

FEDERAL RESERVE SYSTEM

NBT Bancorp Inc.
Norwich, New York

Order Approving the Merger of Bank Holding Companies

NBT Bancorp Inc. (“NBT”), a bank 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 CNB Bancorp, Inc. (“CNB”), and thereby acquire its subsidiary bank, City National Bank and Trust Company (“City National Bank”), both of Gloversville, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 Federal Register 48,953 (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.

NBT, with total consolidated assets of approximately \$4.4 billion, operates one depository institution, NBT Bank, with branches in New York and Pennsylvania. NBT Bank is the 28th largest depository institution in New York, controlling deposits of approximately \$2.4 billion, which represent less than

¹ 12 U.S.C. § 1842.

² NBT’s only subsidiary bank, NBT Bank, National Association (“NBT Bank”), also of Norwich, has filed an application with the Office of the Comptroller of the Currency (“OCC”) to merge City National Bank into NBT Bank under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)).

1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³

CNB, with total consolidated assets of approximately \$419 million, operates one insured depository institution, City National Bank. The bank is the 85th largest insured depository institution in New York, controlling deposits of approximately \$344 million. On consummation of the proposal, NBT would become the 25th largest depository organization in New York, controlling deposits of approximately \$2.7 billion, which represent less than 1 percent of state deposits.

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 an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁴

NBT and CNB compete directly in the Albany banking market in New York.⁵ The Board has reviewed carefully the competitive effects of the

³ Deposit, ranking, and asset data are as of June 30, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁴ 12 U.S.C. § 1842(c)(1).

⁵ The Albany banking market is defined as Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington Counties in New York.

proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the Albany market (“market deposits”) controlled by NBT Bank and City National Bank,⁶ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁷ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Albany market. On consummation, the Albany banking market would remain moderately concentrated, as measured by the HHI. The increase in concentration would be small and numerous competitors would remain in the market.⁸

⁶ Deposit and market share data are as of June 30, 2005, 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).

⁷ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) 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 DOJ has stated that the higher than normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

⁸ NBT operates the ninth largest depository institution in the Albany banking market, controlling deposits of approximately \$579.9 million, which represent

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that 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 all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Albany banking market or in any other relevant banking market. Accordingly, based on all the facts of record, 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 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 supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

approximately 2.6 percent of market deposits. CNB is the 12th largest depository institution in the market, controlling deposits of approximately \$343.7 million, which represent approximately 1.5 percent of market deposits. On consummation, NBT would operate the eighth largest depository institution in the market, controlling deposits of approximately \$923.6 million, which represent approximately 4.1 percent of market deposits. The HHI would increase 28 points to 1745.

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.

NBT and NBT Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board believes that NBT has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash purchase. NBT will issue trust preferred securities to fund the cash portion of the transaction.

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 NBT, CNB, 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. NBT, CNB, and their subsidiary depository institutions are considered to be well managed. The Board also has considered NBT's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future

prospects of the organizations involved in the 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”).⁹ 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 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.¹⁰

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of NBT Bank and City National Bank, data reported by these banks in 2003 and 2004 under the Home Mortgage Disclosure Act (“HMDA”),¹¹ other information provided by NBT, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2003 and 2004 HMDA data, that NBT Bank and City National Bank had low levels of home mortgage lending to, and engaged in disparate treatment of, minority borrowers in their home mortgage operations. In

⁹ 12 U.S.C. § 2901 et seq.

¹⁰ 12 U.S.C. § 2903.

¹¹ 12 U.S.C. § 2801 et seq.

addition, the commenter expressed concern about NBT Bank's rating under the service test in its most recent CRA performance evaluation.

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 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.¹²

NBT Bank received an "outstanding" rating at its most recent CRA evaluation by the OCC, as of July 6, 2004 ("2004 CRA Evaluation").¹³ City National Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 27, 2003.¹⁴ After consummation of the proposed series of transactions, NBT will direct

¹² See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹³ Examiners evaluated NBT Bank's CRA performance in its 11 assessment areas in New York and Pennsylvania. In determining NBT Bank's overall rating, examiners gave the greatest weight to the bank's performance in the assessment areas in New York. The evaluation period for home mortgage and small business loans was January 1, 2001, through December 31, 2002. The evaluation period for community development loans and the investment and service tests was September 17, 2001, through July 6, 2004.

¹⁴ The evaluation period for City National Bank's CRA performance was January 1, 2000, through December 31, 2002. A commenter alleged that City National Bank's CRA examination was dated, but this comment referred to the bank's 1999 CRA examination.

the resulting institution to adopt the community development program, including products, services, outreach, and initiatives, that is currently in place at NBT Bank.

In its 2004 CRA Evaluation, NBT Bank received an overall “outstanding” rating under the lending test. Examiners reported that NBT Bank’s lending levels reflected excellent responsiveness to the credit needs of its communities. Furthermore, examiners noted that NBT Bank’s distribution of loans showed a good penetration among geographies and customers of different income levels and among businesses of different revenue sizes.

Examiners commended NBT Bank’s lending activity in the New York assessment areas and noted that its overall geographic distribution of loans was good. In NBT Bank’s New York assessment areas where examiners conducted a full-scope review, they noted that the bank’s percentage of home purchase loans in moderate-income geographies generally exceeded the percentage of owner-occupied housing units in these geographies.¹⁵ Moreover, the market share for home purchase loans made to LMI borrowers exceeded NBT Bank’s overall market share for all home purchase loans. Examiners also took into consideration programs offered by NBT Bank to address the credit needs of LMI individuals and geographies. These programs included a partnership with the State of New York Mortgage Agency to increase homeownership opportunities for LMI households through subsidized loans and

¹⁵ These areas included the Albany Region, consisting of Montgomery, Saratoga, Schoharie, and Schenectady Counties, and the northern portion of Albany County (“Albany Assessment Area”), and the Southern Tier Region, consisting of Chenango, Delaware, and Otsego Counties, and portions of Madison, Greene, and Ulster Counties, all in New York.

closing-cost assistance.¹⁶ Examiners noted that NBT Bank also had partnerships with a number of nonprofit agencies through which it offered an affordable housing mortgage product to LMI individuals and participated in the Federal Home Loan Bank of New York's First Home Club program that aided low-income borrowers. The First Home Club program provides down-payment and closing-cost assistance to participating low-income borrowers by providing matching funds to augment participants' savings.

The 2004 CRA Evaluation also found that the bank demonstrated an excellent overall record of serving the credit needs of small businesses. Examiners concluded that the overall geographic distribution of small loans to businesses and farms was good, particularly in the bank's Albany Assessment Area.

Examiners commended NBT Bank for its level of community development lending throughout its assessment areas in the 2004 CRA Evaluation. During the evaluation period, NBT Bank originated 19 community development loans totaling \$25.7 million in New York and Pennsylvania, the majority of which supported affordable housing initiatives.

NBT Bank received an overall "outstanding" rating under the investment test in the 2004 CRA Evaluation, reflecting what examiners reported as an "excellent" level of qualified investments in various assessment areas. The bank's qualified investments in New York during the evaluation period totaled approximately \$19.8 million.

NBT Bank received a "low satisfactory" rating in the 2004 CRA Evaluation under the service test overall and in its New York assessment areas. In Pennsylvania, NBT Bank was rated "high satisfactory" under the service test.

¹⁶ NBT Bank originated almost \$1.6 million in loans to LMI borrowers through the agency's programs during the evaluation period.

Examiners reported that the bank's branches in its assessment areas were reasonably accessible to individuals and geographies of different income levels. Examiners also reported that NBT Bank's hours and services offered in its assessment areas were good and that the bank offered services that provided easy access to funds for low-income people who received government assistance at its branches.¹⁷ Examiners commended NBT Bank for supporting community development services throughout its assessment areas that promoted or facilitated affordable housing, services, and economic development in LMI areas and for LMI individuals.

B. HMDA and Fair Lending Record

The Board has considered carefully NBT Bank's and City National Bank's lending records and HMDA data in light of public comment about their records of lending to minorities. A commenter expressed concern, based on 2004 HMDA data, that NBT Bank disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants. The

¹⁷ The commenter requested that the Board require NBT to file branch closing information as part of this proposal. The Board notes that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. 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 a 30-day notice and the appropriate federal supervisory agency and customers of the branch with at least a 90-day 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. In addition, the Board notes that the OCC, as the appropriate federal supervisor of NBT Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

commenter also expressed concern that the 2003 and 2004 HMDA data indicated that NBT Bank and City National Bank made few home purchase loans to minority applicants and that the banks received few applications from minority individuals. Based on the 2004 HMDA data, the commenter also criticized NBT Bank for making higher-cost mortgage loans.¹⁸ The Board reviewed the HMDA data for 2003 and 2004 reported by NBT Bank and City National Bank in the Albany-Schenectady-Troy Metropolitan Statistical Area.¹⁹

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 provide an insufficient basis by themselves to conclude whether or not NBT Bank or City National Bank 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.²⁰ HMDA data, therefore, have limitations that make

¹⁸ 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. NBT Bank stated that some of its HMDA-reported loans are higher-priced loans because they are for the purchase of manufactured housing and represented that these loans generally have a higher credit risk and are secured by collateral that decreases in value. The bank also stated that a loan's administrative cost might cause it to be priced differently.

¹⁹ The Albany-Schenectady-Troy Metropolitan Statistical Area is defined as Albany, Saratoga, Schenectady, Schoharie, and Rensselaer Counties in New York.

²⁰ 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

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 examination reports that provide on-site evaluations of compliance by NBT Bank and City National Bank with fair lending laws. In the fair lending reviews of NBT Bank and City National Bank conducted in conjunction with their most recent CRA evaluations, examiners noted no substantive violations of applicable fair lending laws by either bank.

The record also indicates that NBT has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. NBT represented that it performs significant monitoring of compliance in its mortgage lending operations through a wide variety of audit and review methods, including file reviews, statistical analyses, and exception reviews. One such review method at NBT Bank is a “second-look” program for all residential mortgage loan applications initially scheduled for denial. Under this program, a manager or other supervisory officer reviews such applications to ensure that they were properly evaluated and to determine whether the applicants qualify for another loan product offered by NBT Bank. Furthermore,

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.

NBT Bank primarily offers conventional mortgage products such as those offered by government-sponsored enterprises that conform to secondary-market underwriting guidelines. NBT Bank's mortgage program includes risk-priced procedures consistent with these guidelines and it uses automated software for underwriting and pricing mortgage loans. In addition, NBT Bank stated that it will conduct a quarterly review of the overall distribution of its mortgage loan applications and originations, including the distribution of lending to minority individuals, in the Albany Assessment Area for a period of at least two years after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs described above and the overall performance records of NBT Bank and City National Bank under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance Records

The Board has carefully considered all the facts of record, including reports of evaluation of the CRA performance records of the institutions involved, HMDA data reported by NBT Bank and City National Bank, information provided by NBT, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to the customers of City National Bank, including access to expanded branch and ATM networks. 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.²¹ The Board's approval is specifically conditioned on compliance by NBT 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

²¹ A commenter requested that the Board hold a public hearing or meeting 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 any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if 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 requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal 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 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 hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

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 New York, acting pursuant to delegated authority.

By order of the Board of Governors,²² effective December 14, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²² Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.