

FEDERAL RESERVE SYSTEM

Bank of America Corporation
Charlotte, North Carolina

Order Approving the Acquisition of a Bank Holding Company

Bank of America Corporation (“Bank of America”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire U.S. Trust Corporation (“U.S. Trust”) and its subsidiary bank, United States Trust Company, National Association (“U.S. Trust Bank”), both of New York, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 Federal Register 132 (2007)). 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 the BHC Act.³

Bank of America, with total consolidated assets of approximately \$1.5 trillion, is the second largest depository organization in the United States.⁴ Bank of America operates six insured depository institutions⁵ that operate in

¹ 12 U.S.C. § 1842.

² U.S. Trust is a wholly owned subsidiary of The Charles Schwab Corporation (“Charles Schwab”), San Francisco, California. Bank of America proposes to acquire all the outstanding common stock of U.S. Trust from Charles Schwab. In addition, Bank of America proposes to acquire the nonbanking subsidiaries of U.S. Trust in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

³ Three commenters expressed concerns on various aspects of the proposal.

⁴ Asset data are as of December 31, 2006.

⁵ In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

30 states and the District of Columbia, and it engages nationwide in numerous nonbanking activities that are permissible under the BHC Act.

U.S. Trust, with total banking assets of approximately \$11.1 billion, controls one depository institution, U.S. Trust Bank, with branches in 11 states and the District of Columbia. U.S. Trust also engages in a broad range of permissible nonbanking activities. On consummation of the proposal, Bank of America would remain the second largest depository organization in the United States, with total consolidated assets of approximately \$1.5 trillion.

Interstate and Deposit Cap 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 Bank of America is North Carolina,⁶ and U.S. Trust Bank is located in California, Connecticut, the District of Columbia, Florida, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Texas.⁷

The Board may not approve an interstate acquisition under section 3(d) if the applicant controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States ("nationwide deposit cap").⁸

⁶ See 12 U.S.C. § 1842(d). 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.

⁷ 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 or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

⁸ One commenter expressed general concerns about the proposal's consistency with the nationwide deposit cap.

As required by section 3(d), the Board has carefully considered whether Bank of America controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions⁹ in the United States. In analyzing this matter, the Board calculated the percentage of total deposits of insured depository institutions in the United States and the total deposits that Bank of America controls, and on consummation of the proposal would control, in the same manner as described in the Board's 2004 order approving Bank of America's acquisition of FleetBoston Financial Corporation.¹⁰ These calculations are based on the definition of "deposit" in the FDI Act,¹¹ the deposit data collected in reports filed by all insured depository institutions,¹² and the methods and adjustments used by the FDIC to compute total insured deposits.

⁹ The BHC Act adopts the definition of "insured depository institution" used in the Federal Deposit Insurance Act (12 U.S.C. § 1811 *et seq.*) ("FDI Act"). See 12 U.S.C. § 1841(n). The FDI Act contains an identical nationwide deposit cap applicable to bank-to-bank mergers and, consequently, many of the terms used in the nationwide deposit cap in the BHC Act refer to terms or definitions contained in the FDI Act. The FDI Act's definition of "insured depository institution" includes all banks (whether or not the institution is a bank for purposes of the BHC Act), savings banks, and savings associations that are insured by the Federal Deposit Insurance Corporation ("FDIC") and insured U.S. branches of foreign banks, as each of those terms is defined in the FDI Act. See 12 U.S.C. § 1813(c)(2).

¹⁰ Bank of America Corporation, 90 Federal Reserve Bulletin 217, 219 (2004) ("BOA/Fleet Order"); see also Bank of America Corporation, 92 Federal Reserve Bulletin C5 (2006) (order approving Bank of America's merger with MBNA Corporation, Wilmington, Delaware ("BOA/MBNA Order")).

¹¹ Section 3(d) of the BHC Act specifically adopts the definition of "deposit" in the FDI Act. 12 U.S.C. § 1842(d)(2)(E) (incorporating the definition of "deposit" at 12 U.S.C. § 1813(l)).

¹² Each insured bank in the United States must report data regarding its total deposits in accordance with the definition of "deposit" in the FDI Act on the institution's Consolidated Report of Condition and Income ("Call Report").

Based on the latest available deposit data reported by all depository institutions, the total amount of deposits of insured depository institutions in the United States is approximately \$6.757 trillion as of December 31, 2006. Also based on the latest Call Report, Bank of America (including all its insured depository institution affiliates) controls deposits of approximately \$612.0 billion, and U.S. Trust controls deposits of approximately \$9.4 billion. Bank of America, therefore, currently controls approximately 9.1 percent of total U.S. deposits. On consummation of the proposed transaction, Bank of America would control approximately 9.2 percent of the total amount of deposits of insured depository institutions in the United States. Therefore, the Board finds that Bank of America does not now control, and on consummation of the proposed transaction would not control, an amount of deposits that would exceed the nationwide deposit cap.

Section 3(d) also prohibits the Board from approving a proposal if, on consummation, the applicant would control 30 percent or more of the total deposits of insured depository institutions in any state in which both the applicant and the organization to be acquired operate an insured depository institution, or such higher or lower percentage that is established by state law (“state deposit cap”).¹³ On consummation of the proposal, Bank of America would control less than 30 percent of the total amount of deposits of insured depository institutions in California, Connecticut, the District of Columbia, Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Texas, and would not hold deposits in excess of any applicable state deposit caps.

Each insured savings association similarly must report its total deposits on the institution’s Thrift Financial Report. Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. These data are reported quarterly to the FDIC and are publicly available.

¹³ 12 U.S.C. § 1842(d)(2)(B)-(D).

All other requirements of section 3(d) of the BHC Act also would be met on consummation of the proposal.¹⁴ Based on 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 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.¹⁵

Bank of America and U.S. Trust have subsidiary depository institutions that compete directly in 16 banking markets throughout the United States. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by Bank of America and U.S. Trust,¹⁶ the concentration level of market

¹⁴ Bank of America is adequately capitalized and adequately managed as defined by applicable law. 12 U.S.C. § 1842(d)(1)(A). U.S. Trust Bank has been in existence and operated for the minimum period of time required by applicable state law. See 12 U.S.C. § 1842(d)(1)(B). The other requirements in section 3(d) of the BHC Act also would be met on consummation of the proposal.

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through February 20, 2007, and are based

deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁷ and other characteristics of the markets.

A. Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 15 of the 16 banking markets.¹⁸ On consummation of the proposal, three of these markets would remain unconcentrated, eleven markets would remain moderately concentrated, and one market would remain highly concentrated, as measured by the HHI. The change in the HHI measure of concentration in each of these markets would be very small. Moreover, numerous competitors would remain in each of the 15 banking markets.

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, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (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, 55 (1991).

¹⁷ 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.

¹⁸ These markets, and the effects of the proposal on the concentration of banking resources in these markets, are described in the Appendix.

B. Banking Market Warranting Special Scrutiny

Bank of America and U.S. Trust compete directly in one banking market, Hartford, Connecticut,¹⁹ that warrants a detailed review because the post-consummation market share of Bank of America in that market would exceed 35 percent. In the Hartford banking market, Bank of America is the largest depository organization, controlling deposits of approximately \$10.3 billion, which represent approximately 40.5 percent of market deposits. U.S. Trust is the 25th largest depository organization in the market, controlling deposits of \$50.6 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Bank of America would remain the largest depository organization in the market, controlling deposits of approximately \$10.3 billion, which represent approximately 40.7 percent of market deposits. Bank of America's market share would increase by less than 1 percent, and the HHI would increase by only 16 points to 2142, which is consistent with the DOJ Guidelines.

The Board has considered carefully whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.²⁰

Several factors indicate that the proposal would not have a significantly adverse effect on concentration in the Hartford banking market. Although the market is highly concentrated, as measured by the HHI, the change

¹⁹ The Hartford banking market is defined as the Hartford-New Britain Ranally Metropolitan Area.

²⁰ See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

in market share and market structure would be de minimis, and 32 other depository organizations would continue to operate in the market. In addition, the record of entry into the Hartford banking market evidences the market's attractiveness for entry. Eight depository institutions have entered the market de novo since 2001.

C. Views of Other Agencies/Conclusion on Competitive Considerations

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction 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 any of the 16 banking markets where Bank of America and U.S. Trust compete directly or in any other relevant banking market. Accordingly, 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 and other supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, including information provided by Bank of America.

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 information, 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 considered carefully the proposal under the financial factors. Bank of America, all its subsidiary banks, and U.S. Trust Bank currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Bank of America has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase of shares, and Bank of America will use existing resources to fund the purchase.

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 Bank of America and U.S. Trust, and their subsidiary banks, including assessments of their management, risk-management systems, and operations.²¹ In addition, the Board has

²¹ The Board has considered that Bank of America recently entered into agreements with the Internal Revenue Service (“IRS”) and the DOJ with respect to ongoing industrywide investigations being conducted by the DOJ, the IRS, and the Securities and Exchange Commission (“SEC”) related to certain practices in the municipal bond industry. Bank of America has voluntarily provided information and continues to work with the three agencies on this matter. The Board has also considered that this month Bank of America settled an SEC enforcement action against Bank of America’s subsidiary, Banc of America Securities LLC, related to its research reports. Consistent with the provisions of section 5 of the BHC Act, as amended by

considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws.²² The Board also has considered Bank of America'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.²³

the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999), the Board has relied on examination and other supervisory information provided by the SEC and other appropriate functional regulators about functionally regulated subsidiaries. The Board also has consulted with the SEC about its review of the efforts of Bank of America to comply with federal securities laws. The Board also has considered the willingness and efforts undertaken by Bank of America's management to ensure compliance with all applicable state and federal law and to improve compliance programs and policies in light of these investigations.

²² As part of its consideration of managerial factors, the Board reviewed confidential supervisory information on the policies, procedures, and practices of Bank of America and its subsidiary banks for complying with the Bank Secrecy Act and consulted with the Office of the Comptroller of the Currency ("OCC"). The Board also considered the result of investigations by other authorities concerning anti-money laundering matters involving Bank of America, which related to deficiencies in handling money transfers through Bank of America's New York branch and to certain deficiencies in customer due diligence and suspicious activity reporting at a subsidiary of Bank of America, Banc of America Investment Services, Inc. These investigations have recently been settled, and Bank of America has taken appropriate steps to revise its anti-money laundering policies, systems, and controls.

²³ One commenter reiterated concerns he had expressed previously about Bank of America's relations with unaffiliated third parties engaged in subprime lending, including OwnIt Mortgage ("OwnIt"), formerly Oakmont Mortgage Company, Woodland Hills, California. Bank of America represented that its investment in OwnIt was a passive, noncontrolling investment and that OwnIt recently terminated its operations. Bank of America provides warehouse

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).²⁴ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁵

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of Bank of America and U.S. Trust, data reported by Bank of America under the Home Mortgage Disclosure Act (“HMDA”),²⁶ other information provided by Bank of America, confidential supervisory information, and public comments

lines-of-credit to subprime lenders and other consumer finance companies, purchases subprime mortgage loans from unaffiliated lenders, and securitizes pools of subprime mortgage loans. 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. See BOA/Fleet Order 217, at 223 n.29 (2004). Moreover, the commenter provided no evidence that Bank of America has originated, purchased, or securitized “predatory” loans or otherwise engaged in abusive lending practices. Bank of America has policies and procedures to help ensure that the subprime loans it purchases and securitizes are in compliance with applicable state and federal consumer protection laws.

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

²⁵ 12 U.S.C. § 2903.

²⁶ 12 U.S.C. § 2801 et seq.

received on the proposal. One commenter questioned Bank of America's record of serving the credit needs of residents of the New York City area. The commenter also expressed concern that the acquisition of U.S. Trust Bank could negatively affect LMI residents of New York City if U.S. Trust Bank's current CRA programs were altered.²⁷ Two other commenters alleged, based on HMDA data, that Bank of America engaged in disparate 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.²⁸

Bank of America's lead bank, Bank of America, National Association ("BA Bank"), Charlotte, North Carolina, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2001

²⁷ The commenter also requested that Bank of America implement a number of CRA-related recommendations set forth in the comment letter. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See BOA/Fleet Order at 232-33. Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

(“2001 Evaluation”).²⁹ The only other subsidiary bank of Bank of America subject to the CRA, FIA Card Services, N.A., Wilmington, Delaware,³⁰ also received an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of April 4, 2005. U.S. Trust Bank was formed in 2006 by the conversion of United States Trust Company of New York (“USTC New York”), New York, New York, to a national bank charter and its subsequent merger with U.S. Trust Company, National Association (“USTC Los Angeles”), Los Angeles, California. Both banks were subsidiaries of U.S. Trust and had “outstanding” CRA performance ratings by the Board and the OCC, respectively, before the merger.³¹ Bank of America has represented that it would work to combine the community development and community investment activities of BA Bank and U.S. Trust Bank to strengthen and meet the banking needs of the communities in which they operate.

CRA Performance of BA Bank. The 2001 Evaluation of BA Bank was discussed in the BOA/Fleet Order.³² The Board also considered BA Bank’s CRA performance in the BOA/MBNA Order. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in those two orders concerning BA Bank’s CRA performance record. Bank of America also provided the Board with additional information about its CRA performance since the Board last reviewed such matters in the

²⁹ The evaluation period for the 2001 Evaluation was January 1, 2000, through December 31, 2001.

³⁰ FIA Card Services was formerly known as MBNA America Bank, National Association, Wilmington, Delaware, and was renamed in June 2006.

³¹ USTC New York received an overall “outstanding” CRA performance rating from the Board, as of March 15, 2004, and USTC Los Angeles received an overall “outstanding” CRA performance rating from the OCC, as of October 15, 2002. The OCC has not yet evaluated U.S. Trust Bank’s CRA performance.

³² BOA/Fleet Order at 225-229.

BOA/MBNA Order.³³ The Board also consulted with the OCC with respect to BA Bank's CRA performance since the BOA/MBNA Order.

In the 2001 Evaluation, examiners commended BA Bank's overall lending performance, which they described as demonstrating excellent or good lending-test results in all its rating areas. Examiners reported that the distribution of HMDA-reportable mortgage loans among areas of different income levels was good, and they commended BA Bank for developing mortgage loan programs with flexible underwriting standards, such as its Neighborhood Advantage programs, which assisted in meeting the credit needs of BA Bank's assessment areas. Examiners also reported that the bank's small business lending was excellent or good in the majority of its rating areas, and they commended the distribution of small business loans among businesses of different sizes in several of BA Bank's assessment areas.³⁴ In addition, examiners noted in the 2001 Evaluation that BA Bank's level of community development lending was excellent.

Since the 2001 Evaluation, BA Bank has maintained a substantial level of home mortgage, small business, and community development lending. The bank originated more than 376,000 HMDA-reportable home mortgage loans totaling approximately \$80 billion throughout its assessment areas in 2005.³⁵ More than 75,000 of those loans totaling more than \$8 billion were originated to LMI individuals. In 2006, BA Bank was recognized by the U.S. Small

³³ Bank of America has provided detailed information about its community development activities in New York City in response to a commenter's concerns about its record of serving the credit needs of the city's residents.

³⁴ In this context, "small business loans" are loans with original amounts of \$1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to borrowers in the United States.

³⁵ BA Bank originated more than 5,400 HMDA-reportable home mortgage loans totaling approximately \$1.6 billion in the New York MSA in 2005, including 785 loans totaling approximately \$188 million to LMI individuals.

Business Administration (“SBA”) for the ninth consecutive year as the leading small business lender in the country, based on its origination of approximately 13,000 SBA loans totaling more than \$405 million. Bank of America represented that BA Bank’s community development lending during 2005 and 2006 totaled approximately \$5.8 billion.³⁶

In the 2001 Evaluation, examiners reported that BA Bank consistently demonstrated strong investment-test performance, noting that its performance was excellent or good in the majority of its assessment areas. During the evaluation period, BA Bank funded more than 17,000 housing units for LMI families through its community development investments throughout its assessment areas.³⁷ Examiners commended BA Bank for taking a leadership role in developing and participating in complex investments that involved multiple participants and both public and private funding.

Since the 2001 Evaluation, BA Bank has continued its strong activities in community development investment in its assessment areas. Bank of America represented that BA Bank’s qualifying community development investments during 2005 and 2006 totaled approximately \$3.6 billion and that BA Bank’s subsidiary community development corporation had helped develop more than 6,200 housing units in LMI census tracts or for LMI individuals since 2003.³⁸

³⁶ Bank of America advised that information for 2006 is based on preliminary data, which have not been finalized and may be incomplete.

³⁷ Bank of America also has provided grants to nonprofit organizations, such as ACCION and the New Mexico Community Development Loan Fund, that originate microloans in amounts as small as \$500 and promote SBA programs.

³⁸ Bank of America also has represented that, during 2005 and 2006, BA Bank’s qualifying community development investments in New York City totaled approximately \$170 million and qualified community development lending in New York City totaled approximately \$700 million.

Examiners commended BA Bank's service performance throughout its assessment areas in the 2001 Evaluation. They reported that the bank's retail delivery systems were generally good and that the bank's distribution of branches among geographies of different income levels was adequate. Examiners also commended BA Bank for its community development services, which typically responded to the needs of the communities served by the bank throughout its assessment areas.³⁹

CRA Performance of U.S. Trust Bank. As noted, U.S. Trust Bank received an overall "outstanding" rating in its March 2004 evaluation.⁴⁰ U.S. Trust Bank provides investment management, private banking, and fiduciary services to high-net-worth individuals and institutions and is designated as a wholesale bank for purposes of evaluating its CRA performance. As such, it is evaluated under the community development test, and examiners may consider the bank's community development investments, loans, and services nationwide rather than only in the bank's assessment area.⁴¹

With respect to community development lending, examiners commended U.S. Trust Bank's responsiveness to the credit needs of its assessment area. Examiners noted that during the evaluation period, U.S. Trust Bank made more than \$44 million in qualified community development investments, including a number of low-income housing tax credit investments, which helped meet the assessment area's critical needs for affordable housing.

³⁹ One commenter asserted that Bank of America should ensure that certain banking products and services are made available to LMI customers in New York City. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes their costs to the consumer.

⁴⁰ The evaluation period was from March 16, 2002, through December 31, 2003.

⁴¹ See 12 CFR 25.25.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Bank of America in light of public comments received on the proposal. Two commenters alleged, based on 2005 and 2006 HMDA data, that Bank of America had denied the home mortgage loan applications of African American and Hispanic borrowers more frequently than those of nonminority applicants in various metropolitan statistical areas (“MSAs”) and nationwide. The commenters also alleged that Bank of America and its subsidiaries made higher-cost loans more frequently to African American and Hispanic borrowers than to nonminority borrowers.⁴² The Board has focused its analysis on the 2005 HMDA data reported by Bank of America and its subsidiary banks.⁴³

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials 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 Bank of America is excluding or imposing higher costs on any 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.⁴⁴ HMDA data,

⁴² 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 or more for first-lien mortgages and by 5 percentage points or more for second-lien mortgages. 12 CFR 203.4.

⁴³ The Board reviewed HMDA data for BA Bank nationwide and in MSAs and states where the bank’s primary assessment areas are located. The Board notes that 2006 HMDA data are preliminary and that final data will not be available for analysis until fall 2007.

⁴⁴ 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

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 lending institutions 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 with fair lending laws by Bank of America and its subsidiaries. The Board also has consulted with the OCC, the primary federal supervisor of Bank of America's subsidiary banks.

The record, including confidential supervisory information, indicates that Bank of America has taken steps to ensure compliance with fair lending and other consumer protection laws. Bank of America has corporatewide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Bank of America's compliance program includes fair lending policy and product guides, compliance file reviews, testing of HMDA data integrity, and other quality-assurance measures. In addition, Bank of America represented that it provides annual fair lending training to

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.

ensure that Bank of America's associates understand their responsibilities for complying with the fair lending policy and how to employ fair lending "best practices" in all aspects of the lending process. Bank of America has stated that its fair lending policies will continue to apply to current Bank of America operations and that it will review and make appropriate modifications to the fair lending policies that would apply to US Trust Bank's operations after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Bank of America under the CRA. These established efforts and record of performance 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

The Board has considered carefully all of the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Bank of America, comments received on the proposal, and confidential supervisory information. Bank of America represented that the proposal will result in greater convenience for Bank of America and U.S. Trust customers through expanded delivery channels and a broader range of products and 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 and the CRA performance record of the relevant insured depository institutions are consistent with approval of the proposal.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴⁵ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Bank of America with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the

⁴⁵ One 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 written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. 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), 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 his 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 written comments do not present his 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.

effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,⁴⁶ effective March 27, 2007.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁴⁶ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

Appendix

Banking Markets Consistent with Board Precedent and DOJ Guidelines						
Data are as of June 30, 2006. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.						
Boston Banking Market in Massachusetts and New Hampshire						
Boston – the Boston Rnally Metropolitan Area (“RMA”) and the town of Lyndeboro in Hillsborough County, New Hampshire.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	1	\$30.0 bil.	23.17	1231	+ 16	161
<i>U.S. Trust</i>	26	\$445.7mil.	0.34			
<i>Bank of America Post-Consummation</i>	1	\$30.4 bil.	23.51			

Charlotte-Rock Hill Banking Market in North Carolina and South Carolina						
Charlotte-Rock Hill – the Charlotte RMA and the non-RMA portion of Cabarrus County, North Carolina.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$21.8 bil.	23.27	4741	0	49
<i>U.S. Trust</i>	38	\$8.7 mil.	0.01			
<i>Bank of America Post-Consummation</i>	2	\$21.8 bil.	23.28			

Dallas Banking Market in Texas

Dallas – Dallas County; the southeastern quadrant of Denton County (including the cities of Denton and Lewisville); the southwestern quadrant of Collin County (including the cities of McKinney and Plano); Rockwall County; the communities of Forney and Terrell in Kaufman County; and the cities of Midlothian, Waxahachie, and Ferris in Ellis County.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$18.9 bil.	24.50	1726	+ 3	114
<i>U.S. Trust</i>	75	\$52.5 mil.	0.07			
<i>Bank of America Post-Consummation</i>	2	\$18.9 bil.	24.57			

Greensboro-High Point Banking Market in North Carolina

Greensboro-High Point – the Greensboro RMA and the non-RMA portions of Davidson (excluding the Winston-Salem RMA portion) and Randolph Counties.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	3	\$1 bil.	9.03	1179	0	27
<i>U.S. Trust</i>	27	\$3.6 mil.	0.03			
<i>Bank of America Post-Consummation</i>	3	\$1 bil.	9.07			

Houston Banking Market in Texas

Houston – the Houston–Sugar Land–Baytown Metropolitan Statistical Area, consisting of Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$9.1 bil.	11.17	1406	+ 1	84
<i>U.S. Trust</i>	70	\$26.2 mil.	0.03			
<i>Bank of America Post-Consummation</i>	2	\$9.1 bil.	11.20			

Los Angeles Banking Market in California

Los Angeles – the Los Angeles RMA and the towns of Acton and Rosamond.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	1	\$56.4 bil.	21.24	814	+ 5	166
<i>U.S. Trust</i>	58	\$268.5 mil.	0.10			
<i>Bank of America Post-Consummation</i>	1	\$56.6 bil.	21.34			

Miami-Fort Lauderdale Banking Market in Florida

Miami-Fort Lauderdale – Broward and Dade Counties.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$20.1 bil.	20.12	990	0	99
<i>U.S. Trust</i>	98	\$0.0 mil.	0.00			
<i>Bank of America Post-Consummation</i>	2	\$20.1 bil.	20.12			

Naples Banking Market in Florida

Naples – Collier County, excluding the town of Immokalee.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$1.8 bil.	17.89	1150	+ 9	36
<i>U.S. Trust</i>	29	\$24.7 mil.	0.25			
<i>Bank of America Post-Consummation</i>	2	\$1.8 bil.	18.14			

New York Banking Market in New York, New Jersey, Pennsylvania, and Connecticut						
New York – Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey; Monroe and Pike Counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	3	\$56.2 bil.	6.57	1246	+ 9	285
<i>U.S. Trust</i>	20	\$5.7 bil.	0.67			
<i>Bank of America Post-Consummation</i>	3	\$62 bil.	7.24			

Philadelphia Banking Market in New Jersey and Pennsylvania						
Philadelphia – Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania; and Burlington, Camden, Cumberland, Gloucester, and Salem Counties in New Jersey.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	5	\$6.4 bil.	6.09	1003	0	123
<i>U.S. Trust</i>	109	\$9.2 mil.	0.01			
<i>Bank of America Post-Consummation</i>	5	\$6.4 bil.	6.10			

Portland Banking Market in Oregon and Washington						
Portland – the Portland RMA; the towns of Banks, Molalla, Mount Angel, North Plains, Saint Helens, Scappoose, Vernonia, and Woodburn, Oregon; and Yacolt, Washington.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$4.1 bil.	16.96	1438	+ 4	42
<i>U.S. Trust</i>	32	\$22.3 mil.	0.09			
<i>Bank of America Post-Consummation</i>	2	\$4.1 bil.	17.05			

Raleigh Banking Market in North Carolina

Raleigh – the Raleigh RMA and the non-RMA portions of Franklin, Harnett (excluding the Fayetteville RMA portion), Johnston, and Wake Counties.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	6	\$1.1 bil.	7.01	1538	+ 1	31
<i>U.S. Trust</i>	28	\$1.8 mil.	0.01			
<i>Bank of America Post-Consummation</i>	6	\$1.1 bil.	7.02			

San Francisco-Oakland-San Jose Banking Market in California

San Francisco-Oakland-San Jose – the San Francisco-Oakland-San Jose RMA and the towns of Byron, Hollister, San Juan Bautista, Pescadero, and Point Reyes Station.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	1	\$56.2 bil.	27.03	1349	+ 1	101
<i>U.S. Trust</i>	73	\$56.9 mil.	0.03			
<i>Bank of America Post-Consummation</i>	1	\$56.2 bil.	27.06			

Washington Banking Market in the District of Columbia, Maryland, Virginia, and West Virginia

Washington – the Washington RMA, the non-RMA portions of Calvert, Charles, Frederick, Prince George's, and St. Mary's Counties in Maryland; Fauquier and Loudoun Counties in Virginia; Jefferson County in West Virginia; and the independent cities of Alexandria, Fairfax, Falls Church, and Manassas in Virginia.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>PNC Pre-Consummation</i>	2	\$14.8 bil.	11.76	842	+ 1	91
<i>Mercantile</i>	80	\$16.9 mil.	0.01			
<i>PNC Post-Consummation</i>	2	\$14.8 bil.	11.77			

West Palm Beach Banking Market in Florida

West Palm Beach – Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>Bank of America Pre-Consummation</i>	2	\$5.9 bil.	18.39	1520	+ 13	62
<i>U.S. Trust</i>	32	\$115.4 mil.	0.36			
<i>Bank of America Post-Consummation</i>	2	\$6 bil.	18.75			