divestitures are: Brevard, Fort Myers, Fort Pierce, Gainesville, Highlands, Indian River, Naples, North Lake/Sumter, Ocala, Pensacola, Sarasota, Tallahassee, Tampa Bay, and West Palm Beach, all in Florida; Atlanta and Dalton, both in Georgia; Greensboro-High Point and Raleigh, both in North Carolina; Charleston, Columbia, Greenville, and Spartanburg, all in South Carolina; and Newport News-Hampton and Norfolk-Portsmouth, both in Virginia. The moderately concentrated banking markets with divestitures are Orlando, Florida, and Augusta, Georgia.

<sup>20</sup> The highly concentrated banking markets are: St. Augustine, Florida; Columbus, Georgia; Rutherford, Salisbury, and Shelby, all in North Carolina; and Richmond, Virginia.

that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market.<sup>21</sup> In each of these markets, the Board has identified factors that indicate the proposal would not have a significantly adverse impact on competition, despite the size of increase in and resulting level of the HHI or market share.

Jacksonville. Wachovia is the second largest depository organization in the Jacksonville banking market, controlling \$4.7 billion of deposits, which represents approximately 31.1 percent of market deposits. SouthTrust is the fourth largest depository organization in the market, controlling approximately \$806 million of deposits, which represents approximately 5.4 percent of market deposits. To reduce the potential for adverse effects on competition in the Jacksonville banking market, Wachovia has committed to divest nine SouthTrust branches with at least \$275 million in deposits in the market to an out-of-market depository organization. After accounting for the proposed divestiture, Wachovia would operate the largest depository organization in the market on consummation of the merger, controlling approximately \$5.2 billion of deposits, which represents approximately 34.8 percent of market deposits. The HHI would increase by not more than 210 points and would not exceed 2416.

A number of factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Jacksonville banking market. As a result of the proposed divestiture to an out-of-market depository organization, 27 competitors would remain in the market. In addition, the size

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<sup>21</sup> See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

of the proposed divestiture helps create a competitively viable market participant. Moreover, the second largest bank competitor in the market would control 30 percent of market deposits and operate a large number of branches, and another bank competitor would control more than 5 percent of market deposits.

In addition, one thrift institution operating in the market serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products. Competition from this thrift institution closely approximates competition from a commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in market share calculations.<sup>22</sup> Accounting for the revised weighting of these deposits, Wachovia would control 34.7 percent of market deposits and the HHI would increase by not more than 208 points and would not exceed 2397 on consummation of the proposal.

The Board also has considered that the market has six credit unions that are accessible to the public and offer a wide range of consumer products and services.<sup>23</sup> These credit unions have street-level branches and their memberships are open to at least 73 percent of the market's residents.<sup>24</sup> The

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<sup>22</sup> The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). The thrift in this case has a ratio of commercial and industrial loans to assets of 9.04 percent, which is comparable to the national average for all commercial banks. See First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).

<sup>23</sup> These credit unions collectively account for approximately 9.3 percent of total market deposits.

<sup>24</sup> After accounting for the proposed divestiture and including the deposits of these credit unions in market share calculations at 50 percent, Wachovia would

Board concludes that these credit unions exert a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

In addition, two depository institutions entered the Jacksonville banking market de novo in 2001 and 2002, indicating that the market has been attractive for entry. Other factors indicate that the Jacksonville banking market would remain attractive for entry. Deposit growth in the five major counties in the market<sup>25</sup> was more than twice the average growth in the metropolitan counties in the state between 2001 and 2003. In those major counties, both population growth between 2001 and 2003 and the level of per capita income in 2003 also slightly exceeded the averages for metropolitan counties in Florida.

Polk County. In the Polk County banking market, Wachovia is the third largest depository organization, controlling \$746 million of deposits, which represents approximately 17.1 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately \$490 million of deposits, which represents approximately 11.2 percent of market deposits. To reduce the potential for adverse effects on competition in the Polk County banking market, Wachovia has committed to divest five SouthTrust branches with at least \$95 million in deposits to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestitures, Wachovia would operate the largest depository organization in the market, controlling approximately \$1.1 billion of deposits, which represents approximately 26.2 percent of market deposits. The HHI would increase by not more than 270 points and would not exceed 1841.

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become the largest depository organization in the market with 31.4 percent of market deposits. The HHI would increase by not more than 171 points and would not exceed 2022 as a result of this transaction.

<sup>25</sup> These major counties are Baker, Clay, Duval, Nassau, and St. Johns Counties.

Certain factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Polk County banking market. After consummation of the proposal, 12 other depository institutions would remain in the market. The two largest bank competitors in the market, one of which would have a branch network comparable to Wachovia's, would each control at least 20 percent of market deposits. Another bank competitor would control more than 10 percent of market deposits. Moreover, one depository institution has entered the market de novo since 2001.

The Board also has considered the competitive influence of two credit unions that offer a wide range of consumer products and services and have a significant competitive presence in the market.<sup>26</sup> These credit unions have street-level branches accessible to the public and their memberships are open to all residents of the banking market.<sup>27</sup> The Board concludes that these credit unions exert a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

Daytona Beach. In the Daytona Beach banking market, Wachovia is the largest depository organization, controlling \$1.3 billion of deposits, which represents approximately 23.1 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately \$413 million of deposits, which represents approximately 7.2 percent of market deposits. On consummation of the merger, Wachovia would remain the largest

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<sup>26</sup> These two credit unions collectively account for approximately 5.3 percent of total market deposits.

<sup>27</sup> After accounting for the proposed divestiture and including the deposits of these credit unions in market share calculations at 50 percent, Wachovia would become the largest depository organization in the Polk County banking market with 24.8 percent of market deposits. The HHI would increase by not more than 243 points and would not exceed 1673 as a result of this transaction.

depository organization in the market, controlling approximately \$1.7 billion of deposits, which represents approximately 30.3 percent of market deposits. The HHI would increase by 335 points to 1880.

Several factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Daytona Beach banking market. After consummation of the proposal, 19 other depository institution competitors would remain in the market. The second and third largest bank competitors in the market would operate branch networks comparable to that of Wachovia's and each would control at least 20 percent of market deposits. Another bank competitor would control approximately 8 percent of market deposits.

In addition, the Daytona Beach banking market has been attractive for entry, as indicated by the de novo entry of three depository institutions in 2001. The market also appears to remain attractive for entry. For example, the annual population growth rate of the two major counties in the market<sup>28</sup> exceeded the average growth rate for metropolitan counties in Florida between 2001 and 2003.

Punta Gorda. In the Punta Gorda banking market, Wachovia is the fourth largest depository organization, controlling approximately \$282 million of deposits, which represents approximately 13.4 percent of market deposits. SouthTrust is the third largest depository organization in the market, controlling approximately \$339 million of deposits, which represents approximately 16.1 percent of market deposits. On consummation of the merger, Wachovia would operate the largest depository organization in the market, controlling approximately \$620 million of deposits, which represents approximately

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<sup>28</sup> Flagler and Volusia Counties are the major counties in the Daytona Beach banking market.

29.4 percent of market deposits. The HHI would increase by 428 points to 1872.

A number of factors mitigate the potential for anticompetitive effects in this market. After consummation of the proposal, 11 other depository institution competitors would remain in the market. The second and third largest bank competitors in the market would control 22 percent and 20 percent of market deposits, respectively.

In addition, the Board has considered the entry of two depository institutions in the Punta Gorda banking market since 2001 and factors indicating that the market remains somewhat attractive for entry. The market contains deposits of more than \$2 billion. Moreover, the annualized rate of population growth in Charlotte County, the main county in the market, exceeded the rate for metropolitan counties in Florida between 2001 and 2003.

Transylvania. In the Transylvania banking market, Wachovia is the third largest depository organization, controlling approximately \$73 million of deposits, which represents approximately 14.9 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately \$36 million of deposits, which represents approximately 7.5 percent of market deposits. On consummation of the merger, Wachovia would operate the second largest depository organization in the market, controlling approximately \$109 million of deposits, which represents approximately 22.5 percent of market deposits. The HHI would increase by 224 points to 2077.

Numerous factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Transylvania banking market. After consummation of the proposal, seven other depository institutions would remain in the market. The largest bank competitor in the market would control

approximately 32.5 percent of market deposits and two other bank competitors would control 17 percent and 12 percent of market deposits, respectively.

In addition, several factors indicate that the Transylvania banking market is attractive for entry. One competitor has entered the market de novo since 2001. In 2003, the average level of per capita income in the market substantially exceeded the average per capita income levels for nonmetropolitan counties in North Carolina. Moreover, deposits in the banking market increased at an annualized rate of at least 5.9 percent from June 2001 to June 2003, which exceeded the 3.5 percent annualized rate of deposit growth for nonmetropolitan counties in North Carolina during the same period.

Charlotte-Rock Hill. In the Charlotte-Rock Hill banking market, Wachovia is the second largest depository organization, controlling approximately \$24.3 billion of deposits, which represents approximately 37.3 percent of market deposits. SouthTrust is the seventh largest depository organization in the market, controlling approximately \$535 million of deposits, which represents less than 1 percent of market deposits. On consummation of the merger, Wachovia would remain the second largest depository organization in the market, controlling approximately \$24.9 billion of deposits, which represents approximately 38.2 percent of market deposits. The HHI would increase by 62 points to 3853.

Although the proposal would be consistent with the DOJ Guidelines in this market, its unique structure warrants careful consideration. Two of the nation's largest depository organizations, Wachovia and Bank of America Corporation, are headquartered in Charlotte. Bank of America controls approximately 49 percent of market deposits and Wachovia currently controls approximately 37 percent of market deposits. On consummation of the

proposal, Wachovia's market share would increase by less than 1 percent. In addition, 33 other depository institution competitors would remain in the market.

Certain other factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Charlotte-Rock Hill banking market. The market has been attractive for entry, as indicated by the de novo entries of three depository institutions since 2001. In addition, the market is the largest banking market in North Carolina and its four major counties<sup>29</sup> have experienced above-average population growth between 2001 and 2003 relative to the average growth rate of metropolitan counties in the state. Moreover, the market's per capita income level in 2003 exceeded the average for metropolitan counties in North Carolina. Thus, consummation of the proposal does not appear to have a significantly adverse competitive effect in the Charlotte-Rock Hill banking market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The Department of Justice also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or the concentration of resources in any of the 41 banking

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<sup>29</sup> These major counties are Cabarrus, Gaston, and Mecklenberg Counties in North Carolina and York County in South Carolina.

markets in which Wachovia and SouthTrust directly compete or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive considerations are consistent with approval.

#### Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record. The Board has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, the Federal Reserve System's confidential supervisory information, information provided by the Securities and Exchange Commission ("SEC"), and public comments on the proposal. In addition, the Board has consulted with the relevant supervisory agencies, including the Office of the Comptroller of the Currency ("OCC"), the primary supervisor for all of Wachovia's subsidiary banks. The Board also has considered publicly available financial and other information on the proposal's financial and managerial aspects submitted by Wachovia during the application process.

In evaluating financial factors in this and other expansionary proposals by banking organizations, the Board reviews the financial condition of the holding companies on both a parent-only and consolidated basis and the financial condition of each of their subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially

important. The Board also evaluates the pro forma financial condition of the combined organization, including its capital position, earnings prospects, and the impact of the proposed funding of the transaction. Based on its review of these factors, the Board finds that the organization has sufficient financial resources to effect the proposal. Wachovia, SouthTrust, and their subsidiary banks are well capitalized and the resulting organization and its subsidiary banks would remain so on consummation of the proposal. The proposal is structured as an exchange of shares and would not increase the debt service requirements of the combined organization.

The Board also has considered the managerial resources of the proposed combined organization. The Board has reviewed the examination records of Wachovia, SouthTrust, and their subsidiary depository institutions, including assessments of their risk-management systems. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Wachovia, SouthTrust, and their subsidiary depository institutions are considered well managed overall. The Board also has considered Wachovia's plans to integrate SouthTrust and its subsidiaries and the proposed management, including the risk-management systems, of the resulting organization.

In addition, the Board has taken account of two publicly reported SEC investigations involving Wachovia, one related to Wachovia's mutual fund business and one related to conduct by the former Wachovia Corporation in connection with its merger with First Union Corporation.<sup>30</sup> Consistent with the

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<sup>30</sup> In 2001, First Union Corporation acquired the former Wachovia Corporation, Winston-Salem, North Carolina ("Old Wachovia"), and subsequently changed

provisions of section 5 of the BHC Act, as amended by the Gramm-Leach-Bliley Act,<sup>31</sup> the Board has relied on examination and other supervisory information provided by the SEC and other appropriate functional regulators about functionally regulated subsidiaries, such as mutual funds and securities broker-dealers. The Board also has consulted with the SEC about its review of the efforts of Wachovia to comply with federal securities laws. Wachovia has provided the Board with information pertinent to the SEC's investigations and has conducted internal inquiries into these matters. The Board also has considered the willingness and efforts undertaken by Wachovia's management to ensure compliance with all applicable state and federal law and to improve compliance programs and policies in light of these investigations.

Based on these and all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Wachovia, SouthTrust, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.<sup>32</sup>

#### Convenience and Needs Considerations

Section 3 of the BHC Act requires the Board to consider the effects of the proposal on the convenience and needs of the communities to be served and to

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its name from First Union Corporation to Wachovia Corporation.  
See First Union Corporation, 87 Federal Reserve Bulletin 683 (2001).

<sup>31</sup> Pub. L. No. 106-102, 113 Stat. 1338 (1999).

<sup>32</sup> A commenter expressed concern about the degree of ethnic diversity in senior management positions in both organizations. This concern is outside the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10<sup>th</sup> Cir. 1973).

take into account the records of the relevant insured depository institutions under the CRA.<sup>33</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial 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 expansionary proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Wachovia and SouthTrust, including public comments received on the effect the proposal would have on the communities to be served by the resulting organization.

A. Summary of Public Comments on Convenience and Needs

In response to the Board's request for public comment, approximately 200 commenters submitted their views on the proposal. Approximately 190 commenters commended Wachovia or SouthTrust for the financial and technical support provided to community development organizations or related their favorable experiences with specific programs or services offered by Wachovia or SouthTrust. Most of these commenters also expressed their support for the proposal.

Seven commenters expressed concern about the lending records of Wachovia or SouthTrust or opposed the proposal. Some commenters contended that data submitted under the Home Mortgage Disclosure Act ("HMDA")<sup>34</sup> demonstrated that Wachovia and SouthTrust engaged in disparate treatment of

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<sup>33</sup> 12 U.S.C. § 2901 et seq.

<sup>34</sup> 12 U.S.C. § 2801 et seq.

minority individuals in home mortgage lending in certain markets.<sup>35</sup> In addition, several commenters expressed concern about branch closures or other reductions in service resulting from the proposed merger.<sup>36</sup>

#### B. CRA Performance Evaluations

As provided in the BHC Act, the Board has evaluated the convenience and needs factor in light of the appropriate federal supervisors' examinations of the CRA performance records 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

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<sup>35</sup> Several commenters also expressed concern that Wachovia and SouthTrust finance unaffiliated lenders who provide alternative products such as payday loans. Wachovia reviews loans to payday lenders, check cashing companies, and pawnshops; and it imposes increased documentation requirements, monitoring, and annual reviews of these loans to account for the potential increased risks, including legal and reputational risks, associated with these loans. Wachovia plays no role in the lending practices or credit review processes of these lenders.

One commenter disagreed with a statement in the application that SouthTrust has a policy not to lend to payday lenders, pawnshops, and other "money service businesses" ("MSBs"). Wachovia acknowledged that SouthTrust has made several exceptions to this policy and, as a result, has ten loans outstanding to pawnshops or related entities worth \$755,056, representing a de minimis portion of SouthTrust's total loan portfolio.

<sup>36</sup> One commenter alleged mismanagement of his accounts by Wachovia Bank, and another commenter alleged improper handling by SouthTrust Bank of a loan request. The Board has reviewed these comments about individual accounts and transactions in light of the facts of record, including information provided by Wachovia and SouthTrust. These letters have been forwarded to the consumer complaint function at the OCC and the Board, the primary supervisors of Wachovia Bank and SouthTrust Bank, respectively.

represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>37</sup>

Wachovia's lead bank, Wachovia Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of September 30, 2000, when it was known as First Union National Bank, Charlotte, North Carolina ("FUNB") ("FUNB Evaluation"). This evaluation was conducted before the merger of First Union Corporation with Old Wachovia, and the merger of Old Wachovia's lead bank, Wachovia Bank, N.A., Winston-Salem, North Carolina ("Old Wachovia Bank"), into FUNB, which was then renamed Wachovia Bank. Old Wachovia Bank also received an "outstanding" rating at its last CRA performance evaluation by the OCC, as of December 31, 2000 ("Old Wachovia Bank Evaluation"). Wachovia Bank-DE received a "satisfactory" rating from the OCC at its most recent CRA performance evaluation, as of December 31, 2000.<sup>38</sup>

SouthTrust's only subsidiary bank, SouthTrust Bank, received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank"), as of May 5, 2003 ("SouthTrust Bank Evaluation").

### C. CRA Performance of Wachovia

#### 1. CRA Performance Record of FUNB

As noted, the most recent CRA performance evaluation for Wachovia Bank occurred before its 2001 merger with Old Wachovia Bank,

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<sup>37</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

<sup>38</sup> Wachovia's other subsidiary depository institutions, Wachovia Trust Company, N.A. and First Union Direct Bank, N.A., are limited-purpose banks that do not accept deposits from the public and are not subject to the CRA.

when it was known as FUNB. FUNB received an overall “outstanding” rating from the OCC for its performance under the CRA during the period covered by the FUNB Evaluation.<sup>39</sup>

FUNB received an “outstanding” rating under the lending test. Examiners concluded that FUNB’s level of lending reflected an excellent responsiveness to the credit needs of its assessment areas.<sup>40</sup> They characterized the bank’s lending performance as “outstanding” or “high satisfactory” in each of the eleven states and four of the five multistate metropolitan statistical areas (“MSAs”) where FUNB operated during the evaluation period. Examiners also found that FUNB’s lending record showed excellent distribution of loans among geographies of different income levels and a good distribution of loans among borrowers of different income levels. These assessments were based on a review of FUNB’s housing-related loans reported under HMDA, small business and small farm loans, and qualified community development loans.

During the evaluation period, FUNB and its affiliates made more than 398,000 home mortgage loans, totaling more than \$37 billion, throughout

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<sup>39</sup> The evaluation period was from January 1, 1997, to December 31, 1999, for lending; for community development loans, investments, and services, the evaluation period extended through September 30, 2000. As part of the FUNB Evaluation, examiners also considered the lending and community development activities of several affiliates of FUNB, including First Union Mortgage Corporation (now Wachovia Mortgage Corporation (“Wachovia Mortgage”)) and First Union Home Equity Bank, N.A., both in Charlotte, North Carolina (since merged into Wachovia Bank-DE).

<sup>40</sup> At the time of the FUNB Evaluation, FUNB had 104 assessment areas, 21 of which received full-scope reviews. The overall rating for FUNB was a composite of its state/multistate ratings, although examiners placed special emphasis on FUNB’s performance in five areas selected as “primary rating areas” based on FUNB’s deposits in those areas: Florida, Georgia, New Jersey, North Carolina, and Pennsylvania and Philadelphia.

the bank's assessment areas.<sup>41</sup> Examiners reported that the distribution of HMDA-reportable loans, both by geography income level and by borrower income level, was good or excellent in each of the eleven states and four of the five multistate MSAs.<sup>42</sup>

FUNB originated more than 62,500 small loans to businesses and farms, totaling approximately \$7.8 billion, in its assessment areas.<sup>43</sup> Examiners generally characterized FUNB's small business lending in each of its primary rating areas as excellent or good. In assessing FUNB's small business lending, examiners focused on the distribution of loans among geographies of differing income levels and, particularly, to businesses in LMI areas. Examiners placed special emphasis on those areas where FUNB made a large number of small-denomination loans to businesses. For example, examiners noted that the proportion of FUNB's small loans to businesses that had originated amounts of \$100,000 or less was 69 percent in Pennsylvania and 75 percent in the Washington, D.C., MSA.

The FUNB Evaluation found that FUNB achieved a good or excellent level of community development lending in 19 of the 21 assessment areas selected by the examiners for full-scope review. In total, FUNB originated

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<sup>41</sup> In the FUNB Evaluation, home mortgage lending data included home purchase, refinance, and improvement loans, as well as loans for multifamily dwellings and manufactured housing, reported under HMDA by FUNB and its reviewed affiliates. The data included loans originated and purchased.

<sup>42</sup> In the remaining multistate MSA, FUNB's distribution of HMDA-reportable loans by geography income level was described as adequate.

<sup>43</sup> "Small loans to business" are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. "Small loans to farms" are farm or agricultural loans with original amounts of \$500,000 or less that are secured by farmland or finance agricultural production and other loans to farmers.

410 community development loans totaling approximately \$1.24 billion during the evaluation period. These loans principally supported affordable housing projects, including \$30 million to finance the acquisition and renovation of a 1,235-unit multifamily housing complex in Philadelphia; two loans totaling \$9.5 million to help develop 870 affordable housing units in Washington, D.C.; and a \$110 million loan to an Atlanta-area hospital authority that is the primary provider of health care services for indigent persons in Georgia.

Under the investment test, examiners rated FUNB “outstanding” and concluded that the bank’s investments reflected an excellent responsiveness to the needs of its assessment areas. During the evaluation period, FUNB made more than 7,300 qualified community development investments in its assessment areas, totaling approximately \$647 million. These investments included equity investments in community development financial institutions and small business investment corporations (“SBICs”), low-income housing tax credits (“LIHTCs”), grants, and financial and in-kind contributions. Among the areas supported by FUNB’s community development investments were affordable housing activities, community revitalization and stabilization projects, and job creation programs for LMI individuals. Examiners praised FUNB for its use of complex investments such as LIHTCs in several of its assessment areas and noted that FUNB helped finance various projects instead of simply purchasing the tax credits.

FUNB’s performance under the service test was rated “high satisfactory” because of a good distribution of branches that were accessible to geographies and individuals of different income levels and a good level of responsiveness to area needs through community services. Examiners found that, although FUNB had closed branches during the evaluation period, including some in LMI areas, these closures did not have a significantly adverse

impact on access to FUNB's services in LMI areas, in part because FUNB had made alternative delivery channels available to individuals and areas of all income levels. Examiners singled out FUNB's "eCommunities First" initiative that it launched in 2000 in partnership with 15 community organizations and the city of Charlotte. This initiative sought to provide computer and financial literacy education to LMI communities, senior citizens, and students.

## 2. CRA Performance Record of Old Wachovia Bank

As noted above, Old Wachovia Bank received an overall rating of "outstanding" from the OCC at its last CRA performance evaluation, including separate "outstanding" ratings for its performance in each of the five states and two multistate MSAs where it operated during the evaluation period.<sup>44</sup> It also received an "outstanding" rating under the lending test, due in part to what examiners considered to be especially strong lending in several MSAs, including Charlotte-Gastonia-Rock Hill, Norfolk-Virginia Beach-Newport News, and Atlanta. Examiners also considered Old Wachovia Bank to have good overall farm lending performance and emphasized that the bank reported more than \$2 billion in community development loans during the evaluation period.

Examiners gave separate "outstanding" ratings to Old Wachovia Bank for its lending performance in each of its states and multistate MSAs. During the evaluation period, Old Wachovia Bank made more than 54,500 home

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<sup>44</sup> The evaluation period was from January 1, 1998, to December 31, 2000. In reviewing Old Wachovia Bank's community development lending, examiners also included the activities of several of Old Wachovia Bank's affiliates, particularly Wachovia Community Development Corporation, Winston-Salem, North Carolina ("WCDC"). Full-scope reviews were done for nine assessment areas, including both the bank's multistate MSAs and seven other MSAs, with at least one in each of the bank's five states.

mortgage loans, totaling more than \$8 billion, throughout its assessment areas.<sup>45</sup> Examiners characterized the distribution of the bank's loans among geographies of different income levels as good in each of the five states and both multistate MSAs.

Examiners commended Old Wachovia Bank and WCDC for offering innovative and flexible loan products, including participating as a Small Business Administration Preferred Lender in North and South Carolina. The evaluation also noted that Old Wachovia Bank's Neighborhood Revitalization Program offered various affordable housing loan products and first-time homebuyer assistance programs.

Old Wachovia Bank made 41,775 small loans to businesses or farms during the evaluation period, for a total of approximately \$4 billion. The geographic distribution by income level of the bank's small loans to businesses was found to be good or excellent in each of the nine MSAs where examiners conducted a full-scope review. The distribution of these loans by businesses of different annual revenue levels ranged from adequate to excellent across the nine MSAs.

Old Wachovia Bank's community development lending was considered to be excellent in all geographic areas reviewed, and examiners noted that the bank, together with WCDC, was one of the largest community development lenders on the East Coast. Examiners found that much of the bank's community development lending supported affordable housing needs. The bank's lending financed the creation or retention of more than 9,210 units of

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<sup>45</sup> In the Old Wachovia Bank Evaluation, home mortgage lending data included home purchase, refinance, and improvement loans reported under HMDA by the bank, including loans for multifamily dwellings and manufactured housing. The data included loans originated and purchased.

affordable housing in the Augusta-Aiken, Charlotte-Gastonia-Rock Hill, Atlanta, and Raleigh-Durham MSAs. Old Wachovia Bank's lending also supported community development services and job creation and retention programs for LMI individuals, including programs that created or retained more than 1,830 such jobs in the Atlanta MSA and almost 1,500 such jobs in the Greenville-Spartanburg MSA.

Examiners also gave Old Wachovia Bank a rating of "outstanding" for performance under the investment test, finding that it had an excellent volume of investments addressing affordable housing and economic development needs in its communities. They also noted favorably that the bank invested in an SBIC pursuing economic development in areas across the bank's geographic footprint, as well as in tax credit investments.

Old Wachovia Bank received a "high satisfactory" rating under the service test portion of the evaluation. Examiners found the bank had a good overall geographic distribution of its branches, particularly in LMI areas. They also viewed the bank as taking a leadership role in providing community development services in each of the nine MSAs selected for full-scope review. These services included workshops and seminars to assist small businesses and homebuyers, housing education and counseling services for LMI families, and technical assistance to community development corporations.

### 3. CRA Performance Record of Wachovia Bank-DE

At its most recent evaluation for CRA performance by the OCC, Wachovia Bank-DE received an overall rating of "satisfactory" and a "high satisfactory" rating for its performance under each of the lending, investment, and service tests.<sup>46</sup>

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<sup>46</sup> The evaluation period was from January 1, 1999, to December 31, 2000.

Examiners found the bank to have an excellent overall level of lending and a good distribution of loans among borrowers of different income levels. During the evaluation period, Wachovia Bank-DE originated or purchased HMDA-reportable loans totaling \$269 million in its three assessment areas and small loans to businesses or farms totaling \$67 million. Examiners noted that the bank had developed three home loan products offering flexible terms and conditions, including one requiring no down payment. During the evaluation period, the bank originated loans totaling \$34.2 million using these three products.

Wachovia Bank-DE focused its community development lending during the evaluation period on the Wilmington-Newark MSA.<sup>47</sup> Its most significant loan was a \$2.65 million loan to construct a charter school in a low-income census tract in downtown Wilmington.

Examiners characterized the bank's performance under the investment test as excellent in both the Dover MSA and the Sussex Non-MSA assessment areas. During the evaluation period, Wachovia Bank-DE made 53 qualified community development investments totaling approximately \$743 thousand, which increased its community development investment portfolio to more than \$24 million. The bulk of these investments was in the First Union Regional Foundation (now the Wachovia Regional Foundation), which supports economic and community development initiatives designed to help residents of low-income neighborhoods in Delaware, New Jersey, and eastern Pennsylvania.

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<sup>47</sup> One commenter alleged, based on HMDA data and Wachovia's lending relationships with unaffiliated MSBs, that Wachovia was not adequately addressing the convenience and needs of Delaware communities.

Wachovia Bank-DE also received a “high satisfactory” rating for its performance under the service test. Examiners found its service delivery systems to be accessible to geographies and individuals in all three of its assessment areas. They noted that the one branch closing during the evaluation period did not adversely affect the accessibility of the bank’s delivery systems.

#### 4. Recent CRA Activities of Wachovia

Since the FUNB Evaluation and the Old Wachovia Bank Evaluation, Wachovia Bank and its affiliates have continued to serve the convenience and needs of their communities. For example, in 2003 Wachovia provided more than \$1.2 billion in community development loans and also delivered financial counseling and education to approximately 16,000 LMI seminar attendees.

Wachovia’s recent CRA-related lending programs have focused on affordable housing needs, small business support, and community development. Wachovia’s proprietary affordable mortgage products include loans for up to 100 percent of the value of the property and down payments as low as \$500, if the purchaser attends a home-ownership counseling class. Wachovia also offers mortgage products sponsored or guaranteed by Fannie Mae, the Federal Housing Administration, and the Veterans Administration and has participated in several programs designed to promote home ownership by LMI individuals, such as by providing matching funds for assistance with down payments. Wachovia has also partnered with nonprofit organizations and some local governments to create regional mortgage programs. For example, in May 2003, Wachovia signed an agreement to provide its mortgage loans through minority credit unions to LMI minority borrowers in North Carolina.

Between January 2001 and December 2003, Wachovia made 1,267 community development loans, totaling approximately \$3 billion, in the

five states where its branches overlap with SouthTrust Bank's branches.<sup>48</sup> These loans financed more than 18,800 affordable housing units. Also included was a \$5 million loan (as part of a \$25.5 million syndication) to a fund that finances the purchase of farm materials by Virginia farmers with annual revenues of \$500,000 or less.<sup>49</sup>

Wachovia's recent community development investments have included direct investments in community development funds, tax credit investments, and investments made by Wachovia's SBIC. As of December 31, 2003, Wachovia held \$2.1 billion of community development investments in the five-state overlap area. Wachovia's recent investments in the area have included \$30 million in bridge loans to, and a \$3 million equity investment in, a Virginia housing fund that lends to and invests in low-income residential rental properties; a \$10 million commitment to a fund supporting economic development in Winston-Salem; and \$6 million in tax credit investments to an apartment complex for low-income elderly tenants in Macon, Georgia.

Since the FUNB Evaluation and the Old Wachovia Bank Evaluation, Wachovia has continued to sponsor a range of educational programs

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<sup>48</sup> These states are Florida, Georgia, North Carolina, South Carolina, and Virginia.

<sup>49</sup> One commenter alleged that Wachovia and SouthTrust have not provided a sufficient amount of credit to African-American farmers and business owners in their respective markets and have not provided sufficient outreach and support to African-American farmers and community organizations. Wachovia noted that it had in fact provided financial support and technical assistance to many community organizations, including the commenter. The commenter also objected to Wachovia's lack of participation in U.S. Department of Agriculture lending programs. The Board notes that the CRA does not require banks to provide specific kinds of credit products or programs.

for prospective homebuyers, small business owners, and nonprofit and community organizations. Among its newer CRA-related services is a pilot program, begun in 2002 in conjunction with state and local authorities and Fannie Mae, that permits federal Section 8 housing assistance vouchers to be used for mortgage payments in 11 of Wachovia Bank's markets.

D. CRA Performance of SouthTrust

As noted above, SouthTrust Bank received a "satisfactory" rating from the Reserve Bank in the SouthTrust Bank Evaluation.<sup>50</sup> The bank was rated "high satisfactory" for performance under the lending test. Examiners found that the bank's lending showed excellent responsiveness to the credit needs of its assessment area and a good record of both HMDA-related lending to borrowers of differing income levels and lending to small businesses.<sup>51</sup>

SouthTrust Bank originated or purchased more than 91,100 HMDA-reportable loans in its assessment area during the evaluation period, totaling \$11.6 billion, and also made approximately 26,700 small business loans totaling \$3.8 billion. The bank made \$210.9 million of community development loans during the evaluation period, which examiners considered to be a relatively high level of lending. Examiners also favorably noted SouthTrust Bank's use of flexible lending practices, including the offering of flexible mortgage programs of various state housing finance agencies.

In the SouthTrust Bank Evaluation, the bank received an "outstanding" performance rating under the investment test. Examiners found that it had achieved an excellent level of qualified community development

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<sup>50</sup> The evaluation period was from January 1, 2001, through December 31, 2002.

<sup>51</sup> In this context, small businesses are those with gross annual revenues of \$1 million or less.

investments and grants and was often in a leadership position in making investments and grants not usually provided by private investors. SouthTrust Bank made a total of \$239 million in qualified community development investments in its assessment areas during the evaluation period, which included investments in various state and local housing agency bonds, LIHTCs, mortgage-backed securities, and community development financial institutions. Examiners characterized these investments as demonstrating excellent responsiveness to community credit and development needs. SouthTrust Bank also made approximately \$387,000 in charitable contributions to community development organizations during the evaluation period.

SouthTrust Bank received a “high satisfactory” rating for performance under the service test. The bank’s delivery systems, including branches and automated teller machines (“ATMs”) were considered to be accessible to essentially all portions of the bank’s assessment areas.

#### E. HMDA Data and Fair Lending Records

The Board also has carefully considered the lending records of Wachovia and SouthTrust in light of comments on the HMDA data reported by their subsidiaries.<sup>52</sup> Based on 2002 and 2003 HMDA data, several commenters

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<sup>52</sup> The Board analyzed 2002 and 2003 HMDA data for Wachovia Bank; Wachovia Bank-DE; First Union Mortgage Corporation; SouthTrust Bank; SouthTrust Mortgage Corporation, Birmingham, Alabama (“SouthTrust Mortgage”); and Founders National Bank-Skillman, Dallas, Texas, which was merged into SouthTrust Bank in 2003. The Board has reviewed HMDA-reportable originations in each of the states served by the banks, the assessment area of the MSA in which each bank's headquarters is located, as well as in their respective assessment areas in MSAs identified by the commenters.

alleged that Wachovia Bank, Wachovia Bank-DE, Wachovia Mortgage,<sup>53</sup> and SouthTrust Bank disproportionately excluded or denied African-American and Hispanic applicants for home mortgage loans in various MSAs in several states. These commenters asserted that Wachovia's and SouthTrust Bank's denial rates for minority applicants were higher than the rates for nonminority applicants, and that Wachovia's denial disparity ratios compared unfavorably with those ratios for the aggregate of all lenders ("aggregate lenders") in certain MSAs.<sup>54</sup>

The 2003 data indicate that Wachovia's denial disparity ratios<sup>55</sup> for African-American and Hispanic applicants for HMDA-reportable loans overall were slightly less favorable than or exceeded those ratios for the aggregate lenders in all markets reviewed. Wachovia's percentages of total HMDA-reportable loans to African-American and Hispanic borrowers generally were slightly less favorable than or exceeded the total percentages for the aggregate lenders in most of the areas reviewed. Moreover, Wachovia's percentage of total HMDA-reportable loans to borrowers in minority census tracts generally was comparable with or exceeded the total percentages for the aggregate lenders in the areas reviewed.<sup>56</sup>

The 2003 data indicate that SouthTrust's denial disparity ratios for African-American and Hispanic applicants for HMDA-reportable loans

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<sup>53</sup> The data for Wachovia Bank and Wachovia Bank-DE included Wachovia Mortgage's reported loans in the markets reviewed. Wachovia Mortgage is a subsidiary of Wachovia Bank.

<sup>54</sup> The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

<sup>55</sup> The denial disparity ratio equals the denial rate for a particular racial category (e.g., African-American) divided by the denial rate for whites.

<sup>56</sup> For purposes of this HMDA analysis, a minority census tract means a census tract with a minority population of 80 percent or more.

generally were comparable with those ratios for the aggregate lenders in a number of the areas reviewed, although in several states and MSAs SouthTrust's ratios were less favorable than those of the aggregate lenders. The data also indicate that in the majority of these areas SouthTrust's percentage of originations to African-American applicants was below the percentage for the aggregate lenders, while its percentage of originations to Hispanic applicants was either slightly less favorable or more favorable than the aggregate lenders' percentage in approximately half of the markets. However, SouthTrust originated HMDA-reportable loans to African-American and Hispanic borrowers at rates comparable with or exceeding those of the aggregate lenders in most of the states and MSAs reviewed.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data generally do not indicate that Wachovia or SouthTrust is excluding any racial group or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race. 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 the covered loans.<sup>57</sup> HMDA data, therefore, have limitations that make them an

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<sup>57</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

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. This includes examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of Wachovia and SouthTrust with fair lending laws.

Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of the depository institutions controlled by Wachovia or SouthTrust. The record also indicates that Wachovia has taken steps to ensure compliance with fair lending laws. Wachovia has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Wachovia's compliance program incorporates logistic regression testing, policy and procedure review, mystery shopping, and employee training. Its internal fair lending analysis covers the lending process from a review of marketing initiatives through servicing and collection practices. Customer-contact employees receive fair lending training through internal communications, policy manuals, and interactive computer-based training. Wachovia also maintains a Corporate Fair Lending Steering Committee, which is chaired by Wachovia's Chief Risk Officer, and includes the heads of all major business units, as well as the heads of the Credit Risk, Legal, Internal Audit, Compliance, and Community

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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.

Development units. Wachovia has indicated that its fair lending program would be adopted by the combined organization following the proposed merger.

The record also indicates that SouthTrust has policies and procedures intended to ensure compliance with fair lending laws. For example, SouthTrust uses a centralized underwriting process for all consumer and mortgage loans, which largely eliminates the ability of individual loan officers to give disparate treatment to similarly situated credit applicants. Both SouthTrust Bank and SouthTrust Mortgage review declined applications for HMDA-reportable loans twice to ensure that the applicant has received the proper consideration before declining the loan. SouthTrust's compliance program also includes statistical testing of HMDA data for SouthTrust Bank and SouthTrust Mortgage; review of compliance procedures and controls, as well as transaction testing, by SouthTrust's internal audit department; and training.

The Board also has considered the HMDA data in light of the programs described above and the overall performance records of Wachovia's and SouthTrust's subsidiary banks under the CRA. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

#### F. Branch Closures

Two commenters expressed concern about the effect of branch closings that might result from this proposal. Wachovia has stated that it plans to close or consolidate 130 to 150 branches as a result of this proposal, but that these actions would not leave any markets without service. Wachovia has represented that it will not close any branches in LMI census tracts in markets affected by the proposed merger before the end of the first quarter of 2006.

The Board has reviewed Wachovia's branch closing policy. The policy requires Wachovia to consider possible alternatives to branch closings,

including adjusting hours, services, and facilities, and to examine methods of minimizing adverse effects on the community affected by the potential closure. The policy requires that, before a final decision is made to close a branch, management must conduct an impact study to assess the likely effects of any closure. If the branch under review is in an LMI area, the impact study must include concerns and ideas from the local community and an assessment of the closure's potential impact on customers and other possible ways the community's credit needs will be met.

As noted, the most recent CRA performance evaluations of Wachovia and SouthTrust's insured depository institutions have each concluded that the institutions' records of opening and closing branches has not adversely affected the level of services available in LMI areas. The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.<sup>58</sup> Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Board and the OCC, as the appropriate federal supervisors of SouthTrust Bank and Wachovia's subsidiary banks, respectively, will continue to review the banks' branch closing records in the course of conducting CRA performance evaluations.

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<sup>58</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

G. Other Matters

As part of the proposed merger, Wachovia has announced a \$75 billion, five-year community development plan for the states affected by the merger, including Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia. Many commenters mentioned the plan, with most praising it as indicative of Wachovia's commitment to the communities it serves. Two commenters, however, expressed concerns about the community development plan, arguing that the size of the plan is too small relative to the size of the proposed merger. Another commenter alleged that Wachovia has not abided by the terms of a community development pledge made in connection with a prior merger.

As the Board previously has explained, in order to approve a proposal to acquire an insured depository institution, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.<sup>59</sup> Moreover, the Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.<sup>60</sup>

In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that

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<sup>59</sup> See J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Bank of America Corporation, 90 Federal Reserve Bulletin 217 (2004) ("Bank of America Order"); NationsBank Corporation, 84 Federal Reserve Bulletin 858 (1998).

<sup>60</sup> See, e.g., Bank of America Order at 233; Citigroup Inc., 88 Federal Reserve Bulletin 485, 488 n.18 (2002).

the applicant has in place to serve the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by Wachovia under this factor, the Board similarly will review Wachovia's actual CRA performance record at that time and the programs it has in place to meet the credit needs of its communities at the time of such review.

#### H. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a significant expansion of Wachovia and its scope of operations. Accordingly, an important component of the Board's review is the effects of the proposal on the convenience and needs of all the communities served by Wachovia and SouthTrust.

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Wachovia, public comments on the proposal, and confidential supervisory information. As discussed in this order, the record demonstrates that the subsidiary depository institutions of Wachovia and SouthTrust have strong records of meeting the credit needs of their communities. The Board expects the resulting organization to continue to help serve the banking and credit needs of all its communities, including LMI neighborhoods. The Board notes that the proposal would expand the availability of banking products and services to customers of Wachovia and SouthTrust, for example by making Wachovia's broader range of affordable mortgage products available to SouthTrust customers. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations related to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

### Foreign Activities

As noted above, Wachovia also proposes to acquire SouthTrust International, Inc., the agreement corporation subsidiary of SouthTrust of Alabama. The Board has concluded that all the factors required to be considered under section 25 of the Federal Reserve Act and section 211.5 of Regulation K are consistent with approval.<sup>61</sup>

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>62</sup> 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. The Board's approval is specifically conditioned on

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<sup>61</sup> 12 C.F.R. 211.5.

<sup>62</sup> Several commenters requested that the Board hold a public meeting or 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 authorities. Under its regulations, 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 commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and submitted written comments that the Board has carefully considered in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their evidence adequately and fail 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 requests for a public meeting or hearing on the proposal are denied.

compliance by Wachovia with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, these conditions 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 merger with SouthTrust and the acquisition of SouthTrust Bank may 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 for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>63</sup> effective October 15, 2004.

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>63</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, Bernanke, and Kohn. Absent and not voting: Governor Bies.

## APPENDIX A

### Banking Markets Where Wachovia's and SouthTrust's Subsidiary Depository Institutions Compete Directly

#### Florida

##### *Brevard*

Brevard County.

##### *Daytona Beach*

Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County.

##### *Fort Myers*

Lee County, excluding Gasparilla Island (the town of Boca Grande), and including the town of Immokalee in Collier County.

##### *Fort Pierce*

Martin County, excluding the towns of Indiantown and Hobe Sound, and St. Lucie County.

##### *Fort Walton Beach*

Okaloosa and Walton Counties and the town of Ponce de Leon in Holmes County.

##### *Gainesville*

Alachua, Gilchrist, and Levy Counties.

##### *Highlands*

Highlands County.

##### *Indian River*

Indian River County.

*Jacksonville (Florida and Georgia)*

Baker, Clay, Duval, and Nassau Counties; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, and Switzerland in St. Johns County; and the city of Folkston in Charlton County, Georgia.

*Miami-Fort Lauderdale*

Broward and Dade Counties.

*Naples*

Collier County, excluding the town of Immokalee.

*North Lake/Sumter*

Lake County, excluding the towns of Astor, Clermont, and Groveland, and Sumter County.

*Ocala*

Marion County and the town of Citrus Springs in Citrus County.

*Orlando*

Orange, Osceola, and Seminole Counties; the western half of Volusia County; and the towns of Clermont and Groveland in Lake County.

*Pensacola*

Escambia and Santa Rosa Counties.

*Polk*

Polk County.

*Punta Gorda*

The portion of Charlotte County that is east of the harbor or east of the Myakka River, and the portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently, the towns of Northport and Port Charlotte).

*St. Augustine*

St. Johns County, excluding the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, and Switzerland.

*Sarasota*

Manatee and Sarasota Counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placido); and Gasparilla Island (the town of Boca Grande) in Lee County.

*Tallahassee*

Leon County and the towns of Quincy and Havana in the eastern half of Gadsden County.

*Tampa Bay*

Hernando, Hillsborough, Pinellas, and Pasco Counties.

*West Palm Beach*

The portion of Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

Georgia

*Athens*

Barrow County, excluding the towns of Auburn and Winder, and Clarke, Jackson, Madison, Oconee, and Oglethorpe Counties.

*Atlanta*

Bartow County; the towns of Auburn and Winder in Barrow County; Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties; Hall County, excluding the town of Clermont; and the town of Luthersville in Meriwether County.

*Augusta (Georgia and South Carolina)*

Columbia, McDuffie, and Richmond Counties in Georgia, and Aiken and Edgefield Counties in South Carolina.

*Columbus (Georgia and Alabama)*

Chattahoochee, Harris, and Muscogee Counties in Georgia; the towns of Junction City, Geneva, and Box Springs in Talbot County; and Russell County and the portion of Lee County, both in Alabama, that is within 12 road miles of Phoenix City, Alabama, or Columbus, Georgia.

*Dalton*

Murray and Whitfield Counties.

North Carolina

*Charlotte-Rock Hill (North Carolina and South Carolina)*

The Charlotte-Rock Hill Ranally Metropolitan Area (“RMA”) and the non-RMA portion of Cabarrus County in North Carolina.

*Greensboro-High Point*

The Greensboro-Highpoint RMA and the non-RMA portions of Davidson and Randolph Counties, excluding the Winston-Salem RMA portion of Davidson County.

*Raleigh*

The Raleigh RMA; the non-RMA portions of Franklin, Johnston, and Wake Counties; and Harnett County, excluding the Fayetteville RMA portion.

*Rutherford*

Rutherford County.

*Salisbury*

The Salisbury RMA and the non-RMA portion of Rowan County, excluding the Charlotte-Rock Hill RMA portion of Rowan County.

*Shelby*

Cleveland County, excluding the Charlotte-Rock Hill RMA portion.

*Transylvania*

Transylvania County.

## South Carolina

### *Charleston*

The Charleston RMA and the non-RMA portions of Berkeley and Charleston Counties.

### *Columbia*

The Columbia RMA and the non-RMA portions of Fairfield, Lexington, and Richland Counties.

### *Greenville*

The Greenville RMA and the non-RMA portions of Greenville and Pickens Counties.

### *Spartanburg*

The RMA and non-RMA portions of Spartanburg County, excluding the Greenville RMA portion of Spartanburg County.

## Virginia

### *Newport News-Hampton*

The Newport-News-Hampton RMA; the non-RMA portion of James City County; Mathews County; and the independent cities of Hampton, Newport News, Poquoson, and Williamsburg.

### *Norfolk-Portsmouth (Virginia and North Carolina)*

The Norfolk-Portsmouth RMA; the independent cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach; and Currituck County in North Carolina.

### *Richmond*

The Richmond RMA; the non-RMA portions of Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince George Counties; the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond; Amelia, Charles City, King and Queen, King William, and New Kent Counties; and the town of Mineral in Louisa County.

## APPENDIX B

### Market Data for Certain Banking Markets without Divestitures

#### I. Unconcentrated Banking Markets

##### FLORIDA

###### *Fort Walton Beach*

Wachovia operates the 18<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$28.4 million, which represent 1 percent of market deposits. SouthTrust operates the 11<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$104.4 million, which represent 3.7 percent of market deposits. On consummation of the proposal, Wachovia would operate the eighth largest depository institution in the market, controlling deposits of approximately \$132.8 million, which represent 4.7 percent of market deposits. Twenty-one depository institutions would remain in the market. The HHI would increase 8 points to 810.

###### *Miami-Fort Lauderdale*

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$11.8 billion, which represent 15.5 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately \$1.7 billion, which represent 2.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$13.5 billion, which represent 17.7 percent of market deposits. Ninety-six depository institutions would remain in the banking market. The HHI would increase 68 points to 988.

##### GEORGIA

###### *Athens*

Wachovia operates the eighth largest depository institution in the market, controlling deposits of approximately \$119 million, which represent 4.3 percent of market deposits. SouthTrust operates the 13<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$79.9 million, which represent 2.9 percent of market deposits. On consummation of the proposal, Wachovia would operate the sixth largest depository institution in the market, controlling deposits of approximately \$198.9 million, which represent 7.2 percent of market

deposits. Nineteen depository institutions would remain in the banking market. The HHI would increase 24 points to 943.

## II. Moderately Concentrated Banking Markets

### FLORIDA

#### *Brevard*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$1.32 billion, which represent 26.5 percent of market deposits. SouthTrust operates the 18<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$26.6 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$1.35 billion, which represent 27 percent of market deposits. Nineteen depository institutions would remain in the banking market. The HHI would increase 29 points to 1568.

#### *Fort Myers*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$1.04 billion, which represent 14.2 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately \$460 million, which represent 6.3 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately \$1.5 billion, which represent 20.5 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 178 points to 1268.

#### *Fort Pierce*

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately \$577.5 million, which represent 13.6 percent of market deposits. SouthTrust operates the 14<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$51.2 million, which represent 1.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately \$628.7 million, which represent 14.8 percent of market deposits. Sixteen depository institutions would remain in the banking market. The HHI would increase 33 points to 1292.

### *Gainesville*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$507 million, which represent 20.5 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately \$95.8 million, which represent 3.9 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$602.8 million, which represent 24.4 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase 159 points to 1242.

### *Highlands*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$200.2 million, which represent 16.7 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately \$49.1 million, which represent 4.1 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately \$249.3 million, which represent 20.8 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 137 points to 1737.

### *Indian River*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$632.2 million, which represent 25.2 percent of market deposits. SouthTrust operates the ninth largest depository institution in the market, controlling deposits of approximately \$113.4 million, which represent 4.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$745.6 million, which represent 29.7 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 228 points to 1461.

### *Naples*

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$990.9 million, which represent 15 percent of market deposits. SouthTrust operates the 14<sup>th</sup> largest depository

institution in the market, controlling deposits of approximately \$107 million, which represent 1.6 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$1.1 billion, which represent 16.6 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase 48 points to 1073.

#### *North Lake/Sumter*

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately \$293.1 million, which represent 10.3 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately \$91.2 million, which represent 3.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately \$384.3 million, which represent 13.5 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 66 points to 1375.

#### *Ocala*

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately \$284.6 million, which represent 9.2 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately \$273.7 million, which represent 8.8 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately \$558.3 million, which represent 18 percent of market deposits. Twenty-one depository institutions would remain in the banking market. The HHI would increase 161 points to 1425.

#### *Pensacola*

Wachovia operates the sixth largest depository institution in the market, controlling deposits of approximately \$277.6 million, which represent 7.3 percent of market deposits. SouthTrust operates the 12<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$82 million, which represent 2.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the fifth largest depository institution in the market, controlling deposits of approximately \$359.6 million, which represent

9.5 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 31 points to 1070.

#### *Sarasota*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$1.1 billion, which represent 9.1 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately \$1 billion, which represent 8.4 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately \$2.1 billion, which represent 17.5 percent of market deposits. Thirty-nine depository institutions would remain in the banking market. The HHI would increase 153 points to 1310.

#### *Tallahassee*

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately \$379.4 million, which represent 11.2 percent of market deposits. SouthTrust operates the 11<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$89.6 million, which represent 2.6 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately \$469 million, which represent 13.8 percent of market deposits. Thirteen depository institutions would remain in the banking market. The HHI would increase 59 points to 1380.

#### *Tampa Bay*

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$4.8 billion, which represent 14 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately \$2.8 billion, which represent 8.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$7.6 billion, which represent 22.2 percent of market deposits. Fifty-four depository institutions would remain in the banking market. The HHI would increase 230 points to 1493.

#### *West Palm Beach*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$5.8 billion, which represent 26.7 percent of market deposits. SouthTrust operates the seventh largest depository

institution in the market, controlling deposits of approximately \$713.6 million, which represent 3.3 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$6.5 billion, which represent 30 percent of market deposits. Fifty-four depository institutions would remain in the banking market. The HHI would increase 175 points to 1529.

## GEORGIA

### *Atlanta*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$16.6 billion, which represent 23.8 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately \$4.6 billion, which represent 6.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$21.2 billion, which represent 30.3 percent of market deposits. One hundred and one depository institutions would remain in the banking market. The HHI would increase 309 points to 1715.

### *Dalton*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$358.8 million, which represent 22 percent of market deposits. SouthTrust operates the 12<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$19.7 million, which represent 1.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$378.5 million, which represent 23.2 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase 53 points to 1443.

## NORTH CAROLINA

### *Greensboro-High Point*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$2.5 billion, which represent 26.7 percent of market deposits. SouthTrust operates the 18<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$51.1 million, which represent less than 1 percent of market deposits. On consummation of the proposal,

Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$2.6 billion, which represent 27.3 percent of market deposits. Twenty-six depository institutions would remain in the banking market. The HHI would increase 29 points to 1366.

#### *Raleigh*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$2.95 billion, which represent 26.4 percent of market deposits. SouthTrust operates the 13<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$171.2 million, which represent 1.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$3.1 billion, which represent 27.9 percent of market deposits. Twenty-two depository institutions would remain in the banking market. The HHI would increase 81 points to 1457.

### SOUTH CAROLINA

#### *Charleston*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$1.2 billion, which represent 24.6 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately \$217.7 million, which represent 4.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$1.4 billion, which represent 29.1 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase 220 points to 1564.

#### *Columbia*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$2.1 billion, which represent 28.4 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately \$95.5 million, which represent 1.3 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$2.2 billion, which represent 29.7 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 73 points to 1724.

### *Greenville*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which represent 21.2 percent of market deposits. SouthTrust operates the 16<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$68.3 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$1.7 billion, which represent 22.1 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 38 points to 1256.

### *Spartanburg*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$388.5 million, which represent 15.7 percent of market deposits. SouthTrust operates the 15<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$9.2 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately \$397.7 million, which represent 16 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase 12 points to 1150.

## VIRGINIA

### *Newport News-Hampton*

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$672.1 million, which represent 17.5 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately \$107.2 million, which represent 2.8 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$779.3 million, which represent 20.3 percent of market deposits. Sixteen depository institutions would remain in the banking market. The HHI would increase 98 points to 1504.

*Norfolk-Portsmouth* (Virginia and North Carolina)

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$2 billion, which represent 20 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately \$757.1 million, which represent 7.5 percent of market deposits. On consummation of the proposal, Wachovia would operate the largest depository institution in the market, controlling deposits of approximately \$2.8 billion, which represent 27.5 percent of market deposits. Twenty-one depository institutions would remain in the banking market. The HHI would increase 299 points to 1624.

III. Highly Concentrated Banking Markets

FLORIDA

*St. Augustine*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$149.4 million, which represent 15.4 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately \$36.8 million, which represent 3.8 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately \$186.2 million, which represent 19.2 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase 117 points to 2000.

GEORGIA

*Columbus* (Georgia and Alabama)

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately \$288.1 million, which represent 9.3 percent of market deposits. SouthTrust operates the third largest depository institution in the market, controlling deposits of approximately \$328.1 million, which represent 10.6 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately \$616.2 million, which represent 19.9 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 198 points to 3252.

## NORTH CAROLINA

### *Rutherford*

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately \$122.9 million, which represent 19.2 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately \$31.3 million, which represent 4.9 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$154.2 million, which represent 24.1 percent of market deposits. Seven depository institutions would remain in the banking market. The HHI would increase 189 points to 2153.

### *Salisbury*

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately \$182.5 million, which represent 21 percent of market deposits. SouthTrust operates the ninth largest depository institution in the market, controlling deposits of approximately \$15.2 million, which represent 1.7 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately \$197.7 million, which represent 22.7 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 70 points to 2221.

### *Shelby*

Wachovia operates the sixth largest depository institution in the market, controlling deposits of approximately \$32.4 million, which represent 4.1 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately \$11.7 million, which represent 1.5 percent of market deposits. On consummation of the proposal, Wachovia would operate the fifth largest depository institution in the market, controlling deposits of approximately \$44.1 million, which represent 5.6 percent of market deposits. Eight depository institutions would remain in the banking market. The HHI would increase 12 points to 2772.

## VIRGINIA

### *Richmond*

Wachovia operates the largest depository institution in the market, controlling deposits of approximately \$5.2 billion, which represent 27 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately \$307.8 million, which represent 1.6 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$5.5 billion, which represent 28.6 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 87 points to 2031.

## APPENDIX C

### Market Data for Certain Banking Markets with Divestitures

#### *Orlando, Florida*

Wachovia operates the third largest depository organization in the market, controlling deposits of \$2.7 billion, which represent approximately 13.5 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling deposits of approximately \$795.6 million, which represent approximately 3.9 percent of market deposits. Wachovia proposes to divest one SouthTrust branch in the De Land RMA portion of the banking market to either an out-of-market depository organization or an in-market depository organization that has less than 2 percent of total deposits in the market. This branch had deposits of approximately \$63.9 million as of June 30, 2003. After the proposed divestiture and on consummation of the merger, Wachovia would continue to operate the third largest depository organization in the market, controlling deposits of approximately \$3.4 billion, which represent approximately 17.1 percent of market deposits. The HHI would increase by 96 points to 1555. At least 44 depository institutions would remain in the market.

#### *Augusta (Georgia and South Carolina)*

Wachovia operates the largest depository organization in the market, controlling deposits of \$1.2 billion, which represent approximately 26.1 percent of market deposits. SouthTrust is the sixth largest depository organization in the market, controlling deposits of approximately \$389.3 million, which represent approximately 8.5 percent of market deposits. Wachovia proposes to divest three SouthTrust branches in the Augusta RMA portion of the banking market to an out-of-market depository organization. These branches had deposits of approximately \$127 million as of June 30, 2003. Wachovia has committed to divest not less than \$105 million in deposit liabilities. After the proposed divestitures and on consummation of the merger, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately \$1.5 billion, which represent approximately 32.3 percent of market deposits. The HHI would increase by not more than 361 points and would not exceed 1764. At least 13 depository institutions would remain in the market.