
Legal Developments: First Quarter, 2008

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

First National Bank Group, Inc. Edinburg, Texas

Order Approving the Acquisition of Additional Shares of a Bank Holding Company

First National Bank Group, Inc. (“First National”), 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 acquire up to 9.9 percent of the voting shares and control of Southside Bancshares, Incorporated (“Southside”), Tyler, and acquire indirect control of Southside’s subsidiary banks, Southside Bank, also of Tyler, and Fort Worth National Bank, Fort Worth, all of Texas.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (72 *Federal Register* 70862 (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 section 3 of the BHC Act.

First National, with total consolidated assets of \$4.1 billion, is the 18th largest depository organization in Texas, controlling deposits of \$3.3 billion, which represent less than 1 percent of total deposits of insured depository institutions in Texas (“state deposits”).³ Southside, with total consolidated assets of \$1.9 billion, is the 29th largest depository organization in Texas, controlling deposits of \$1.4 billion.⁴ On consummation of the proposal, First

National would become the 12th largest depository organization in Texas, controlling deposits of approximately \$4.7 billion, which would represent 1.1 percent of state deposits.

First National, together with its related interests and principal shareholders, currently owns 8.62 percent of Southside’s voting shares and proposes to acquire the additional voting shares (up to 1.28 percent) through purchases on the open market. First National received approval from the Board to acquire up to 9.9 percent of the voting shares of Southside on September 11, 2006.⁵ As part of the approval, First National agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act (“Passivity Commitments”).

First National is proposing again to acquire up to 9.9 percent of the voting shares of Southside and has also requested approval to control Southside for purposes of the BHC Act.⁶ On acquiring control, First National would be required to treat Southside Bank as a subsidiary of First National and would be subject to certain obligations imposed by the BHC Act and other federal statutes, including obligations to serve as a source of financial and managerial strength to Southside.⁷

The Board received a comment from the management of Southside objecting to the proposal and questioning First National’s compliance with the Passivity Commitments. Southside also expressed concerns about the management of First National. The Board has considered carefully First National’s application and Southside’s comments in light of the factors it must consider under section 3 of the BHC Act.

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 banks involved in the proposal and certain other supervisory factors. The Board has considered

1. 12 U.S.C. §1842.

2. Southside has two intermediate bank holding companies in Delaware, Southside Delaware Financial Corporation, Dover, and Fort Worth Bancorporation, Inc., Wilmington. In addition, Southside has an intermediate bank holding company in Texas, Fort Worth Bancshares, Inc., Fort Worth.

3. Asset data are as of September 30, 2007, and statewide deposit and ranking data are as of June 30, 2007.

4. Southside acquired Fort Worth Bancshares, Inc. (a small bank holding company) in October 2007. Fort Worth Bancshares’ subsid-

ary bank, Fort Worth National Bank, Fort Worth, has assets of \$125 million. These assets were not included in Southside’s September 30, 2007, asset figures.

5. 91 *Federal Reserve Bulletin* C164 (2006) (“2006 Order”).

6. As part of the proposal, First National requests relief from the Passivity Commitments.

7. See 12 CFR 225.4; 12 U.S.C. § 1815(e)(1).

carefully these factors in light of all the facts of record, including, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, publicly reported and other financial information, information provided by First National, and public comment received on the proposal.

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 effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of the financial factors, the Board finds that First National has sufficient resources to effect the proposal. First National, Southside, and their subsidiary banks are well capitalized and would remain so on consummation of this proposal.⁸ The proposed transaction is structured as a share purchase, and the consideration to be received by Southside's shareholders would be funded from First National's existing liquid assets.

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

As noted, Southside has alleged that certain actions taken by the management of First National violated the Passivity Commitments.⁹ Specifically, Southside alleged that requests made by First National for employment and compensation information on employees who are related to

the president of Southside violated these commitments. Southside also asserted that a filing made by First National with the Securities and Exchange Commission ("SEC") evidenced First National's intent to change or influence control of Southside and was a *prima facie* violation of the Passivity Commitments. In addition, Southside alleged that the filing contained statements intended to force Southside to change its business and operations.¹⁰ The Board has reviewed the information provided by Southside and First National as well as public and confidential supervisory information. Based on all the facts of record, the Board finds that neither First National's request for information nor its mandatory filing with the SEC violated the Passivity Commitments.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of First National, Southside, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

First National's subsidiary bank, First National Bank, Edinburg, and Southside Bank compete directly in the Dallas banking market. In addition, First National Bank and Fort Worth National Bank compete directly in the Fort Worth banking market. The Board has reviewed carefully the competitive effects of the proposal in both 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

8. As previously noted, the proposal provides that First National would acquire only up to 9.9 percent of Southside. Under these circumstances, the financial statements of Southside and First National would not be consolidated. Moreover, because First National will not acquire a majority of the voting shares of Southside in this transaction, First National must obtain the Board's approval before acquiring more than 9.9 percent of Southside's voting shares.

9. Southside also criticized the management of First National, as trustee of First National's employee stock ownership plan ("ESOP"), for causing the ESOP to purchase shares of Southside. The amount of shares acquired by the ESOP did not exceed the percentage of shares authorized by the Board in the 2006 Order.

10. The SEC requires the owners of more than 5 percent of a class of equity securities of a registered company to file certain forms. *See* 15 U.S.C. § 78m(d); Rule 13d-1, 17 CFR 240.13d-1 (2007). First National filed a Schedule 13D report with the SEC, which is required for a 5 percent shareholder who "holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect" (17 CFR 240.13d-1(e)(1)(i) (2007)). In its Schedule 13D report, First National stated that, after making its 2006 investment in Southside, it wanted to change its investment goals with respect to Southside and, accordingly, filed this application with the Board requesting approval to increase its investment in Southside and to be relieved of the Passivity Commitments. First National also stated that it did not intend to take any action inconsistent with the Passivity Commitments until after the Board approved this application and the applicable statutory waiting period expired.

11. 12 U.S.C. § 1842(c)(1).

of depository institutions in the markets (“market deposits”) controlled by First National and Southside,¹² the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹³ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in both the Dallas and Fort Worth banking markets.¹⁴ On consummation of the proposal, the Dallas banking market would remain moderately concentrated and the Fort Worth banking market would remain unconcentrated, as measured by the HHI. There would be no change in the HHI’s measure of concentration in either market, and numerous competitors would remain in both banking markets.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation 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 either the Dallas or Fort Worth banking market or in any other relevant banking market and that competitive considerations are consistent with approval.

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

12. Deposit and market share data are as of June 30, 2007, are adjusted to reflect subsequent mergers and acquisitions as of January 28, 2008, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

13. Under the DOJ Guidelines, a market is considered 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 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 more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

14. Those banking markets and the effects of the proposal on the concentrations of banking resources are described in the appendix.

take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁵ The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of First National’s and Southside’s subsidiary banks, other information provided by First National, and confidential supervisory information. First National Bank received an “outstanding” rating at its most recent CRA evaluation by the Office of the Comptroller of the Currency (“OCC”), as of September 9, 2006. Southside Bank also received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of March 12, 2007.¹⁶ Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹⁷ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board’s approval is specifically conditioned on compliance by First National with the conditions imposed in this order and the commitments made to the Board in connection with the application. 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 acquisition of additional Southside voting shares may not be consummated before the 15th 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 Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 4, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

15. 12 U.S.C. § 2901 et seq.

16. Fort Worth National Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of February 21, 2006.

17. In granting this approval, the Board hereby relieves First National of the Passivity Commitments it provided in connection with the 2006 Order.

Appendix

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
TEXAS BANKING MARKETS						
<i>Dallas—Dallas County, the southeastern quadrant of Denton County (including Denton and Lewisville), the southwestern quadrant of Collin County (including McKinney and Plano), Rockwall County, the communities of Forney and Terrell in Kaufman County, and Midlothian, Waxahachie, and Ferris in Ellis County</i>						
First National Pre-Consummation ...	52	\$118 mil.	.14	1,604	0	129
Southside	119	687 th.	0	1,604	0	129
First National Post-Consummation ..	52	\$118.8 mil.	.14	1,604	0	129
<i>Fort Worth—The Fort Worth—Arlington Metropolitan division, which consists of Tarrant, Johnson, Parker, and Wise counties and excludes Mineral Wells in Parker County</i>						
First National Pre-Consummation ...	76	Minimal	Minimal	886	0	79
Southside	29	\$100.1 mil.	.45	886	0	79
First National Post-Consummation ..	29	\$110.1 mil.	.45	886	0	79

NOTE: Deposit data are as of June 30, 2007, and include mergers as of January 28, 2008. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

Frandsen Financial Corporation Arden Hills, Minnesota

Order Approving the Acquisition of a Bank

Frandsen Financial Corporation (“Frandsen”), 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 acquire First National Bank of Montgomery (“Bank”), Montgomery, Minnesota.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (73 *Federal Register* 492 (2008)). 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.

Frandsen, with total consolidated assets of \$1.2 billion, operates seven subsidiary insured depository institutions in Minnesota, Wisconsin, and North Dakota. In Minnesota, Frandsen is the 12th largest depository organization, controlling deposits of \$758.6 million, which represent less than 1 percent of total deposits of insured depository institutions in the state (“state deposits”).²

Bank is the 221st largest insured depository institution in Minnesota, controlling deposits of approximately \$55 million. On consummation of this proposal, Frandsen would become the 11th largest depository organization in Minne-

1. 12 U.S.C. § 1842.

2. Asset data are as of December 31, 2007, and statewide deposit and ranking data are as of June 30, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

sota, controlling deposits of approximately \$813.6 million, which represent less than 1 percent of state deposits.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal 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.³ In evaluating the competitive factors in this case, the Board has considered the assertion by several commenters that the proposal would create a monopoly or substantially lessen competition for banking services by eliminating Frandsen's only competitor in Montgomery.

Frandsen and Bank compete directly in the Minneapolis-St. Paul banking market, as delineated by the Federal Reserve Bank of Minneapolis ("Reserve Bank").⁴ Frandsen Bank and Trust ("Frandsen Bank"), Lonsdale, Minnesota, a subsidiary bank of Frandsen, operates a branch in Montgomery. Frandsen Bank and Bank are the only two insured depository institutions operating in Montgomery.

In defining the relevant geographic market, the Board and the courts have consistently found that the relevant geographic market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where customers can practicably turn for alternatives.⁵ In reviewing this proposal and the comments received, the Board has considered the geographic proximity of the Minneapolis-St. Paul banking market's population centers and the worker commuting data from the 2000 census. The data indicate that more than 40 percent of the labor force residing in Montgomery (and Montgomery Township) commute to work in the Minneapolis-St. Paul banking market. Montgomery is approximately 55 miles from the city center of Minneapo-

lis.⁶ Residents of the area also have highway access to the Minneapolis-St. Paul banking market for shopping and other purposes. These and other factors indicate that the Minneapolis-St. Paul banking market, which includes Montgomery, is the appropriate local geographic banking market for purposes of analyzing the competitive effects on this proposal.⁷

The Board has reviewed carefully the competitive effects of the proposal in the Minneapolis-St. Paul banking market where Frandsen and Bank compete directly in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Frandsen and Bank,⁸ the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),⁹ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines as applied in the Minneapolis-St. Paul banking market. On consummation, the HHI of the Minneapolis-St. Paul banking market would remain highly concentrated, and the HHI would increase less than 1 point as a result of this transaction.¹⁰ In addition, numerous competitors would remain in the market.

6. Montgomery Township is the unincorporated area that surrounds Montgomery.

7. The Board also considered the significantly lower percentage of residents in Montgomery and Montgomery Township commuting to other population centers in the surrounding counties outside the Minneapolis-St. Paul banking market and the availability and variety of shopping alternatives in the surrounding area.

8. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. 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 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.

10. Frandsen operates the 77th largest depository institution in the Minneapolis-St. Paul banking market, controlling deposits of approximately \$72 million, which represent less than 1 percent of market deposits. Bank is the 87th largest depository institution in the market, controlling deposits of approximately \$55 million. After the proposed acquisition, Frandsen would operate the 50th largest depository institution in the market, controlling deposits of approximately \$127 mil-

3. 12 U.S.C. § 1842(c)(1).

4. The Minneapolis-St. Paul banking market is defined as Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota counties; the townships of Lent, Chisago Lake, Shafer, Wyoming, and Franconia in Chisago County; the townships of Blue Hill, Baldwin, Orrock, Livonia, and Big Lake and the city of Elk River in Sherburne County; the townships of Monticello, Buffalo, Rockford, and Franklin and the cities of Otsego, Albertville, and St. Michael in Wright County; and the townships of Lanesburgh, Derrynane, and Montgomery and the city of Montgomery in Le Sueur County, all in Minnesota; and the township of Hudson in St. Croix County, Wisconsin.

5. See *United States v. Phillipsburg National Bank*, 399 U.S. 350 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963). See also *First York Ban Corp.*, 88 *Federal Reserve Bulletin* 251, (2002); *First Union Corporation*, 84 *Federal Reserve Bulletin* 489, 491-92 (1998); *First Union Corporation*, 83 *Federal Reserve Bulletin* 1012, 1013-14 (1997); *Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239, 241 (1996); and *Wyoming Bancorporation*, 68 *Federal Reserve Bulletin* 313, 314 (1982).

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Minneapolis-St. Paul banking market, where Frandsen and Bank compete directly, or in any other relevant banking market.¹¹ Accordingly, the Board has determined that competitive considerations are consistent with approval.¹²

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.

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 expects banking orga-

tion, which represent less than 1 percent of market deposits. One hundred and forty-seven insured depository institutions would remain in the banking market. The HHI is 1858 and would increase less than 1 point as a result of this proposal.

11. Until recently, the Reserve Bank included Montgomery and Montgomery Township in the definition of the Mankato banking market. After a review of the facts and for the reasons discussed above, the Board reaffirms the Reserve Bank's inclusion of Montgomery and Montgomery Township in its revised definition of the Minneapolis-St. Paul banking market. If Montgomery and Montgomery Township were included in the Mankato banking market, the competitive effects of the proposal also would be consistent with approval. Frandsen's market share in the Mankato banking market would increase to 8.3 percent, and the HHI would increase 29 points to 650.

12. A commenter contended that the elimination of banking options in Montgomery would adversely affect a customer's ability to ensure the confidentiality of personal and business banking information. As noted above, Montgomery is in the Minneapolis-St. Paul banking market and numerous banking options would remain for customers in the market. Moreover, Frandsen has an established privacy policy and customer information security policy and has represented that it will implement these policies at Bank.

nizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. 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. Frandsen, its subsidiary depository institutions, and Bank are well capitalized and would remain so on consummation. Based on its review of the record, the Board also finds that Frandsen has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase that will be funded through dividends from its subsidiary insured depository institutions.

The Board also has considered the managerial resources of Frandsen, its subsidiary depository institutions, and Bank. 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 the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Frandsen and its subsidiary depository institutions are considered to be well managed. The Board also has considered Frandsen's plans for implementing the proposal, including the proposed management at Bank after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA. All of Frandsen's insured depository institutions received "outstanding" or "satisfactory" ratings at their most recent CRA performance evaluations by the institutions' primary federal supervisors. Frandsen's lead bank, Frandsen Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of September 15, 2003.¹³ The examiners noted that Frandsen Bank had an excellent distribution of residential lending to borrowers of different incomes and

13. Frandsen Bank is the result of a merger involving affiliate banks in 2004. The FDIC conducted the last CRA performance evaluation of Frandsen Bank while the bank was doing business as Valley Bank and Trust. The most recent CRA performance evaluation ratings of Frandsen's other subsidiary insured depository institutions are listed in the appendix.

commended the bank's involvement in special home loan programs to meet the needs of low- and moderate-income families. They also reported that the bank had a good distribution of lending to businesses of different sizes. Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of March 4, 2003. Frandsen represented that the proposal would expand the availability of credit and the products and services available to Bank's customers.¹⁴ Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹⁵ In reaching its conclusion, the Board

14. Some commenters expressed concern that the proposed acquisition would result in a loss of jobs and businesses in Montgomery. A proposed transaction's effect on those matters for a community is not among the factors that the Board is authorized to consider under the BHC Act, and the federal banking agencies, courts, and the Congress consistently have interpreted the convenience and needs factor to relate to the effect of a proposal on the availability and quality of banking services in the community. *See, e.g., Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 447 (1996).*

15. The commenters 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

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 Frandsen 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 15th 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 25, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.25(d)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their 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 requests for a public meeting or hearing on the proposal are denied.

Appendix

CRA PERFORMANCE EVALUATIONS

Subsidiary Bank	CRA Rating	Date	Supervisor
Queen City Federal Savings Bank, Virginia, Minnesota	Outstanding	3/29/2004	Office of Thrift Supervision
Rural American Bank, Braham, Minnesota	Satisfactory	3/12/2003	FDIC
Valley Bank, Waterville, Minnesota	Satisfactory	10/31/2007	FDIC
Community Bank of the Red River Valley, East Grand Forks, Minnesota	Satisfactory	12/15/2003	FDIC
Rural American Bank-Luck, Luck, Wisconsin	Satisfactory	9/23/2002	FDIC
Valley Bank Minnesota, Jordan, Minnesota	Satisfactory	1/21/2003	FDIC

*The PNC Financial Services Group, Inc.
Pittsburgh, Pennsylvania*

*PNC Bank Delaware
Wilmington, Delaware*

Order Approving the Mergers of Bank Holding Companies and Banks and the Establishment of a Branch

The PNC Financial Services Group, Inc. (“PNC”), 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 Act to merge with Sterling Financial Corporation (“Sterling”),¹ Lancaster, Pennsylvania, and acquire Sterling’s two subsidiary banks, BLC Bank, National Association (“BLC NA”), Strasburg, Pennsylvania; and Delaware Sterling Bank & Trust Company (“DE Sterling Bank”), Christiana, Delaware.

In addition, PNC Bank Delaware (“PNC Bank DE”), Wilmington, Delaware, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act² (“Bank Merger Act”) to merge with DE Sterling Bank, with PNC Bank DE as the surviving entity. PNC Bank DE also has applied under section 9 of the Federal Reserve Act (“FRA”) to retain and operate a branch at the main office of DE Sterling Bank.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with relevant statutes and the Board’s Rules of Procedure (72 *Federal Register* 45,426 (2007)).⁴ As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request was provided to the Federal Deposit Insurance Corporation (“FDIC”). 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, the Bank Merger Act, and the FRA.

PNC, with total consolidated assets of approximately \$125.7 billion, is the 20th largest depository organization in the United States, controlling deposits of approximately \$74.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ PNC operates three subsidiary insured depository institutions in nine states and the District of

Columbia⁶ and engages in numerous nonbanking activities that are permissible under the BHC Act. PNC is the largest depository organization in Pennsylvania, controlling deposits of approximately \$35.2 billion. In Delaware, PNC is the eighth largest depository organization, controlling deposits of approximately \$2.6 billion.

Sterling has total consolidated assets of \$3.2 billion, and its subsidiary banks operate in Delaware, Maryland, and Pennsylvania. In Pennsylvania, Sterling is the 22nd largest depository organization, controlling state deposits of approximately \$2.3 billion. In Delaware, Sterling is the 27th largest depository organization, controlling deposits of approximately \$45.6 million.

On consummation of the proposal, PNC would become the 18th largest depository institution in the United States, with total consolidated assets of approximately \$128.9 billion. PNC would control deposits of approximately \$77 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Pennsylvania, PNC would remain the largest depository organization, controlling deposits of approximately \$37.5 billion, which represent approximately 14.5 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”). In Delaware, PNC would remain the eighth largest depository organization, controlling deposits of approximately \$2.6 billion, which represent approximately 1.6 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of PNC is Pennsylvania,⁷ and Sterling is located in Delaware, Maryland, and Pennsylvania.⁸

Based on a review of all the facts of record, including the relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of

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

6. PNC’s largest subsidiary bank, PNC Bank National Association (“PNC Bank”), Pittsburgh, Pennsylvania, operates branches in Delaware, Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, and the District of Columbia. PNC Bank DE operates in Delaware and Pennsylvania. On October 26, 2007, PNC acquired Yardville National Bancorp, Hamilton, New Jersey, and its subsidiary bank, Yardville National Bank, which operates in New Jersey and Pennsylvania.

7. A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the 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), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B)).

1. 12 U.S.C. § 1842. PNC proposes to acquire the nonbanking subsidiaries of Sterling in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

2. 12 U.S.C. § 1828(c).

3. 12 U.S.C. § 321. The office is at 630 Churchmans Road, Suite #204, Christiana.

4. 12 CFR 262.3(b).

5. National asset, deposit, and ranking data are as of June 30, 2007. Statewide deposit and deposit ranking data are as of June 30, 2007, and reflect merger activity through January 9, 2008. In this context,

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.

COMPETITIVE CONSIDERATIONS

The BHC Act and the Bank Merger Act prohibit 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. Both statutes also prohibit 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

PNC and Sterling have subsidiary depository institutions that compete directly in six banking markets: Wilmington in Delaware and Maryland; Baltimore, Maryland; Harrisburg, Lancaster, and York, Pennsylvania; and Philadelphia in Pennsylvania and New Jersey. 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 PNC and Sterling,¹¹ the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹² and other characteristics of the markets.

9. 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). PNC is adequately capitalized and adequately managed, as defined by applicable law. There are no minimum periods of time for which Sterling's subsidiary banks are required to have been in existence under any relevant state law. On consummation of the proposal, PNC would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). In addition, PNC would control less than 30 percent, or the applicable percentage established under state law, of the total amount of deposits of insured depository institutions in Maryland and Delaware. See 12 U.S.C. § 1842(d)(2)(B)-(C); Md. Fin. Inst. § 5-905. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

10. 12 U.S.C. § 1842(c)(1).

11. Deposit and market share data are as of June 30, 2007, adjusted to reflect mergers and acquisitions through January 14, 2008, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift institution 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).

12. 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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of the six banking markets.¹³ On consummation of the proposal, one market would remain concentrated, four markets would remain moderately concentrated, and one market would remain highly concentrated, as measured by the HHI. The change in the HHI's measure of concentration would be less than 100 points in each market, and numerous competitors would remain in all six banking markets.

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 banking markets where PNC and Sterling 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 and the Bank Merger Act require 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, and publicly reported and other financial information, including information provided by PNC.

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 depository institutions and the organizations' 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 com-

factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI 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.

13. Those banking markets and the effects of the proposal on their concentrations of banking resources are described in Appendix A.

bined 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 the proposal carefully under the financial factors. PNC and its subsidiary depository institutions are well capitalized. PNC has represented that it will merge BLC NA into PNC Bank after consummation of this acquisition. On consummation of the proposed mergers of the parent companies and banks, PNC and its subsidiary banks would remain well capitalized. Based on its review of the record, the Board finds that PNC has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase, and PNC will use existing resources to fund the cash portion of 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 PNC, Sterling, 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 bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. PNC and its subsidiary depository institutions are considered to be well managed. The Board also has considered PNC'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 and the Bank Merger Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act and the Bank Merger 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").¹⁴ 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.¹⁵

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of PNC and Sterling,

data reported by PNC and Sterling under the Home Mortgage Disclosure Act ("HMDA"),¹⁶ as well as small business lending data reported under the CRA, other information provided by PNC, confidential supervisory information, and public comments received on the proposal. A commenter criticized the CRA-related activities of PNC and Sterling and alleged that their banks' mortgage lending to LMI minority families in the New York-New Jersey-Pennsylvania regional area ("Tri-State Region") was insufficient. In addition, the commenter criticized PNC's and Sterling's general records of home mortgage lending to minorities in the Tri-State Region.¹⁷

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 insured depository institutions of PNC and Sterling. 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.¹⁸

PNC Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of May 16, 2006 ("PNC 2006 Evaluation"). PNC Bank DE also received an "outstanding" rating at its most recent CRA evaluation.¹⁹

BLC NA, Sterling's largest bank based on both assets and deposits, was formed in 2007 by the consolidation of four Sterling subsidiary banks, including its largest bank at that time, Bank of Lancaster County, National Association ("Lancaster Bank").²⁰ The CRA performance of BLC NA has not yet been evaluated. The Board's analysis takes into consideration the CRA performance record of all of Ster-

16. 12 U.S.C. § 2801 et seq.

17. The commenter also urged the Board to require PNC to provide specific CRA pledges or plans or to require it to take certain actions in the future. The Board consistently has stated 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 and that the enforceability of any such third-party pledges, initiatives, or agreements are matters outside the CRA. See, e.g., *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005). 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 credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

18. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

19. PNC Bank DE's most recent evaluation was as of January 21, 2003, by the FDIC. In 2006, PNC Bank DE became a member of the Federal Reserve System and has not been examined since its membership. Yardville National Bank received a "satisfactory" rating at its most recent performance evaluation by the OCC, as of January 3, 2006.

20. On May 25, 2007, the OCC approved the consolidation of the four depository institutions into BLC NA. In addition to Lancaster Bank, Sterling's other subsidiary banks in the consolidation were Bank of Hanover and Trust Company, Pennsylvania State Bank, and

14. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

15. 12 U.S.C. § 2903.

ling's unconsolidated CRA-reporting depository institutions and focuses on Lancaster Bank's record of performance as the largest of the four banks. Lancaster Bank received an "outstanding" rating at its most recent performance evaluation by the OCC, as of June 13, 2005 ("Sterling 2005 Evaluation"). DE Sterling Bank also received a "satisfactory" rating at its most recent performance evaluation by the FDIC, as of November 6, 2006. PNC has represented that it will implement its program for managing community reinvestment activities at Sterling's subsidiary banks on consummation of the proposal.

CRA Performance of PNC Bank. In addition to PNC Bank's overall "outstanding" rating in the PNC 2006 Evaluation,²¹ the bank received an overall "outstanding" in the Pennsylvania and Multi-State MA assessment areas and "high satisfactory" ratings in each of the lending, service, and investment tests in its New Jersey assessment area. Examiners reported that PNC Bank's overall lending performance was good, as reflected by the bank's loan volume and loan distribution by geography and borrower income. They further noted that PNC Bank's overall community development lending was strong and had a significant positive impact on the bank's overall lending test.

Examiners reported that the bank's overall distribution of loans in the Multi-State MA to borrowers of different income levels and businesses of different sizes and the geographic distribution of those loans was excellent. They noted that the bank's percentage of small loans to businesses represented a significant percentage of the bank's lending to businesses in each year of the evaluation period. Examiners noted that in the Multi-State MA, PNC Bank focused such lending on affordable housing and that the bank also made a significant volume of community development loans for revitalization and stabilization of LMI areas.

In the PNC 2006 Evaluation, examiners also commended PNC Bank's overall level of qualified investments and concluded that the bank's performance under the investment test in the Multi-State MA assessment area was outstanding. They noted that the bank's level of qualifying

investments represented excellent responsiveness to the needs of the Multi-State MA community, particularly for affordable housing.

Examiners also concluded that the bank's delivery systems overall were accessible to all customers. In the Multi-State MA assessment area, examiners rated PNC Bank's performance under the service test as "high satisfactory" and reported that the bank offered an excellent level of community development services that benefited LMI individuals. They noted that PNC employees provided community development services to approximately 200 different organizations and groups and in educational settings, including financial-literacy assistance to LMI individuals.

CRA Performance of Lancaster Bank. As noted, Lancaster Bank received an overall "outstanding" rating in the Sterling 2005 Evaluation.²² Under the lending test, Lancaster Bank also received an "outstanding" rating, and examiners reported that the bank's distribution of loans in its assessment areas reflected a good penetration among retail customers and an excellent distribution among retail customers of different income levels and business customers of varying sizes. They stated that the bank's lending levels reflected excellent responsiveness to community credit needs.

Examiners reported that Lancaster Bank's community development lending was responsive to the Lancaster AA's need for affordable housing in LMI geographies, to the credit needs of LMI individuals in the assessment area, and to the revitalization needs of distressed communities. They also commended the bank's performance for originating small loans to businesses, despite strong competition from five large lenders in the Lancaster AA.

Examiners rated Lancaster Bank's community development investment activities as "high satisfactory" under the investment test and reported that Lancaster Bank's qualified investments reflected a good responsiveness to community revitalization needs. During the exam's evaluation period, Lancaster Bank made investments and donations totaling \$1.4 million in the Lancaster AA. They also noted that Lancaster Bank had good investment performance despite limited investment opportunities in the Lancaster AA. For instance, the bank took the initiative to form Sterling Community Development Corporation LLC to help meet the affordable housing needs of LMI individuals.

In the Sterling 2005 Evaluation, Lancaster Bank received a "high satisfactory" rating on the service test. Examiners found that the bank's services were accessible to all portions of the Lancaster AA, including LMI geographies, and they noted that Lancaster Bank provided Spanish

Bay First Bank, National Association. The most recent CRA performance ratings of those four banks before consolidation are in Appendix B.

21. Examiners considered the performance of certain relevant PNC subsidiaries in the PNC 2006 Evaluation. References to PNC Bank in the Board's convenience and needs analysis incorporate these entities. The PNC 2006 Evaluation focused on PNC Bank's performance in assessment areas in Pennsylvania and New Jersey and the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Area ("Multi-State MA"), which together represented approximately 83 percent of the bank's deposits. Examiners considered PNC's HMDA-reportable loans and small loans to businesses for the period of January 1, 2002, through December 31, 2005. "Small loans to businesses" are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. PNC Bank's community development loans, investments, and services were evaluated for the period beginning April 1, 2002, through April 30, 2006.

22. Of Lancaster Bank's three assessment areas, examiners focused on the Lancaster assessment area ("Lancaster AA") in the Sterling 2005 Evaluation. Lancaster Bank obtained the majority of its deposits from, and originated most of its loans in, the Lancaster AA. The evaluation period was from January 1, 2002, to June 13, 2005, for the lending, investment, and service tests.

language services, including services for Latino LMI customers. They reported that the bank's employees provided a high level of community services in the bank's assessment areas. Examiners also commended Lancaster Bank for providing technical and financial expertise to qualified community organizations involved in activities that included assisting with support services and skill training targeted to LMI individuals; addressing redevelopment issues, urban revitalization, and property rehabilitation; assisting start-up businesses; and helping families gain access to affordable housing.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of PNC and Sterling in light of public comments received on the proposal. A commenter alleged that in the Tri-State region, PNC and Sterling provided an insufficient number of home mortgage loans to African American and Hispanic borrowers or otherwise engaged in disparate treatment of those minority individuals in home mortgage lending. The Board has focused its analysis on the 2005 and 2006 HMDA data reported by PNC Bank and Sterling's predecessor banks.²³

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 PNC or Sterling 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.²⁴ 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 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.

23. The Board reviewed the HMDA data reported by PNC in its assessment areas in New Jersey and Pennsylvania, the Pittsburgh Metropolitan Statistical Area ("MSA"), and the Philadelphia-Camden Metropolitan District ("MD"), as well as the New Jersey portion of the New York-White Plains-Wayne MD. In addition, the Board reviewed the 2005 and 2006 HMDA data reported by Sterling's institutions in their assessment areas in Pennsylvania and the Lancaster MSA.

24. 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.

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 PNC, Sterling, and their subsidiaries. The Board also has consulted with the OCC about the fair-lending compliance record of PNC Bank.

The record of this proposal, including confidential supervisory information, indicates that PNC and Sterling have taken steps to ensure compliance with fair lending and other consumer protection laws. PNC has a fair-lending compliance program that includes a second review process to identify any discriminatory practices with respect to the company's home mortgage lending. In addition, PNC has a process for resolving fair lending complaints and conducts periodic internal audits of its fair lending program. PNC requires its employees to complete fair-lending training sessions.

Sterling's compliance program is handled by a consulting firm that provides services regarding regulatory changes and that is responsible for overseeing the implementation of regulatory changes. The firm monitors bank initiatives and products, including a review of all marketing and advertising. In addition, the firm performs compliance monitoring, prepares risk assessments, and oversees compliance training.

PNC has represented that after the conversion of relevant Sterling financial systems to PNC systems, PNC's policies, procedures, processing systems, and personnel will be used to ensure regulatory compliance, and PNC plans to employ its lending system and processes across its expanded network of branches. In addition, Sterling employees will receive PNC's fair lending and compliance training.

The Board also has considered the HMDA data in light of other information, including the CRA-related small business lending, and the overall performance records of the subsidiary banks of PNC and Sterling under the CRA. These established efforts and records 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 PNC, the comment received on the proposal, and confidential supervisory information. PNC represented that the proposal will result in greater convenience for PNC and Sterling customers by enabling PNC to provide additional products and services more efficiently through an enhanced distribution system. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval.

ESTABLISHMENT OF A BRANCH

As noted, PNC Bank DE also has applied under section 9 of the FRA to establish a branch at DE Sterling Bank’s main office. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and the Board’s Regulation H and finds those factors to be consistent with approval.²⁵

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. The Board’s approval is specifically conditioned on compliance by PNC and PNC Bank DE with the conditions imposed in this order, the commit-

ments made to the Board in connection with the applications, and receipt of all other regulatory approvals. 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 proposal may not be consummated before the 15th 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 25, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

25. 12 U.S.C. § 322; 12 CFR 208.6(b).

Appendix A

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
DELAWARE AND MARYLAND BANKING MARKETS						
<i>Wilmington—New Castle County, Delaware and Cecil County, Maryland</i>						
PNC Pre-Consummation	3	2.0 bil.	6.5	3,580	7	21
Sterling	13	169.1 mil.	.6	3,580	7	21
PNC Post-Consummation	3	2.1 bil.	7.1	3,580	7	21
<i>Baltimore—The Baltimore Rnally Metro Area (RMA) and the non-RMA portions of Harford and Carroll counties in Maryland (except that part in the Washington, DC RMA)</i>						
PNC Pre-Consummation	2	4.8 bil.	12.1	1,214	7	74
Sterling	34	110.3 mil.	.3	1,214	7	74
PNC Post-Consummation	2	4.9 bil.	12.4	1,214	7	74
PENNSYLVANIA BANKING MARKETS						
<i>Harrisburg—Cumberland, Dauphin, Juniata, Lebanon, and Perry counties</i>						
PNC Pre-Consummation	4	968.2 mil.	9.8	765	55	31
Sterling	11	274.1 mil.	2.8	765	55	31
PNC Post-Consummation	2	1.2 bil.	12.6	765	55	31

Appendix A—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>Lancaster—Lancaster County</i>						
PNC Pre-Consummation	14	55.3 mil.	.7	1,422	23	18
Sterling	3	1.3 bil.	16.5	1,422	23	18
PNC Post-Consummation	3	1.4 bil.	17.2	1,422	23	18
<i>York—Includes Adams and York counties, excluding the Baltimore RMA</i>						
PNC Pre-Consummation	10	273.4 mil.	4.3	1,170	94	13
Sterling	3	675.9 mil.	10.8	1,170	94	13
PNC Post-Consummation	2	949.3 mil.	15.1	1,170	94	13
<i>Philadelphia and South Jersey—Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania; Burlington, Camden, Gloucester, and Salem counties in New Jersey; and the city of Trenton and Ewing, Hamilton, and Lawrence townships in Mercer County, New Jersey</i>						
PNC Pre-Consummation	4	9.8 bil.	9	1,075	1	121
Sterling	91	45.6 mil.	.1	1,075	1	121
PNC Post-Consummation	4	9.8 bil.	9.1	1,075	1	121

NOTE: Deposit data are as of June 30, 2007, and include mergers as of January 14, 2008. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

Appendix B

CRA PERFORMANCE EVALUATIONS OF THE STERLING BANKS CONSOLIDATED TO FORM BLC BANK, NATIONAL ASSOCIATION

Subsidiary Bank	CRA Rating	Date	Supervisor
Bank of Hanover and Trust Company, Hanover, Pennsylvania	Satisfactory	11/6/2006	FDIC
Pennsylvania State Bank, Camp Hill, Pennsylvania	Satisfactory	6/6/2005	FRB
Bay First Bank, National Association, North East, Maryland	Satisfactory	2/22/2002	OCC
Bank of Lancaster County, National Association, Strasburg, Pennsylvania	Outstanding	6/13/2005	OCC

*Royal Bank of Canada
Montreal, Canada*

Order Approving the Acquisition of a Bank Holding Company

Royal Bank of Canada (“RBC”) and its subsidiary bank holding companies (collectively, “Applicants”), including RBC Centura Banks, Inc. (“RBC Centura”),¹ Raleigh, North Carolina, all financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the BHC Act² to acquire Alabama National Bancorporation (“ANB”), Birmingham, Alabama, and its ten subsidiary banks.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 68,163 (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.

RBC, with total consolidated assets equivalent to \$569.8 billion, is the largest depository organization in Canada.⁴ RBC operates branches in New York City and Miami and through RBC Centura controls RBC Centura Bank (“Centura Bank”), Raleigh, which operates in six states.⁵ RBC Centura, with total consolidated assets of \$25.5 billion, is the 53rd largest depository organization in the United States, controlling \$13.6 billion in deposits.⁶ RBC Centura is the sixth largest depository organization in Alabama, controlling deposits of approximately \$1.7 billion. In Florida, RBC Centura is the 35th largest depository organization, controlling deposits of approximately \$1.1 billion, and in Georgia, RBC Centura is the 9th largest depository organization, controlling deposits of approximately \$2.2 billion.

ANB has total consolidated assets of approximately \$7.8 billion, and its subsidiary banks operate in Alabama, Florida, and Georgia. In Alabama, ANB is the sixth largest

depository organization, controlling deposits of \$2.8 billion. ANB is the 23rd largest depository organization in Florida, controlling deposits of \$2.1 billion, and is the 18th largest depository organization in Georgia, controlling deposits of \$866.9 million.

On consummation of the proposal, RBC Centura would become the 47th largest depository organization in the United States, with total consolidated assets of approximately \$33.3 billion. RBC Centura would control deposits of approximately \$19.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Alabama, RBC Centura would become the fifth largest depository organization, controlling deposits of approximately \$4.5 billion, which represent approximately 6 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”). In Florida, RBC Centura would become the 21st largest depository organization, controlling deposits of approximately \$3.3 billion, which represent less than 1 percent of state deposits. In Georgia, RBC Centura would become the eighth largest depository organization, controlling deposits of approximately \$3.1 billion, which represent approximately 1.7 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company’s home state if certain conditions are met. For purposes of the BHC Act, the home state of Applicants is North Carolina,⁷ and ANB is located in Alabama, Florida, and Georgia.⁸

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the 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

1. Applicants also include the following companies: Royal Bank Holding, Inc., Toronto, Canada; RBC Holdings (USA), Inc. and RBC USA Holdco Corporation, both of New York, New York; and Prism Financial Corporation, Wilmington, Delaware.

2. 12 U.S.C. § 1842.

3. ANB’s largest subsidiary bank, as measured by both assets and deposits, is First American Bank (“ANB Lead Bank”), Birmingham. ANB’s other subsidiary bank in Alabama is Alabama Exchange Bank, Tuskegee. ANB’s subsidiary banks in Florida are Community Bank of Naples, National Association, Naples; CypressCoquina Bank, Ormond Beach; First Gulf Bank, National Association, Pensacola; Florida Choice Bank, Mount Dora; Indian River National Bank, Vero Beach; and Millennium Bank, Gainesville. ANB’s subsidiary banks in Georgia are Georgia State Bank, Mableton, and The Peachtree Bank, Duluth.

4. Canadian asset and ranking data are as of October 31, 2007, and are based on the exchange rate as of that date.

5. Centura Bank operates branches in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

6. Asset data and nationwide deposit ranking data are as of September 30, 2007. Statewide deposit and ranking data are as of June 30, 2007, and reflect merger activity as of that date.

7. 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.

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

9. 12 U.S.C. §§ 1842(d). Applicants are adequately capitalized and adequately managed, as defined by applicable law. All of ANB’s subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws. See Ala. Code § 5-13B-6(d) (five years); Fla. Stat. § 658.295(8)(a) (three years); Ga. Code § 7-1-622(b)(1) (three years). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in each of Alabama, Florida, and Georgia (12 U.S.C. § 1842(d)(2)(A)–(B)). On consummation, Applicants also would be in compliance with the deposit caps under relevant state law in Alabama, Florida, and Georgia, each of which is 30 percent. See 12 U.S.C. § 1842(d)(2)(C); Ala. Code § 5-13B-6(b); Fla. Stat. § 658.295(8)(b); Ga. Code § 7-1-622(b)(2). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

The BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a 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 its probable effect in meeting the convenience and needs of the community to be served.¹⁰

Applicants and ANB have subsidiary depository institutions that compete directly in eight banking markets: Decatur area, Gulf Shores area, Huntsville area, and Mobile area in Alabama; Brevard County, Orlando area, and Sarasota area in Florida; and Atlanta area in Georgia. 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 and public comment received on the proposal. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions (“market deposits”) controlled by Applicants and ANB in the markets,¹¹ the concentration levels of market deposits and the increases in those levels as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ

Guidelines in all eight banking markets.¹³ On consummation of the proposal, six of the banking markets would remain moderately concentrated. The Mobile area banking market would remain highly concentrated, and the Decatur area would become highly concentrated, as measured by the HHI, but the changes in the HHIs in each market would be less than 200 points. Moreover, numerous competitors would remain in each of the eight banking markets.

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 significant 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 eight banking markets where Applicants and ANB 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 carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comment received on the proposal.¹⁴ The Board also has consulted with the Office of the Superintendent of Financial Institutions (“OSFI”), the agency with primary responsibility for the supervision and regulation of Canadian banks, including RBC.

In evaluating the 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

10. 12 U.S.C. § 1842(c)(1).

11. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2007, adjusted to reflect mergers and acquisitions through January 11, 2008, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

12. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 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 more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

13. Those banking markets and the effects of the proposal on the concentration of banking resources therein are described in Appendix A.

14. A commenter expressed concern about RBC Centura’s relationships with unaffiliated pawn shops 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. RBC Centura has stated that it conducts substantial due diligence reviews of its customers who provide alternative financial services, including reviews of anti-money-laundering and Bank Secrecy Act compliance, and that it does not play any role in the lending practices, credit review processes, or other business practices of those firms.

and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial 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 financial resources of the organizations involved in the proposal. The capital levels of RBC would continue to exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, RBC Centura, ANB, and the subsidiary depository institutions involved in the proposal are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of the organizations involved.¹⁵ The Board has reviewed the examination records of Applicants, ANB, 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 other relevant banking supervisory agencies, including the Office of Comptroller of the Currency and the Federal Deposit Insurance Corporation, with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. Applicants, ANB, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Applicants' plans for implementing the proposal, including the proposed management after consummation.¹⁶

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.¹⁷

15. The commenter expressed concern about pending litigation in Canada involving RBC and a Canadian asset management firm that is in receivership. The Board notes that the litigation will be resolved by a Canadian court with jurisdiction to adjudicate such matters.

16. The commenter expressed concern that Applicants have exercised control over ANB before the Board's consideration of this application. Commenter cited ANB's notice to some employees that their jobs would be eliminated as a result of the proposed transaction. Applicants have stated that they have taken no action with respect to ANB employees, and the record does not support a finding that Applicants have prematurely attempted to control ANB for purposes of the BHC Act.

17. Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.¹⁸ As noted, the OSFI is the primary supervisor of Canadian banks, including RBC. The Board previously has determined that RBC is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.¹⁹ Based on this finding and all the facts of record, the Board has concluded that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

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").²⁰ 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 neighborhoods, in evaluating bank expansionary proposals.²¹

and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act (12 U.S.C. § 1842(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which RBC operates and has communicated with relevant government authorities concerning access to information. In addition, RBC previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. RBC also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. In light of these commitments, the Board has concluded that RBC has provided adequate assurances of access to any appropriate information the Board may request.

18. 12 U.S.C. § 1843(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home-country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home-country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

19. See *Royal Bank of Canada*, 89 *Federal Reserve Bulletin* 139 (2003); *Royal Bank of Canada*, 83 *Federal Reserve Bulletin* 443 (1997).

20. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

21. 12 U.S.C. § 2903.

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of Applicants and ANB, data reported by RBC Centura and ANB under the Home Mortgage Disclosure Act (“HMDA”),²² other information provided by Applicants, confidential supervisory information, and a public comment received on the proposal. The commenter alleged, based on HMDA data reported in 2006, that RBC Centura had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed 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.²³

Centura Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond, as of April 17, 2006.²⁴ ANB Lead Bank received a “satisfactory” CRA performance rating by the Federal Reserve Bank of Atlanta, as of May 1, 2006.²⁵ ANB’s other subsidiary banks received ratings of “satisfactory” or “outstanding” at their most recent CRA performance evaluations.²⁶ Applicants have represented that RBC Centura will implement its current CRA program at ANB’s subsidiary banks.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of RBC Centura in light of the public comment received on the proposal. The commenter alleged, based on HMDA data, that RBC Centura had denied the home mortgage loan applications of African American and Latino borrowers more frequently than those of nonminority applicants. The Board has focused its analysis on the 2006 HMDA data reported by Centura Bank.²⁷

22. 12 U.S.C. § 2801 et seq.

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

24. The evaluation period was January 1, 2004, through December 31, 2005, for the lending test and March 24, 2004, through December 31, 2005, for the service and investment tests.

25. The evaluation period was January 1, 2004, through December 31, 2005, for the lending test and January 1, 2004, through May 1, 2006, for the service and investment tests.

26. Appendix B lists the most recent CRA performance ratings of these banks.

27. The Board reviewed HMDA data for Centura Bank’s assessment areas nationwide and in the Charlotte-Gastonia-Concord and the Atlanta-Sandy Springs-Marietta Metropolitan Statistical Areas.

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 RBC Centura 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.²⁸ 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 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 RBC Centura and its subsidiaries. The Board also has consulted with the Federal Reserve Bank of Richmond about the fair-lending compliance record of Centura Bank.

The record of this application, including confidential supervisory information, indicates that RBC Centura has taken steps to ensure compliance with fair lending and other consumer protection laws. RBC Centura’s compliance program includes statistical data analysis and file reviews to ensure that mortgage lending and pricing decisions are not made on a prohibited basis. In addition, RBC Centura provides annual online fair lending training to all its employees, supplemented by ongoing in-person fair lending training for mortgage-lending employees. Applicants have stated that RBC Centura will review the fair lending programs of ANB’s subsidiary banks and the combined organization after consummation of the proposal, and they will adopt any of ANB’s fair lending programs determined to be more effective than RBC Centura’s programs.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Applicants and ANB under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

28. 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.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comment received on the proposal, and confidential supervisory information. Applicants state that the proposal will result in increased credit availability and access to a broader range of financial services for customers of RBC Centura and ANB. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant 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.²⁹ In reaching its

29. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a 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), 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view,

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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants 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 15th 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 by the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 5, 2008.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix A

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
ALABAMA BANKING MARKETS						
<i>Decatur area—Morgan County and the portion of the city of Decatur in Limestone County</i>						
RBC Centura Pre-Consummation ...	6	52.1 mil.	3.5	1,913	137	11
ANB	2	288.8 mil.	19.5	1,913	137	11
RBC Centura Post-Consummation ..	2	340.9 mil.	23	1,913	137	11
<i>Gulf Shores area—the towns of Elberta, Foley, Gulf Shores, Lillian, Magnolia Springs, and Orange Beach in Baldwin County</i>						
RBC Centura Pre-Consummation ...	14	0 ¹	0	1,704	0	12
ANB	3	273.4 mil.	19.3	1,704	0	12
RBC Centura Post-Consummation ..	3	273.4 mil.	19.3	1,704	0	12

Appendix A—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
ALABAMA BANKING MARKETS— CONTINUED						
<i>Huntsville area—Madison County and Limestone County, excluding the town of Ardmore and the city of Decatur</i>						
RBC Centura Pre-Consummation ...	7	186.5 mil.	3.4	1,738	56	21
ANB	5	464.9 mil.	8.4	1,738	56	21
RBC Centura Post-Consummation ..	3	651.4 mil.	11.8	1,738	56	21
<i>Mobile area—Mobile County and the towns of Bay Minette, Daphne, Fairhope, Loxley, Point Clear, Robertsdale, Silverhill, Spanish Fort, and Summerdale in Baldwin County</i>						
RBC Centura Pre-Consummation ...	3	953.1 mil.	13.1	2,040	68	19
ANB	8	186.7 mil.	2.6	2,040	68	19
RBC Centura Post-Consummation ..	2	1.1 bil.	15.7	2,040	68	19
FLORIDA BANKING MARKETS						
<i>Brevard—Brevard County</i>						
RBC Centura Pre-Consummation ...	14	72 mil.	1	1,461	4	18
ANB	12	148.0 mil.	2.1	1,461	4	18
RBC Centura Post-Consummation ..	10	220.0 mil.	3.2	1,461	4	18
<i>Orlando area—Orange, Osceola, and Seminole counties; the western half of Volusia County; and the towns of Clermont and Groveland in Lake County</i>						
RBC Centura Pre-Consummation ...	23	156.4 mil.	.5	1,159	2	48
ANB	12	476.0 mil.	1.7	1,159	2	48
RBC Centura Post-Consummation ..	11	632.4 mil.	2.2	1,159	2	48
<i>Sarasota—Manatee and Sarasota counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida); and Gasparilla Island (the town of Boca Grande) in Lee County</i>						
RBC Centura Pre-Consummation ...	10	392.1 mil.	2.4	1,141	1	49
ANB	44	12.2 mil.	.1	1,141	1	49
RBC Centura Post-Consummation ..	9	404.3 mil.	2.5	1,141	1	49

Appendix A—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
GEORGIA BANKING MARKET						
<i>Atlanta—Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County, excluding the town of Clermont; the towns of Auburn and Winder in Barrow County; and the town of Luthersville in Meriwether County</i>						
RBC Centura Pre-Consummation ...	8	1.9 bil.	1.7	1,460	3	135
ANB	13	857.9 mil.	.8	1,460	3	135
RBC Centura Post-Consummation ..	7	2.7 bil.	2.5	1,460	3	135

NOTE: Deposit data are as of June 30, 2007, and include mergers as of January 11, 2008. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

1. Centura Bank opened a de novo branch in the Gulf Shores area market on September 9, 2007.

Appendix B

CRA PERFORMANCE EVALUATIONS OF ANB'S SUBSIDIARY BANKS

Subsidiary Bank	CRA Rating	Date	Supervisor
Alabama Exchange Bank, Tuskegee, Alabama	Outstanding	November 2006	Federal Reserve
Community Bank of Naples, National Association, Naples, Florida	Satisfactory	August 2007	FDIC
CypressCoquina Bank, Ormond Beach, Florida	Satisfactory	May 2006	FDIC
First Gulf Bank, National Association, Pensacola, Florida	Satisfactory	January 2004	OCC
Florida Choice Bank, Mount Dora, Florida	Satisfactory	March 2007	FDIC
Georgia State Bank, Mableton, Georgia	Satisfactory	March 2004	FDIC
Indian River National Bank, Vero Beach, Florida	Satisfactory	December 2003	OCC
Millennium Bank, Gainesville, Florida	Satisfactory	May 2007	FDIC
The Peachtree Bank, Duluth, Georgia	Satisfactory	October 2004	Federal Reserve

*The Toronto-Dominion Bank
Toronto, Canada*

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank (“TD”) and its subsidiary bank holding companies, including TD US P&C Holdings

ULC (“TD ULC”), Calgary, Canada, and TD BankNorth, Inc. (“TD Banknorth”), Portland, Maine (collectively, “Applicants”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Commerce Bancorp, Inc. (“Commerce”), Cherry Hill, New Jersey, and its two subsidiary banks, Commerce

1. 12 U.S.C. § 1842.

Bank/North (“CB North”), Ramsey, New Jersey, and Commerce Bank, National Association (“CB NA”), Philadelphia, Pennsylvania.² In addition, Applicants have applied to acquire Commerce’s minority interest in Pennsylvania Commerce Bancorp, Inc. (“PCB”), Harrisburg, a bank holding company that controls Commerce Bank/Harrisburg National Association (“PCB Bank”), Lemoyne, both of Pennsylvania.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (73 *Federal Register* 2,255 (2008)). 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.

TD, with total consolidated assets equivalent to \$434.3 billion, is the second largest depository organization in Canada.⁴ TD operates a branch in New York City and an agency in Houston and through TD Banknorth, controls TD Bank NA and TD Bank USA, National Association (“TD Bank USA”), New York, New York. TD Banknorth, with total consolidated assets of \$63.5 billion, is the 25th largest depository organization in the United States, controlling \$43.9 billion in deposits.⁵ TD Banknorth’s subsidiary banks operate in eight states.⁶ TD Banknorth is the eighth largest depository organization in New York, controlling deposits of approximately \$18.2 billion, and in Connecticut TD Banknorth is the sixth largest depository organization, controlling deposits of approximately \$3.9 billion. In New Jersey, TD Banknorth is the 11th largest depository organization, controlling deposits of approximately \$3.9 billion, and in Pennsylvania, TD Banknorth is the 45th largest depository organization, controlling deposits of approximately \$575 million.

Commerce has total consolidated assets of approximately \$49.4 billion, and its subsidiary banks operate in eight states, including New York, Connecticut, New Jersey, and Pennsylvania; and the District of Columbia. In New York, Commerce is the 13th largest depository organization, controlling deposits of \$12.0 billion, and in

Connecticut, Commerce is the 43rd largest depository organization, controlling deposits of approximately \$125.6 million. Commerce is the third largest depository organization in New Jersey, controlling deposits of \$22.3 billion, and in Pennsylvania, Commerce is the fifth largest depository organization, controlling deposits of \$8.4 billion.

On consummation of the proposal, TD Banknorth would become the 19th largest depository organization in the United States, with total consolidated assets of approximately \$115 billion. TD Banknorth would control deposits of approximately \$90.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, TD Banknorth would become the sixth largest depository organization, controlling deposits of approximately \$30.2 billion, which represent approximately 4.4 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”). In Connecticut, TD Banknorth would remain the sixth largest depository organization, controlling deposits of approximately \$4.1 billion, which represent approximately 5.9 percent of state deposits. In New Jersey, TD Banknorth would become the third largest depository organization, controlling deposits of approximately \$26.2 billion, which represent approximately 13.5 percent of state deposits. In Pennsylvania, TD Banknorth would become the fifth largest depository organization, controlling deposits of approximately \$9 billion, which represent approximately 3.8 percent of state deposits.

PCB has consolidated assets of approximately \$2 billion, and PCB Bank operates only in Pennsylvania. PCB is the 23rd largest insured depository institution in Pennsylvania, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of state deposits. If TD Banknorth were deemed to control PCB on consummation of the proposal, TD Banknorth would become the fifth largest banking organization in Pennsylvania, controlling approximately \$11.1 billion in deposits, which would represent less than 5 percent of state deposits.

TD has stated that it does not propose to control or exercise a controlling influence over PCB or PCB Bank and has made certain commitments to the Board designed to limit the influence TD may exercise.⁷

2. Applicants also include the following intermediate holding companies formed by TD to facilitate the Commerce acquisition: Cardinal Top Co., Cardinal Intermediate Co., and Cardinal Merger Co., all of New York, New York (collectively, “HCs”). HCs have requested the Board’s approval under Section 3 of the BHC Act to become bank holding companies and to acquire or merge with Commerce. TD, TD ULC, and TD Banknorth are all financial holding companies within the meaning of the BHC Act. TD filed applications with the Office of the Comptroller of the Currency (“OCC”) on January 25, 2008, for approval, under the Bank Merger Act (12 U.S.C. § 1828(c)), to merge CB NA and CB North into TD’s indirect subsidiary bank, TD BankNorth, National Association, (“TD Bank NA”), Portland.

3. Commerce holds voting securities and warrants that collectively represent 14.6 percent of PCB’s voting shares.

4. Canadian asset and ranking data are as of January 31, 2008, and are based on the exchange rate as of that date.

5. Asset data and nationwide deposit ranking data are as of December 31, 2007. Statewide deposit and ranking data are as of June 30, 2007, and reflect merger activity as of February 26, 2008.

6. TD Bank NA operates in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont. TD Bank USA operates only in New York.

7. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). 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 percent 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, MCH*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company). The BHC Act would require TD to file an application and receive the Board’s approval before the company could directly or

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 TD is New York,⁸ and Commerce is located in Connecticut, Delaware, the District of Columbia, Florida, Maryland, New Jersey, New York, Pennsylvania, and Virginia.⁹

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.¹⁰ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

The BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a 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 its probable effect in meeting the convenience and needs of the community to be served.¹¹

Applicants and Commerce have subsidiary depository institutions that compete directly in four banking markets: Atlantic City, New Jersey; Metropolitan New York-New Jersey-Connecticut-Pennsylvania; New Haven, Con-

necticut; and Philadelphia and South Jersey, in New Jersey and Pennsylvania.¹² 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 and public comment received on the proposal.¹³ In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions ("market deposits") controlled by Applicants and Commerce in the markets,¹⁴ the concentration levels of market deposits and the increases in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹⁵ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in all four banking markets.¹⁶ On consummation, each of the banking markets would remain moderately

12. Applicants and PCB do not have subsidiary depository institutions that compete directly in any banking market.

13. Several commenters asserted that the proposal would result in an undue concentration of resources in Camden, New Jersey, which is part of the Philadelphia and South Jersey banking market, as defined by the Federal Reserve Bank of Philadelphia ("Reserve Bank"). The Reserve Bank's definition of this market is set forth in the appendix. In reviewing this proposal and the comments received, the Board has considered whether to include Camden in this banking market. Camden is directly across the Delaware River from Philadelphia and has been included in the Reserve Bank's definition of the Philadelphia and South Jersey banking market for over a decade. According to data from the 2000 census, more than 65 percent of the labor force residing in Camden commutes to other counties in the Philadelphia and South Jersey banking market. These and other factors indicate that the Philadelphia and South Jersey banking market, including Camden, is the appropriate local geographic market for purposes of analyzing the competitive effects of this proposal.

14. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2007, adjusted to reflect mergers and acquisitions as of February 26, 2008, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

15. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 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 more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

16. Definitions of the other three banking markets and the effects of the proposal on concentrations of banking resources in all the markets are described in the appendix.

indirectly acquire additional shares of PCB or attempt to exercise a controlling influence over PCB.

8. 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.

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

10. 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). TD is adequately capitalized and adequately managed, as defined by applicable law. Both of Commerce's subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). Applicants would control less than 30 percent, or a greater percentage established under applicable state law, of the state deposits in Connecticut, New Jersey, New York, and Pennsylvania (12 U.S.C. § 1842(d)(2)(B)-(D)). In addition, Applicants would not hold deposits in excess of an applicable deposit cap under the law of any other states where Commerce is located. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

11. 12 U.S.C. § 1842(c)(1).

concentrated as measured by the HHI, and the HHI changes would increase less than 200 points in each market. In addition, numerous competitors would remain in all the banking markets.

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 four banking markets where Applicants and Commerce 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 carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comment received on the proposal.¹⁷ The Board also has consulted with the Office of the Superintendent of Financial Institutions (“OSFI”), the agency with primary responsibility for the supervision and regulation of Canadian banks, including TD.

In evaluating the 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 financial resources of the organizations involved in the proposal. The capital levels of TD exceed the minimum levels that would be required under the Basel Capital Accord and are therefore considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the subsidiary depository institutions involved in the proposal are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.¹⁸

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, Commerce, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations.¹⁹ In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the OCC and the Federal Deposit Insurance Corporation (“FDIC”), with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. Applicants, Commerce, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Applicants’ plans for implementing the acquisition, including the proposed management after consummation.²⁰

17. Several commenters expressed concern about pending and prospective litigation in Canada and the United States involving TD and the effect of such litigation on TD’s managerial and financial resources. The Canadian litigation involves a class action lawsuit against TD based on allegations that credit cardholders were overcharged on foreign currency conversions and a lawsuit for allegedly improperly withholding deposited funds. These pending cases will be resolved by a Canadian court with jurisdiction to adjudicate such matters.

The U.S. lawsuits include a discrimination case that has been settled. Another lawsuit involving the amount of consideration TD offered to shareholders in connection with a previous acquisition is currently under review by a court of competent jurisdiction. The Board does not have authority to resolve the shareholders’ dispute. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

Board action on this proposal would not interfere with Canadian or U.S. courts’ ability to resolve the pending lawsuits. Moreover, the Board has taken these comments into account in its assessment of the financial resources and future prospects of the companies and depository institutions involved in the proposal.

18. One commenter claimed that the amount of consideration TD is offering in connection with the proposal is excessive. The amount of consideration offered is a matter decided by the parties involved, and the Board has reviewed this aspect of the proposal in its assessment of the financial resources of the resulting organization.

19. Several commenters expressed concern about TD Banknorth’s relationships with unaffiliated pawnshops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenters are permissible, and the businesses are licensed by the states where they operate. TD noted that it has established a detailed review program for pawnshops and other money-service businesses (“MSBs”), including reviews for compliance with anti-money-laundering, Bank Secrecy Act, fair lending, and consumer protection requirements. Furthermore, TD stated that TD Banknorth does not have any role in the lending practices, credit review, or other business practices of MSBs and does not purchase any loans originated by MSBs.

20. Several commenters expressed concern that the proposal would jeopardize the combined organization’s ability to serve as the desig-

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.²¹

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.²² As noted, the OSFI is the primary supervisor of Canadian banks, including TD. The Board previously has determined that TD is

subject to comprehensive supervision on a consolidated basis by its home-country supervisor.²³ Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

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 neighborhoods, in evaluating bank expansionary proposals.²⁵

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of TD Banknorth and Commerce, data reported by TD Banknorth and Commerce under the Home Mortgage Disclosure Act ("HMDA"),²⁶ other information provided by Applicants, confidential supervisory information, and public comments received on the proposal. Two commenters alleged, based on HMDA data reported in 2006, that TD Banknorth had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the relevant insured depository institutions' CRA performance records. 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.²⁷

nated bonding authority ("DBA") for the Department of Education's ("DOE's") Historically Black Colleges and Universities Capital Financing Program ("CFP"). A Commerce subsidiary serves as the DBA and administers the CFP. Several commenters asserted that Commerce had performed poorly as the DBA, had insufficient managerial controls over the CFP, and had mismanaged the program. In addition, several commenters alleged that Commerce, through its insistence on certain loan payment terms, had risked violating fair lending laws and that certain terms and conditions of loans under the CFP were abusive.

TD represented that key elements of the CFP, including pricing and repayment, were established by a division of the Department of the Treasury, and not by the DBA. Final determinations on credit approvals and denials are determined by the DOE. Moreover, TD stated that the DBA has an extremely diligent loan review process and that no loan has defaulted under the CFP while the Commerce subsidiary has served as the DBA. The Board expects all banking organizations to conduct their operations in a safe and sound manner with adequate systems to manage operational, compliance, and reputational risks and will take appropriate supervisory actions to prevent and address abusive lending practices.

21. Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. (12 U.S.C. § 1842(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. Based on all facts of record, the Board has concluded that TD has provided adequate assurances of access to any appropriate information the Board may request.

22. 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home-country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home-country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

23. See *The Toronto-Dominion Bank*, 92 *Federal Reserve Bulletin* C100 (2006); *The Toronto-Dominion Bank*, 91 *Federal Reserve Bulletin* 277 (2005).

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.

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

TD Banknorth's subsidiary banks each received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC.²⁸ Both of Commerce's subsidiary banks received "outstanding" CRA performance ratings at their most recent evaluations by the relevant federal supervisors.²⁹ PCB's subsidiary bank, PCB Bank, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 3, 2005. Applicants have represented that no significant changes to the CRA programs at any subsidiary bank will take place until CB NA and CB North are merged into TD Bank NA, at which time the banks will adopt the CRA program of TD Bank, as modified to address issues specific to the banks' markets.³⁰

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of TD Banknorth in light of the public comments received on the proposal. Two commenters alleged, based on HMDA data, that TD Banknorth denied the home mortgage refinance and home improvement loan applications of African American borrowers more frequently than those of nonminority applicants. The Board has focused its analysis on the 2006 HMDA data reported by TD Banknorth NA.³¹

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 TD Banknorth 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.³² 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 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 TD Banknorth and its subsidiaries. The Board also has consulted with the OCC about the fair-lending compliance record of TD Bank NA, TD Bank USA, and CB NA and with the FDIC about the fair-lending compliance record of CB North.

The record of these applications, including confidential supervisory information, indicates that TD Banknorth has taken steps to ensure compliance with fair lending and other consumer protection laws. TD Banknorth's board of directors annually approves a fair-lending policy statement, which serves as a reference document for all employees. TD Banknorth's compliance program includes risk assessments, annual monitoring, monthly business line self-monitoring, complaint tracking, and reviews by regulatory compliance and fair lending committees. The program includes statistical data analysis quarterly and annually to identify trends and fair lending concerns. In addition, TD Banknorth provides annual training covering compliance-related regulations to all employees based on job function. Applicants stated that they would not change the fair-lending compliance programs of TD Banknorth's and Commerce's subsidiary banks until consummation of the proposed merger of those banks, at which time the banks will adopt the fair-lending compliance programs of TD Banknorth, as modified to address issues specific to each bank's markets.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Applicants and Commerce under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

28. The most recent CRA performance evaluations were as of December 30, 2004, for TD Bank NA and as of January 16, 2007, for TD Bank USA.

29. The most recent CRA performance evaluation for CB NA by the OCC was as of October 2, 2006. The most recent CRA performance evaluation for CB North by the FDIC was as of May 15, 2006.

30. Two commenters expressed concern regarding the impact of the acquisition on the types of loans, investments, and services provided by the subsidiary banks of TD Banknorth and Commerce. One commenter also requested that Applicants make specific commitments with regard to the products and services offered in the New York City Metropolitan Statistical Area ("MSA"). The Board has stated that the CRA neither requires a depository institution to provide any specific types of products or services nor prescribes the fees charged for them. See *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 226 footnote 49 (2004). The Board also has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to enter into pledges, commitments, or agreements with any organization and that the enforceability of any such third-party pledges, initiatives, and agreements are matters outside the CRA. See *Bank of America Corporation*, 93 *Federal Reserve Bulletin* C109, C112 footnote 28 (2007); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002). 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 credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

31. The Board reviewed HMDA data for TD Bank NA's assessment areas in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and the MSAs noted in the comments.

32. 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.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comment received on the proposal, and confidential supervisory information. Applicants represented that the proposal would result in increased credit availability and access to a broader array of financial products and services for customers of TD Banknorth and Commerce. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant 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 applications should be, and hereby are, approved.³³ In reaching its

33. Several commenters 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), 262.25(d)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view,

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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants 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 15th 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 by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 13, 2008.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their 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 requests for a public meeting or hearing on the proposal are denied.

Appendix

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
<i>Atlantic City—Atlantic and Cape May counties in New Jersey</i>						
TD Banknorth Pre-Consummation ..	17	48 mil.	.8	1,325	33	21
Commerce	2	1.3 bil.	20.5	1,325	33	21
TD Banknorth Post-Consummation ..	2	1.3 bil.	21.3	1,325	33	21

Appendix—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
<i>Metropolitan New York-New Jersey-Pennsylvania-Connecticut—Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and the northern portions of Mercer County in New Jersey; Monroe and Pike counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut</i>						
TD Banknorth Pre-Consummation ..	9	20.8 bil.	2.6	1,118	17	272
Commerce	8	26.1 bil.	3.3	1,118	17	272
TD Banknorth Post-Consummation ..	4	46.9 bil.	5.9	1,118	17	272
<i>New Haven—Clinton, Killingworth, and Westbrook townships in Middlesex County; and Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, and Woodbridge townships in New Haven County, all in Connecticut</i>						
TD Banknorth Pre-Consummation ..	8	772 mil.	.1	1,290	2	20
Commerce	19	14 mil.	7.3	1,290	2	20
TD Banknorth Post-Consummation ..	8	786 mil.	7.5	1,290	2	20
<i>Philadelphia and South Jersey—Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania; Burlington, Camden, Gloucester, and Salem counties in New Jersey; and the city of Trenton and Ewing, Hamilton, and Lawrence townships in Mercer County, New Jersey</i>						
TD Banknorth Pre-Consummation ..	13	1.2 bil.	1.4	1,032	39	118
Commerce	2	13.7 bil.	14	1,032	39	118
TD Banknorth Post-Consummation ..	2	14.9 bil.	15.4	1,032	39	118

NOTE: Deposit data are as of June 30, 2007, and include mergers as of February 26, 2008. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

ORDERS ISSUED UNDER SECTION 4 OF THE
BANK HOLDING COMPANY ACT

*Bank of America Corporation
Charlotte, North Carolina*

*Notice of Public Meetings
Los Angeles, California
Chicago, Illinois*

BACKGROUND AND PUBLIC MEETINGS NOTICE

On February 15, 2008, Bank of America Corporation, Charlotte, North Carolina ("Bank of America"), requested the Board's approval under the Bank Holding Company Act (12 U.S.C. § 1841 et seq.) ("BHC Act") and related statutes to acquire Countrywide Financial Corporation, Calabasas, California ("Countrywide"), and thereby acquire Countrywide's wholly owned savings association subsidiary, Countrywide Bank, FSB, Alexandria, Virginia, and its other nonbanking subsidiaries. The Board hereby orders that public meetings on the Bank of America/Countrywide proposal be held in Los Angeles, California, and Chicago, Illinois.

The public meeting in Los Angeles will be held at the Los Angeles Branch of the Federal Reserve Bank of San Francisco, 950 South Grand Avenue, Los Angeles, California, on Monday, April 28, and Tuesday, April 29, 2008, beginning at 8:30 a.m. Pacific Daylight Time ("PDT").

The public meeting in Chicago will be held at the Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois, on Tuesday, April 22, 2008, beginning at 8:30 a.m. Central Daylight Time ("CDT").

In addition, the comment period on the application has been extended to close of business on Tuesday, April 29, 2008.

PURPOSE AND PROCEDURES

The public meetings will collect information relating to factors the Board is required to consider under the BHC Act. The factors the BHC Act requires the Board to consider include whether the notificant's performance of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interests, and unsound banking practices). Consideration of the above factors includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries, and any company to be acquired; the effect of the proposed transaction on those resources; and the management expertise, internal control and risk-management systems, and capital of the entity conducting the activity. In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the insured depository institutions involved in the proposal under the Com-

munity Reinvestment Act, which requires the Board to take into account a relevant institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution (12 U.S.C. § 2903).

Testimony at the public meetings will be presented to a panel consisting of a presiding officer and other panel members appointed by the presiding officer. In conducting the public meetings, the presiding officer will have the authority and discretion to ensure that the meetings proceed in a fair and orderly manner. In contrast to a formal administrative hearing, the rules for taking evidence will not apply to the public meetings. Panel members may question witnesses but no cross-examination of witnesses will be permitted. The public meetings will be transcribed, and the transcripts will be posted on the Board's public website within several days after the meetings. Information regarding the procedures for obtaining a copy of the transcript will be announced at the public meetings.

All persons wishing to testify at the public meeting in Los Angeles must submit a written request to Scott Turner, Community Affairs Officer, Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California 94105 (facsimile: 415/393-1920) no later than 5:00 p.m. PDT on April 8, 2008. All persons wishing to testify at the public meeting in Chicago must submit a written request to Alicia Williams, Vice President, Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60604 (facsimile: 312/913-2626) no later than 5:00 p.m. CDT on April 8, 2008.

The request to testify must include the following information: (i) identification of which meeting (and which day for the Los Angeles meeting) the participant wishes to attend; (ii) a brief statement of the nature of the expected testimony (including whether the testimony will support or oppose the proposed transaction or provide other comment on the proposal) and the estimated time required for the presentation; (iii) the address and telephone number (and e-mail address and facsimile number, if available) of the individual testifying; and (iv) identification of any special needs, such as individuals needing translation services, individuals with a physical disability who may need assistance, or individuals requiring visual aids for their presentation. To the extent available, translators will be provided for those wishing to present their views in a language other than English if so requested in the request to testify. Individuals interested only in attending the meeting, but not testifying, need not submit a written request.

On the basis of the requests received, the presiding officer will prepare a schedule for participants who will testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the presiding officer may limit the time for presentation. Individuals not listed on the schedule may be permitted to speak at the public meeting if time permits at the conclusion of the schedule of witnesses, at the discretion of the presiding officer. Copies of testimony may, but need not, be filed with the presiding officer before a participant's presentation.

By order of the Board of Governors, effective March 27, 2008.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

*The Royal Bank of Scotland Group plc
Edinburgh, Scotland*

Order Approving Notice to Engage in
Activities Complementary to a Financial
Activity

The Royal Bank of Scotland Group plc (“RBS”), a financial holding company (“FHC”) for purposes of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 4 of the BHC Act¹ and the Board’s Regulation Y² to engage in physical commodity trading, which involves entering into contracts that may require making or taking physical delivery of or storing commodities (“Physical Commodity Trading”), and providing energy management services (“Energy Management Services”) for owners of power generation facilities under energy management agreements. The Board has previously found Physical Commodity Trading and Energy Management Services to be activities that are complementary to the financial activity of engaging as principal in commodity derivatives transactions and, in the case of Energy Management Services, also complementary to providing financial and investment advisory services for derivatives transactions.

In addition, RBS has requested approval to engage in physically settled energy tolling by entering into tolling agreements with power plant owners (“Energy Tolling”) as an activity that is complementary to the financial activity of engaging as principal in commodity derivatives transactions. The Board has not previously considered whether Energy Tolling is complementary to a financial activity. RBS proposes to engage in such complementary activities through a joint venture company (“JV”) formed with Sempra Energy (“Sempra”), San Diego, California, an energy services company.³

BACKGROUND

The Board’s Regulation Y currently permits bank holding companies (“BHCs”) to (i) enter into derivative contracts that are based on nonfinancial commodities (“Commodity Derivatives Activities”), and (ii) provide information, statistical forecasting, and advice with respect to transactions in foreign exchange, swaps, and similar transactions; commodities; and any forward contract, option, future, option

on a future, and similar instruments (“Derivatives Advisory Services”), as activities that are closely related to banking.⁴

The BHC Act, as amended by the Gramm-Leach-Bliley Act, permits BHCs that qualify as FHCs to engage in an expanded set of activities that are defined by statute to be financial in nature, as well as any additional activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.⁵

The BHC Act also permits FHCs to engage in any activity that the Board determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.⁶ This authority is intended to allow the Board to permit FHCs to engage on a limited basis in activities that, although not necessarily financial in nature, are so meaningfully connected to financial activities that they complement those activities. In this way, FHCs would not be disadvantaged by market developments if commercial activities evolve into financial activities or competitors find innovative ways to combine financial and nonfinancial activities. The BHC Act provides the Board with exclusive authority to determine that an activity is complementary to a financial activity.

The BHC Act further provides that any FHC seeking to engage in a complementary activity must obtain the Board’s prior approval. When reviewing such a proposal, the BHC Act requires the Board to consider whether performance of the activity by the FHC can reasonably be expected to produce public benefits that outweigh possible adverse effects, such as “undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”⁷ Moreover, the Board previously has stated that complementary activities should be limited in size and scope relative to an FHC’s financial activities.⁸ The Board has approved Physical Commodity Trading⁹ and Energy Management Services¹⁰ as activities that are complementary to financial activities. As noted, the

4. 12 CFR 225.28(b)(8)(ii). Under Regulation Y, a BHC is permitted to engage in Commodity Derivatives Activities but is generally not allowed to take or make delivery of the nonfinancial commodities underlying commodity derivatives or purchase or sell nonfinancial commodities in the spot market.

5. 12 U.S.C. § 1843(k)(1)(A).

6. 12 U.S.C. § 1843(k)(1)(B).

7. 12 U.S.C. § 1843(j)(2)(A).

8. See 68 *Federal Register* 68493, 68497 (Dec. 9, 2003); see also 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) (“It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.”).

9. Board letters regarding Bank of America Corporation (April 24, 2007), Credit Suisse Group (March 27, 2007), Fortis S.A./N.V. (September 29, 2006), and Wachovia Corporation (April 13, 2006); and Board orders regarding *Société Générale*, 92 *Federal Reserve Bulletin* C113 (2006); *Deutsche Bank AG*, 91 *Federal Reserve Bulletin* C54 (2005); *JPMorgan Chase & Co.*, 91 *Federal Reserve Bulletin* C57 (2005); *Barclays Bank PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003).

10. *Fortis S.A./N.V.*, 94 *Federal Reserve Bulletin* C20 (2008).

1. 12 U.S.C. § 1843.

2. 12 CFR Part 225.

3. RBS would own 51 percent of JV, which would be headquartered in the United Kingdom.

Board has not previously considered a request by an FHC to engage in Energy Tolling.

RBS currently engages in Commodity Derivatives Activities and Derivatives Advisory Services (both are financial activities) in the United States. RBS has requested approval to engage in Physical Commodity Trading and Energy Tolling as activities that are complementary to its Commodity Derivatives Activities and to provide Energy Management Services as an activity that is complementary to both its Commodity Derivatives Activities and Derivatives Advisory Services.

RBS'S PROPOSAL

RBS operates in the United States through Citizens Financial Group, Inc., Providence, Rhode Island, a multibank holding company, as well as through branches in New York, New York, and Greenwich, Connecticut, and representative offices in Houston, Texas, and Los Angeles, California.¹¹ RBS also operates nonbanking companies in the United States, including a broker-dealer subsidiary, RBS Greenwich Capital, Greenwich, Connecticut.

RBS proposes to expand its commodity-related activities by forming JV with Sempra. A subsidiary of Sempra, Sempra Energy Trading Corp. ("SET"), that engages in commodity derivatives transactions and physical commodity trading would be transferred to JV.¹² SET acts as principal in commodity transactions in and outside the United States and takes and makes physical delivery of commodities in connection with those transactions. SET also acts as an energy manager and enters into tolling agreements with power plant owners. RBS proposes to engage in Physical Commodity Trading, Energy Tolling, and Energy Management Services under the complementary activity authority of section 4 of the BHC Act so that the SET Companies transferred to JV may continue to conduct these activities.¹³

PHYSICAL COMMODITY TRADING

RBS currently engages in Commodity Derivatives Activities in the United States and proposes to expand those activities and to engage in Physical Commodity Trading through JV. JV's activities would include taking or making

delivery of permissible commodities pursuant to physically settled commodity derivatives; taking inventory positions in natural gas, oil, emissions allowances, and other permissible commodities; and engaging in other spot market trading activities. RBS has also indicated that JV might engage in commodity-related financing transactions, including volumetric production payment transactions ("VPPs").¹⁴

As noted, the Board previously has determined that Physical Commodity Trading is a permissible activity because it complements the financial activity of engaging in Commodity Derivatives Activities. Most of the transactions in which RBS proposes to engage as part of Physical Commodity Trading do not differ from transactions that the Board has approved. RBS proposes to engage, however, in a wider set of transactions under the Physical Commodity Trading authority and requests confirmation that these activities are within the scope of that authority.

Specifically, RBS proposes to enter into long-term power supply contracts with large commercial and industrial end-users; to engage in physical trading in commodities for which derivatives contracts have not been approved by the Commodity Futures Trading Commission ("CFTC") for trading on a U.S. exchange or specifically approved by the Board; and to enter into contracts with third parties to process, refine, or otherwise alter commodities.

A. Long-Term Electricity Supply Contracts

As part of its energy trading business, RBS proposes to enter into long-term electricity supply contracts with large commercial and industrial customers. The current Physical Commodity Trading authority permits an FHC to take a position in a commodity and does not limit the duration of, or counterparties to, an FHC's contracts. Most commodities in which an FHC may trade under the Physical Commodity Trading authority, however, tend by their nature to be limited to the wholesale market. Electricity, on the other hand, has a greater potential to be sold not only to end-users generally but also to small retail customers who are unlikely to be participants in the market for energy-related derivatives products.

11. RBS also holds a 38.3 percent interest in RFS, a financial holding company formed by a consortium of banking organizations, including Fortis N.V., Utrecht, Netherlands, and certain of its affiliates and Banco Santander Central Hispano, S.A., Madrid, Spain, that recently acquired ABN AMRO Holding N.V., Amsterdam, Netherlands ("ABN AMRO"). On approval of the consortium's restructuring plan by ABN AMRO's home-country supervisor, RBS will acquire ABN AMRO's direct U.S. branches and representative offices.

12. JV proposes to purchase SET and its related energy trading subsidiaries and affiliates ("SET Companies"), which would become JV's subsidiaries.

13. As set forth in the appendix, RBS has committed that within two years of consummation of the transaction it will conform, including by divestiture if necessary, any activities that are impermissible for an FHC under the BHC Act or that are inconsistent with the activities permitted by this order.

14. RBS may engage in VPPs on oil and gas as permissible credit transactions if it agrees to sell the oil or gas it receives under the VPP to third parties before delivery. VPPs are a means of financing oil and gas exploration and production. Under a VPP, the lender or VPP holder provides an up-front payment in exchange for a royalty interest that entitles the VPP holder to receive hydrocarbons on a regular basis during the life of the VPP transaction in quantities that will allow the VPP holder to recover its up-front payment and a specified return. The Board's General Counsel has determined that VPPs generally are considered extensions of credit permissible for a BHC under section 225.28(b)(1) of Regulation Y, if the BHC agrees to sell the commodities before delivery. See letter from Scott G. Alvarez to Elizabeth T. Davy, May 15, 2006, regarding UBS AG ("UBS Letter"). RBS has confirmed that all VPP transactions will conform in all material respects to the description of permissible VPP transactions set forth in the UBS Letter, including a commitment that any commodities that RBS receives under the VPP and does not immediately sell to a third party will count against the 5 percent cap on RBS's total physical commodity holdings, which is discussed below.

To ensure that RBS's activities remain consistent with the general complementary nature of the activities permitted under the Physical Commodity Trading authority, RBS has committed to enter into long-term supply contracts only with large industrial and commercial customers. Market risk relating to these long-term contracts would be handled by the same methodologies used for other electricity trades.

RBS has represented that in all states where the electricity market has been deregulated, state regulations distinguish among types of end-users. To distinguish types of customers, states generally rely on the customer's typical electricity consumption level.¹⁵ To ensure that RBS contracts only with customers who are sufficiently large and sophisticated, RBS has committed that it will enter into long-term electricity supply contracts only with commercial and industrial customers that consume electricity at a rate of at least (i) 800 megawatt-hours/year ("MWHrs/year") or (ii) the minimum consumption level for large commercial and industrial customers under applicable state law, whichever is greater. This restriction should be sufficient to ensure that RBS transacts with financially sophisticated purchasers (and not with retail purchasers) and thus remains essentially a wholesale intermediary.

B. Physical Trading in Certain Commodities Not Approved by the CFTC for Trading on a Futures Exchange

The Board has conditioned its approval of notices to engage in Physical Commodity Trading on a commitment by the FHC to trade only in commodities for which derivative contracts have been approved for trading on a futures exchange by the CFTC (unless specifically excluded by the Board) or that have been specifically approved by the Board ("Approved Commodities Commitment"). This commitment provided a means to ensure that the Physical Commodity Trading remained complementary to the financial activity of Commodity Derivatives Activities because it helped demonstrate that there was a derivatives market for the underlying commodity. This commitment also was intended to prevent FHCs from dealing in finished goods and other items, such as real estate or industrial products that lack the fungibility and liquidity of exchange-traded commodities. The Board believes that, subject to certain requirements, an FHC may take delivery of certain commodities that have not been approved by the CFTC category but are similarly fungible and liquid without being exposed to significant additional risk.

1. *Commodities that are Approved for Trading on Non-U.S. Exchanges.* The test that a commodity derivative be approved by the CFTC is a useful, but not a comprehensive, test of whether a derivative or the underlying commodity is liquid and fungible. For some liquid and fungible commodities, no market-maker has sought CFTC approval

because of the presence of an established foreign trading market, which may deter a U.S. exchange from listing a similar product. The absence of CFTC approval in those cases generally would not indicate that taking and making physical delivery of the commodity would entail substantially greater risks than taking and making delivery of a CFTC-approved commodity. As a general matter, the fact that a derivatives contract based on the commodity trades on a non-U.S. exchange that is subject to a regulatory structure comparable to the one administered by the CFTC should be sufficient to demonstrate that there is a market in financially settled contracts on the commodities, the commodity is fungible, and a reasonably liquid market for the commodity exists.

RBS specifically has requested approval to take and make physical delivery of nickel, a metal that is widely and actively traded on the London Metal Exchange ("LME"), one of the largest nonferrous metal markets in the world. The LME offers futures and options contracts for aluminum, copper, nickel, tin, zinc, and certain aluminum alloy contracts. The LME is a highly liquid,¹⁶ global market that derives more than 95 percent of its business from outside the United Kingdom. The CFTC has determined that the LME is subject to a regulatory structure comparable to that administered by the CFTC under the Commodity Exchange Act. As a result, members of the LME may conduct brokerage activities for U.S. customers without having to register with the CFTC as a futures commission merchant or otherwise comply with certain of the CFTC's consumer protection rules.¹⁷ Given the nature of the LME trading market and the CFTC's determination that LME members are subject to comparable regulatory oversight, the Board has determined that FHCs that receive approval to engage in Physical Commodity Trading may take and make delivery of nickel. The Board has determined that other FHCs that have already received approval to engage in Physical Commodity Trading may also make and take delivery of nickel, consistent with the Approved Commodities Commitment, as a commodity that has been specifically approved by the Board.

2. *Commodities that are Not Approved for Trading in the United States or on Certain Non-U.S. Exchanges.* Many commodities for which derivatives contracts have not been approved for trading by the CFTC or that are not traded on a non-U.S. exchange may also be commodities that have

16. In 2006, the LME reported that it recorded volumes of 87 million lots, equivalent to \$8.1 trillion annually and \$35 billion to \$45 billion on an average business day.

17. The CFTC's Rule 30.10 permits a person affected by the requirements contained in Part 30 of the CFTC's rules, which relate to registration as a futures commission merchant, to petition the CFTC for an exemption from the requirements based on the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the CFTC under the Commodity Exchange Act. The inclusion of the LME in the CFTC's so-called "30.10 program" is reflected in an order issued by the CFTC to the U.K.'s Financial Services Authority that consolidates the relief set forth in prior orders issued pursuant to Rule 30.10 regarding sales of futures and options to customers in the United States by certain firms in the United Kingdom, 68 *Federal Register* 58583 (2003).

15. For example, the minimum consumption level to be considered a large commercial or industrial customer under state regulations is 175 MWHrs/year in California, 220 MWHrs/year in Pennsylvania, and 876 MWHrs/year in Washington, D.C.

viable markets with financially settled contracts on the commodities and that satisfy fungibility and liquidity concerns. In many cases, the existence of an established over-the-counter market obviates the need to seek CFTC approval for listing on a futures exchange. In addition, the particular commodity may be so similar to a CFTC-approved commodity, such as a product that is derived from a CFTC-approved commodity, that the separate listing is superfluous because market participants can use derivatives contracts on the CFTC-approved commodity to hedge their positions in the non-CFTC-approved derivative product.

The Board believes that taking and making physical delivery of non-CFTC-approved commodities may be consistent with the Physical Commodity Trading authority if an FHC can demonstrate that (i) there is a market in financially settled contracts on those commodities in addition to the physically settled contracts, (ii) the particular commodity is fungible, and (iii) the market for the commodity is sufficiently liquid. In addition, the FHC must demonstrate that it has trading limits in place that address both concentration risk and overall exposure to the commodity to ensure that the FHC could physically trade in these commodities without incurring significant additional risk.

As noted above, RBS has requested authority to trade in certain natural gas liquids, oil products, and petrochemicals. Specifically, the proposed natural gas liquids are butane, ethane, and natural gasoline; the proposed oil products are asphalt, condensate, boiler cutter, residual oil no. 6, kerosene, straight run, marine diesel, and naphtha; and the proposed petrochemicals are ethylene, paraxylene, styrene, propylene, and toluene (“Proposed Commodities”). Contracts on these commodities are not approved for trading on a U.S. futures exchange by the CFTC or on a major non-U.S. exchange. Nonetheless, a number of considerations support a Board determination that trading in the Proposed Commodities should be permitted as part of the Physical Commodity Trading authority.

Market in financially settled contracts. Many commodities trade on established alternative trading platforms (“ATP”) that are used by a wide variety of market participants, rather than on a futures exchange. If derivatives contracts on a commodity trade on a recognized ATP, that activity could serve as sufficient evidence that a market in financially settled contracts on the particular commodity exists. Financially and physically settled contracts for all the Proposed Commodities trade on recognized ATPs. Specifically, the natural gas liquids are traded on the Intercontinental Exchange (“ICE”) and on the New York Mercantile Exchange (“NYMEX”) electronic trading platforms; the distillate and residual oil products trade on ICE and NYMEX; and the petrochemicals are traded on the Chemconnect electronic trading platform. These ATPs are major platforms that are widely used by a variety of producers, consumers, and traders of the Proposed Commodities.

Fungibility. To ensure that a commodity is fungible, an FHC must demonstrate that no specification of exact

product or lot would be included for contracts on the commodity. In other words, the physical asset that may be delivered to satisfy a contract would be, by nature or usage of trade, the equivalent of any other unit of the asset. The Proposed Commodities, which trade on ICE, NYMEX, and Chemconnect, are fungible because market participants contract for specific quantities of the commodity but cannot specify the particular product they will receive.

Liquidity. To ensure that the market for a particular commodity is sufficiently liquid, an FHC must demonstrate that an active trading market in the commodity exists that would allow the institution to limit its position in the commodity relative to the volume that trades in the market generally. The Board believes the following factors indicate that a reasonably liquid market exists: (i) reliable trading volume in the commodity or production statistics exist that demonstrate the size of the market in the commodity; (ii) daily or intraday price data on the commodity are published; and (iii) a number of market makers in the commodity stand ready to buy or sell the commodity each day at published bid and offer quotations. Each of the Proposed Commodities is derived from CFTC-approved commodities (natural gas and oil) and is used, similar to CFTC-approved commodities, as fuel or as inputs for finished products. The Proposed Commodities are traded widely through brokers on the ATPs discussed above and physically traded at various hubs in the United States and abroad.¹⁸ There are numerous participants in the trading markets for the Proposed Commodities, and published production statistics exist for all the Proposed Commodities. Reliable independent price reporting for the Proposed Commodities is widely available from a number of sources, such as Platts, a division of The McGraw-Hill Companies that provides information on the energy and metals markets, and the Argus Media Group, an energy news and price-reporting agency. Prices for both buy and sell offers are posted daily by the ATPs on which the Proposed Commodities trade.

Trading limits. An FHC that proposes to trade in a new commodity must demonstrate that it has established appropriate limits on its trading in the commodity and has a risk-management program in place to monitor compliance with those limits, which must include both concentration limits and overall exposure limits. RBS has represented that as part of its risk-management program relating to the Proposed Commodities, it will impose appropriate concentration and overall exposure limits for each Proposed Commodity.

In light of the characteristics of the Proposed Commodities and based on all the facts of record, the Board has determined that taking physical delivery of the Proposed

18. Specifically, natural gas liquids are physically traded in the United States at hubs in Texas and Kansas; the distillate and residual oil products are physically traded at various points in the United States as well as the Caribbean, Africa, Europe, and Singapore; and the petrochemicals are physically traded at various points in the United States, South Korea, and Thailand.

Commodities is consistent with the complementary nature of Physical Commodity Trading and does not present undue safety and soundness concerns for RBS.¹⁹

3. *Altering Commodities.* As noted, the Board has previously approved Physical Commodity Trading, on a limited basis, subject to a number of commitments, including that the FHC not process, refine, or otherwise alter a commodity. RBS proposes to engage third parties to refine, blend, or otherwise alter commodities for which it is permitted to take and make physical delivery.

A number of considerations support the Board's determination that engaging a third party to alter a commodity is consistent with the existing Physical Commodity Trading authority. Permitting RBS to engage a third party to alter a commodity would not significantly increase the risks to the institution from Physical Commodity Trading. Under this authority, an FHC may already engage a third party to store commodities, which exposes an FHC to substantially the same types of risks as engaging a third party to alter a commodity. Moreover, an FHC could sell a commodity to a refinery and buy back the refined commodity if both the commodity sold to and bought from the refinery were permissible commodities. Permitting an FHC to engage third parties to alter commodities also would enhance an FHC's ability to meet its customers' needs.

To ensure that the activity remains consistent with the scope of Physical Commodity Trading, RBS has made the following commitments: (i) RBS will not alter commodities itself; (ii) both the commodity input and the resulting altered commodity will be permissible commodities under the Board's decisions; and (iii) RBS will not have exclusive rights to use the alteration facility. Requiring that both the commodity input and the altered commodity be permissible commodities under the Board's decisions helps ensure that RBS would not assume the risk of taking and making physical delivery of commodities that the Board has not yet evaluated. In addition, preventing RBS from having the exclusive right to use an alteration facility should reduce RBS's exposure to the potential risks associated with operating commodity-altering facilities.

4. *Risks of Proposed Physical Commodity Trading Activities.* Permitting RBS to engage in the limited amount and types of Physical Commodity Trading described above does not appear to pose a substantial risk to RBS, depository institutions, or the U.S. financial system generally. RBS has made commitments relating to its Physical Commodity Trading that are designed to address the risks involved in the proposed activities. In addition to the commitments discussed above, RBS provided substantially the same commitments as those provided by other FHCs in

19. Because trading the Proposed Commodities might require that an FHC adapt a particular risk-management program beyond what would be required to trade in the commodities that are currently permissible, this order does not authorize an FHC with Physical Commodity Trading authority to take and make delivery of the Proposed Commodities.

connection with the Board's approvals of their proposals to engage in Physical Commodity Trading. In particular, RBS has committed to limit the total market value of all commodities that it will hold at any one time relating to its Physical Commodity Trading activities to 5 percent of its consolidated tier 1 capital (as calculated under its home-country standard).²⁰ Additionally, RBS will notify the Federal Reserve Bank of Boston if the market value of commodities it holds as a result of its Physical Commodity Trading exceeds 4 percent of its tier 1 capital.

ENERGY TOLLING

As noted, the Board has not previously determined that Energy Tolling is a complementary activity under section 4 of the BHC Act. For the reasons stated below, a number of considerations support the Board's determination that Energy Tolling is complementary to the financial activity of engaging in Commodity Derivatives Activities.

A. RBS's Proposed Energy Tolling Agreements

Under the energy tolling agreements that would be transferred to JV, SET, as toller, pays the plant owner a fixed-periodic payment that compensates the owner for its fixed costs ("capacity payments"), usually monthly, in exchange for the right to all or part of the plant's power output. The plant owner, however, retains control over the day-to-day operations of the plant and physical plant assets at all times.²¹ The toller provides (or pays for) the fuel needed to produce the power that it directs the owner to produce. The fuel and energy transactions that the toller enters into in these circumstances are generally physically settled.²² The agreements also generally provide that the owner will receive a marginal payment for each megawatt hour produced by the plant to cover the owner's variable costs plus a profit margin. The toll is similar to a call option on the power produced by the plant with a strike price linked to fuel and power prices. In general, the toller would direct the operator to run the plant (*i.e.*, the toller would exercise its option) when the price of power exceeds the cost of producing that amount of power. Some tolling agreements may also give the toller the right to a plant's excess

20. RBS would be required to include within this 5 percent limit the market value of any commodities held as a result of a failure of reasonable efforts to avoid taking delivery of derivatives contracts that RBS enters into under the authority for BHCs in section 225.28(b)(8)(ii)(B) of Regulation Y.

21. RBS has indicated that SET's tolling agreements are all medium term (generally two to five years), although some market participants enter into longer-term agreements. SET has not entered into longer-term contracts, however, because it can be difficult to hedge exposure over a longer period of time.

22. Because an FHC would generally take or make physical delivery of fuel and electricity in connection with a tolling agreement, an FHC would need approval to engage in Physical Commodity Trading to engage in Energy Tolling.

capacity, which the toller may sell to the market or use to meet reliability obligations to the power grid.

B. Energy Tolling as a Complementary Activity

Energy Tolling is an outgrowth of the existing financial activity of engaging in Commodity Derivatives Activities. As part of its Commodity Derivatives Activities, an FHC may take a derivatives position in a commodity, including energy. Energy Tolling complements Commodity Derivatives Activities by allowing an FHC to hedge its own, or assist its clients to hedge, positions in energy. Engaging in energy tolling would also provide an FHC with additional information on the energy markets that would help the FHC manage its own commodity risks. The Board also notes that financial institution competitors of RBS that are not FHCs engage in tolling activities as part of their energy trading operations. Based on the foregoing and all other facts of record, the Board concluded that RBS's Energy Tolling complements its Commodity Derivatives Activities.

C. Risks of Energy Tolling

The primary risk to a toller is that the plant proves to be uneconomical to operate, which can occur when the cost of producing power is greater than the power's market price. In those cases, the toller has no ability to recover its capacity payments. To limit the potential safety and soundness risks of Energy Tolling, RBS has committed that it will limit the amount of its Energy Tolling activities. Currently, all Physical Commodity Trading activities are limited to a maximum of 5 percent of the FHC's tier 1 capital. RBS has committed to include the present value of its future committed capacity payments under an energy tolling agreement in calculating the value of commodities held by RBS under its Physical Commodity Trading authority to determine compliance with the cap of 5 percent of tier 1 capital. As a result, allowing RBS to engage in Energy Tolling would not increase the overall position that it may take in physical commodities. This cap would also ensure that Energy Tolling remains limited in size and scope relative to RBS's financial activities.

ENERGY MANAGEMENT SERVICES

RBS has requested that the Board permit it to expand its Commodity Derivatives Activities and Derivatives Advisory Services in the United States to include providing Energy Management Services pursuant to energy management agreements ("EMA") with plant owners. Under the EMAs to which SET is a party, the energy manager (SET) provides transactional and advisory services to power plant owners. The transactional services consist primarily of SET acting as a financial intermediary, substituting its credit and liquidity for those of the owner to facilitate the owner's purchase of fuel and sale of power. SET's advisory services include providing market information to assist the owner in developing and refining a risk-management plan for the

plant. SET also provides a variety of administrative services to support these transactions.

The Board previously has determined that providing Energy Management Services complements the financial activities of Commodity Derivatives Activities and Derivatives Advisory Services.²³ Energy Management Services would complement RBS's current Commodity Derivatives Activities and Derivatives Advisory Service by allowing RBS to offer power plant owners certain agency and administrative services that would provide a power plant owner with an integrated approach to managing the commodity-related aspects of its business. The Energy Management Services that RBS proposes to provide do not differ in any significant way from the services that the Board previously approved. Furthermore, RBS has made all the required commitments that generally limit the scope of the activities that it may perform as energy manager to ensure that RBS is only taking on risks consistent with the agency nature of the Energy Management Services and limits the revenues attributable to RBS's Energy Management Services to 5 percent of RBS's total consolidated operating revenues.²⁴

Granting RBS the authority to act as energy manager would not expand its ability to engage in physical commodity trading beyond what it can do as part of its proposed Physical Commodity Trading. The potential risks of providing Energy Management Services are already largely mitigated by the limits imposed on RBS's Commodity Derivatives Activities and Physical Commodity Trading.

RISKS AND PUBLIC BENEFITS OF THE PROPOSED ACTIVITIES

As noted, to authorize RBS to engage in a complementary activity, the Board must determine that the activity does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. Moreover, the Board previously has stated that complementary activities should be limited in size and scope relative to an FHC's financial activities.

Permitting RBS to engage in the proposed complementary activities of Physical Commodity Trading, Energy Tolling, and Energy Management Services in the limited amounts and situations described above would not appear to pose a substantial risk to RBS, depository institutions, or the U.S. financial system generally. The commitments described above and in the appendix should help limit the safety and soundness risks, size, and scope of the proposed activities. RBS may already incur the price risk of commodities under its existing Commodity Derivatives Activities, and none of the proposed activities would appear to increase its potential exposure to that risk. In addition, RBS

23. *Fortis S.A./N.V.*, 94 *Federal Reserve Bulletin* C20 (2008).

24. "Total operating revenues" is defined as net interest income and all non-interest revenue, including net securities gains but excluding extraordinary items.

would remain subject to the securities, commodities, and energy laws and to the applicable rules and regulations (including the anti-fraud and anti-manipulation rules and regulations) of the CFTC and the Federal Energy Regulation Commission.

The Board believes that RBS has the managerial expertise and internal control framework to manage the risks of engaging in Physical Commodity Trading, Energy Tolling, and Energy Management Services. RBS has shown it has the expertise and internal controls necessary to effectively integrate the risk management of those activities into its overall risk-management framework.

The Board must also determine that the performance of these complementary activities by RBS “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.” Approval of the request to engage in Physical Commodity Trading, Energy Tolling, and Energy Management Services likely would benefit RBS’s customers by enhancing RBS’s ability to provide efficiently a full range of commodity-related services consistent with existing market practice. Approval also would enable RBS to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in those markets. In addition, engaging in Energy Tolling would allow RBS to provide risk-intermediation services to clients whose businesses involve significant energy commodity risks. Energy Tolling also would allow RBS to participate more fully in Physical Commodity Trading by securing a source for its physically settled electricity derivatives contracts and to employ tolling agreements as part of its own hedging strategies or those of its clients.

RBS’s Physical Commodity Trading, Energy Tolling, and Energy Management Services should not result in an undue concentration of resources or other adverse effects on competition because the market for these services is regional or national in scope. Any potential conflicts of interests associated with RBS’s activities should be mitigated by the anti-tying provisions in section 106 of the Bank Holding Company Act Amendments of 1970.

For these reasons, and based on RBS’s policies and procedures for monitoring and controlling the risks of the activities, the Board concludes that allowing RBS to engage in Physical Commodity Trading, Energy Tolling, and Energy Management Services on the limited bases described above does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

CONCLUSION

Based on all the facts of record, including the representations and commitments made by RBS to the Board in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board’s determination is subject to all the conditions set forth in Regulation Y and to the Board’s authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board’s regulations and orders issued thereunder. The Board’s decision is specifically conditioned on compliance with all the commitments made in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be 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.

By order of the Board of Governors, effective March 27, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

COMMITMENTS BY RBS

RBS, together with its subsidiaries (collectively, “RBS”), commits with respect to the notice (“Notice”) it has filed with the Board to engage in Physical Commodity Trading, Energy Tolling, and Energy Management Services in the United States or by an entity located in the United States that

1. RBS will conduct its Physical Commodity Trading, Energy Tolling, and Energy Management Services exclusively pursuant to the authority of section 4 of the BHC Act and in accordance with the limitations that the Board has placed on the conduct of such activities, and will not conduct such activities in the United States in reliance on section 2(h)(2) of the BHC Act or section 211.23(f)(5) of the Board’s Regulation K.

PHYSICAL COMMODITY TRADING ACTIVITIES

2. RBS will limit the aggregate market value of physical commodities that it holds at any one time as a result of Physical Commodity Trading to 5 percent of its tier 1

- capital. RBS will include in this 5 percent limit the market value of any physical commodities it holds as a result of a failure of reasonable efforts to avoid taking delivery in commodities transactions conducted pursuant to section 225.28(b)(8)(ii)(B) of Regulation Y. In addition, RBS agrees to notify the Federal Reserve Bank of Boston if the aggregate market value of commodities held under this approval exceeds 4 percent of RBS's tier 1 capital.
3. RBS will take and make physical delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") or physical commodities of which the Board has specifically authorized RBS to take and make physical delivery (collectively, "Approved Commodities").
 4. RBS will enter into long-term electricity supply contracts only with large commercial and industrial end-users that consume electricity at a rate of at least (i) 800 megawatt-hours/year or (ii) the minimum consumption level for large commercial and industrial customers under applicable state law, whichever is greater.
 5. RBS will not use this authority to own, invest in, or operate facilities for the extraction, transportation, storage, or distribution of commodities but will only use storage and transportation facilities owned and operated by third parties. RBS will enter into service agreements only with reputable independent third-party facilities.
 6. RBS will conform to the requirements of the BHC Act, including by divestiture if necessary, the activities of (i) owning, investing in, or operating storage facilities for commodities that it is not permitted to hold or store under the BHC Act and (ii) making and taking physical delivery of commodities that are not Approved Commodities, including metal concentrates, acquired in connection with the transactions contemplated by the Notice within two years of consummation of the transactions, or such longer period as the Federal Reserve in its discretion may grant.
 7. After consummation of the transactions contemplated by the Notice, RBS will not expand its direct or indirect activities or investments in the activities of (i) owning, investing in, or operating storage facilities for commodities that it is not permitted to hold or store under the BHC Act and (ii) making and taking physical delivery of commodities that are not Approved Commodities, including metal concentrates. RBS will not expand these activities or investments beyond those engaged in by the SET Companies immediately prior to the date of the consummation of the proposed transaction by directly or indirectly (i) acquiring direct control of a company engaged in any activity, or acquiring any assets or business lines of another company that engages in impermissible activities, (ii) increasing the types of investments, products, or services to be engaged in or provided by RBS, or (iii) any similar transactions that would result in an expansion of these activities.
 8. RBS will act solely as an intermediary in the physical commodities market and will not process, refine, or otherwise alter a physical commodity itself. RBS will contract with a third party for any services it needs in connection with the handling of any commodity. RBS further commits that it will not contract for the exclusive right to use a facility to alter commodities for any period of time. Consistent with the Physical Commodity Trading authority, RBS will contract with third parties (i) to alter only an Approved Commodity and (ii) to alter the commodity only into another Approved Commodity.
- ENERGY TOLLING**
9. RBS will include the present value of all capacity payments to be made by RBS in connection with energy tolling agreements in calculating its compliance with the limit of 5 percent of tier 1 capital on the aggregate market value of the physical commodities that it and any of its subsidiaries hold at any one time as a result of Physical Commodity Trading.
- VOLUMETRIC PRODUCTION PAYMENT TRANSACTIONS**
10. RBS will include any commodities that RBS receives under a volumetric production payment transaction and does not immediately sell to a third party in calculating its compliance with the limit of 5 percent of tier 1 capital on the aggregate market value of the physical commodities that it and any of its subsidiaries hold at any one time as a result of Physical Commodity Trading.
- ENERGY MANAGEMENT SERVICES**
11. Revenues attributable to RBS's Energy Management Services in the United States will not exceed 5 percent of its total consolidated operating revenues.¹
 12. RBS will only act as energy manager in the United States if the energy management agreement under which it performs its Energy Management Services provides that
 - a. The owner of the facility retains the right to market and sell power directly to third parties, which may be subject to the energy manager's right of first refusal;
 - b. The owner of the facility retains the right to determine the level at which the facility will operate (*i.e.*, to dictate the power output of the facility at any given time);
 - c. Neither the energy manager nor its affiliates guarantee the financial performance of the facility; and
 - d. Neither the energy manager nor its affiliates bear any risk of loss if the facility is not profitable.
- RBS agrees that the foregoing commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision on the notice filed by RBS to engage in Physical Commodity Trading, Energy Tolling, and Energy Management Services under section 225.89 of Regulation Y and, as such, may be enforced in proceedings under applicable law.
-
1. Total operating revenues are defined as net interest income and all non-interest revenue, including net securities gains but excluding extraordinary items.

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

eBANK Corporation *Tokyo, Japan*

Order Approving Establishment of a Representative Office

eBANK Corporation (“eBANK”), Tokyo, Japan, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA to establish a representative office in San Francisco, California.¹ The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in San Francisco (*San Francisco Chronicle*, March 16, 2006). The time for filing comments has expired, and all comments received have been considered.

eBANK, with total consolidated assets of approximately \$6.1 billion,² is an internet-only bank providing deposit accounts and services and settlement services exclusively to Japanese residents. eBANK’s largest shareholder is the Development Bank of Japan, a government entity that owns 14.91 percent of the outstanding shares of the bank. eBANK’s founder and president, Mr. Taiichi Matsuo, owns 6.47 percent of the outstanding shares of the bank, and NTT Finance Corporation, a Japanese company, owns 6.16 percent of the outstanding shares.³

The bank, which commenced operations in July 2001, accepts deposits but does not have branches or ATMs and does not engage in lending. The bank engages in financial advisory activities, including asset securitization advice, research services, and investment administration services. eBANK, through a wholly owned subsidiary, also manages mutual funds that are publicly offered over the internet to Japanese investors. eBANK currently conducts no activities in the United States. The bank’s only office outside Japan is a representative office in Hong Kong.

eBANK has stated that the establishment of the representative office is part of its strategy to explore business and technology opportunities in the United States. The proposed representative office would research technology related to internet banking, identify business opportunities with banks and companies in the United States that have advanced information technology capabilities potentially relevant to eBANK’s internet banking activities, and identify investment opportunities in the United States for the

bank’s dollar-denominated deposits in Japan. eBANK has committed, *inter alia*, that the representative office will not solicit deposits in the United States.

In acting on a foreign bank’s application under the IBA and Regulation K to establish a representative office, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁴ The Board also considers additional standards set forth in the IBA and Regulation K.⁵

As noted above, eBANK engages directly in the business of banking outside the United States. eBANK also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to home-country supervision of eBANK, the Board has previously determined, in connection with applications involving other Japanese banks, that those banks were subject to home-country supervision on a consolidated basis.⁶ eBANK is supervised by the Japanese Financial Services Agency (“FSA”) on substantially the same terms and conditions as those other Japanese banks. Based on all the facts of record, including the above information, it has been determined that eBANK is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.⁷ With respect to the financial and managerial resources of eBANK,

4. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing this standard, the Board considers, among other factors, the extent to which the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

5. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

6. See e.g., *The Wakashio Bank, Limited*, 89 *Federal Reserve Bulletin* 237 (2003); *The Daiwa Bank, Limited*, 89 *Federal Reserve Bulletin* 185 (2003).

7. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). These standards include: whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering; whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

1. 12 U.S.C. § 3107(a).

2. Asset data are as of September 30, 2007.

3. Citigroup Inc. indirectly owns 5.33 percent of eBANK. The remaining shares are widely held by individuals and corporations.

taking into consideration eBANK's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. eBANK appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law and for its operations in general. The FSA has no objection to the establishment of the proposed representative office.

Japan is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations on measures to combat money laundering. In accordance with those recommendations, Japan has enacted laws and developed regulatory standards to deter money laundering. Money laundering is a criminal offense in Japan, and Japanese financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. The bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about eBANK's operations, the Board has reviewed restrictions on disclosure in the relevant jurisdictions in which eBANK operates and has communicated with relevant government authorities regarding access to information. eBANK has committed to make available to the Board such information on its operations and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, eBANK has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that eBANK has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by eBANK and the terms and conditions set forth in this order, eBANK's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, acting pursuant to authority delegated by the Board.⁸ Should any restrictions on access to information on the operations or activities of eBANK or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by eBANK or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of

eBANK's direct and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by eBANK with the commitments made in connection with this application and with the conditions in this order.⁹ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective January 16, 2008.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

State Bank of India Mumbai, India

Order Approving Establishment of a Branch

State Bank of India ("Bank"), Mumbai, India, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to establish a branch in Jackson Heights, New York. The Foreign Bank Supervision Enhancement Act of 1991 ("FBSEA"), which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Jackson Heights, New York (*The New York Times*, August 5, 2005). The time for filing comments has expired, and the Board has considered all comments received.

Bank, with total assets of approximately \$187.5 billion, is the largest bank in India.² The government of India owns approximately 63.8 percent of Bank's shares.³ No other shareholder owns directly more than 5 percent of Bank's shares.

Bank engages primarily in corporate and retail banking and trade finance but also provides through its subsidiaries life insurance, merchant banking, brokerage, credit card processing, and credit information services in India. Outside India, Bank maintains offices in 32 countries. In the

9. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of California to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the California Department of Financial Institutions to license the proposed representative office of eBANK in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. § 3105(d).

2. Asset data are as of March 31, 2007. Ranking data are as of June 30, 2006.

3. In June 2007, the government of India purchased 59.7 percent of Bank's shares from the Reserve Bank of India ("RBI") for approximately \$8.7 billion. An additional 4.1 percent of Bank's shares are owned by the government of India through the Life Insurance Corporation of India, a government-owned insurance company.

8. See 12 CFR 265.7(d)(12).

United States, Bank operates insured branches in New York, New York, and Chicago, Illinois; an agency in Los Angeles, California; and a representative office in Washington, D.C. Bank also operates a wholly owned subsidiary, State Bank of India (California), also in Los Angeles.⁴ Bank is a qualifying foreign banking organization under Regulation K.⁵

The proposed Jackson Heights branch would offer a range of banking products and services, including permissible deposit accounts and small business loans, as well as remittance, investment advisory, and trade-related services.⁶

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisors.⁷ The Board also considers additional standards as set forth in the IBA and Regulation K.⁸

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.⁹ This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application, provided that (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.¹⁰ In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money launder-

ing.¹¹ The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.¹² This is the standard applied by the Board in this case.

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

Based on all the facts of record, the Board has determined that Bank's home-country supervisory authority is actively working to establish arrangements for the consolidated supervision of Bank and that considerations relating to the steps taken by Bank and its home jurisdiction to combat money laundering are consistent with approval under this standard.¹³ The RBI is the principal supervisory authority of Bank, including its foreign subsidiaries and affiliates. The RBI has the authority to license banks, regulate their activities and approve expansion, both domestically and abroad. It supervises and regulates Bank through a combination of regular on-site reviews and off-site monitoring. On-site examinations cover the major areas of operation, capital adequacy, management (including risk-management strategies), asset quality (including detailed loan portfolio analysis), earnings, liquidity, and internal controls and procedures (including anti-money-laundering controls and procedures). The frequency of on-site examinations depends on a bank's risk profile, but generally all Indian banks, including Bank, are examined at least annually.

Off-site monitoring is conducted through the review of required quarterly or monthly reports on, among other things, asset quality, earnings, liquidity, capital adequacy, loans, and on- and off-balance-sheet exposures. The RBI monitors the foreign activities of Indian banks using guidelines designed to ensure that banks identify, control, and minimize risk in the bank and in its joint ventures and subsidiaries. The RBI also periodically audits Indian banks' foreign operations.

Bank is required to be audited annually by a firm of chartered accountants approved by the RBI, and the audit report is submitted to the RBI. The scope of the required audit includes a review of financial statements, asset quality, internal controls, and anti-money-laundering procedures. The RBI may order a special audit at any time. In connection with its listing of Global Depository Receipts on the London Stock Exchange, Bank files reports with the London Stock Exchange that also are subject to annual external audit. In addition, Bank conducts internal audits of its offices and operations on a risk-based schedule. The proposed branch would be subject to internal audits to determine compliance with internal controls and RBI guidelines.

4. Bank's home state under the IBA and Regulation K is New York. All of Bank's operations in the United States were established before enactment of FBSEA.

5. 12 CFR 211.23(a).

6. The proposed branch would not be insured.

7. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

8. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

9. 12 U.S.C. § 3105(d)(6).

10. 12 U.S.C. § 3105(d)(6)(A).

11. 12 U.S.C. § 3105(d)(6)(B).

12. *Id.*

13. The Board recently approved an application by another Indian bank under this standard. See *ICICI Bank Limited*, 94 *Federal Reserve Bulletin* C26 (2008).

Indian laws impose various prudential limitations on banks, including limits on transactions with affiliates and large exposures. The RBI is authorized to request and receive information from any bank and its domestic and foreign affiliates and to impose penalties for failure to comply with a disclosure request or for providing false or misleading information. The RBI also has the authority to impose conditions on licensees and to impose penalties for failure to comply with the RBI's rules, orders, and directions. Penalties include monetary fines, removal of management, and the revocation of the authority to conduct business.

In recent years, the Indian government has enhanced its anti-money-laundering regime. In January 2003, India took initial steps to adopt an anti-money-laundering law, the Prevention of Money Laundering Act. The law, related amendments, and implementing rules (collectively, the "PMLA") became effective in July 2005 and established a regulatory infrastructure to assist the anti-money-laundering effort. In accordance with the PMLA, India has established the Financial Intelligence Unit, India ("FIU-IND"), which reports directly to the Economic Intelligence Council headed by the Finance Minister of India. The FIU-IND is responsible for receiving, processing, analyzing, and disseminating information related to cash and suspicious transaction reports. The Directorate of Enforcement, a department within the Ministry of Finance, is responsible for investigating and prosecuting money laundering cases. In addition, the RBI issued "Know Your Customer (KYC) Guidelines — Anti-Money Laundering Standards" ("Guidelines") in November 2004, which require financial institutions to establish systems for the prevention of money laundering. Indian banks were required to be fully compliant with the Guidelines by December 31, 2005. The RBI issued further guidelines in February 2006 providing clarification on reporting cash and suspicious transactions to the FIU-IND.

India participates in international fora that address the prevention of money laundering and terrorist financing. India is a member of the Asia/Pacific Group on Money Laundering (Financial Action Task Force for the Asia/Pacific region), an observer organization to the Financial Action Task Force ("FATF"), and is actively seeking to join FATF as a member.¹⁴ India is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. International Convention for the Suppression of the Financing of Terrorism.

Bank has policies and procedures to comply with Indian laws and regulations and the RBI's Guidelines regarding anti-money laundering. Bank has also taken additional steps on its own initiative to combat money laundering and other illegal activities. Bank states that it is committed to implementing the relevant recommendations of the FATF and that it has put in place anti-money-laundering policies and procedures to ensure ongoing compliance with statutory and regulatory requirements, including designating

branch-level and regional officers who are responsible for implementing Bank's anti-money-laundering policies and procedures. Bank's compliance with anti-money-laundering requirements is monitored by the RBI and by Bank's internal and external auditors.

The Board also has taken into account the additional standards set forth in section 7 of the IBA and Regulation K.¹⁵ The RBI has no objection to Bank's establishment of the proposed branch.

The Board has also considered carefully the financial and managerial factors in this case. India's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. In addition, Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that Bank has provided adequate assurances of access to any necessary information that it may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish a branch in Jackson Heights, New York, is hereby approved. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect

15. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). The additional standards set forth in section 7 of the IBA and Regulation K include the following: whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; the bank's record of operation.

14. India became an observer to FATF in February 2007.

activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.¹⁶ The commit-

16. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York or its agent, the New York State Banking Department ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

ments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order of the Board of Governors, effective January 25, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board