

FEDERAL RESERVE SYSTEM

Whitney Holding Corporation  
New Orleans, Louisiana

Order Approving the Acquisition of a Bank Holding Company

Whitney Holding Corporation (“Whitney”), 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 Act<sup>1</sup> to acquire First National Bancshares, Inc. (“Bancshares”) and its subsidiary bank, 1<sup>st</sup> National Bank & Trust (“1<sup>st</sup> Bank”), both of Bradenton, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (71 Federal Register 600 (2006)). 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.

Whitney, with total consolidated assets of \$10.1 billion, controls Whitney National Bank (“Whitney Bank”), also of New Orleans, with branches in Alabama, Florida, Louisiana, Mississippi, and Texas. Whitney is the third largest depository organization in Louisiana, controlling deposits of approximately \$4.8 billion, which represent approximately 8.4 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).<sup>2</sup> In

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<sup>1</sup> 12 U.S.C. section 1842.

<sup>2</sup> Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 23, 2006. In this

Florida, Whitney is the 43<sup>rd</sup> largest depository organization, controlling deposits of approximately \$860.3 million, which represent less than 1 percent of state deposits.

Bancshares, with total consolidated assets of approximately \$378.7 million, operates one subsidiary bank, 1<sup>st</sup> Bank, with branches only in Florida. Bancshares is the 93<sup>rd</sup> largest depository organization in Florida, controlling deposits of approximately \$292.4 million, which represent less than 1 percent of state deposits. On consummation of the proposal, Whitney would become the 35<sup>th</sup> largest depository organization in Florida, controlling deposits of approximately \$1.2 billion, 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 the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Whitney is Louisiana,<sup>3</sup> and 1<sup>st</sup> Bank is located in Florida.<sup>4</sup>

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context, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>3</sup> 12 U.S.C. section 1842(d). Under section 3(d) of the BHC Act, 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. 12 U.S.C. section 1841(o)(4)(C).

<sup>4</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. sections 1841(o)(4)-(7) and 1842(d)(1)(A) & (d)(2)(B).

Based on a review of all 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.<sup>5</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. 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.<sup>6</sup>

Whitney and Bancshares 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 not have a significantly adverse effect on

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<sup>5</sup> 12 U.S.C. section 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). Whitney is well capitalized and well managed, as defined by applicable law. 1<sup>st</sup> Bank has been in existence and operated for the minimum period of time required by Florida law. On consummation of the proposal, Whitney 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 deposits of insured depository institutions in Florida. See Fla. Stat. Ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>6</sup> 12 U.S.C. section 1842(c)(1).

competition or on the concentration of banking resources in any relevant banking market and that competitive factors 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 and other supervisory information received from the primary federal supervisors of the organizations involved, publicly reported and other financial information, information provided by Whitney, and public comment received on the proposal. The Board also has considered these factors in light of the effect that Hurricane Katrina had on the Gulf Coast region and its impact on Whitney's resources and future prospects.

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. The Board considers a variety of measures in this evaluation, 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.

The Board has carefully considered the financial factors. Whitney, Bancshares, and their subsidiary depository institutions are well capitalized and

would remain so on consummation of the proposal. Based on its review of the record, the Board believes that Whitney has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination cash purchase and share exchange. The cash portion of the transaction would be funded from Whitney's general corporate resources.

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 Whitney, Bancshares, and their subsidiary depository institutions, 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.<sup>7</sup> Whitney, Bancshares, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Whitney's plans for implementing the proposal, including the proposed management after consummation.

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

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<sup>7</sup> A commenter who opposed the proposal expressed concern about Whitney Bank's relationship with a rent-to-own company, which is an unaffiliated, nontraditional provider of financial services. As a general matter, the activities of this type of business are permissible, and such businesses are licensed by the states where they operate. Whitney Bank has implemented a policy for its commercial credit facilities to finance companies or other consumer lenders to fund consumer loans. This policy provides for an evaluation of the practices of such borrowers to identify any potentially predatory lending practices and for ongoing monitoring and management of relationships with such borrowers.

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”).<sup>8</sup> 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 neighborhoods, in evaluating bank expansionary proposals.<sup>9</sup>

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of the subsidiary depository institutions of Whitney and Bancshares, data reported by Whitney Bank and 1<sup>st</sup> Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>10</sup> other information provided by Whitney, confidential supervisory information, and public comment received on the proposal. The Board also has consulted with the Office of the Comptroller of the Currency (“OCC”) regarding Whitney’s efforts to revitalize and stabilize the communities it serves that were affected by Hurricane Katrina. A commenter

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<sup>8</sup> 12 U.S.C. section 2901 et seq.; 12 U.S.C. section 1842(c)(2).

<sup>9</sup> 12 U.S.C. section 2903.

<sup>10</sup> 12 U.S.C. section 2801 et seq.

alleged, based on 2004 HMDA data, that Whitney Bank and 1<sup>st</sup> Bank engaged in discriminatory treatment of minority individuals in home mortgage lending.

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.<sup>11</sup>

Whitney Bank received an overall "outstanding" rating at its most recent CRA evaluation by the OCC, as of January 6, 2003. 1<sup>st</sup> Bank received an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of March 4, 2002. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current CRA policies, procedures, and programs at 1<sup>st</sup> Bank.

B. HMDA and Fair Lending Records

The Board has carefully considered the lending record and HMDA data of Whitney Bank and 1<sup>st</sup> Bank in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Whitney Bank and 1<sup>st</sup> Bank disproportionately denied applications for HMDA-reportable loans by minority applicants in several Metropolitan Statistical Areas ("MSAs"). The Board reviewed HMDA data

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<sup>11</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

for 2004 reported by Whitney Bank in MSAs in Alabama, Florida, Louisiana, Mississippi, and Texas and for 1<sup>st</sup> Bank in the MSA in Florida that includes its assessment area.

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 on which to conclude whether or not Whitney Bank or 1<sup>st</sup> Bank is excluding or imposing higher credit costs on any racial or ethnic group 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.<sup>12</sup> 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,

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<sup>12</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 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.

including examination reports that reflect on-site evaluations of compliance by Whitney Bank and 1<sup>st</sup> Bank with fair lending laws and the CRA performance records of Whitney Bank and 1<sup>st</sup> Bank. In the fair lending reviews that were conducted in conjunction with the banks' most recent CRA performance evaluations, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Whitney has taken steps to ensure compliance with fair lending and other consumer protection laws. Whitney represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, Whitney represented that it performs a review of all denials of HMDA-reportable purchase money loans and a two-level review of all other HMDA-reportable denials of loans. Whitney also represented that its fair lending policy includes a comparative file review of all HMDA-reportable loan denials for minorities. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current fair lending policies, procedures, and programs at 1<sup>st</sup> Bank.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs of Whitney and Bancshares and the overall performance records of the subsidiary banks of Whitney and Bancshares 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 Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Whitney, comments received on the proposal, and confidential supervisory information. Whitney represented that the proposal would benefit Bancshares customers by providing access to an expanded ATM network and a broader array of products and services, including additional mortgage services, loan and checking account programs for low-income consumers, and international banking and cash management services. 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, including 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.<sup>13</sup> The Board's approval

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<sup>13</sup> The 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

is specifically conditioned on compliance by Whitney with the conditions imposed in this order and the commitments made 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,<sup>14</sup> effective March 7, 2006.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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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.

<sup>14</sup> Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.