

FEDERAL RESERVE SYSTEM

Passumpsic Bancorp
St. Johnsbury, Vermont

Order Approving the Merger of Bank Holding Companies

Passumpsic Bancorp (“Passumpsic”), 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 The Siwooganock Holding Company, Inc. (“Siwooganock”) and acquire its subsidiary bank, Siwooganock Bank (“Siwooganock Bank”), and Siwooganock’s ownership of 10 percent of the voting shares of The Lancaster National Bank (“Lancaster Bank”), all of Lancaster, New Hampshire.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 Federal Register 42,092 (2006)). 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.

Passumpsic, with total banking assets of approximately \$426 million, operates one depository institution, Passumpsic Bank, with branches in Vermont and New Hampshire. Passumpsic Bank is the 35th largest insured depository institution in New Hampshire, controlling deposits of approximately \$20 million,

¹ 12 U.S.C. § 1842.

² Passumpsic proposes to merge Siwooganock Bank into Passumpsic’s subsidiary bank, Passumpsic Savings Bank (“Passumpsic Bank”), St. Johnsbury, Vermont. Passumpsic has filed applications with the Federal Deposit Insurance Corporation (“FDIC”) for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) and with the bank commissioners of Vermont and New Hampshire for approval under applicable state laws.

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

Siwooganock, with total banking assets of approximately \$78 million, operates one depository institution, Siwooganock Bank, in New Hampshire. Siwooganock Bank is the 31st largest insured depository institution in New Hampshire, controlling deposits of approximately \$64 million. On consummation of the proposed transaction, Passumpsic would be the 30th largest depository organization in New Hampshire, controlling \$84 million in deposits, which represents less than 1 percent of state deposits.

Lancaster Bank, with total assets of approximately \$56 million, is the 32nd largest insured depository institution in New Hampshire, controlling deposits of approximately \$51 million, which represent less than 1 percent of state deposits. If Passumpsic were deemed to control Lancaster on consummation of the proposal,⁴ Passumpsic would become the 28th largest

³ Asset data are as of June 30, 2006; statewide deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity through June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁴ Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board’s approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks. See 12 U.S.C § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

banking organization in New Hampshire, controlling approximately \$135 million in deposits, which would represent less than 1 percent of state deposits.

Siwooganock's investment in Lancaster Bank has been a passive investment, and Siwooganock has complied with certain commitments previously relied on by the Board in determining that an investing bank holding company would not exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments"). Passumpsic has stated that it does not propose to control or exercise a controlling influence over Lancaster Bank and that its indirect investment in Lancaster Bank would also be a passive investment. In this light, Passumpsic has provided the Passivity Commitments to the Board.⁵ For example, Passumpsic has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Lancaster Bank or any of its subsidiaries; not to seek or accept representation on the board of directors of Lancaster Bank or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with Lancaster Bank or any of its subsidiaries. Passumpsic also has committed not to attempt to influence the dividend policies, loan decisions, or operations of Lancaster Bank or any of its subsidiaries.

Based on these considerations and all the other facts of record, the Board has concluded that Passumpsic would not acquire control of, or have the ability to exercise a controlling influence over, Lancaster Bank through the proposed indirect acquisition of the bank's voting shares. The Board notes that the BHC Act would require Passumpsic to file an application and receive the Board's approval before the company could directly or indirectly acquire

⁵ The commitments made by Passumpsic are set forth in the appendix.

additional shares of Lancaster Bank or attempt to exercise a controlling influence over Lancaster Bank.⁶

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 Passumpsic is Vermont,⁷ and Siwooganock is located in New Hampshire.⁸

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) of the BHC Act are met in this case.⁹ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

⁶ See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996); First Community Bancshares, Inc., 77 Federal Reserve Bulletin 50 (1991).

⁷ 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. § 1841(o)(4)(C).

⁸ For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

⁹ See 12 U.S.C. § 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Passumpsic is adequately capitalized and adequately managed, as defined by applicable law. Neither New Hampshire nor Vermont has any state age laws within the meaning of 12 U.S.C. § 1842(d)(1)(B). On consummation of the proposal, Passumpsic would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States and less than 30 percent of total deposits in New Hampshire. All other requirements of section 3(d) would be met on consummation of the proposal.

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.¹⁰

Passumpsic Bank, Siwooganock Bank, and Lancaster Bank compete directly in the Littleton banking market.¹¹ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Passumpsic Bank, Siwooganock Bank, and Lancaster Bank;¹² the concentration level of market

¹⁰ 12 U.S.C. § 1842(c)(1).

¹¹ The Littleton banking market includes the towns of Bethlehem, Easton, Franconia, Landaff, Lisbon, Littleton, Lyman, Monroe, and Sugar Hill in Grafton County, New Hampshire; the towns of Carroll, Dalton, Groveton, Jefferson, Lancaster, Northumberland, Stratford, and Whitefield in Coos County, New Hampshire; and the towns of Brunswick, Granby, Guildhall, Lunenburg, and Maidstone in Essex County, Vermont.

¹² 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, with one exception. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (1984). The Board regularly has

deposits and the increase in the level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”);¹³ other characteristics of the market; and the Passivity Commitments made by Passumpsic with respect to Lancaster Bank.

Passumpsic Bank is the sixth largest depository institution in the market, controlling \$20 million in deposits, which represents 5.4 percent of market deposits. Siwooganock Bank is the second largest depository institution in the market, controlling \$64 million in deposits, which represents 17 percent of market deposits. Lancaster Bank is the fifth largest depository institution in the market, controlling \$51 million in deposits, which represents 14 percent of market deposits. If considered a combined organization on consummation of the proposal, Passumpsic, Siwooganock, and Lancaster Bank would be the largest depository organization in the Littleton banking market, controlling \$135 million

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, 55 (1991). The deposits of one thrift in the banking market have been included at 100 percent because that thrift is actively engaged in commercial lending. The Board has previously stated that it may weigh the deposits of savings associations at 100 percent when competition from the savings association approximates that of a commercial bank. *See, e.g., Fifth Third Bancorp*, 87 Federal Reserve Bulletin 330, 334 (2001).

¹³ 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.

in deposits, which would represent approximately 37 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Littleton banking market would increase 343 points to 2509.¹⁴

Consummation of the proposal would raise competitive issues in the Littleton banking market if Passumpsic acquired control of Lancaster Bank. As discussed above, Passumpsic does not intend to control the bank, and the Board has concluded that the proposal, including the Passivity Commitments, would not result in Passumpsic controlling or exercising a controlling influence over Lancaster Bank. Such a conclusion, however, does not end the Board's inquiry under the competitive considerations in the BHC Act. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.¹⁵ The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.¹⁶

¹⁴ If only Passumpsic Bank and Siwooganock Bank were considered as a combined organization, the HHI for the Littleton banking market would increase 191 points to 1864. Although the banking market would become highly concentrated, the proposal would be consistent with Board precedent and DOJ Guidelines in this banking market. Passumpsic would become the second largest depository organization in this market, controlling \$84 million in deposits, which would represent 22.4 percent of market deposits.

¹⁵ See, e.g., SunTrust Banks, Inc., 76 Federal Reserve Bulletin 542 (1990); First State Corp., 76 Federal Reserve Bulletin 376, 379 (1990); Sun Banks, Inc., 71 Federal Reserve Bulletin 243 (1985) ("Sun Banks").

¹⁶ See, e.g., BOK Financial Corp., 81 Federal Reserve Bulletin 1052, 1053-54 (1995); Sun Banks at 244.

The Board has concluded, after careful analysis of the record, that no significant reduction in competition is likely to result from Passumpsic's proposed investment in Lancaster Bank. The record shows that Passumpsic intends to be a passive investor and that there will be no officer or director interlocks between Passumpsic and Lancaster Bank. There is no evidence that Passumpsic, by virtue of holding 10 percent of the voting shares of Lancaster Bank, would have access to confidential information that would enable it to engage in anticompetitive behavior with respect to Lancaster Bank.¹⁷ Moreover, Passumpsic has committed not to exercise a controlling influence over Lancaster Bank and, therefore, may neither direct Lancaster Bank to act in coordination with Passumpsic nor acquire nonpublic financial information from Lancaster that would permit Passumpsic to act in a manner that reduces competition.

The Board notes that additional factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Littleton banking market. In addition to Passumpsic, Siwooganock, and Lancaster Bank, five other bank and thrift competitors, including two competitors, each with market shares of at least 15 percent, provide additional sources of banking services to the market. The Board also notes that the market includes three community credit unions with broad fields of membership that include most

¹⁷ The Board recognizes that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In this case, no such information sharing currently takes place, and there are no legal, contractual, or statutory provisions that would allow any access to financial information of Lancaster Bank beyond the information already available to shareholders with a less than 5 percent interest.

of the residents in the market, offer a wide range of consumer banking products, and operate street-level branches with drive-up service lanes.¹⁸

The DOJ also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Accordingly, in light of 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 any relevant banking market and 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 supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

¹⁸ The Board previously has considered competition from certain active credit unions as a mitigating factor. See Capital City Group, Inc., 91 Federal Reserve Bulletin 418 (2005); F.N.B. Corporation, 90 Federal Reserve Bulletin 481 (2004); Gateway Bank & Trust Co., 90 Federal Reserve Bulletin 547 (2004). If Passumpsic, Siwooganock, and Lancaster Bank were considered as a combined organization on consummation of the proposal, the HHI for the Littleton banking market would increase 323 points to 2366 when three of the market's credit unions are weighted at 50 percent.

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 also evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines.

The Board has carefully considered the financial factors of the proposal. Passumpsic Bank is well capitalized, and both Passumpsic and Passumpsic Bank would be well capitalized on consummation of the proposal. Based on its review of the record, the Board also finds that Passumpsic has sufficient financial resources to effect the proposal and that the financial resources of Passumpsic and its subsidiaries would not be adversely affected by the proposal. The proposed transaction would be funded by a dividend from Passumpsic Bank.

The Board also has considered the managerial resources of Passumpsic, Siwooganock, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws. Passumpsic, Siwooganock, and their subsidiary banks are considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Passumpsic and the institutions involved 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”).¹⁹ Passumpsic Bank and Siwooganock Bank received “satisfactory” ratings at their most recent examinations for CRA performance by the FDIC, as of September 7, 2004, and July 21, 2003, respectively. Lancaster Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 13, 2001. The proposal would allow Passumpsic to offer a broader array of financial products and services over an expanded geographic area, including affordable housing programs, accounts with low- or no-balance requirements, no-cost electronic banking services, and electronic transfer accounts. Based on all the facts of record, the Board concludes that the considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all 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

¹⁹ 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Passumpsic 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 Boston, acting pursuant to delegated authority.

By order of the Board of Governors,²⁰ effective September 15, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²⁰ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin. Absent and not voting: Governor Bies.

Appendix

Passumpsic Bancorp ("Passumpsic"), St. Johnsbury, Vermont, commits that Passumpsic will not, without the prior approval of the Federal Reserve, directly or indirectly:

- (1) Exercise or attempt to exercise a controlling influence over the management or policies of The Lancaster National Bank ("Lancaster Bank"), Lancaster, New Hampshire, or any of its subsidiaries;
- (2) Seek or accept representation on the board of directors of Lancaster Bank or any of its subsidiaries;
- (3) Have or seek to have any employee or representative serve as an officer, agent, or employee of Lancaster Bank or any of its subsidiaries;
- (4) Take any action that would cause Lancaster Bank or any of its subsidiaries to become a subsidiary of Passumpsic or any of Passumpsic's subsidiaries;
- (5) Acquire or retain shares that would cause the combined interests of Passumpsic and any of Passumpsic's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of Lancaster Bank or any of its subsidiaries;
- (6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or the board of directors of Lancaster Bank or any of its subsidiaries;
- (7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Lancaster Bank or any of its subsidiaries;
- (8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of Lancaster Bank or any of its subsidiaries;

(9) Dispose or threaten to dispose of shares of Lancaster Bank or any of its subsidiaries as a condition of specific action or nonaction by Lancaster Bank or any of its subsidiaries; or

(10) Enter into any banking or nonbanking transactions with Lancaster Bank or any of its subsidiaries, except that Passumpsic may establish and maintain deposit accounts with any depository institution subsidiary of Lancaster Bank, provided that the aggregate balance of all such accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Lancaster Bank or any of its subsidiaries.