FEDERAL RESERVE SYSTEM

Wells Fargo & Company
San Francisco, California

Order Approving the Acquisition of a Bank Holding Company

Wells Fargo & Company ("Wells Fargo"), 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 Act (12 U.S.C. § 1842) to acquire First Commerce Bancshares, Inc., Lincoln, Nebraska ("First Commerce"); First Commerce Bancshares of Colorado, Inc., Colorado Springs, Colorado; and their wholly owned subsidiary banks. Wells Fargo also has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C.§§ 1843(c)(8) and 1843(j)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire First Commerce's nonbanking subsidiaries.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 18,996 (2000)). 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 sections 3 and 4 of the BHC Act.

Wells Fargo, with total consolidated assets of $222.3 billion is the seventh largest commercial banking organization in the United States, controlling 3.9 percent of total assets of insured commercial banks in the United

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[1] The subsidiary banks and nonbanking subsidiaries of First Commerce are listed in the Appendix.

States.[2] Wells Fargo operates a large network of subsidiary banks in 21 states, including Nebraska and Colorado.[3] Wells Fargo is the fourth largest commercial banking organization in Nebraska, controlling deposits of $1.8 billion, representing approximately 6.6 percent of total deposits in depository institutions in the state ("state deposits").[4] In Colorado, Wells Fargo is the largest commercial banking organization, controlling deposits of $8.8 billion, representing approximately 19.2 percent of state deposits. First Commerce, with total consolidated assets of $3.9 billion, also operates depository institutions in Nebraska and Colorado. It is the third largest commercial banking organization in Nebraska, controlling deposits of $1.8 billion, representing approximately 6.6 percent of state deposits. In Colorado, First Commerce is the 160th largest commercial banking organization, controlling deposits of $978,000, representing less than 1 percent of state deposits. On consummation of the proposal, and accounting for the proposed divestitures discussed in this order, Wells Fargo would become the second largest commercial banking organization in Nebraska, controlling deposits of $3.4 billion, representing approximately 12.4 percent of state deposits. Wells Fargo would remain the largest commercial banking organization in Colorado, controlling deposits of $8.8 billion.

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2 Asset data are as of December 31, 1999, and ranking data are as of December 31, 1999.

3 Wells Fargo operates in Arizona, California, Colorado, Idaho, Iowa, Illinois, Indiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

4 Deposit data are as of June 30, 1999. In this context, depository institutions include commercial banks, savings banks, and savings associations.

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 the bank holding company if certain conditions are met.[5] For purposes of the BHC Act, the home state of Wells Fargo is California, and First Commerce's subsidiary banks are located in Nebraska and Colorado.[6] All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[7] In view of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

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5 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 the company were the largest on July 1, 1966, or on the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

6 For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. NationsBank Corporation, 84 Federal Reserve Bulletin 858 (1998).

7 See 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). First Commerce's subsidiary banks have been in existence and continuously operated for the minimum period of time required under state law. See Neb. Rev. Stat. § 8-911 (five years); Colo. Rev. Stat. 11-6.4-103 (permits acquisition of a depository institution that has been in operation for less than five years when it is in conjunction with the acquisition of a Colorado bank holding company). In addition, on consummation of the proposal, Wells Fargo and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States, and would not exceed applicable deposit limitations as calculated under state law. See Neb. Rev. Stat. § 8-910 (14 percent); Colo. Rev. Stat. 11-6.4-103 (25 percent). Wells Fargo also meets the capital, managerial, and other requirements established under applicable law. In making this determination, the Board has relied on all the facts of record, including the views of the Colorado Division of Banking and the Nebraska Department of Banking and Finance concerning the permissibility of the proposed transaction under applicable state laws.

Competitive Considerations

The BHC Act prohibits the Board from approving an application under section 3 of the BHC Act if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a proposed combination that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effects of the proposal in meeting the convenience and needs of the community to be served.[8]

The Board has carefully reviewed the competitive effects of the proposal in the relevant banking markets in light of all the facts of record, including 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 the companies involved in this transaction,[9] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"), and other characteristics of the markets.[10]

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[8] 12 U.S.C. § 1842(c).

[9] Market share data are as of June 30, 1999, and are based on calculations that include the deposits of thrift institutions 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 has regularly included thrift deposits in the calculation of market share on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[10] Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market in which the post merger HHI is more than 1800 is considered highly concentrated.

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Wells Fargo and First Commerce compete directly in four banking markets: Adams County,[11] Hall County,[12] and Lincoln,[13] all in Nebraska; and Colorado Springs, Colorado.[14] Consummation of the proposal without divestitures would be consistent with the DOJ Guidelines and Board precedent in the Colorado Springs and Hall County banking markets.[15]

Wells Fargo's subsidiary bank, Norwest Bank Nebraska, N.A., Omaha, Nebraska ("Norwest Bank Nebraska"), is the largest depository institution in the Adams County banking market and controls deposits of $165.3 million,

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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 by 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.

[11] The Adams County banking market is defined as Adams County, Nebraska.

[12] The Hall County banking market is defined as Hall County, Nebraska.

[13] The Lincoln banking market is defined as Lancaster County, Nebraska.

[14] The Colorado Springs banking market is defined as El Paso and Teller Counties, Colorado.

[15] On consummation of the proposal, Wells Fargo's subsidiary bank, Norwest Bank Colorado, N.A., Denver, Colorado, would remain the largest depository institution in the Colorado Springs banking market and control $700.3 million in deposits, representing 22.7 percent of market deposits. The HHI would increase one point to 961. In the Hall County banking market, Wells Fargo's subsidiary bank, Norwest Bank Nebraska, N.A., Omaha, Nebraska, would become the largest depository institution in the market and control $223.1 million in deposits, representing 27.3 percent of market deposits. The HHI would increase 171 points to 1591.

representing 34.3 percent of market deposits. In order to mitigate the potential anticompetitive effects of the proposal in this market, Wells Fargo has committed to divest City National Bank and Trust Company, Hastings, Nebraska, which controls all of First Commerce's deposits in the market ($135.4 million), to a purchaser that does not currently compete in the market. Accordingly, the HHI for the market would remain unchanged at 2353, and consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines.

In the Lincoln banking market, Wells Fargo has committed to sell one branch that controls $94.7 million in deposits to a commercial bank that currently operates in the market.[16] On consummation of the proposal, and accounting for the proposed divestiture, Norwest Bank Nebraska, would become the largest depository institution in the market, controlling deposits of $1.1 billion, representing approximately 39.5 percent of market deposits. The HHI would increase 234 points to 2282.

In reviewing the competitive effects of this proposal, the Board has considered that several factors appear to mitigate the likely effect of the proposal on competition in the Lincoln banking market, in particular, the number and size of competing institutions in the banking market. Seventeen depository institutions

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[16] In each market in which Wells Fargo has committed to divest offices to mitigate the anticompetitive effects of the proposal, Wells Fargo has committed to execute sales agreements for the proposed divestitures with a purchaser determined by the Board to be competitively suitable, within 180 days of consummation of the Proposal. Wells Fargo also has committed that, if it is unsuccessful in completing any divestiture within 180 days of consummation, it will transfer the unsold offices to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the offices promptly to one or more alternative purchasers acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

besides Norwest Bank Nebraska would remain in the market after the proposed acquisition. Two of these organizations would each control more than 14 percent of market deposits. The market also appears to be attractive for entry by out-of-market competitors. From 1990 to 1999, the population of the Lincoln banking market increased by 10.9 percent, compared with an increase of 9.1 percent in the population of Omaha, the other metropolitan area in Nebraska, and a 5.7 percent increase in population for the state as a whole. From 1999 to 2004, Lincoln's population is expected to continue to increase at almost twice the state rate.[17]

The Department of Justice has conducted a detailed review of the proposal and advised the Board that, conditioned on completion of the proposed divestitures in the Adams County and Lincoln banking markets, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation also have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, and for the reasons discussed in this order, the Board concludes that consummation of the proposal would not likely result in a significantly adverse effect on competition or on the concentration of banking resources in any of the banking markets in which Wells Fargo and First Commerce directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, and subject to completion of the proposed divestitures and compliance with the related commitments, the Board has determined that competitive factors are consistent with approval of the proposal.

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[17] Rand McNally Commercial Atlas & Marketing Guide (2000).

Other Considerations

The BHC Act requires the Board, in acting on an application, to consider the financial and managerial resources and future prospects of the companies and banks involved, the convenience and needs of the communities to be served, and certain supervisory factors. The Board has reviewed these factors in light of the record, including supervisory reports of examination assessing the financial and managerial resources of the organizations and financial information provided by Wells Fargo. Based on all the facts of record, the Board concludes that the financial and managerial resources and the future prospects of Wells Fargo, First Commerce, and their respective subsidiary banks are consistent with approval, as are the other supervisory factors the Board must consider under section 3 of the BHC Act. In addition, considerations related to the convenience and needs of the communities to be served, including the records of performance of the institutions under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.), are consistent with approval of the proposal.

Nonbanking Activities

Wells Fargo has filed notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire First Commerce's wholly owned nonbanking subsidiaries and thereby engage in a number of nonbanking activities. The Board has determined by regulation that extending credit and servicing loans, providing financial and investment advisory services, certain insurance agency and underwriting activities, and data processing activities are closely related to banking for purposes of the BHC Act.[18] Moreover, the Federal Reserve System previously has approved applications by First Commerce to engage in all the proposed activities. Wells

[18] See 12 C.F.R. 225.28(b)(1), (6), (11)(i), and (14).

Fargo has committed to conduct these nonbanking activities in accordance with the limitations set forth in Regulation Y and the Board's orders and interpretations.

In order to approve this notice, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of the nonbanking subsidiaries of First Commerce by Wells Fargo "can reasonably be expected to produce benefits to the public … that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[19]

As part of its evaluation of these factors, the Board considers the financial and managerial resources of Wells Fargo and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of Wells Fargo's proposed acquisition of the nonbanking subsidiaries of First Commerce in light of all the facts of record. Most of the markets in which the nonbanking subsidiaries of First Commerce and Wells Fargo directly compete are national or regional in scope and are unconcentrated, and there are numerous providers of all of these services. One of First Commerce's nonbanking subsidiaries originates mortgages in the Lincoln, Nebraska market. There are numerous competitors in the market for mortgage originations in Lincoln, and there are few barriers to entry. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for all these services. Based on all the facts of

[19] 12 U.S.C. § 1843(j)(2)(A).

record, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the nonbanking acquisitions proposed in this transaction.

The Board also expects that the proposed transaction would give Wells Fargo an increased ability to serve the needs of its customers. In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments are consistent, as in this case, with the relevant considerations under the BHC Act.

The Board also concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under section 4(j)(2)(A) of the BHC Act is favorable and consistent with approval of this proposal.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved. Approval of the application and notice is specifically conditioned on compliance by Wells Fargo with all the commitments made in connection with the proposal and with the conditions stated or referred to in this order, including Wells Fargo's divestiture commitments. The Board's determination on the nonbanking activities also is subject to all the terms and conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this transaction, the commitments and conditions referred to in this order 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.

The acquisition of the subsidiary banks of First Commerce shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,[20] effective May 30, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

[20] This action was taken pursuant to the Board's Rules Regarding Delegation of Authority (12 C.F.R. 265.4(b)(1)) by a committee of Board members. Voting for this action: Governors Kelley, Meyer, and Gramlich. Absent and not voting: Chairman Greenspan and Vice Chairman Ferguson.

APPENDIX

Subsidiary Banks of First Commerce

City National Bank and Trust Company, Hastings, Nebraska

First Commerce Bank of Colorado, N.A., Colorado Springs, Colorado

First National Bank and Trust Company of Kearney, Kearney, Nebraska

National Bank of Commerce Trust and Savings Association, Lincoln, Nebraska

The First National Bank of McCook, McCook, Nebraska

The First National Bank of West Point, West Point, Nebraska

The Overland National Bank of Grand Island, Grand Island, Nebraska

Western Nebraska National Bank, North Platte, Nebraska

Nonbanking Subsidiaries of First Commerce

(1) Cabella's Card, LLC; Community Mortgage Corp.; and First Commerce Mortgage, Inc., all in Lincoln, Nebraska, which extend credit and service loans in accordance with section 225.28(b)(1) of Regulation Y (12 C.F.R. 225.28(b)(1)).

(2) First Commerce Investors, Inc., Lincoln, Nebraska, which provides financial and investment advisory services in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)).

(3) Commerce Affiliated Life Insurance Co., Lincoln, Nebraska, which engages in credit related insurance agency and underwriting activities in accordance with section 228.28(b)(11)(i) of Regulation Y (12 C.F.R. 225.28(b)(11)(i)).

(4) First Commerce Technology, Inc., Lincoln, Nebraska, which provides data processing services in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14)).