

FEDERAL RESERVE SYSTEM

National City Corporation  
Cleveland, Ohio

Order Approving the Acquisition of a Savings Association  
and a Notice to Engage in Nonbanking Activities

National City Corporation (“National City”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y<sup>1</sup> to acquire Harbor Federal Savings Bank (“Harbor FSB”), a savings association, by merging with its holding company, Harbor Florida Bancshares, Inc. (“Harbor”), both of Fort Pierce, Florida. National City also has requested the Board’s approval under those provisions to acquire Appraisal Analysis, Inc. (“Appraisal Analysis”), Fort Pierce, a subsidiary of Harbor, and thereby provide appraisal services for real estate and personal property in accordance with section 225.28(b)(6) of the Board’s Regulation Y.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (71 Federal Register 41,219 (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 4 of the BHC Act.

National City, with total consolidated assets of \$141.5 billion, is the 13<sup>th</sup> largest depository organization in the United States, controlling deposits of

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<sup>1</sup> 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

<sup>2</sup> 12 CFR 225.28(b)(6).

approximately \$83.2 billion, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>3</sup> National City operates one insured depository institution, National City Bank, Cleveland, Ohio, with branches in seven states.<sup>4</sup> Harbor, with total consolidated assets of approximately \$3.2 billion, operates one insured depository institution, Harbor FSB, with branches only in Florida. Harbor is the 11th largest depository organization in Florida, controlling deposits of approximately \$2.2 billion, which represent approximately 2 percent of the total amount of deposits of insured depository institutions in the state.

On consummation of the proposal, National City would remain the 13th largest insured depository organization in the United States, with total consolidated assets of approximately \$145.4 billion. National City would control deposits of approximately \$85 billion, representing 1 percent of the total amount deposits of insured depository institutions in the United States.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>5</sup> The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.<sup>6</sup> National City has committed to conform all the activities of Harbor FSB to those permissible under section 4(c)(8)

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<sup>3</sup> Asset, deposit and ranking data are as of June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>4</sup> National City Bank operates in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, and Pennsylvania.

<sup>5</sup> 12 CFR 225.28(b)(4)(ii).

<sup>6</sup> Id.

of the BHC Act and Regulation Y. In addition, the Board has determined that appraising real estate and personal property is closely related to banking.<sup>7</sup> National City has committed to conduct this activity in accordance with the Board's regulations and orders.

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of Harbor FSB and Appraisal Analysis "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>8</sup> As part of its evaluation under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the public benefits of the proposal.<sup>9</sup> In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").<sup>10</sup> The Board has considered the proposal under these factors in light of all the facts of record, including confidential supervisory and examination information, publicly reported financial and other information, and public comments submitted on the proposal.<sup>11</sup>

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<sup>7</sup> 12 CFR 225.28(b)(2)(i).

<sup>8</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>9</sup> See 12 CFR 225.26; see, e.g., BancOne Corporation, 83 Federal Reserve Bulletin 602 (1997).

<sup>10</sup> 12 U.S.C. § 2901 et seq.

<sup>11</sup> One of the two commenters on the proposal expressed concern that National City's acquisition of Appraisal Analysis could erode the separation between appraisers and the loan-production and credit decision-making processes. National City has committed that it will conduct all appraisal services in compliance with applicable federal regulations and guidance

### Competitive Considerations

As part of the Board's consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposed acquisition of Harbor FSB in light of all the facts of record. National City and Harbor 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 result in any significantly adverse effect on competition in any relevant banking market.<sup>12</sup>

The Board has considered the effects of the proposed transaction on competition for appraisal services. Harbor and National City do not compete directly in providing the proposed appraisal services. Moreover, the markets for these nonbanking activities are local or regional in scope and are unconcentrated. The record in this case indicates that there are numerous providers of these services. Based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect on competition among providers of appraisal services.

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requiring functional separation of appraisals from credit-solicitation and decision-making processes.

<sup>12</sup> Another commenter expressed concern about the existing concentration levels of market deposits in markets where Harbor FSB has offices. Because National City Bank currently does not have branches in any of these banking markets, the proposal would not increase the concentration levels of deposits in Harbor FSB's banking markets. Furthermore, the Board reviewed the concentration levels in the Indian River County, Florida banking market, one of the markets where Harbor FSB has branches, in its recent review of the proposed acquisition of Golden West Financial Corporation, Oakland, California, by Wachovia Corporation, Charlotte, North Carolina. The Board found no adverse competitive impact in the market as a result of that transaction. See Wachovia Corporation, 92 Federal Reserve Bulletin \_\_ (Order dated September 29, 2006).

## Financial and Managerial Resources

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of National City, Harbor, and their subsidiaries. The Board also has reviewed the effect the transaction would have on those resources 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, information provided by National City, and public comments received on the proposal.

In evaluating financial resources 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 insured depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, 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 proposal under the financial factors. National City, Harbor, 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 finds that National City has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

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 National City, Harbor, 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 and with anti-money laundering laws. National City, Harbor, and their subsidiary depository institutions are considered to be well managed. The Board also has considered National City's plans for implementing the proposal, including the proposed management after consummation.<sup>13</sup>

Based on all the facts of record, the Board has concluded that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

#### CRA Performance Records

As previously noted, the Board considers the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire a savings association. 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

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<sup>13</sup> A commenter expressed concern about National City's relationships with unaffiliated pawn shops, cash-advance lenders, and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. National City has stated that it does not pursue such nontraditional providers as a line of business. National City also has represented that it does not play any role in the lending practices, credit review, or other business practices of those firms.

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 ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>14</sup>

The Board received a comment related to the CRA performance record of National City. The commenter alleged, based primarily on data reported under the Home Mortgage Disclosure Act ("HMDA"),<sup>15</sup> that National City extended a disproportionately high number of subprime mortgage loans in the Cincinnati area, particularly to LMI borrowers, as compared to its lending outside Cincinnati.<sup>16</sup>

As provided in the CRA, the Board has evaluated the proposal 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

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<sup>14</sup> 12 U.S.C. § 2903.

<sup>15</sup> 12 U.S.C. § 2801 *et seq.*

<sup>16</sup> As the Board has previously noted, subprime lending is a permissible activity that provides needed credit to consumers who have difficulty meeting conventional underwriting criteria. The Board continues to expect all bank holding companies and their affiliates to conduct their lending operations without any abusive lending practices. *See, e.g., Royal Bank of Canada*, 88 Federal Reserve Bulletin 385, 388 (2002). The Board notes that on September 5, 2006, National City signed an agreement to sell its principal subsidiary that originates subprime mortgage loans, First Franklin Financial Corporation ("First Franklin"), San Jose, California, to Merrill Lynch & Co., New York, New York, and also announced its intention to sell to Merrill Lynch \$5.6 billion of loans originated by First Franklin.

detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>17</sup>

National City Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of February 22, 2000.<sup>18</sup> Harbor FSB received an "outstanding" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of September 30, 2005. National City has indicated that its CRA program would be implemented at Harbor FSB on consummation of the proposal.

In connection with previous applications by National City, the Board has reviewed the CRA performance records of National City's subsidiary insured depository institutions.<sup>19</sup> A summary of the most recent CRA evaluations of National City Bank was included in the Allegiant Order. Based on its review of the record in this case, the Board hereby reaffirms and adopts the facts and findings

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<sup>17</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 at 36,640 (2001).

<sup>18</sup> On July 22, 2006, National City consolidated five other subsidiary banks into National City Bank: National City Bank of Indiana, Indianapolis, Indiana; National City Bank of Kentucky, Louisville, Kentucky; National City Bank of Pennsylvania, Pittsburgh, Pennsylvania; National City Bank of Southern Indiana, New Albany, Indiana; and National City Bank of the Midwest, Bannockburn, Illinois. On August 19, 2006, National City also consolidated Pioneer Bank and Trust Company, Maplewood, Missouri, into National City Bank. Each of these banks received either an "outstanding" or a "satisfactory" rating at its most recent CRA evaluation, as have the other insured depository institutions that, since the most recent CRA performance evaluation of National City Bank, have been consolidated into National City Bank.

<sup>19</sup> National City Corporation, 2006 Federal Reserve Bulletin C84 (Legal Developments: First Quarter) (Board's public website); National City Corporation, 90 Federal Reserve Bulletin 519 (2004); National City Corporation, 90 Federal Reserve Bulletin 236 (2004) ("Allegiant Order"); and National City Corporation, 90 Federal Reserve Bulletin 382 (2004) ("Provident Order").

detailed in the Allegiant Order. The Board also has consulted with the OCC concerning the CRA performance of National City Bank since its last CRA evaluation.

As discussed in the Allegiant Order, the most recent CRA evaluation of National City Bank characterized the bank's overall record of home mortgage and small business lending as excellent and commended its level of community development lending.<sup>20</sup> Examiners noted favorably the use of several flexible lending products designed to address the affordable housing needs of LMI individuals and the bank's level of qualified investments. In addition, examiners reported that National City Bank's community development services were excellent and commended the geographic distribution of the bank's branches.

In 2004 and 2005, National City originated housing-related loans reported under HMDA totaling more than \$11.6 billion. Of this amount, 13 percent was lent to borrowers in LMI census tracts and 26 percent to LMI borrowers. National City represented that, in 2004 and 2005, its subsidiary banks also made approximately \$977 million in qualified community development loans and approximately \$235 million in qualified investments and grants in their assessment areas, including significant investments in the Cincinnati area.

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<sup>20</sup> See Allegiant and Provident Orders. In evaluating the records of performance under the CRA of National City Bank, examiners considered home mortgage loans by certain affiliates in the bank's assessment areas. The loans reviewed by examiners included loans reported by National City Mortgage Corporation, Miamisburg, Ohio (then a subsidiary of National City Bank of Indiana); National City Mortgage Services, Kalamazoo, Michigan (then a subsidiary of National City Bank of the Midwest); and other bank and nonbank affiliates of National City Bank.

In the most recent CRA performance evaluation of Harbor FSB, examiners reported that the savings association's overall lending to LMI borrowers exceeded that of all other lenders in its assessment areas during the evaluation period (January 1, 2003, to December 31, 2004). In addition, examiners characterized Harbor FSB's level of community development lending in the combined assessment area as strong. Examiners also commended Harbor FSB for supporting a wide variety of nonprofit civic organizations in its assessment areas and noted that the savings association offered a high level of banking services, including several products that were beneficial to LMI individuals.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to the CRA performance records of the relevant depository institutions are consistent with approval.

#### Other Considerations

In light of public comments on the proposal, the Board also has carefully considered the fair lending record and HMDA data reported by subsidiaries of National City in its evaluation of the public interest factors. A commenter opposed the proposal and alleged, based on 2005 HMDA data, that National City made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.<sup>21</sup> The Board has analyzed 2004 and 2005 HMDA data reported by subsidiaries of National City in its banks' primary assessment areas, including the Metropolitan Statistical Areas ("MSA") of

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<sup>21</sup> 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 or more percentage points for first-lien mortgages and by 5 or more percentage points for second-lien mortgages. 12 CFR 203.4.

Cleveland, Cincinnati, and Indianapolis, and statewide in the states where those banks operated branches.

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 National City is excluding 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.<sup>22</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 or ethnicity. 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 National City with fair lending laws. In the fair lending reviews

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<sup>22</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.

that were conducted in conjunction with the most recent CRA performance evaluations of National City, examiners noted no substantive violations of applicable fair lending laws. The Board has also forwarded the commenter's submissions to, and consulted with, the OCC about the fair-lending and consumer-protection compliance records of National City Bank, including the records of First Franklin, which is a subsidiary of the bank.

The record also indicates that National City has taken steps to ensure compliance with fair lending and other consumer protection laws. National City represents 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, National City states that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policies using monthly reporting and quality control reviews. National City also represents that its fair lending policies include a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas. National City intends to implement its consumer compliance and fair lending programs at Harbor FSB after consummation of the proposal.

In addition, the Board has considered the HMDA data in light of other information, including the CRA performance records of National City Bank and Harbor FSB. Based on all the facts of record, the Board has concluded that considerations relating to the fair lending record and HMDA data of National City Bank and Harbor FSB are consistent with approval under section 4 of the BHC Act.

### Public Benefits

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses currently served by Harbor. National City has represented that the proposed transaction would provide Harbor's customers with expanded products and services, including expanded commercial lending products, cash management and international trade services, and fiduciary and trust services. In addition, National City has represented that its acquisition of Appraisal Analysis would increase competition for appraisal services in Florida by increasing the availability of such services.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentrations of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.<sup>23</sup> In reaching its

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<sup>23</sup> A commenter requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the

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. The Board's approval is specifically conditioned on compliance by National City and Harbor with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>24</sup> and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

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Board also may, in its discretion, hold a public meeting or hearing on an application if a meeting or hearing is necessary or appropriate to provide an opportunity for testimony or other presentations. See 12 CFR 262.3(i)(2), 262.25(d). 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 comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its 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.

<sup>24</sup> 12 CFR 225.7 and 225.25(c).

The acquisition shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>25</sup> effective October 13, 2006.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>25</sup> Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Kroszner and Mishkin. Absent and not voting: Governors Bies and Warsh.