
Legal Developments: Fourth Quarter, 2009

ORDER ISSUED UNDER BANK HOLDING COMPANY ACT

ORDER ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

Sandhills Bancshares, Inc. Iraan, Texas

Order Approving the Formation of a Bank Holding Company

Sandhills Bancshares, Inc. (“Sandhills”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become a bank holding company and to acquire all the voting shares of TransPecos Banks-Iraan (“Bank”),² both of Iraan, from TransPecos Financial Corp., San Antonio, all of Texas.³

Notice of the proposal, affording interested persons an opportunity to comment, has been published (74 *Federal Register* 34,015 (2009)). 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.

Sandhills is a newly organized corporation formed for the purpose of acquiring control of Bank. Bank, with total assets of approximately \$23.7 million, is the 583rd largest insured depository institution in Texas, controlling deposits of approximately \$21.2 million, which represent less than

1 percent of the total amount of deposits of insured depository institutions in the state.⁴

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or that 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.⁵

Sandhills does not currently control a depository institution. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS AND FUTURE PROSPECTS

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.⁶ The Board has considered the factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of Bank and publicly reported and other available financial information, including information provided by Sandhills. In addition, the Board has consulted with the primary federal and state supervisors of Bank.

In evaluating financial factors in proposals involving newly formed small bank holding companies, the Board reviews the financial condition of both the applicant and the target depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects,

1. 12 U.S.C. § 1842.

2. Bank’s name will change to Tejas Bank after the acquisition. Bank currently has one branch in Iraan, Texas, and had filed an application with the Federal Deposit Insurance Corporation (“FDIC”) and the Texas Department of Banking (“TDOB”), Bank’s primary federal and state supervisors, to establish a second branch in Monahans, Texas, on consummation of this proposal. The Board received one comment in opposition and fourteen comments in support of the proposal to establish the Monahans branch. Those comments were forwarded to the TDOB and FDIC, and both agencies have approved the proposed branch (September 8 and September 11, 2009, respectively).

3. The seller is a bank holding company with one other subsidiary bank, TransPecos Banks, Pecos, Texas.

4. Asset and deposit data are as of June 30, 2009. State ranking is based on 2008 FDIC Summary of Deposit data. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. 12 U.S.C. § 1842(c)(1).

6. 12 U.S.C. § 1842(c)(2) and (3).

and the impact of the proposed funding on the transaction. In addition, for proposals involving small bank holding companies, the Board evaluates the institutions' compliance with the Board's Small Bank Holding Company Policy Statement, including compliance with those measures that are to be used to assess capital adequacy and overall financial strength.⁷ In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered carefully the financial factors of the proposal. Bank currently is well capitalized and would remain so on consummation of the proposal, and Sandhills would be in compliance with relevant capital standards. The transaction is structured as a cash purchase funded from the proceeds of an issuance of new holding company stock. Based on its review of those factors, the Board finds that Sandhills has sufficient financial resources to effect the proposal and to comply with the Board's Small Bank Holding Company Policy Statement.⁸

The Board also has considered the managerial resources of the applicant, including the proposed management of the organization. The Board has reviewed the examination records of Bank, including assessments of its current management, risk-management systems, and operations. In addition, the Board has considered the supervisory experience of the other relevant banking agencies with Bank, including its records of compliance with applicable banking laws and anti-money-laundering laws, and the proposed management officials and principal shareholders of Sandhills. The Board also has considered Sandhills' plan for the proposed acquisition, including the proposed changes in management at Bank after the acquisition.⁹

The Board also has considered carefully the future prospects of Sandhills and Bank. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects

involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.¹⁰

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on proposals under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹¹ Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of July 30, 2007. After consummation of the proposal, Sandhills does not plan to alter the Bank's current CRA policies. Sandhills has represented that the proposal would provide convenience to Bank's customers by continuing products and services currently offered by Bank.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Sandhills with all representations and commitments made to the Board in connection with the application. For purposes of this action, these representations and commitments 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 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 Federal Reserve Bank of Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 1, 2009.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

7. 12 CFR 225, appendix C.

8. Sandhills also has adequate resources to finance the establishment of the proposed Monahans branch.

9. The Board received a comment regarding two proposed officers and directors of Sandhills from a bank in Monahans, Texas, where Bank plans to open its new branch. One of the individuals was previously employed by a bank that was acquired by the commenter, and the other had worked for a company that provided services to such bank. The commenter alleged that these individuals potentially could use proprietary knowledge about the commenter's operations and customers. The commenter also alleged that the proposed service of its former employee at Sandhills would violate an unwritten, implied agreement not to serve as an employee of a competitor institution. The commenter further alleged, without providing any substantiating information, that the second proposed official had previously failed to provide certain services to the bank acquired by the commenter. The proposed management officials denied the commenter's allegations, including that any implied agreement restricts the employment of any of Bank's employees. In weighing the managerial factor, the Board has considered carefully the information provided by the commenter, information on all proposed management officials provided by Sandhills, including information on the management record in banking of the individual who was employed by the bank acquired by the commenter, and available supervisory and other information.

10. The commenter also raised concerns about the future prospects of the proposed Monahans branch. As previously noted, the Board forwarded these comments to the TDOB and FDIC, the primary supervisors with jurisdiction to act on the proposed branch filings, for their consideration, and both agencies have approved establishment of the branch.

11. 12 U.S.C. § 2901 et seq.

ORDER ISSUED UNDER INTERNATIONAL BANKING ACT

Banque Transatlantique
Paris, France

Order Approving Establishment of a Representative Office

Banque Transatlantique (“Bank”), Paris, France, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. 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 New York, New York (*The Daily News*, March 16, 2009). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$2.7 billion,² is a member of the Crédit Mutuel group (“CM”), one of the largest cooperative banking groups in France. Bank primarily provides private banking services to French nationals living in France and abroad. Outside France, Bank operates a branch in London, operates a representative office in Singapore, and owns more than 50 percent of Banque Transatlantique Belgium and Banque Transatlantique Luxembourg, which are banks located in Belgium and Luxembourg, respectively. The proposed representative office would be Bank’s only office in the United States.³ Bank is a direct wholly owned subsidiary of Crédit Industriel et Commercial (“CIC”), Paris, France. Through its offices and subsidiaries, CIC offers banking services directly in a number of countries worldwide and owns subsidiary banks in Switzerland, Luxembourg, and Liechtenstein.⁴ In the United States, CIC operates a branch in New York, New York. CIC is majority owned by Banque Fédérative du Crédit Mutuel (“BFCM”), Strasbourg, France. BFCM does not conduct operations in the United States. BFCM is majority owned by Caisse Fédérale de Crédit Mutuel Centre Est Europe (“CFCM”), also of Strasbourg, which is Bank’s ultimate parent.

CFCM is the central body for the Credit Mutuel Centre Est Europe subgroup, which consists of five federations located in Northeast France, Southeast France, Paris, the

Savoie Mont-Blanc region of France, and the Mid-Atlantic region of France. CFCM is wholly owned by these five federations, which are in turn owned by their member banks. In addition to providing strategic advice to its members, CFCM through its subsidiary, BFCM, issues debt and other instruments in support of member banks and maintains the federation’s solidarity fund.⁵ CFCM has no direct operations in the United States and is one of 13 subgroups that are members of CM.⁶ CFCM is a bank that is supervised by the French bank licensing authority, the Comité des établissements de crédit et des entreprises d’investissement (the “Commission Bancaire”).

The proposed representative office would market the products and services of Bank to prospective French customers in the United States and would facilitate communications between Bank’s existing and prospective customers and employees of Bank at its headquarters in Paris.⁷ Specifically, the proposed representative office would present and promote Bank’s products and services, conduct research, solicit loans of principal amounts above \$250,000 and, in connection with such loans, assemble credit information, make inspections and appraisals of property, secure title information, prepare loan applications and make recommendations, and solicit other banking business except for deposits or deposit-type liabilities.

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board shall take into account whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home-country supervisor.⁸ The Board also may consider addi-

5. The fund serves as an emergency fund that may be used by a member bank to meet its emergency liquidity and funding needs.

6. CM consists of 1,200 cooperative banks that are grouped into 18 federations and 13 subgroups. CM does not operate under legally binding cross-guarantee mechanisms but instead the subgroups, including CFCM, maintain a solidarity fund to which all members within the subgroup contribute.

7. A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity (12 CFR 211.24(d)(1)).

8. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision 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 the 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

1. 12 U.S.C. § 3107(a).

2. Unless otherwise indicated, data are as of December 31, 2008.

3. Bank previously had a representative office in Washington, D.C. (see *Banque Transatlantique*, 79 *Federal Reserve Bulletin* 900 (1993)), which it opened in 1993 and closed in December 2008.

4. CIC’s subsidiary banks are CIC Suisse, Banque de Luxembourg, and Banque Pasche, respectively.

tional standards set forth in the IBA and Regulation K.⁹ The Board will consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.¹⁰ This application has been considered under the lesser standard.

As noted above, Bank, CIC, BFCM, and CFCM engage 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.

The Commission Bancaire is the primary regulatory and supervisory authority for French banks and, as such, is the home-country supervisor of Bank, CIC, BFCM, and CFCM. The Board previously has determined that, in connection with other applications involving banks in France, those banks were subject to consolidated comprehensive supervision by the Commission Bancaire.¹¹ Bank, CIC, BFCM, and CFCM are supervised by the Commission Bancaire on substantially the same terms and conditions as those other French banks. Based on all the facts of record, it has been determined that factors relating to the supervision of Bank by its home-country supervisor are consistent with approval of the proposed representative office.

The additional standards set forth in section 7 of the IBA and Regulation K¹² have also been taken into account. The Commission Bancaire has no objection to the establishment of the proposed representative office.

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.

9. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) 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; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) 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. See also *Standard Chartered Bank*, 95 *Federal Reserve Bulletin* B98 (2009).

10. 12 CFR 211.24(d)(2).

11. See, e.g., *Fédération Nationale du Crédit Agricole*, 92 *Federal Reserve Bulletin* C159 (2006); *Calyon, S.A.*, 92 *Federal Reserve Bulletin* C159 (2006); *BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (2005); *Société Générale*, 87 *Federal Reserve Bulletin* 353 (2001); *Caisse Nationale de Crédit Agricole*, 86 *Federal Reserve Bulletin* 412 (2000); *Crédit Agricole Indosuez*, 83 *Federal Reserve Bulletin* 1025 (1997); *Caisse Nationale de Crédit Agricole*, 81 *Federal Reserve Bulletin* 1055 (1995).

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

With respect to the financial and managerial resources of Bank, taking into consideration Bank'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. Bank 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, as well as controls and procedures for its worldwide operations generally.

France is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, France has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in France, and financial services businesses are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. Bank has policies and procedures to comply with these laws and regulations, and these policies and procedures are monitored by the Commission Bancaire.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank and its ultimate parent CFCM have 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 of 1956, as amended, 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 and CFCM have 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 addition, subject to certain conditions, the Commission Bancaire may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and CFCM have provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a representative office is hereby approved.¹³ Should any restrictions on access to information on the operations or activities of Bank or 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

13. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank and CFCM with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁴ For purposes of this action, these commitments and conditions are deemed to be condi-

14. The Board's authority to approve the establishment of the proposed representative office 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

tions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 1, 2009.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.