



Legal Developments: Fourth Quarter, 2010

Orders Issued under Bank Holding Company Act

Order Issued under Section 3 of the Bank Holding Company Act

SKBHC Holdings LLC
Corona del Mar, California

Order Approving the Formation of a Bank Holding Company

SKBHC Holdings LLC (“SKBHC”) 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 Starbuck Bancshares, Inc. (“Bancshares”) and indirectly acquire Bancshares’ wholly owned subsidiary bank, The First National Bank of Starbuck (“Bank”), both of Starbuck, Minnesota.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*75 Federal Register* 16,808 (April 2, 2010)). 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.

SKBHC is a newly organized corporation formed by an individual who will become the chief executive officer and chairman of the board of SKBHC. SKBHC will be capitalized by a group of investors to enable it to acquire Bancshares and Bank and to make future acquisitions of other institutions either through Federal Deposit Insurance Corporation resolutions or on an open-bank basis. SKBHC plans to acquire institutions primarily in the Pacific Northwest, West Coast, and the Southwest regions of the United States.²

Bank, with total assets of approximately \$17 million, is the 439th largest insured depository institution in Minnesota, controlling deposits of approximately \$15.5 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.³

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

¹ 12 U.S.C. §1842.

² Any future expansion proposal would be subject to review and approval by the Board or other relevant federal banking agency on its own merits under the standards of the BHC Act or Bank Merger Act.

³ Asset and deposit data are as of June 30, 2010. Ranking data are also as of June 30, 2010, and reflect merger activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

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.⁴

SKBHC 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.⁵ The Board has considered those factors in light of all the facts of record, including supervisory and examination information received from the relevant federal supervisor of Bank and publicly reported and other available financial information, including information provided by SKBHC. In addition, the Board has consulted with the primary federal supervisor of Bank.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board also evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered carefully the financial factors of this proposal. Bancshares and Bank currently are well capitalized and would remain so on consummation of the proposal. SKBHC also would be well capitalized and in compliance with relevant capital standards on consummation. The transaction is structured as a cash purchase funded from the proceeds of an issuance of new holding company stock in SKBHC, in exchange for a draw-down of capital from its investors.⁶ Based on its review of those factors, the Board finds that SKBHC has sufficient financial resources to effect the proposal and to comply with the Board's Small Bank Holding Company Policy Statement.⁷

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 record of compliance with applicable banking laws and anti-money-laundering laws, and the proposed management officials and principal shareholders of SKBHC. The Board also has considered SKBHC's plan for the proposed acquisition, including the proposed management of SKBHC and

⁴ 12 U.S.C. § 1842(c)(1).

⁵ 12 U.S.C. § 1842(c)(2) and (3).

⁶ The remaining capital commitments of SKBHC's investors are available for an 18-month period to fund ongoing operations and expenses, satisfy any applicable regulatory requirements, and fund potential additional acquisitions.

⁷ SKBHC will be a small bank holding company after acquiring Bancshares and will be subject to the Small Bank Holding Company Policy Statement, as long as it has less than \$500 million in total consolidated assets.

proposed changes in management at Bancshares and Bank after the acquisition. In addition, the Board has considered carefully the future prospects of SKBHC, Bancshares, and Bank in light of the financial and managerial resources and proposed business plan.

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.

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”).⁸ The Board has carefully considered all the facts of record, including evaluations of the CRA performance record of Bank, information provided by SKBHC, and public comment received on the proposal. The Board has also considered confidential supervisory information provided by the Office of the Comptroller of the Currency (“OCC”), Bank’s primary federal regulator. Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of January 3, 2005. The OCC has scheduled a CRA performance examination of Bank for July 2010.

Several commenters expressed concerns that information in the application about SKBHC’s plans to provide products and services to its communities was insufficient. As noted above, Bank received a “satisfactory” rating at its most recent CRA performance. Examiners found that the majority of Bank’s loans were made within the assessment area and that Bank’s record of lending to borrowers of different incomes and businesses of different sizes exceeded the standard for achieving a “satisfactory” rating.

SKBHC represents that the proposal would provide convenience to, and meet the needs of, Bank’s customers by continuing products and services currently offered by Bank at the same levels as Bank now provides. SKBHC also represents that its management would not diminish Bank’s commitment to meeting the credit needs of the community in which it operates, including the needs of low- and moderate-income geographies and individuals. In addition, SKBHC plans to form a CRA Committee responsible for ensuring Bank’s continued commitment to its CRA performance.

Based on a review of the entire record, the Board has concluded that convenience and needs considerations and the CRA performance record of Bank are consistent with approval of the proposal.

Conclusion

Based on the foregoing, and in light of 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 the application 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 SKBHC with all 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.

⁸ 12 U.S.C. §2901 et seq.

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 San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 26, 2010.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Warsh, Duke, Tarullo, and Raskin.

Robert deV. Frierson
Deputy Secretary of the Board

Order Issued under Sections 3 and 4 of the Bank Holding Company Act

Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja
Valencia, Spain

Banco Financiero y de Ahorros, S.A.
Madrid, Spain

Order Approving the Acquisition of a Bank Holding Company

Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja (“Bancaja”), Valencia, Spain, a foreign banking organization subject to the Bank Holding Company Act (“BHC Act”),¹ and Banco Financiero y de Ahorros, S.A. (“New Bank”), Madrid, Spain, a newly formed foreign bank (collectively, “Applicants”), have requested the Board’s approval under section 3 of the BHC Act² to acquire control of Caja de Ahorros y Monte de Piedad de Madrid (“Caja Madrid”), and thereby indirectly acquire Caja Madrid’s subsidiaries, Caja Madrid Cibeles S.A. (“Cibeles”), both of Madrid; CM Florida Holdings, Inc. (“CM Florida”), Coral Gables, Florida; and City National Bancshares, Inc. (“CNB”) and City National Bank of Florida (“Bank”), both of Miami, Florida. Caja Madrid, Cibeles, CM Florida, and CNB are financial holding companies.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (*75 Federal Register* 69,666 (2010)). 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.

Bancaja, with total consolidated assets equivalent to \$153 billion, is the sixth largest depository organization in Spain and operates a branch in Miami. New Bank, on a pro forma basis, will have total assets of approximately \$470 billion and will be the third largest banking institution by total assets in Spain.

New Bank was formed as a commercial bank under the laws of Spain in connection with the proposed integration of seven savings banks, or *cajas de ahorros*,³ into a single financial group through a *Sistema Institucional de Protección* (“SIP”). A SIP integrates a group of *cajas de ahorros* into a united economic group headed by a commercial bank while allowing

¹ Bancaja operates a branch in the United States and, therefore, is subject to the BHC Act (12 U.S.C. §3106(a)).

² 12 U.S.C. §1842.

³ *Cajas de ahorros* have no shareholders but are controlled by governing bodies that represent various groups, such as depositors, employees, the local government, and local companies.

each *caja de ahorros* to maintain the regional approach of its business. The Spanish government and the Bank of Spain have promoted such integration transactions in an effort to consolidate the number of *cajas de ahorros* operating in Spain. New Bank will serve as the central point of governance and the head of the integrated group and, thus, will exercise control over the management and policies of Caja Madrid and each of the other six *cajas de ahorros* in the group.

Caja Madrid will hold approximately 52 percent of the total issued shares of New Bank and will be its largest shareholder. Bancaja will hold approximately 38 percent of the total issued shares of New Bank. Each of the remaining five *cajas de ahorros* will own less than 3 percent of New Bank.⁴

By entering into the integration transaction, New Bank will be eligible to receive funds from the *Fondo de Reestructuración Ordenada Bancaria* (“FROB”), which was created by the Spanish government to support and facilitate integration transactions among Spanish financial institutions. In exchange for the funds, FROB will purchase perpetual convertible preference shares of New Bank that are convertible to voting shares if not redeemed in five years. The five-year period may be extended for two additional years with the approval of the Bank of Spain.

FROB proposes to invest up to €4.465 billion in New Bank. FROB's investment in New Bank would represent approximately 30 percent of the total equity and if converted to voting shares, would currently represent 30 percent of New Bank's voting shares.

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 markets. 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.⁵

Bancaja operates an uninsured branch in Miami. Applicants do not currently control a U.S. insured 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 these factors in light of all the facts of record, including supervisory and examination information received from the Office of the Comptroller of the Currency (“OCC”), the primary federal supervisor of Bank, and publicly reported and other available information, including information

⁴ The five *cajas de ahorros* are (1) Caja Insular de Ahorros de Canarias, Las Palmas, (2) Caja de Ahorros y Monte de Piedad de Ávila, Ávila, (3) Caixa d'Estalvis Laietana, Mataró, (4) Caja de Ahorros de Segovia, Segovia, and (5) Caja de Ahorros de la Rioja, Logroño, all of Spain.

⁵ 12 U.S.C. § 1842(c)(1).

⁶ 12 U.S.C. § 1842(c)(2) and (3).

provided by Applicants. The Board also has consulted with the Bank of Spain, the agency with primary responsibility for the supervision and regulation of Spanish banks, including Bancaja and New Bank.

In evaluating the financial factors in proposals involving bank holding companies, the Board reviews the financial condition of the applicants and the target depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial factors of the proposal. The capital levels of Bancaja and New Bank 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 this regard, FROB proposes to invest up to €4.465 billion in New Bank, which would substantially enhance the capital and financial strength of New Bank and its affiliated savings banks.⁷ In addition, Bank is 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 Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Bancaja, CM Florida, and Bank, including assessments of their management, risk-management systems, and operations. The Board has also consulted with the Bank of Spain. In addition, the Board has considered its supervisory experiences, and those of other relevant banking supervisory agencies, with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. The Board also has considered Applicants' plans for implementing the proposal, including the proposed management of the organization 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.⁸

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.⁹ As noted, the Bank of Spain is the primary supervisor of Spanish banks, including Applicants.

⁷ The Board received a comment concerning, among other matters discussed later, the losses that Caja Madrid has suffered in certain foreign investments. Because of FROB's investment of up to €4.465 billion, the Board believes New Bank and Caja Madrid have sufficient financial resources to effect the proposal.

⁸ 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. § 1843(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Bancaja and New Bank must, to the extent not prohibited by applicable law, 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. In light of the commitments and conditions in this case, the Board has concluded that Applicants have provided adequate assurances of access to any appropriate information the Board may request.

⁹ 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 regulation. *See* 12 CFR 211.24(c)(1).

The Board previously has determined that Bancaja is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.¹⁰ The Board also has determined that other banks in Spain were subject to home-country supervision on a consolidated basis.¹¹ New Bank is supervised by the Bank of Spain on substantially the same terms and conditions as Bancaja and those other banks. Based on all the facts of record, the Board has determined that Bancaja continues to be, and New Bank will be, subject to comprehensive supervision on a consolidated basis by their 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”).¹² 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.¹³

The Board has considered carefully all the facts of record, including evaluations of the CRA performance record of Bank, other information provided by Applicants, confidential supervisory information, and a public comment received on the proposal. The commenter alleged that Bank has engaged in disparate treatment of minority individuals in home mortgage lending.

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 supervisor of the CRA performance record of the relevant insured depository institution. 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.¹⁴

Bank received an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of May 18, 2009.¹⁵ Applicants have represented that they do not intend to change Bank’s CRA program on consummation.

A. HMDA and Fair Lending Record

The Board has carefully considered Bank’s fair lending record and Home Mortgage Disclosure Act (“HMDA”) data in light of the public comment contending that Bank denied a

¹⁰ See *Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja*, 84 *Federal Reserve Bulletin* 231 (1998).

¹¹ See, e.g., *Caja de Ahorros y Monte de Piedad de Madrid*, 95 *Federal Reserve Bulletin* B23 (2009); *Caja de Ahorros del Mediterráneo*, 92 *Federal Reserve Bulletin* C133 (2006); *Caja de Ahorros de Galicia, Caixa Galicia*, 92 *Federal Reserve Bulletin* C132 (2006); *Banco Popular Español S.A.*, 92 *Federal Reserve Bulletin* C130 (2006).

¹² 12 U.S.C. § 1842(c)(2).

¹³ 12 U.S.C. § 2901 et seq.

¹⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642 and 11,665 (2010).

¹⁵ With the exception of community development loans, the evaluation period for the Lending Test was January 1, 2006, through December 31, 2008. For community development loans, the Investment Test, and the Service Test, the evaluation period was April 6, 2006, the date of the last CRA evaluation, through May 18, 2009.

disproportionate percentage of loan applications from African Americans in the Miami Metropolitan Statistical Area (“MSA”). The Board has focused its analysis on the 2009 HMDA data reported by Bank.¹⁶

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Bank is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone provide only limited information about the covered loans.¹⁷ 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 Bank’s compliance with fair lending laws.

The record of this application, including confidential supervisory information, indicates that Bank has taken steps to ensure compliance with fair lending and other consumer protection laws. The Board also has considered the HMDA data in light of other information, including the overall performance record of Bank under the CRA. Bank’s established efforts and its record of performance demonstrate that Bank is active in helping to meet the credit needs of its entire community.

B. 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 record of the institution involved, information provided by Applicants, the comment received on the proposal, and confidential supervisory information. Based on a review of the entire record, the Board has concluded that convenience and needs considerations and the CRA performance record of Bank are consistent with approval of the proposal.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the transaction should be, and hereby is, approved.¹⁸ 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

¹⁶ The Board reviewed HMDA data from the Miami and Ft. Lauderdale MSAs, as well as from Bank’s entire CRA assessment area.

¹⁷ 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.

¹⁸ This approval includes any approvals required under section 3 of the BHC Act as a result of the indirect acquisition of shares of Bank by FROB.

BHC Act and other applicable statutes.¹⁹ 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.²⁰ For purposes of this action, 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 the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 16, 2010.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Warsh, Duke, Tarullo, and Raskin.

Robert deV. Frierson
Deputy Secretary of the Board

Order Issued under Bank Merger Act

Centennial Bank
Conway, Arkansas

Order Approving the Merger of Banks and the Establishment of Branches

Centennial Bank ("Centennial"),¹ a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act² ("Bank Merger Act") to acquire the assets and assume the liabilities of Gulf State Community Bank ("Gulf State"), Carrabelle, Florida. Centennial also proposes to establish and operate branches at the locations of the acquired branches of Gulf State.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Gulf State and has scheduled the sale of certain assets and the transfer of certain liabilities

¹⁹ 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 the factual issues related to the application and to provide an opportunity for testimony (12 CFR 223.16(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, 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.

²⁰ The Board has provided certain temporary exemptions to Bancaja and New Bank under section 4(c)(9) of the BHC Act (12 U.S.C. §1843(c)(9)), which authorizes the Board to grant exemptions to foreign companies from the nonbanking restrictions of the BHC Act when the exemptions would not be substantially at variance with the purposes of the act and would be in the public interest. See Board letter to Alcides I. Avila, Esq., dated December 16, 2010.

¹ Centennial is a subsidiary of Home Bancshares, Inc., also of Conway.

² 12 U.S.C. §1828(c).

of Gulf State for November 19, 2010. The FDIC has recommended immediate action by the Board to prevent the probable failure of Gulf State. On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act³ to safeguard the depositors of Gulf State. Accordingly, public notice of the application and an opportunity for comment are not required by the Bank Merger Act.

Centennial, the only bank subsidiary of Home Bancshares, Inc., has total assets of approximately \$3.8 billion and operates in Arkansas and Florida, controlling total deposits of approximately \$3.0 billion.⁴ Gulf State, with total assets of approximately \$117 million, operates only in Florida, controlling deposits of approximately \$116 million. On consummation of the proposal, Centennial would become the 34th largest insured depository institution in Florida, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of total deposits in Florida.

Interstate Analysis

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.⁵ For purposes of the Riegle-Neal Act, the home state of Centennial is Arkansas, and the home state of Gulf State is Florida.⁶ The Riegle-Neal Act provides an exception to certain requirements of section 102 of the act for merger transactions involving banks in default or in danger of default.⁷ The proposal complies with all other requirements of the Riegle-Neal Act. Accordingly, approval of the proposed transaction is consistent with the Riegle-Neal Act.

Competitive Considerations

The Board has considered carefully the competitive effects of the proposal in light of the facts of record. The Bank Merger 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 Bank Merger Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community served.⁸

Centennial and Gulf State compete directly in two Florida banking markets: the Tallahassee banking market and the Franklin County banking market.⁹ 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 financial condition of Gulf State and the fact that the Florida Office of Financial Regulation (“FOFR”) has placed

³ 12 U.S.C. § 1828(c)(3).

⁴ These data reflect Centennial's recent acquisitions of Bayside Savings Bank, Coastal Community Bank, and Wakulla Bank, all of Florida. For purposes of this order, insured depository institutions include commercial banks, savings banks, and savings associations.

⁵ See 12 U.S.C. § 1831u.

⁶ 12 U.S.C. § 1831u(a)(4) and (g)(4).

⁷ 12 U.S.C. § 1831u(e). The excepted requirements include provisions relating to the application and approval process.

⁸ 12 U.S.C. § 1828(c)(5).

⁹ The Tallahassee banking market is defined as Gadsden, Jefferson, Leon, and Wakulla counties, Florida. The Franklin County banking market is defined as Franklin County, Florida.

the bank in FDIC receivership. In addition, the FDIC, as receiver for Gulf State, has selected Centennial's bid for Gulf State in accordance with the least-cost resolution requirements in the Federal Deposit Insurance Act.¹⁰

Under the proposal, Centennial would purchase the assets and assume the liabilities of Gulf State and thereby merge Gulf State's businesses into a viable, going concern with demonstrated capital strength and management capability. Centennial's proposal would continue the availability of credit opportunities and banking services to the customers and communities that Gulf State served and would avoid serious economic disruption to Gulf State depositors. The FDIC actively solicited bids for Gulf State and selected Centennial's proposal under the procedures specified by Congress in the Federal Deposit Insurance Act for resolving failed banks.¹¹ The FDIC considered this proposal and determined that Centennial's bid represented the lowest cost to the Deposit Insurance Fund. On this basis, the Centennial proposal is the only means before the Board of achieving the public benefits discussed above.

Under these circumstances, and after careful consideration of all the facts of record, the Board concludes that the anticompetitive effects of this proposal in the relevant markets are clearly outweighed in the public interest by the probable effect of the Centennial proposal in meeting the convenience and needs of the communities to be served in Florida.

Financial and Managerial Resources and Future Prospects

The Bank Merger 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 supervisory and examination information from the FOFR and federal banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Centennial.

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 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 also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial resources of the organizations involved in the proposal. Centennial is well capitalized and would remain so on consummation of the proposal. In addition, the parent holding company of Centennial, Home Bancshares, Inc., recently raised in a public offering approximately \$150 million in additional capital, of which a sufficient portion will be downstreamed to Centennial to support the proposed and future transactions. Based on its review of the record in this case, the Board finds that Centennial has sufficient financial resources to effect the proposal. As noted, the proposed

¹⁰ The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC's expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the deposit insurance fund of all possible methods. *See* 12 U.S.C. §§ 1821, 1822, and 1823(c)–(k). Centennial was the only bidder for Gulf State.

¹¹ *See* 12 U.S.C. §§ 1821, 1822, and 1823(c)–(k).

transaction is structured as a purchase of assets and assumption of liabilities from the FDIC as receiver.

The Board also has considered the managerial resources of Centennial. The Board has reviewed the examination records of Centennial, including assessments of its 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 FDIC, with both organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Centennial's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Centennial are consistent with approval under the Bank Merger Act, as are the other statutory factors.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger 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").¹² Centennial received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of May 4, 2009. Gulf State received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 1, 2006. After consummation of the proposal, Centennial plans to implement its CRA policies at the Gulf State branches and consumer lending operations acquired in the proposal.

As noted, the Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to Gulf State customers. Centennial has represented that consummation of the proposal would allow it to provide a broader range of financial products and services to the customers of Gulf State. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act. The Board's approval is specifically conditioned on compliance by Centennial with the commitments made to the Board in connection with the application and the conditions imposed in this order. These commitments and conditions 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 transaction may be consummated immediately but in no event 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 St. Louis, acting pursuant to delegated authority.

¹² 12 U.S.C. §§ 2901–2908.

By order of the Board of Governors, effective November 19, 2010.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Warsh,
Duke, Tarullo, and Raskin.

Robert deV. Frierson
Deputy Secretary of the Board