

FEDERAL RESERVE SYSTEM

ABC Bancorp
Moultrie, Georgia

Order Approving the Merger of Bank Holding Companies

ABC Bancorp (“ABC”), 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 Act¹ to merge with First National Banc, Inc. (“FNB”), St. Marys, Georgia, and acquire its subsidiary banks, First National Bank (“First National-Georgia”), also of St. Marys, and First National Bank (“First National-Florida”), Orange Park, Florida.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 Federal Register 50,348 (2005)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

ABC, with total consolidated assets of approximately \$1.3 billion, operates subsidiary insured depository institutions in Alabama, Georgia, and Florida. In Georgia, ABC is the 15th largest depository organization, controlling deposits of approximately \$722.4 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state (“state

¹ 12 U.S.C. § 1842.

² Immediately after the merger of FNB into ABC, First National-Georgia will be merged into The First Bank of Brunswick (“Bank of Brunswick”), Brunswick, Georgia, a subsidiary bank of ABC. The proposed merger by Bank of Brunswick is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”) under section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

deposits").³ In Florida, ABC is the 186th largest depository organization, controlling deposits of approximately \$108.9 million, which represent less than 1 percent of state deposits in Florida.

FNB, with total consolidated assets of approximately \$269.5 million, operates subsidiary depository institutions in Georgia and Florida. In Georgia, FNB is the 132nd largest depository organization, controlling deposits of approximately \$118.9 million. In Florida, FNB is the 227th largest depository organization controlling deposits of approximately \$68.4 million.

On consummation of the proposal, ABC would have consolidated assets of approximately \$1.5 billion. In Georgia, ABC would become the 13th largest depository organization, controlling deposits of approximately \$841.3 million, which represent less than 1 percent of state deposits. In Florida, ABC would become the 131st largest depository organization controlling deposits of approximately \$177.3 million, which represent less than 1 percent of state deposits.

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 home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of ABC is Georgia,⁴ and FNB is located in Georgia and Florida.⁵

³ Asset, deposit, and ranking data are as of June 30, 2005, and reflect merger activity as of November 15, 2005.

⁴ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁵ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁶ 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. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁷

ABC and FNB do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

⁶ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). ABC is adequately capitalized and adequately managed, as defined by applicable law. First National-Florida has been in existence and operated for at least the minimum period of time required by applicable state law (three years). On consummation of the proposal, ABC would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Florida. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

⁷ 12 U.S.C. § 1842(c)(1).

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 depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by ABC, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, 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 financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that ABC has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase. ABC will fund the cash component of the consideration with existing working capital. ABC, each of ABC's subsidiary banks, and FNB are well capitalized and would remain so on consummation of the proposal.⁸

⁸ First National-Georgia is not currently well capitalized, but as noted, ABC intends to merge that bank into Bank of Brunswick on consummation of the proposal. Bank of Brunswick would be well capitalized after consummation of that bank merger, and the Board has considered ABC's plans for the operation of

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of ABC, FNB, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. ABC and its subsidiary depository institutions are considered to be well managed. The Board also has considered ABC's plans for implementing the proposal, including the proposed management after consummation.⁹

Based on 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 the organizations involved in the

the resulting bank and has consulted with the federal and state regulators responsible for supervising Bank of Brunswick.

⁹ A commenter asserted that ABC has exercised a controlling influence over FNB or its subsidiary banks without receiving the prior approval of the Board as required under the BHC Act. The Board has considered these comments in light of the Agreement and Plan of Merger ("Merger Agreement") between ABC and FNB, and other information provided by ABC about its relationship with FNB. ABC has confirmed to the Board that, despite certain provisions of the Merger Agreement, it has limited and will limit its relationships with FNB before consummation of the proposal in the following ways: no officers, directors, or agents of ABC have served or will serve as directors or management officials of FNB or its subsidiary banks; ABC has not installed, and will not require installation of, any of its policies and procedures (including but not limited to ABC's credit policy) at First National or its subsidiary banks; ABC has not made and will not make credit or underwriting decisions with respect to any loan applications made to First National or its subsidiary banks; and ABC has not exercised and will not otherwise exercise a controlling influence over the management or policies of FNB or its subsidiary banks. ABC has confirmed that, although one of its employees attended meetings of the boards of directors of FNB and its subsidiary banks as an observer before the filing of the application, no directors, officers, or agents of ABC will attend such board meetings before consummation of the proposal.

proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁰ The CRA requires the federal financial supervisory agencies to encourage insured depository 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 a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.¹¹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of ABC and FNB, data reported by ABC and FNB under the Home Mortgage Disclosure Act (“HMDA”),¹² other information provided by ABC, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on data reported under HMDA, that ABC engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the

¹⁰ 12 U.S.C. § 2901 *et seq.*

¹¹ 12 U.S.C. § 2903.

¹² 12 U.S.C. § 2801 *et seq.*

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 represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹³

ABC's 12 subsidiary banks each received a rating of "satisfactory" or better at its most recent CRA performance evaluation.¹⁴ FNB's subsidiary banks, First National-Georgia and First National-Florida, received "satisfactory" ratings at their most recent evaluations by the Office of the Comptroller of the Currency ("OCC"), as of March 8, 2005, and June 10, 2002, respectively. After consummation of the proposal, ABC will generally implement its current CRA policies, procedures, and programs at the banks acquired from FNB.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of ABC and FNB in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that ABC disproportionately denied applications for HMDA-reportable loans by Hispanic applicants. The commenter also asserted that ABC made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.¹⁵

¹³ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁴ The appendix lists the most recent CRA performance ratings of ABC's subsidiary banks.

¹⁵ Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and by 5 percentage points for second-lien mortgages. 12 CFR 203.4.

The Board reviewed HMDA data for 2003 and 2004 reported by each subsidiary bank of ABC in its assessment areas.¹⁶

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not ABC is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.¹⁷ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including

¹⁶ Only six of ABC's twelve subsidiary banks originated HMDA-reportable loans: Bank of Brunswick; Southland Bank, Dothan, Alabama; Tri-County Bank, Trenton, Florida; Heritage Community Bank, Quitman, Georgia; Citizens Bank-Wakulla, Crawfordville, Florida; and First National Bank of South Georgia ("South Georgia Bank"), Albany, Georgia.

¹⁷ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

examination reports that provide on-site evaluations of compliance by ABC and FNB with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA evaluations of the subsidiary depository institutions of ABC and FNB, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that ABC has taken steps to ensure compliance with fair lending and other consumer protection laws.¹⁸ ABC represented that it currently conducts quarterly compliance reviews of each bank's loans, along with annual fair lending reviews involving comparative-file analyses. ABC also stated that it maintains a second-review program for its residential lending. In addition, ABC requires all its employees to participate annually in fair lending and CRA compliance training. ABC has indicated that it will institute its current fair lending polices and procedures at the banks acquired from FNB.

The Board also has considered the HMDA data in light of other information, including ABC's CRA lending programs and the overall performance records of the subsidiary banks of ABC and FNB under the CRA.¹⁹ These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

¹⁸ A commenter questioned the completeness of information provided by ABC about its policies and procedures for ensuring compliance with fair lending laws. After the commenter expressed this concern, the Board received additional information from ABC about its fair lending compliance program.

¹⁹ A commenter asserted that the absence of any denied, withdrawn, or incomplete applications in the 2004 HMDA data reported by South Georgia Bank demonstrated the bank's violation of HMDA or the Equal Credit Opportunity Act. Commenter provided no evidence that the HMDA data are, in fact, inaccurate. The OCC, as the primary federal supervisor of South Georgia Bank, is responsible for evaluating the bank's compliance with HMDA and fair lending laws. The Board has consulted with the OCC about South Georgia Bank's record of compliance with these laws.

C. Conclusion on Convenience and Needs and CRA Performance

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 ABC, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the banking products and services available to customers of FNB. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.²⁰ The Board's approval is

²⁰ A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its 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 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

specifically conditioned on compliance by ABC with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors,²¹ effective November 30, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

APPENDIX

CRA Ratings of ABC's Subsidiary Banks

Bank	CRA Rating	Date	Supervisor
Southland Bank, Dothan, Alabama	Satisfactory	June 2002	FDIC
American Banking Company, Moultrie, Georgia	Satisfactory	June 2003	FDIC
Citizens Security Bank, Tifton, Georgia	Satisfactory	March 2003	FDIC
The First Bank of Brunswick, Brunswick, Georgia	Satisfactory	February 2004	FDIC
First National Bank of South Georgia, Albany, Georgia	Satisfactory	November 1999	OCC
Heritage Community Bank, Quitman, Georgia	Satisfactory	October 2003	FDIC
Cairo Banking Company, Cairo, Georgia	Satisfactory	May 2003	FDIC
Merchants and Farmers Bank, Donalsonville, Georgia	Satisfactory	November 2002	FDIC
Citizens Bank-Wakulla, Crawfordville, Florida	Outstanding	September 1999	FDIC
Tri-County Bank, Trenton, Florida	Satisfactory	April 2005	FDIC
Central Bank & Trust, Cordele, Georgia	Satisfactory	November 2002	FDIC
Bank of Thomas County, Thomasville, Georgia	Satisfactory	October 2004	FDIC