

Legal Developments

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

*AllNations Bancorporation, Inc.
Shawnee, Oklahoma*

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank

AllNations Bancorporation, Inc. (“AllNations”) has requested the Board’s approval under section 3(a)(1) of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. §1842(a)(1)) to become a bank holding company by acquiring all the voting shares of The First National Bank of Calumet, Calumet, Oklahoma (“Calumet Bank”). AllNations is wholly owned by the Absentee Shawnee Tribe of Indians of Oklahoma (“Tribe”), a Native-American tribe.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (68 *Federal Register* 35,411 (2003)). The time for filing comments has expired, and the Board has considered all the comments received on the application in light of the factors enumerated in section 3 of the BHC Act.

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 a monopoly in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition 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.¹

AllNations is a newly organized corporation that does not control a depository institution and has been formed to acquire Calumet Bank. Calumet Bank is the 261st largest depository institution in Oklahoma,² controlling \$16.5 million in deposits, representing less than 1 percent of total deposits in the state.³ The Board has reviewed carefully all the facts of record and has concluded that consumma-

tion of the proposal likely would not have a significantly adverse effect on competition or on concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors are consistent with approval of the proposal.

Section 3 of the BHC Act also requires the Board to consider the effect of the transaction on the convenience and needs of the community to be served.⁴ In evaluating this factor, the Board places particular emphasis on the ratings received by the depository institutions involved in a proposal at their most recent examinations under the Community Reinvestment Act (12 U.S.C. §2901 *et seq.*) (“CRA”). Calumet Bank received a “satisfactory” CRA rating from its primary federal supervisor, the Office of the Comptroller of the Currency (“OCC”), as of May 3, 1999.

AllNations has stated that it intends to retain the bank’s current retail banking activities in the Calumet community and to offer retail banking services to Tribe and other Native-American tribes. After reviewing all the information submitted by AllNations and Calumet Bank related to the convenience and needs factor and based on all the facts of record, the Board concludes that considerations relating to convenience and needs are consistent with approval.

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 a bank acquisition proposal as well as the principal shareholders.⁵ As part of this analysis, the Board has reviewed confidential examination information about Calumet Bank and publicly reported financial and other information about the bank, AllNations, and the proposal. The Board has also considered confidential supervisory and other information provided by the OCC, the primary federal supervisor for Calumet Bank. In addition, the Board has reviewed AllNations’s operating plan for Calumet Bank and the proposed management of AllNations and the bank. The Board also has taken into account the financial resources of AllNations, including its capital levels and ability to serve as a source of strength to the bank.

The principal shareholder of AllNations is Tribe.⁶ Tribe has acknowledged that its interest in and relationship with

4. 12 U.S.C. §1842(c)(2).

5. 12 U.S.C. §1842(c).

6. The stock of AllNations will be voted by the Governor of Tribe in his official capacity. The Board previously has recognized that Native-American tribes such as Tribe are considered domestic sovereigns and are excluded from the BHC Act’s definition of “company.” *E.g., Mille Lacs Bancorporation*, 82 *Federal Reserve Bulletin* 336

1. 12 U.S.C. §1842(c)(1)(A) and (B).

2. In this context, the term “depository institution” includes commercial banks, savings banks, and savings associations.

3. The deposit and ranking data are as of June 30, 2002.

AllNations and Calumet Bank would be subject to federal banking laws. It has made commitments to ensure that Tribe's status as a domestic sovereign does not impede the ability of the federal banking agencies to supervise and enforce banking laws against any entity related to or affiliated with AllNations and Calumet Bank. Tribe also has acknowledged the jurisdiction of the Board to enforce compliance with applicable banking laws and has agreed to the federal courts' jurisdiction to enforce these laws. In addition, Tribe has committed that the tribe and its affiliates will make available the information on their operations and activities necessary for the Board to determine and enforce compliance with applicable federal banking laws. After considering all the facts of record, including all commitments made in connection with this proposal, the Board concludes that the financial and managerial resources and future prospects of AllNations and Calumet Bank are consistent with approval, as are the other supervisory factors the Board is required to consider under the BHC Act.

Based on the foregoing and after considering all the 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 AllNations, Tribe, and all affiliated entities with the commitments and representations made in connection with the application, including the commitments described 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 and, as such, may be enforced in proceedings under applicable law.

The acquisition of Calumet Bank may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may 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 Kansas City, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 12, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

(1996). Four bank holding companies are wholly owned by Native-American tribes. See *Bay Bancorporation*, 81 *Federal Reserve Bulletin* 791 (1995); *Mille Lacs Bancorporation*, *supra*; *Native American Bancorporation*, 87 *Federal Reserve Bulletin* 747 (2001); *Chickasaw Banc Holding Company*, 88 *Federal Reserve Bulletin* 99 (2002).

The Desjardins Group
Montreal, Canada

Federation des caisses Desjardins du Quebec
Levis, Canada

La Caisse centrale Desjardins du Quebec
Montreal, Canada

Desjardins FSB Holdings, Inc.
Wilmington, Delaware

Order Approving the Formation of Bank Holding Companies

The Desjardins Group, Montreal; Federation des caisses Desjardins du Quebec, Levis ("The Federation"); La Caisse centrale Desjardins du Quebec, Montreal ("CCD"), all in Canada; and Desjardins FSB Holdings, Inc., Wilmington, Delaware ("Desjardins Holdings"), have requested the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) ("BHC Act") to become bank holding companies. Applicants propose to convert their wholly owned subsidiary federal savings bank, Desjardins Federal Savings Bank, Hallandale, Florida ("Desjardins FSB"), to a national bank that would operate as Desjardins Bank, N.A. ("Desjardins Bank"), also in Hallandale.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 *Federal Register* 39,091 (2003)). 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.

The Desjardins Group is a cooperative network of financial institutions operating primarily in the province of Quebec, Canada, that functions in many respects as a single financial organization. It includes approximately 750 depository institutions ("caisses"); the Federation and CCD, also depository institutions under Quebec law; and nonbanking companies engaged in securities, asset management, and insurance activities in Canada. Quebec law controls the structure and supervision of the Desjardins Group, The Federation and CCD, and the caisses.

The caisses are autonomous depository institutions chartered as savings and credit cooperatives and are required by Quebec law to be members of The Federation.¹ Together, the caisses control all the shares of The Federation, and the boards of directors of The Federation are elected by the caisses.² Quebec law requires The Federation to act as the coordinating and supervisory body for all the caisses. The Federation is responsible for the auditing and inspection of the caisses and is the regulatory authority

1. The principal activity of the caisses is accepting deposits from members of the caisses and investing in designated assets, including extensions of credit to those members, primarily through mortgage loans. Membership is typically based on geographical areas or common workplaces or professions.

2. Approximately 80 of the 750 caisses are located outside Quebec and are auxiliary, nonvoting members of The Federation.

for the caisses, particularly with respect to their capital adequacy, general reserves, liquid assets, and credit and investment activities. The Federation also is the holding company for CCD and the nonbanking companies of the Desjardins Group. CCD primarily provides clearing services and funding for the caisses and The Federation, and it directly holds all the shares of Desjardins Holdings, the parent company of Desjardins FSB.

The Desjardins Group prepares consolidated financial statements and has total consolidated assets equivalent to approximately \$67 billion. It is the largest financial organization in Quebec and the sixth largest in Canada.³ Desjardins Bank would be the 200th largest banking organization in Florida, controlling total deposits of \$74.6 million, which represents less than 1 percent of total deposits in depository institutions in the state.⁴ On consummation of the proposed conversion, the Desjardins Group would be a qualifying foreign banking organization.

Competitive and Convenience and Needs 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. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition 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.⁵

The proposal involves a charter conversion from a savings association to a bank. The proposed charter conversion would result in neither an expansion of operations nor the acquisition of an additional depository institution in the United States. 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 banking resources in any relevant banking market, and that competitive considerations are consistent with approval.

The Board also is required to consider the convenience and needs of the community to be served by the depository institutions involved in a proposal, including their records of performance under the Community Reinvestment Act (“CRA”).⁶ Desjardins FSB received an “outstanding” CRA performance rating from the Office of Thrift Supervision (“OTS”) at its most recent examination, as of September 2001. Based on this rating and other facts of record, the Board concludes that considerations related to the convenience and needs of the communities to be served are consistent with approval of this proposal.

3. Asset data are as of June 30, 2003, and are based on exchange rates then in effect.

4. Deposit and ranking data are as of June 30, 2002. In this context, depository institutions include commercial banks, savings banks, and savings associations.

5. 12 U.S.C. § 1842(c).

6. 12 U.S.C. § 2901 *et seq.*

Financial, Managerial, and Supervisory Considerations

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in a bank acquisition proposal. In assessing the financial and managerial strength of the Desjardins Group and its affiliates, the Board has reviewed information concerning the proposal and the condition of the Desjardins Group and the entities that comprise the Desjardins Group, including information described below, from the appropriate home country authority that supervises the Desjardins Group, The Federation, and CCD; financial information from the Desjardins Group, The Federation, CCD, Desjardins Holdings, and Desjardins FSB; and reports of examination from the OTS assessing the financial and managerial resources of the organizations’ U.S. operations. The Desjardins Group’s capital levels exceed the minimum levels that would be required under the Basel Capital Accord and are considered equivalent to the capital levels that would be required of a United States banking organization under similar circumstances. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in this proposal are consistent with approval.

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.”⁷ 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.⁸ The Board’s Regulation K provides that a foreign bank may be considered to be subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the home country supervisor receives sufficient information on the foreign bank’s worldwide operations, including the bank’s relationship to any affiliate, to assess the bank’s overall financial condition and compliance with law and regulation.⁹ For purposes of the proposal, this determination is being made for The Federation and CCD.

The Inspector General of Financial Institutions in

7. 12 U.S.C. § 1842(c)(3)(B).

8. 12 C.F.R. 225.13(a)(4).

9. In making this determination, the Board considers, among other factors, the extent to which the home country supervisor:

- (a) ensures that the bank has adequate procedures for monitoring and controlling its activities worldwide;
- (b) obtains information on the condition of the bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;
- (c) obtains information on the dealings and relationships between the bank and its affiliates, both foreign and domestic;
- (d) receives 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;
- (e) evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. *See* 12 C.F.R. 211.24(c)(1)(ii).

Quebec, an agency official under the jurisdiction of Quebec's Ministry of Finance, is the supervisor for The Federation and CCD.¹⁰ In this capacity, the Inspector General directly supervises and examines The Federation and CCD and oversees The Federation's direct supervision and examination of the caisses. The Inspector General is responsible for developing regulations to govern The Federation and CCD, and The Federation, with the concurrence of the Inspector General, is responsible for developing standards for the caisses. Prudential regulations and standards address capital adequacy,¹¹ asset classification and provisioning, single-borrower exposures, liquidity, equity investments, and transactions with affiliates.¹² Quebec law vests the Inspector General with a range of enforcement powers to ensure compliance with these regulations and standards.¹³

The Inspector General conducts annual on-site examinations of The Federation and CCD that include risk management systems, financial condition, policies and practices, internal control systems, and regulatory compliance. The examinations of The Federation also include an assessment of its responsibility for supervising and auditing the caisses. The examinations of CCD focus on asset quality, earnings, capital, and information systems. The Inspector General may conduct additional targeted examinations of The Federation or CCD as the Inspector General deems necessary.

The Federation and CCD provide the Inspector General with annual financial statements. In addition, The Federation files with the Inspector General quarterly reports on its capital adequacy and liquidity, as well as financial results on a stand-alone basis and as consolidated with the caisses.

10. As noted above, Quebec law governs the establishment, operation, and activities of the caisses, The Federation, and CCD. These entities are supervised by the Inspector General, and Canada's federal supervisor of financial institutions, the Office of the Supervisor of Financial Institutions ("OSFI"), has no role in supervising the caisses, The Federation, or CCD. Certain of the nonbanking subsidiaries in the Desjardins Group, however, are regulated by both OSFI and the authorities of the various Canadian provinces in which they operate.

11. Quebec law requires the Desjardins Group on a consolidated basis to meet Basel capital guidelines as set forth by the Inspector General, which require a total risk-based capital ratio of 8 percent. The caisses have agreed to maintain CCD's total risk-based capital ratio at 8.5 percent and its capital-to-liabilities ratio at a minimum of 5 percent, whichever is higher. Each caisse is required by The Federation to maintain capital levels at least equal to the greater of 5.5 percent of growth assets or 8.8 percent of risk-weighted assets.

12. Regulations and standards generally require that transactions with affiliates be on arm's-length terms.

13. As of February 1, 2004, the entities of the Desjardins Group supervised by the Inspector General will be supervised by a newly created single financial regulator, the National Agency for Regulation of the Financial Sector. This entity was created under a Quebec statute enacted in December 2002 that mandates the merger of five administrative bodies, including the Inspector General, into a new agency under the auspices of the Quebec Ministry of Finance. The functions now performed by the Inspector General will be performed by the Solvency Regulation Directorate, one of seven directorates that will report to the new agency head. Inspector General personnel are to be transferred to the new agency.

CCD also files with the Inspector General quarterly reports on related-party and affiliate transactions.

The Bureau of Supervision and Financial Security, a bureau in The Federation, evaluates the operations and financial condition of the caisses through on-site examinations and off-site reviews. On-site examinations of each caisse are conducted at least every 18 months and focus on a review of financial policies and practices, asset quality and capital adequacy, management, internal control systems, and compliance with governing laws and standards. Examination results are reported to the Inspector General and to the board of directors of the caisse. The Federation also receives periodic reports from each caisse, including information relating to interest-rate-risk exposure, major loans and other significant risks acquired by the caisse, loan loss provision, credit management, and annual and monthly financial statements. Inspector General and Federation representatives meet periodically to discuss financial and supervisory information on the caisses.

The Federation oversees and coordinates the operations of all the entities that comprise the Desjardins Group in various other ways, including director interlocks, policies and procedures, regular internal reporting requirements, conduct of internal audits, reviews of internal and external audit results, and on-site examinations. The Federation uses and would continue to use these means for overseeing the activities and operations of Desjardins Bank.

The Federation establishes internal audit policies, procedures, and plans for the entities that comprise the Desjardins Group, which are subject to review by the Inspector General. An office of the Bureau of Supervision and Financial Security conducts audits of the caisses, verifying financial statements and assessing, among other things, the adequacy of internal controls. Another office of the bureau audits The Federation and ensures that the activities, products, and services of the Desjardins Group's entities are consistent with The Federation's operational and strategic plans. CCD and the nonbanking subsidiaries of The Federation have their own internal auditors. All internal audit results are provided to the Inspector General. In addition, The Federation provides the Inspector General with periodic reports on the activities of auditing staff.

The Desjardins Group, The Federation, and CCD also undergo annual external audits. External auditors must be members in good standing of a professional association of accountants and must comply with the auditing standards of the Canadian Institute of Chartered Accountants. External auditors must attest to the accuracy of financial statements and report on situations or transactions contrary to sound and prudent management or applicable laws or regulations. All external audit results are provided to the Inspector General. External auditors, internal auditors, and Inspector General representatives meet periodically to share information.

The Inspector General assesses the Desjardins Group through its direct supervision of The Federation and CCD and through a review of information, including examina-

tion reports, developed by The Federation on the individual caisses. The Desjardins Group regularly provides the Inspector General with financial information, on a consolidated and unconsolidated basis, as well as with a copy of the Desjardins Group's annual report and business plans, bylaws, and similar corporate information on entities comprising the Desjardins Group.

The Inspector General has direct supervisory responsibility for the insurance and trust subsidiaries of The Federation. The securities-related subsidiaries are supervised by a separate Quebec securities regulator. For purposes of supervising The Federation, the Inspector General may examine or investigate any subsidiary of The Federation, if deemed necessary, and has the authority to require special audits and may appoint an external auditor. The Inspector General shares supervisory information with other regulators that exercise jurisdiction over the subsidiaries of The Federation.

For the reasons set forth above, and based on all the facts of record, the Board concludes that The Federation and CCD are subject to comprehensive supervision on a consolidated basis by their home country supervisors, and that supervision of the Desjardins Group is consistent with approval.

Section 3 of the BHC Act also requires the Board to determine that a foreign bank 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.¹⁴ The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which the entities that comprise the Desjardins Group operate and has communicated with relevant government authorities concerning access to information. In addition, the Desjardins Group, The Federation, and CCD have committed to make available to the Board such information on the operations of the Group, including all affiliated entities, that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law and to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable these entities to make such information available to the Board. In addition, subject to certain conditions, the Inspector General may share information on the Desjardins Group's operations with other supervisors, including the Board.

In light of the commitments provided by the Desjardins Group, The Federation, and CCD, and other facts of record, the Board concludes that the Desjardins Group has provided adequate assurances of access to any necessary information the Board may request. For these reasons, and based on all the facts of record, the Board concludes that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

14. See 12 U.S.C. § 1842(c)(3)(A); 12 C.F.R. 225.13(a)(3).

Conclusion

Based on the foregoing, the Board has determined that the applications should be, and hereby are, approved. In reaching this conclusion, the Board 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 conditioned on compliance by the Desjardins Group, The Federation, CCD, and Desjardins Holdings with all commitments made in connection with the applications, and specifically the commitments on access to information and on the Board's receiving access to information on the operations or activities of the Desjardins Group and the entities that comprise the Desjardins Group that the Board determines to be appropriate to determine and enforce compliance with applicable federal statutes. All the commitments and conditions on which the Board has relied in granting its approval, including the commitments and conditions specifically described above, are conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The transaction shall not be consummated before the fifteenth 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 4, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

The PNC Financial Services Group, Inc.
Pittsburgh, Pennsylvania

PNC Bancorp, Inc.
Wilmington, Delaware

Order Approving the Acquisition of a Bank Holding Company and Merger of Bank Holding Companies

The PNC Financial Services Group, Inc. ("PNC Financial"), 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 (12 U.S.C. § 1841 *et seq.*), to acquire all the voting shares of United National Bancorp ("United National"), and thereby indirectly acquire UnitedTrust Bank, both in Bridgewater, New Jersey. PNC Bancorp, Inc. ("PNC Bancorp"), a bank holding company controlled by PNC Financial, also has requested the Board's approval to merge with United National.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published

(68 *Federal Register* 55,057 (2003)). 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.

PNC Financial, with total consolidated assets of approximately \$72.3 billion, is the 20th largest commercial banking organization in the United States. PNC Financial's subsidiary depository institutions operate in Delaware, Florida, Indiana, Kentucky, New Jersey, and Pennsylvania. In Pennsylvania, PNC Financial is the largest commercial banking organization, controlling \$24.4 billion in deposits, representing approximately 13 percent of total deposits in depository institutions in the state ("state deposits").¹ In New Jersey, PNC Financial is the third largest commercial banking organization, controlling \$13.3 billion in deposits, representing 7.2 percent of state deposits.

United National also operates a subsidiary depository institution in Pennsylvania and New Jersey. In Pennsylvania, United National is the 142nd largest commercial banking organization, controlling deposits of approximately \$155 million, representing less than 1 percent of state deposits. In New Jersey, United National is the 19th largest commercial banking organization, controlling \$1.5 billion in deposits, representing less than 1 percent of state deposits. On consummation of this proposal, PNC Financial would remain the largest commercial banking organization in Pennsylvania, controlling deposits of approximately \$24.6 billion, representing approximately 13 percent of state deposits, and the third largest commercial banking organization in New Jersey, controlling deposits of \$14.5 billion, representing approximately 8 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.² For purposes of the BHC Act, the home state of PNC Financial is Pennsylvania, and UnitedTrust Bank is located in New Jersey and Pennsylvania.³ Based on a review of all the facts of record, including relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁴ In light of all the facts of record, the Board is

1. Asset, deposit, and ranking data are as of June 30, 2002. In this context, depository institutions include commercial banks, savings banks, and savings associations.

2. A bank holding company's home state is that state in which the total deposits of all banking subsidiaries of such company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C).

3. 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, headquartered, or operates a branch.

4. See 12 U.S.C. § 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). PNC Financial is adequately capitalized and adequately managed, as defined by applicable law. In addition, on consummation of the proposal, PNC Financial would control less than 10 percent of the

permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposed 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.⁵

PNC Financial and United National compete directly in the Lehigh Valley, Pennsylvania, and Metropolitan NY–NJ–PA–CT ("New York") banking markets.⁶ Neither market is concentrated, and numerous competitors would remain in these markets after consummation of the transaction. Consummation of the proposal would also be consistent with the Department of Justice Merger Guidelines ("DOJ Guidelines").⁷ PNC Financial would remain the fourth largest commercial banking organization in the Lehigh Valley banking market, controlling deposits of \$661.5 million, representing 8.1 percent of total deposits in depository institutions in the market ("market deposits"),⁸

total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total deposits of insured depository institutions in each of New Jersey and Pennsylvania. See N.J. Stat. Ann. § 17:9A-413 (2003). New Jersey and Pennsylvania do not have minimum age requirements applicable to the proposal.

5. 12 U.S.C. § 1842(c)(1).

6. The Lehigh Valley banking market is defined as Carbon, Lehigh, and Northampton Counties in Pennsylvania. The New York banking market is defined as New York City; Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties, and portions of Mercer County, all in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties, all in Connecticut.

7. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is below 1000, and a market is considered moderately concentrated if the post-merger HHI is between 1000 and 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 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.

8. Market share data are as of June 30, 2003, 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 Board* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

and the HHI would increase 24 points to 1193. PNC Financial would become the seventh largest commercial banking organization in the New York banking market, controlling deposits of approximately \$12.2 billion, representing 2.2 percent of market deposits, and the HHI would increase 2 points to 981.

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 banking resources in any relevant banking market, and that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

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, among other things, confidential reports of examination, other confidential supervisory information received from the primary federal banking agency that supervises each institution, and public comments.⁹ PNC Financial is and will remain well capitalized on consummation of the proposal. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of PNC Financial, PNC Bancorp, United National, and the institutions involved are consistent with approval, as are the other supervisory factors under the BHC Act.¹⁰

9. A commenter expressed concerns about PNC Financial's managerial record in light of recent enforcement actions against the organization, including enforcement actions by the Department of Justice ("DOJ"), Federal Reserve Bank of Cleveland ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"). The enforcement actions required PNC Financial to implement risk management systems, internal controls, and compliance procedures to ensure the continued safe and sound operation of the PNC Financial organization. PNC Financial has developed a new ethics policy and training program, an enterprisewide risk management program, and enhanced credit administration procedures, internal controls, and corporate governance procedures. After a careful review of PNC Financial's efforts to meet the requirements of the enforcement actions, the Federal Reserve and the OCC terminated their respective Written Agreements in September 2003.

In announcing its deferred prosecution agreement in June 2003, the DOJ noted that PNC Financial and PNC ICLC Corp., also in Wilmington, the PNC Financial affiliate involved in the transactions that gave rise to the enforcement actions, had fully accounted for their behavior in the transactions by providing for restitution to victims, acknowledging responsibility for the conduct of the organization, demonstrating compliance with securities law and generally accepted accounting principles, and pledging continued cooperation with respect to investigations of the transactions. The Board has reviewed the managerial factors in this case in light of the enforcement actions and the steps taken by PNC Financial to address these issues. The Board will carefully monitor PNC Financial's efforts to comply with its agreement with the DOJ and its efforts to meet the Board's standards.

10. The commenter also expressed concern about allegations of wrongful termination and employment discrimination by former employees of PNC Bank, National Association, Pittsburgh, Pennsylvania ("PNC Bank"). These contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See *Western Banc-*

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").¹¹ The CRA requires the federal financial supervisory agencies to encourage financial 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals. In reviewing the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of PNC Financial and United National, the Board also has carefully considered public comments submitted in connection with this proposal that criticize PNC Financial's lending record with respect to minorities and PNC Financial's failure to publicly identify the number and location of bank branches that it might close after consummation of this transaction.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations 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.¹²

PNC Financial's lead bank, PNC Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of April 15, 2002.¹³ PNC

shares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). The Board also notes that the Equal Employment Opportunity Commission has jurisdiction to determine whether banking organizations like PNC Financial are in compliance with federal equal employment opportunity statutes under the regulations of the Department of Labor.

11. 12 U.S.C. § 2901 *et seq.*

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

13. The overall rating for PNC Bank was a composite of its state/multistate ratings. In assigning an overall rating to PNC Bank, examiners weighted the bank's performance in some areas more heavily than others based on the percentage of the bank's overall deposits in those areas. In particular, approximately 88 percent of the deposits controlled by PNC Bank were in three areas, Pennsylvania, New Jersey, and the Philadelphia multistate Metropolitan Statistical Area ("MSA") ("Philadelphia MSA"). In evaluating PNC Bank's CRA performance, examiners considered the bank's residential mortgage lending reportable under the Home Mortgage Disclosure Act ("HMDA") (12 U.S.C. § 2801 *et seq.*) and its small business lending

Financial's other depository institution, PNC Bank, Delaware, New Castle, Delaware, also received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of January 24, 2000. UnitedTrust Bank, the only subsidiary depository institution controlled by United National, received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of March 4, 2002.

B. CRA Performance of PNC Bank

1. Lending Test

Overall, OCC examiners rated PNC Bank "high satisfactory" for lending, noting that the bank demonstrated excellent lending activity, with good distribution of loans across geographic boundaries and to various borrowers. PNC Bank's lending data also demonstrated strong community development lending for affordable housing, community services, and economic revitalization.

Pennsylvania. PNC Bank's lending rating for Pennsylvania also was "high satisfactory."¹⁴ The lending, investment, and service test ratings for PNC Bank for Pennsylvania were based primarily on the bank's performance in the two assessment areas that were subject to full-scope reviews, the Pittsburgh and Scranton/Wilkes-Barre ("Scranton") assessment areas, where approximately 77 percent of the bank's deposits in Pennsylvania were located. Examiners noted that PNC Bank's geographic distribution of loans was good. Examiners considered the volume of home mortgage lending by the bank to be excellent and the volume of small business lending to be good throughout PNC Bank's assessment areas. Community development lending also was found to have had a positive impact on PNC Bank's rating in Pennsylvania under the lending test. In the assessment areas subject to a full-scope review, PNC Bank originated or purchased approximately 61,600 small business, community development, and HMDA-reportable loans totaling approximately \$3.7 billion during the review period. Of the loans in these assessment areas, HMDA-reportable loans accounted for 47,488 loans totaling \$1.4 billion. In the rest of the state during the review period, PNC Bank originated or purchased 39,364 HMDA-reportable loans totaling approximately \$2.3 billion.

Examiners reported that the percentage of home purchase loans by PNC Bank in the Pittsburgh assessment area's low-income census tracts was comparable with the percentage of owner-occupied housing units in those

tracts. Examiners also noted that, in the Pittsburgh and Scranton assessment areas, the percentage of home purchase loans by PNC Bank in moderate-income census tracts was comparable with the percentage of owner-occupied housing units in those areas. Based on market share data for 2000 in the bank's Pittsburgh assessment area, PNC Bank ranked first for number of home purchase, home improvement, and home refinance loans. In the Scranton assessment area, PNC Bank ranked fifth for home purchase loans and first for home improvement and home refinance loans.

Examiners stated that PNC Bank had developed bank-wide lending programs that demonstrated flexibility in helping to meet the credit needs of the community, such as the Basic Loan Program, which offered expanded credit criteria, extended terms, and reduced minimum loan amounts to LMI borrowers seeking home equity installment loans, personal unsecured loans, and home equity lines of credit. The bank also had similar products tailored to its Pennsylvania assessment areas, including the Primary Access Mortgage Program, a home purchase loan program sponsored by the Urban Redevelopment Authority of Pittsburgh, and other partnerships with municipal governmental loan programs.

Examiners reported that PNC Bank originated 13,678 small loans to businesses totaling approximately \$1.7 billion in the Pennsylvania assessment areas subject to full-scope reviews during the review period. PNC Bank ranked fifth in the Pittsburgh assessment area and sixth in the Scranton assessment area, which examiners found commendable in light of the competition faced by the bank from large lenders that provided small business credit cards. Examiners also commented that PNC Bank's market share for small loans to businesses in low-income geographies in the Pittsburgh and Scranton assessment areas exceeded the bank's overall market share for this loan product in those assessment areas. In the rest of the state during the review period, PNC Bank originated 8,540 small loans to businesses totaling approximately \$888 million.

Examiners also concluded that PNC Bank demonstrated a good volume of loans to small businesses in the assessment areas receiving a full-scope review, because the bank's market share for loans to small businesses in the Pittsburgh and Scranton assessment areas exceeded its overall market share for small business loans in those assessment areas.

According to examiners, PNC Bank's community development lending record in Pittsburgh was good, and its record in Scranton was excellent. In these assessment areas, the bank originated 87 community development loans during the review period totaling \$87.9 million. For the same period, PNC Bank originated 27 community development loans totaling approximately \$21.2 million in the rest of Pennsylvania. Examiners favorably noted the bank's origination of small business loans for community development. These loans included \$4.3 million in construction financing to redevelop public housing in a low-income area in Pittsburgh and to develop 86 Hope VI

from January 1, 1998, through December 31, 2001, and the bank's community development lending from July 6, 1998, through December 31, 2001 (together, the "review period").

14. PNC Bank's ratings for Pennsylvania did not include data from the bank's branches in the Philadelphia MSA.

rental units, two-thirds of which will be affordable for LMI residents.¹⁵

New Jersey. PNC Bank also received a “high satisfactory” rating under the lending test in New Jersey.¹⁶ The lending, investment, and service test ratings for PNC Bank in New Jersey were based primarily on the bank’s performance in the two assessment areas that were subject to full-scope reviews, the Bergen–Passaic and Newark assessment areas, where approximately 48 percent of the bank’s deposits in New Jersey were located. Examiners concluded that PNC Bank’s performance under the lending test was good in the Bergen–Passaic assessment area and excellent in the Newark assessment area, where the bank demonstrated a high level of community development lending.

In the two assessment areas, PNC Bank originated or purchased approximately 27,400 small business, community development, and HMDA-reportable loans totaling approximately \$2.5 billion during the review period, of which 20,606 loans totaling approximately \$1.9 billion were HMDA-reportable. In the rest of the state during the review period, PNC Bank originated or purchased 27,966 HMDA-reportable loans totaling approximately \$2.4 billion. Examiners noted that the percentage of home purchase, home improvement, and home refinance loans by PNC Bank to LMI census tracts in the Bergen–Passaic assessment area significantly or substantially exceeded the percentage of owner-occupied units in this area. Examiners characterized the geographic distribution of these categories of loans as excellent. With respect to home purchase, home improvement, and home refinance loans in the Newark assessment area, examiners considered the bank’s geographic distribution to be adequate. In addition to offering its bankwide lending programs with flexible terms to meet the community’s credit needs, PNC Bank offered products that were tailored to the needs of its New Jersey assessment areas, such as Hurricane Floyd Loans and Micro Loans.¹⁷

Examiners reported that PNC Bank originated 6,795 small loans totaling \$578.5 million during the review period to businesses in the assessment areas subject to full-scope review. Examiners characterized the geographic distribution of these loans as excellent in both the Bergen–Passaic and Newark assessment areas. In the rest of the state during the review period, examiners reported that PNC Bank originated 6,194 small loans to businesses

totaling approximately \$613.1 million. In the Bergen–Passaic assessment area, the percentage of PNC Bank’s loans to small businesses in LMI census tracts significantly exceeded the percentage of small businesses in these tracts. In each of these assessment areas, PNC Bank’s market share of loans to small businesses was almost twice as large as its market share of loans to businesses of all sizes.

According to examiners, the level and type of community development lending by PNC Bank was responsive to the credit needs of the communities it served in its New Jersey assessment areas. In the assessment areas subject to full-scope review, PNC Bank originated 25 community development loans totaling \$55.9 million during the review period. In the rest of the state, PNC Bank originated 11 community development loans totaling approximately \$19.7 million during the review period. These loans included a \$15 million loan to the operator of a large apartment complex in a low-income community in Newark that provided housing for elderly or disabled LMI tenants, and a line of credit to provide working capital to a Bergen–Passaic community development corporation that administered programs beneficial to LMI individuals by providing housing, a men’s shelter, and job development and adult education programs.

Philadelphia MSA. PNC Bank’s lending rating for the Philadelphia MSA also was “high satisfactory,”¹⁸ with examiners commending PNC Bank’s geographic distribution of loans. PNC Bank originated or purchased 50,238 small business, community development, and HMDA-reportable loans totaling approximately \$3.9 billion in the Philadelphia MSA during the review period. Of the loans in this assessment area, 38,577 loans totaling approximately \$2.4 billion were HMDA-reportable. Examiners noted that PNC Bank’s market share for HMDA-reportable loans in LMI geographies was more than its overall market share for these loans in the assessment area. The bank’s percentage of home purchase loans in LMI census tracts exceeded the percentage of owner-occupied units in those geographies. In addition, the bank demonstrated a good distribution of HMDA-reportable loans to borrowers of all income levels.

PNC Bank offered bankwide and locally adapted loan products that demonstrated flexibility in meeting the credit needs of communities in the Philadelphia MSA. The local initiatives included PNC Bank’s Philadelphia Home Improvement Loan (“PHIL”) program, a program sponsored by the City of Philadelphia to provide home purchase loans with 3 percent interest rates and no home equity requirements to residents of LMI areas. During the review period, PNC Bank originated 233 of these loans, representing 61 percent of PHIL loans by all participating lenders.

Examiners stated that PNC Bank had a good volume and an excellent geographic distribution of small loans to businesses in the Philadelphia MSA. The bank originated 11,571 small loans to businesses totaling approximately

15. Hope VI is a Department of Housing and Urban Development program designed, in part, to lessen concentrations of poverty by placing public housing in nonpoverty neighborhoods and promoting mixed-income communities.

16. PNC Bank’s ratings for New Jersey did not include data from the bank’s branches in the Philadelphia MSA.

17. The Hurricane Floyd Loans were offered to New Jersey residents in the fall of 1999. These loans products included flexible underwriting criteria, below-market interest rates, and 90-day deferrals of initial payments. PNC Bank’s Micro Loans were offered in connection with the City of Paterson’s microlending program, in which a 50 percent guarantee by the city allowed small businesses in predominantly LMI communities to qualify for otherwise unavailable small loans.

18. PNC Bank’s Philadelphia MSA assessment area included the Philadelphia MSA, except Salem County, New Jersey.

\$1.4 billion during the review period. The percentage of small loans by PNC Bank to businesses in LMI geographies was comparable with the percentage of businesses in those geographies. The bank's market share of small loans to businesses in LMI areas was significantly greater than its market share for small loans to businesses in the Philadelphia MSA overall.

According to examiners, PNC Bank's community development lending in the Philadelphia MSA during the review period was considered good because it addressed a broad array of community needs. Examiners reported that PNC Bank originated 89 community development loans to 50 borrowers during the review period totaling \$28.4 million. Approximately 54 percent of these loans related to affordable housing, which had been an identified community credit need. A large number of the bank's community development loans also went to various nonprofit organizations that provided services to LMI individuals and families. Examiners noted that several of PNC Bank's community development loans were complex, and their structure required coordination among multiple lenders, community organizations, and governmental entities. The bank's community development lending activities included \$1.5 million to help finance a collaborative effort to build a grocery store in an LMI neighborhood in Philadelphia. The project involved PNC Bank, a local community development corporation, the City of Philadelphia, and Local Initiatives Support Corporation. PNC Bank also provided a \$2 million line of credit to Collaborative Lending Initiative, a community development financial institution ("CDFI") that lends money to affordable housing developers.

2. Investment Test

Overall, PNC Bank received an "outstanding" rating under the investment test. Examiners reported that the bank's community development investments demonstrated an excellent level of responsiveness to specific credit needs of the community.¹⁹ According to examiners, PNC Bank made 833 qualifying community development investments and grants totaling approximately \$88.5 million in those areas in Pennsylvania and New Jersey subject to full-scope reviews and in the Philadelphia MSA during the CRA evaluation period. These investments and grants included investments in low-income housing tax credits for projects that created affordable housing units, a collaboration with the New Jersey Department of Community Affairs to contribute to predevelopment costs for the rehabilitation of a rental apartment building for low-income families, and an investment in a large CDFI to support its affordable housing programs in the Philadelphia area.

19. In its Pennsylvania, New Jersey, and Philadelphia MSA assessment areas, PNC Bank received ratings of "outstanding," "high satisfactory," and "outstanding," respectively, for the investment test. The evaluation period for PNC Bank's performance under the investment test was July 6, 1998, through March 31, 2002.

3. Service Test

PNC Bank received an "outstanding" rating under the service test. Examiners noted that the bank's systems were readily accessible to geographies and individuals of different income levels, and that the bank provided an excellent level of community development service that assisted LMI individuals and areas.²⁰ In those areas in Pennsylvania and New Jersey subject to full-scope reviews and in the Philadelphia MSA, PNC Bank operated 379 branches during the review period, of which approximately 21 percent were in LMI geographies. In addition, PNC Bank opened 18 branches and closed 40 branches in those areas. Examiners reported that the bank's record of opening and closing branches did not adversely affect the accessibility of systems for delivering banking services in the Pittsburgh, Scranton, Bergen-Passaic, Newark, or Philadelphia MSA assessment areas. In the Pennsylvania and New Jersey areas subject to full-scope reviews and in the Philadelphia MSA during the review period, the bank increased by 44 the number of ATMs it operated in LMI geographies.

C. HMDA and Fair Lending Record

The Board also has carefully considered PNC Financial's lending record in light of comments on HMDA data reported by its subsidiaries. The commenter alleged that PNC Financial denies a higher percentage of loan requests by minority applicants than does the aggregate of all lenders ("aggregate") in the following MSAs: Bergen-Passaic; Harrisburg, Pennsylvania; Jersey City, New Jersey; Newark; Newburgh, Pennsylvania-New York; Philadelphia; Pittsburgh; Louisville, Kentucky-Indiana; and Wilmington.²¹ The 2001 and 2002 HMDA data²² indicate that PNC Financial generally had a somewhat better record than the aggregate for lending to African Americans and a somewhat worse record than the aggregate for lending to Hispanics, as measured by denial disparity ratios.²³ The

20. In its Pennsylvania, New Jersey, and Philadelphia MSA assessment areas, PNC Bank received ratings of "outstanding," "high satisfactory," and "outstanding," respectively, for the service test. The evaluation period for PNC Bank's performance under the service test was July 6, 1998, through March 31, 2002.

21. The commenter also alleged that the data PNC Financial submitted to the Board in response to its comment were inconsistent with data reported under HMDA. PNC Financial noted that the data in the response were derived from its HMDA data. The discrepancies noted by the commenter appear to have resulted from different categorizations of the data by PNC Financial in its response. For purposes of the response, PNC Financial designated the race for joint loan applicants based on the race of the primary applicant. For purposes of HMDA, however, joint applicants are categorized as "joint minority" applicants if one applicant is white and other applicant is a minority and are so categorized based on the information provided by the primary applicant if the individuals are members of different minority groups.

22. The Board analyzed 2001 and 2002 HMDA data for PNC Financial's lending affiliates in the MSAs cited by the commenter and in the four statewide assessment areas that include these markets. The Board's review included the HMDA data reported by PNC Bank and PNC Bank, Delaware.

23. The denial disparity ratio compares the denial rate for minority loan applicants with the rate for white applicants.

data also indicate, however, that PNC Financial generally originated a higher percentage of its HMDA-reportable loans to applicants in minority census tracts than the aggregate in 2001 and 2002.²⁴

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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 income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.²⁵ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of PNC Financial with fair lending laws. Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of PNC Financial's subsidiary depository institutions. Examiners also identified no substantive violations of applicable fair lending laws and regulations at these institutions.

The record also indicates that PNC Financial has taken steps to ensure compliance with fair lending laws. PNC Financial's corporate fair lending statement of policy includes a commitment to conduct credit, marketing, and pricing activities for all borrowers while maintaining safe and sound credit standards. To implement this commitment, PNC Financial has devised a fair lending program that includes employee training and a review by senior management of credit decisions, pricing, marketing, and fair credit-related policies and procedures.

The Board has also considered the HMDA data in light of the performance of PNC Financial's subsidiary banks under the CRA and the programs described above. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

24. For purposes of this HMDA analysis, minority census tract means a census tract with a minority population of 80 percent or more.

25. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

D. Branch Closings

One commenter expressed concern about PNC Financial's stated intention of closing branches after the merger of PNC Bank/UnitedTrust Bank. PNC Bank has represented that any consolidations or branch closings would comply with PNC Bank's branch closing policy and all applicable rules and regulations, and that no branches in LMI census tracts would be affected. The policy includes a review of the performance of a branch proposed for relocation, closure, or consolidation; the potential adverse impact of that the closing on the branch's local community, with special emphasis on LMI communities; and the bank's ability to serve communities where a branch is relocated, closed, or consolidated through other PNC Bank branches and departments.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.²⁶ Federal law requires an insured depository institution to provide notice to the public and the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the OCC and FDIC, as the appropriate federal supervisors of PNC Financial's subsidiary banks, will continue to review the branch closing records of the banks in the course of conducting CRA performance examinations.

E. Conclusion on Convenience and Needs Considerations

In reviewing the effect of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered the entire record, including comments received and responses to the comments, evaluations of the performance of the insured depository institution subsidiaries of PNC Financial and United National under the CRA, and confidential supervisory information. The Board also considered information submitted by PNC Financial concerning its subsidiary banks' performance under the CRA since their last CRA performance evaluations and the policies and procedures in place to ensure compliance with fair lending laws, HMDA, and other applicable laws.

Based on all the facts of record, and for reasons discussed above, the Board concludes that considerations relating to the convenience and needs factors, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

26. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

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.²⁷ In reaching this 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 PNC Financial with all the representations and commitments made in connection with the applications and the receipt of all other regulatory approvals. These representations, 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 transaction shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 19, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Bernanke. Absent and not voting: Governors Gramlich and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

27. The commenter requested that the Board hold a public 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 any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal, and in fact, the commenter has 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 hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

In addition, the commenter has alleged that Federal Reserve System staff have not complied with the Board's *ex parte* communication policies in this case, including an allegation of inappropriate communications with PNC Financial before it filed these applications. PNC informed Reserve Bank staff of the United National proposal before submitting the applications. It is fully consistent with federal law and the Board's rules for companies considering acquisitions to provide advance notice of an acquisition proposal to the Federal Reserve System and to identify issues that might be raised by the proposal. The Board finds no basis for the commenter's claim that the applications were preapproved or that the staff engaged in any inappropriate communications.

S&T Bancorp, Inc. *Indiana, Pennsylvania*

Order Approving Acquisition of Shares of a Bank Holding Company

S&T Bancorp, Inc. ("S&T"), 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 (12 U.S.C. § 1842) to acquire up to 9.9 percent of the voting shares of CBT Financial Corp. ("CBT"), and thereby indirectly acquire an interest in CBT's subsidiary bank, Clearfield Bank & Trust Company ("Clearfield Bank"), both in Clearfield, Pennsylvania.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 *Federal Register* 60,105 (2003)). 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.

S&T, with consolidated assets of \$2.8 billion, is the 18th largest banking organization in Pennsylvania, controlling total deposits of \$1.9 billion, which represents 1.1 percent of total deposits in banking organizations in the state ("state deposits").² CBT, with consolidated assets of \$254 million, is the 121st largest banking organization in Pennsylvania, controlling \$187.1 million in deposits, which represents less than 1 percent of state deposits.³ If S&T were deemed to control CBT on consummation of the proposal, S&T would remain the 18th largest banking organization in Pennsylvania, controlling approximately \$2.1 billion in deposits, which would represent 1.2 percent of state deposits.

The Board received a comment from CBT objecting to the proposal on the grounds that the proposed investment could adversely affect the financial condition of both CBT and S&T. The Board has considered carefully CBT's comment in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that 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.⁴ However, 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 and 25 percent of the voting shares of banks.⁵

1. S&T owns 4.99 percent of CBT's voting shares. S&T proposes to acquire the additional shares of CBT through a cash purchase or series of purchases on the open market.

2. Asset data for S&T are as of September 30, 2003. Deposit and ranking data are as of June 30, 2002.

3. Asset data for CBT are as of June 30, 2003. Deposit and ranking data are as of June 30, 2002.

4. See, e.g., *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.* 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

5. 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.⁶

S&T has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over CBT or Clearfield Bank. S&T has 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.⁷ For example, S&T has committed not to exercise or attempt to exercise a controlling influence over the management or policies of CBT or any of its subsidiaries; not to seek or accept representation on the board of directors of CBT or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with CBT or any of its subsidiaries. S&T also has committed not to attempt to influence the dividend policies, loan decisions, or operations of CBT or any of its subsidiaries. Moreover, the BHC Act prohibits S&T from acquiring additional shares of CBT or attempting to exercise a controlling influence over CBT without the Board's prior approval.

The Board has adequate supervisory authority to monitor compliance by S&T with the commitments, and the ability to take enforcement action against S&T if it violates any of the commitments.⁸ The Board also has authority to initiate a control proceeding against S&T if facts presented later indicate that S&T or any of its subsidiaries or affiliates in fact controls CBT for purposes of the BHC Act.⁹ Based on these considerations and all other facts of record, the Board has concluded that S&T would not acquire control of, or the ability to exercise a controlling influence over, CBT through the proposed acquisition of voting shares.

Competitive Considerations

In considering an application under section 3 of the BHC Act, the Board is required to evaluate a number of factors, including the competitive effects of the proposal. S&T and CBT compete directly in the Clearfield-Jefferson, Pennsylvania, banking market.¹⁰ S&T is the largest depository institution¹¹ in the market, controlling \$425.1 million in

deposits, which represents 24.7 percent of the total deposits in depository institutions in the market ("market deposits").¹² CBT is the fourth largest depository institution in the market, controlling \$154.8 million in deposits, which represents 9 percent of market deposits. If considered a combined organization on consummation of the proposal, S&T and CBT would be the largest depository institution in the Clearfield-Jefferson banking market, controlling \$579.9 million in deposits, which would represent 33.7 percent of market deposits. The Herfindahl-Hirschman Index ("HHI") for the Clearfield-Jefferson banking market would increase 444 points to 2,119.¹³

The Board believes that the proposal would raise serious competitive concerns in the Clearfield-Jefferson banking market if S&T were to acquire control of CBT. Based on all the facts of record, including S&T's commitments discussed above, the Board has concluded that S&T would not acquire control of, or exercise a controlling influence over, CBT or its subsidiaries, including Clearfield Bank, as a result of the proposed acquisition. The Board's inquiry does not end, however, with its finding that S&T will not control CBT. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.¹⁴ The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.¹⁵

In this case, the Board has concluded, after careful analysis of the record, that no significant reduction in competition is likely to result from the proposed acquisition. The record shows that S&T intends the acquisition to

50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

12. Market deposit data are as of June 30, 2002, and reflect mergers and acquisitions through November 11, 2003.

13. Under the revised Department of Justice Merger Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market in which the post-merger HHI is above 1800 is considered highly concentrated. 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 thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

14. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

15. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995); *Mansura* at 38; *Sun Banks* at 244.

6. *See, e.g., Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *GB Bancorporation*, 83 *Federal Reserve Bulletin* 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) ("*Mansura*") (acquisition of 9.7 percent of the voting shares of a bank holding company).

7. *See, e.g., Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). These commitments are set forth in the Appendix.

8. *See* 12 U.S.C. § 1818(b)(1).

9. *See* 12 U.S.C. § 1841(a)(2)(C).

10. The Clearfield-Jefferson market is defined as Clearfield and Jefferson Counties and North Mahoning, Canoe, and Banks Townships in Indiana County, all in Pennsylvania.

11. In this context, depository institutions include commercial banks, savings banks, and savings associations. Market share data are based on calculations that include the deposits of thrift institutions at

be a passive investment, and that there will be no officer or director interlocks between S&T and CBT and their respective subsidiaries, including Clearfield Bank. There is no evidence that S&T, by virtue of holding 9.9 percent of the voting shares of CBT, would have access to confidential information that would enable it to engage in anticompetitive behavior with respect to CBT or Clearfield Bank. Moreover, S&T has committed not to exercise a controlling influence over CBT and, therefore, may not direct CBT or Clearfield Bank to act in coordination with S&T in a manner that reduces competition.

The Board has also considered the market conditions in the Clearfield-Jefferson banking market. The Board notes that, in addition to S&T and CBT, eleven other bank and thrift competitors, including four competitors with market shares of at least 8 percent each, provide additional sources of banking services to the market. Moreover, Clearfield-Jefferson is a large rural market with total deposits of more than \$1.7 billion, and its population per banking office and deposits per banking office exceed the averages for other counties in Pennsylvania, indicating that the market is attractive for new entry. In fact, a savings bank established a *de novo* branch in the market in 2002. The Department of Justice has also reviewed the proposal and has advised the Board that it does not believe that the proposed acquisition would likely have a significantly adverse effect on competition in any relevant banking market.

Based on these considerations and other facts of record, the Board has concluded that competitive considerations are consistent with approval.

Other Factors

The Board also is required under section 3 of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks concerned.¹⁶ The Board notes that S&T is well managed and well capitalized and would remain so after the proposed acquisition. The Board has reviewed the financial and managerial resources of S&T and CBT and has concluded on the basis of all the facts of record that these resources, the future prospects of S&T, CBT, and their subsidiaries, and the other supervisory factors the Board must consider are consistent with approval of this application. In addition, considerations relating to the convenience and needs of the

16. CBT asserts that S&T's ownership of a large percentage of CBT's shares could adversely affect the price of CBT's stock. CBT notes that its stock is thinly traded and contends that if S&T sold a large number of shares at once, the price could change precipitously. CBT further argues that this result could adversely affect S&T's financial resources by diminishing the value of S&T's investment in CBT. The Board is limited under the BHC Act to the consideration of factors specified in the Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). The potential effect of future events on the price of a company's shares is not among the factors the Board is charged with considering under the BHC Act or other applicable statutes. Moreover, as noted, S&T is and would continue to be well capitalized after the proposed acquisition, and other considerations relating to the financial resources and future prospects of S&T and CBT are consistent with approval.

communities to be served, including the records of performance of the institutions involved under the Community Reinvestment Act, 12 U.S.C. § 2901 *et seq.* ("CRA"), are consistent with approval of the application.¹⁷

Conclusion

Based on the foregoing and all other facts of record, the Board has determined that this application should be, and hereby is, approved. In reaching this 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 S&T with all representations and commitments made in connection with this application, including the commitments discussed in this order. 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 acquisition of CBT's voting shares shall not be consummated before the fifteenth 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 25, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, and Bernanke. Absent and not voting: Governors Bies and Kohn.

JENNIFER J. JOHNSON
Secretary of the Board

Appendix

As part of this proposal, S&T Bancorp, Inc. ("S&T"), Indiana, Pennsylvania, commits that S&T will not, without the prior approval of the Federal Reserve, directly or indirectly:

- (1) Exercise or attempt to exercise a controlling influence over the management or policies of CBT Financial Corporation ("CBT") or any of its subsidiaries;
- (2) Seek or accept representation on the board of directors of CBT or any of its subsidiaries;
- (3) Have or seek to have any employee or representative serve as an officer, agent, or employee of CBT or any of its subsidiaries;

17. S&T's lead subsidiary bank, S&T Bank, also in Indiana, and Clearfield Bank each received "satisfactory" ratings at their most recent examinations for CRA performance by the Federal Deposit Insurance Corporation, as of January 1, 2003, and January 1, 1999, respectively.

- (4) Take any action that would cause CBT or any of its subsidiaries to become a subsidiary of S&T, or any of S&T's subsidiaries;
- (5) Acquire or retain shares that would cause the combined interests of S&T and any of S&T's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of CBT or any of its subsidiaries;
- (6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of CBT or any of its subsidiaries;
- (7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of CBT or any of its subsidiaries;
- (8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of CBT or any of its subsidiaries;
- (9) Dispose or threaten to dispose of shares of CBT or any of its subsidiaries as a condition of specific action or nonaction by CBT or any of its subsidiaries; or
- (10) Enter into any other banking or nonbanking transactions with CBT or any of its subsidiaries, except that S&T may establish and maintain deposit accounts with CBT's subsidiary depository institution, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with CBT or any of its subsidiaries.

S&T Bancorp, Inc.
Indiana, Pennsylvania

Order Approving Acquisition of Shares of a Bank Holding Company

S&T Bancorp, Inc. ("S&T"), 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 (12 U.S.C. § 1842) to acquire up to 9.9 percent of the voting shares of IBT Bancorp, Inc. ("IBT"), and thereby indirectly acquire an interest in IBT's subsidiary bank, Irwin Bank & Trust Company ("Irwin Bank"), both in Irwin, Pennsylvania.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 *Federal Register* 57,462 (2003)). 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.

1. S&T owns 4.1 percent of IBT's voting shares. S&T proposes to acquire the additional voting shares of IBT through a cash purchase or series of purchases on the open market.

S&T, with consolidated assets of \$2.8 billion, is the 18th largest banking organization in Pennsylvania, controlling deposits of \$1.9 billion, which represents 1.1 percent of total deposits in banking organizations in the state ("state deposits").² IBT, with consolidated assets of \$609 million, is the 52nd largest banking organization in Pennsylvania, controlling \$450.4 million in deposits, which represents less than 1 percent of state deposits.³ If S&T were deemed to control IBT after the proposed acquisition, S&T would become the 16th largest banking organization in Pennsylvania, controlling approximately \$2.4 billion in deposits, which would represent 1.3 percent of state deposits.

The Board received a comment from IBT objecting to the proposal on the grounds that the proposed investment would adversely affect the financial and managerial resources of IBT and competition in the banking market where the subsidiary banks of S&T and IBT compete. The Board has considered carefully IBT's comment in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that 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.⁴ However, 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 and 25 percent of the voting shares of banks.⁵ 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.⁶

IBT asserts that the proposal constitutes a controlling investment in IBT and would enable S&T to influence the affairs of Irwin Bank. Because S&T would not control 25 percent or more of the outstanding shares of any class of voting securities of IBT or Irwin Bank and would not be able to elect a majority of directors of IBT or Irwin Bank, S&T could only be deemed to control IBT or Irwin Bank for purposes of the BHC Act if the Board determines that S&T, by virtue of its proposed investment, would be able to exercise a controlling influence over the management or policies of IBT or Irwin Bank.

S&T has stated that the acquisition is intended as a passive investment and that it does not propose to control

2. Asset data for S&T are as of September 30, 2003. Deposit and ranking data are as of June 30, 2002.

3. Asset data for IBT are as of June 30, 2003. Deposit data and ranking data are as of June 30, 2002.

4. See, e.g., *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.* 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

5. See 12 U.S.C. § 1842(a)(3).

6. See, e.g., *Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *GB Bancorporation*, 83 *Federal Reserve Bulletin* 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) ("*Mansura*") (acquisition of 9.7 percent of the voting shares of a bank holding company).

IBT or Irwin Bank. S&T has 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.⁷ For example, S&T has committed not to exercise or attempt to exercise a controlling influence over the management or policies of IBT or any of its subsidiaries; not to seek or accept representation on the board of directors of IBT or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with IBT or any of its subsidiaries. S&T also has committed not to attempt to influence the dividend policies, loan decisions, or operations of IBT or any of its subsidiaries. Moreover, the BHC Act prohibits S&T from acquiring additional shares of IBT or attempting to exercise a controlling influence over IBT without the Board's prior approval.

IBT asserts that the commitments are insufficient to prevent S&T from exercising a controlling influence over IBT. IBT notes that, after completing the proposed acquisition of voting shares, S&T would be the largest shareholder of IBT, and that S&T's interest in IBT would exceed the combined interests of all the members of IBT's board of directors.

The Board, however, concludes, based on past experience, that the commitments made by S&T in connection with this application are sufficient to prevent S&T from exercising a controlling influence over IBT. The Board has adequate supervisory authority to monitor compliance by S&T with the commitments, and the ability to take enforcement action against S&T if it violates any of the commitments or exercises a controlling influence over IBT.⁸ The Board also has authority to initiate a control proceeding against S&T if facts presented later indicate that S&T or any of its subsidiaries or affiliates in fact controls IBT for purposes of the BHC Act.⁹ Based on these considerations and all other facts of record, the Board has concluded that S&T would not acquire control of, or the ability to exercise a controlling influence over, IBT through the proposed acquisition of voting shares.

Competitive Considerations

In considering an application under section 3 of the BHC Act, the Board is required to evaluate a number of factors, including the competitive effects of the proposal. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.¹⁰ The Board has found that noncontrolling interests in directly competing depository

institutions may raise serious questions under the BHC Act, and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.¹¹

S&T and IBT compete directly in the Pittsburgh, Pennsylvania, banking market.¹² S&T is the ninth largest depository institution¹³ in the Pittsburgh banking market, controlling \$649.6 million in deposits, which represents 1.6 percent of total deposits in depository institutions in the market ("market deposits").¹⁴ IBT is the 14th largest depository institution in the Pittsburgh banking market, controlling \$343.7 million in deposits, which represents less than 1 percent of market deposits. If considered a combined banking organization on consummation of the proposal, S&T and IBT would become the eighth largest depository institution in the Pittsburgh banking market, controlling approximately \$993.4 million in deposits, which would represent 2.5 percent of market deposits. The Herfindahl-Hirschman Index ("HHI") for the Pittsburgh banking market would increase 3 points to 1,537, and numerous competitors would remain in the market.¹⁵

IBT asserts that S&T's ownership of 9.9 percent of IBT's voting shares would provide S&T with the ability to influence the affairs of Irwin Bank, with a resulting adverse effect on competition. The Board concludes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influ-

11. See, e.g., *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995); *Mansura* at 38; *Sun Banks* at 244.

12. The Pittsburgh banking market is defined as all of Allegheny, Beaver, and Washington Counties; Westmoreland County except St. Clair Township; South Buffalo, Gilpin, Parks, and Kiskiminetas Townships in Armstrong County; Muddy Creek, Lancaster, Jackson, Forward, Penn, Jefferson, Winfield, Middlesex, Clinton, Cranberry, Adams, and Buffalo Townships in Butler County; Washington, Jefferson, Perry, Lower Tyrone, Upper Tyrone, Bullsken, and Salt Lick Townships in Fayette County; Conemaugh, Burrell, and West Wheatfield Townships in Indiana County; and Little Beaver, New Beaver, Wayne, and Perry Townships in Lawrence County, all in Pennsylvania.

13. In this context, depository institutions include commercial banks, savings banks, and savings associations. Market share data 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, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has 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, 55 (1991).

14. Market deposit data are as of June 30, 2002, and reflect mergers and acquisitions through September 2, 2003.

15. Under the revised Department of Justice Merger Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market in which the post-merger HHI is between 1000 and 1800 is considered moderately concentrated. 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 thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

7. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). These commitments are set forth in the Appendix.

8. See 12 U.S.C. § 1818(b)(1).

9. See 12 U.S.C. § 1841(a)(2)(C).

10. See, e.g., *SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

ence over IBT reduce the potential adverse effects of the proposal. Moreover, the Board notes that in light of the above analysis of the Pittsburgh banking market, if S&T and IBT were viewed as a combined organization on consummation of the proposal, the elimination of competition between the two entities would not appear to lessen substantially competition in any relevant banking market. The Department of Justice has also reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market.

Accordingly, in light of all the facts of record, the Board has concluded that competitive considerations are consistent with approval of the proposal.

Other Factors

The Board also is required under section 3(c) of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks concerned. IBT contends that S&T's investment would distract the attention of IBT's management from the operation of IBT and Irwin Bank, cause customer confusion about the continued independence of Irwin Bank, and adversely affect the price of IBT's shares.¹⁶ The Board believes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influence over IBT reduce the potential adverse effects of the proposal. As noted above, S&T has committed that it will not attempt to influence the operations or activities, or the dividend, loan, or credit policies of IBT. No evidence has been presented to show that the purchase of shares of IBT on the open market by S&T would adversely affect the financial condition of IBT or S&T. The Board notes that S&T is well capitalized and would remain so on consummation of the proposal. Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of S&T, IBT, 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. In addition, considerations relating to the convenience and needs of the communities to be served, including the records of performance of the institutions involved under the Community Reinvestment Act, 12 U.S.C. §2901 *et seq.* ("CRA"), are consistent with approval of the application.¹⁷

16. IBT also contends that the proposal might create the perception that it is a candidate for acquisition. The Board is limited under the BHC Act to the consideration of factors specified in the Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). The potential effect of a proposal on the behavior of others in the market is not among the factors the Board is charged with considering under the BHC Act or other applicable statutes. The Board also notes that IBT has stated publicly its intention to maintain the independence of Irwin Bank as a local community bank.

17. S&T's lead subsidiary bank, S&T Bank, also in Indiana, and Irwin Bank each received "satisfactory" ratings at their most recent examinations for CRA performance by the Federal Deposit Insurance Corporation, as of January 1, 2003, and August 1, 2001, respectively.

Conclusion

Based on the foregoing and all other facts of record, the Board has determined that this application should be, and hereby is, approved. In reaching this 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 S&T with all representations and commitments made in connection with this application, including the commitments discussed in this order. 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 acquisition of IBT's voting shares shall not be consummated before the fifteenth 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 25, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, and Bernanke. Absent and not voting: Governors Bies and Kohn.

JENNIFER J. JOHNSON
Secretary of the Board

Appendix

As part of this proposal, S&T Bancorp, Inc. ("S&T"), Indiana, Pennsylvania, commits that S&T will not, without the prior approval of the Federal Reserve, directly or indirectly:

- (1) Exercise or attempt to exercise a controlling influence over the management or policies of IBT Bancorp, Inc. ("IBT") or any of its subsidiaries;
- (2) Seek or accept representation on the board of directors of IBT or any of its subsidiaries;
- (3) Have or seek to have any employee or representative serve as an officer, agent, or employee of IBT or any of its subsidiaries;
- (4) Take any action that would cause IBT or any of its subsidiaries to become a subsidiary of S&T, or any of S&T's subsidiaries;
- (5) Acquire or retain shares that would cause the combined interests of S&T and any of S&T's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of IBT or any of its subsidiaries;
- (6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the

- management or board of directors of IBT or any of its subsidiaries;
- (7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of IBT or any of its subsidiaries;
 - (8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of IBT or any of its subsidiaries;
 - (9) Dispose or threaten to dispose of shares of IBT or any of its subsidiaries as a condition of specific action or nonaction by IBT or any of its subsidiaries; or
 - (10) Enter into any banking or nonbanking transactions with IBT or any of its subsidiaries, except for the following:
 - S&T may establish and maintain deposit accounts with any depository institution subsidiaries of IBT, provided that the aggregate balance of all such accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with IBT or any of its subsidiaries.
 - Irwin Bank and Trust Company ("Irwin Bank"), Irwin, Pennsylvania, and S&T Bank, Indiana, Pennsylvania, may continue to sell loan participations to each other, provided that the aggregate balance of such loan participations purchased by Irwin Bank from S&T Bank does not exceed 5 percent of Irwin Bank's total loans outstanding, and provided further, that the aggregate of any such loan participations sold by Irwin Bank to S&T Bank does not exceed 5 percent of Irwin Bank's total loans outstanding.

Shinhan Financial Group Co., Ltd.
Seoul, Korea

Order Approving the Formation of a Bank Holding Company and Control of a Bank

Shinhan Financial Group Co., Ltd. ("SFG") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act") (12 U.S.C. § 1842) to become a bank holding company and to control CHB America Bank, New York, New York ("CHB"). SFG's proposal is part of the privatization of Chohung Bank, Seoul, Korea, by the Korea Deposit Insurance Corporation ("KDIC").¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published

1. The KDIC acquired control of Chohung in 1999. In August 2003, SFG acquired approximately 80 percent of the voting shares of Chohung from the KDIC. The shares of CHB, Chohung's wholly owned subsidiary bank, were placed in a temporary trust ("CHB Trust") pending the submission of this application.

(68 *Federal Register* 52,770 (2003)). The time for filing comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Before its acquisition of Chohung, SFG had total consolidated assets of \$56 billion and was the sixth largest banking organization in Korea.² SFG's wholly owned subsidiary, Shinhan Bank, also in Seoul ("Shinhan"), operates a branch in New York City.

Before its acquisition by SFG, Chohung was the fifth largest banking organization in Korea and had total consolidated assets of \$56 billion.³ Chohung operates a branch in New York City. CHB has total consolidated assets of \$293 million and controls deposits of \$217 million, representing less than 1 percent of total deposits in insured depository institutions in the United States.⁴ CHB operates branches in California and New York City.

Competitive and Convenience and Needs Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or be in furtherance of a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal in that banking market 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.⁵ This proposal represents SFG's initial entry into retail banking in the United States. Although Shinhan, Chohung, and CHB all operate branches in New York City, there are numerous competitors for banking services in the relevant banking markets. 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.

The Board also has considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including the performance record of CHB under the Community Reinvestment Act.⁶ In light of all the facts of record, the Board has concluded that considerations relating to the conve-

2. Foreign asset and ranking data are as of December 31, 2002, and use exchange rates then in effect.

3. SFG has indicated that Chohung will remain a separate legal entity for approximately three years after its acquisition by SFG.

4. Domestic asset and deposit data are as of March 31, 2003. Insured depository institutions include commercial banks, savings banks, and savings associations.

5. 12 U.S.C. § 1842(c)(1).

6. 12 U.S.C. § 2901 *et seq.* CHB was formed in March 2003 by the merger of California Chohung Bank with and into Chohung Bank of New York. Before this merger, each bank had received a "satisfactory" rating at the most recent CRA performance evaluation by its appropriate federal supervisor, the Federal Deposit Insurance Corporation: California Chohung Bank, as of April 2001; and Chohung Bank of New York, as of June 1998.

nience and needs of the communities to be served are also consistent with approval of this proposal.

Financial, Managerial, and Other Supervisory Factors

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in an acquisition.⁷ In assessing the financial and managerial strength of SFG, Chohung, and CHB, the Board has reviewed information provided by SFG, confidential supervisory and examination information, and publicly reported and other financial information. In addition, the Board has consulted with relevant supervisory authorities, including the Financial Supervisory Service (“FSS”),⁸ which is responsible for the supervision and regulation of Korean financial institutions. The Board notes that the overall financial strength and future prospects of the combined organization will likely be enhanced by the privatization transaction. SFG’s capital levels are considered equivalent to those that would be required of a U.S. banking organization under similar circumstances. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of SFG, Chohung, and CHB are consistent with approval.

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 home country supervisor of SFG, Shinhan, and Chohung is the FSS. The Board has previously determined, in an application under the BHC Act involving Woori Bank, Seoul, that Woori Bank was subject to comprehensive consolidated supervision by the FSS.¹⁰ In this case, the Board has determined that Chohung and Shinhan are supervised on substantially the same terms and conditions as Woori Bank. Based on all the facts of record, the Board has concluded that Chohung and Shinhan are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor.¹¹

7. 12 U.S.C. § 1842(c)(2).

8. The FSS is the executive body of the Financial Supervisory Commission, which is responsible for promulgating supervisory regulations, making policy decisions about supervision, and imposing sanctions on financial institutions. See *Woori Finance Holdings Co., Ltd. and Woori Bank*, 89 *Federal Reserve Bulletin* 436 (2003) (“*Woori Order*”).

9. 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 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank will be considered to be 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 to any affiliates, to assess the bank’s overall financial condition and its compliance with laws and regulations. See 12 C.F.R. 211.24(c)(1).

10. See *Woori Order*.

11. The FSS also has supervisory authority with respect to SFG and its nonbanking subsidiaries. The FSS conducts inspections of SFG and its subsidiaries and requires SFG to submit reports about its

In addition, section 3 of the BHC Act 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 The Board has reviewed the restrictions on disclosure in jurisdictions in which SFG, Shinhan, and Chohung have material operations and has communicated with relevant government authorities concerning access to information. SFG, Shinhan, and Chohung have committed that, to the extent not prohibited by applicable law, each 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 and other applicable federal law.

SFG, Shinhan, and Chohung also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable their affiliates to make any such information available to the Board. In light of these commitments, the Board has concluded that SFG, Shinhan, and Chohung have provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

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. In reaching this 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 SFG and its affiliates with all the representations and commitments made in connection with the application, prior commitments made in connection with establishment of the CHB Trust, and the receipt of all other regulatory approvals. These representations, 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 transfer of the CHB voting shares from the CHB Trust to SFG shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may 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 New York, acting pursuant to delegated authority.

operations on a consolidated basis. The FSS also may review transactions between SFG and its subsidiaries and has authority to require SFG to take measures necessary to ensure the safety and soundness of SFG’s organization.

12. See 12 U.S.C. § 1842(c)(3)(A).

By order of the Board of Governors, effective November 20, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Bernanke. Absent and not voting: Governor Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Orders Issued Under Section 4 of the Bank Holding Company Act

The Royal Bank of Scotland Group plc
Edinburgh, Scotland

The Royal Bank of Scotland plc
Edinburgh, Scotland

RBSG International Holdings Ltd.
Edinburgh, Scotland

Citizens Financial Group, Inc.
Providence, Rhode Island

Order Approving the Acquisition of a Savings Association

The Royal Bank of Scotland Group plc (“RBS Group”), The Royal Bank of Scotland plc (“RBS”), RBSG International Holdings Ltd., and Citizens Financial Group, Inc. (“Citizens Financial”) (collectively, “Notificants”) have 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 (j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire all the voting shares of Thistle Group Holdings, Co. (“Thistle”) and thereby indirectly acquire all the voting shares of Thistle’s wholly owned subsidiary savings association, Roxborough-Manayunk Bank, (“Roxborough”), both in Philadelphia, Pennsylvania.

The proposed transaction is primarily a merger of Roxborough into Citizens Financial’s wholly owned subsidiary bank, Citizens Bank of Pennsylvania (“Citizens PA”), also in Philadelphia.¹ The merger transaction was approved by the Federal Deposit Insurance Corporation (“FDIC”) under the Bank Merger Act (12 U.S.C. § 1828(c)) on December 15, 2003. The Board has consulted with the FDIC on its review of Citizens PA’s proposal under the Bank Merger Act.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 *Federal Register* 62,080 (2003)), and the time for filing comments has expired. The Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

1. In addition, the Delaware branch of Roxborough would be sold to Citizens Bank, Wilmington, Delaware (“Citizens DE”), a subsidiary bank of Notificants.

RBS Group, with total consolidated assets equivalent to approximately \$663 billion, is the fifth largest banking organization in the world.² Citizens Financial, with total consolidated assets of approximately \$73 billion, is the nineteenth largest commercial banking organization in the United States.³ Citizens Financial operates subsidiary depository institutions in Rhode Island, Massachusetts, Connecticut, New Hampshire, Delaware, and Pennsylvania that control approximately \$53.6 billion in deposits, which represents approximately 1 percent of total deposits in insured depository institutions in the United States (“total U.S. insured deposits”).⁴

Thistle has one subsidiary depository institution that operates in Pennsylvania and Delaware and controls \$822 million in deposits, which represents less than 1 percent of total U.S. insured deposits. On consummation of this proposal, Citizens Financial, with total consolidated assets of \$73 billion, would remain the nineteenth largest commercial banking organization in the United States, controlling deposits of \$54.4 billion. Citizens Financial would remain the third largest banking organization in Pennsylvania and fifteenth largest in Delaware, controlling deposits of \$18.6 billion and \$854 million, respectively.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁵ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y. Notificants have committed to conform all the activities of Thistle and Roxborough as required. Thistle also engages in printing and selling checks and related documents and in providing certain data processing services, which are activities that the Board has determined to be closely related to banking.⁶

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of Thistle, Roxborough, and Thistle’s other subsidiaries by Notificants “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.”⁷ As part of its evaluation of the proposal under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, as well as the effect of the proposal on competition in the relevant markets.⁸ In acting on notices to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository

2. Global asset and ranking data are as of December 31, 2002.

3. Asset and domestic ranking data are as of September 30, 2003.

4. Deposit data are as of June 30, 2003, unless otherwise noted.

5. 12 C.F.R. 225.28(b)(4)(ii).

6. 12 C.F.R. 225.28(b)(10)(ii) and (14).

7. 12 U.S.C. § 1843(j)(2)(A).

8. See 12 C.F.R. 225.26.

institutions under the Community Reinvestment Act (“CRA”) (12 U.S.C. § 2901 *et seq.*).⁹

The Board has considered these factors in light of a record that includes information provided by Notificants, confidential supervisory and examination information, publicly reported financial and other information, and public comments submitted on the proposal. The Board also has consulted with, and considered information provided by, the primary home country supervisor of RBS Group and various federal and state supervisory agencies, including the FDIC, the Office of Thrift Supervision (“OTS”), the Massachusetts Division of Banks, and the Pennsylvania Department of Banking.

Competitive Considerations

As part of its consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.¹⁰ Notificants and Thistle compete directly in the Philadelphia, Pennsylvania, and Wilmington, Delaware, banking markets.¹¹ The Board has reviewed carefully the competitive effects of the proposal in both banking markets in light of all the facts of record, including the number of competitors that would remain in the markets, the relative share of total deposits in depository institutions controlled by Notificants and Thistle in the markets (“market deposits”),¹² the concentration levels of market deposits and the increases in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Guidelines (“DOJ Guidelines”),¹³ and other characteristics of the markets.

9. See, e.g., *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

10. See *First Hawaiian, Inc.*, 79 *Federal Reserve Bulletin* 966 (1993).

11. These markets are described in Appendix A.

12. Deposit and market share data are based on annual branch reports filed as of June 30, 2003, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously 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 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). Because the Board has analyzed the competitive factors in this case as if Notificants and Thistle were a combined entity, the deposits of Roxborough were included at 100 percent in the calculation of *pro forma* market share. See *Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992).

13. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000 and moderately concentrated if the post-merger HHI is between 1000 and 1800. The DOJ has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each relevant banking market. In addition, no agency has indicated that competitive issues are raised by the proposal. After consummation of the proposal, one banking market would remain unconcentrated and the other would remain moderately concentrated, as measured by the HHI.¹⁴ Numerous competitors would remain in both banking markets. Based on these and all other facts of record, the Board concludes that consummation of the proposal is not likely to result in any significantly adverse effects on competition or on the concentration of banking resources in the two banking markets noted above or any other relevant banking market.

Financial and Managerial Factors

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of Notificants and Thistle and their respective subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record.¹⁵

The Board’s review of these factors has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, publicly reported and other financial information provided by Notificants and Thistle, and public comments.¹⁶ In addition, the Board has consulted with the relevant supervisory agencies, including the FDIC, the OTS, and the relevant supervisory authorities in the United Kingdom.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. The capital ratios of RBS would continue to exceed the minimum levels that would be required under the Basel Capital

14. In the Philadelphia banking market, the HHI would increase 12 points to 947, and the HHI would remain unchanged at 1793 in the Wilmington banking market. The effects of the proposal on the concentration of banking resources in these markets are detailed in Appendix B.

15. See 12 C.F.R. 225.26.

16. One commenter opposing this proposal repeated allegations that the Board previously considered in its decisions to approve Notificants’ applications to acquire Port Financial (the “Port Financial proposal”) and Citizens PA and Citizens DE (the “Mellon proposal”), particularly that Notificants had inadequate records on human rights and the environment. The commenter’s assertions were based on actions taken outside the United States; specifically, it was asserted that the activities of RBS Group and its affiliates in Indonesia ignored human rights concerns, damaged the environment, or caused other societal harm. The Board noted in its approvals of the Port Financial and Mellon proposals, and reaffirms in this case, that these contentions contained no allegations of illegality or of actions that would affect the safety and soundness of the institutions involved in the proposals, and that the allegations were outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See *The Royal Bank of Scotland Group plc*, 89 *Federal Reserve Bulletin* 386 (2003) (“RBS/Port Order”); *The Royal Bank of Scotland Group plc*, 88 *Federal Reserve Bulletin* 51 (2002) (“RBS/Mellon Order”) (citing *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973)).

Accord, and RBS Group's capital levels are considered equivalent to those that would be required of a U.S. banking organization. The Board notes that Citizens Financial, its subsidiary depository institutions, and Roxborough are well capitalized and would remain well capitalized on consummation of the proposal.

The Board also has considered the managerial resources of Notificants and Thistle, particularly the supervisory experience and assessments of management by the various bank supervisory agencies and the organizations' records of compliance with applicable banking laws. The Board also has carefully reviewed the examination records of Citizens Financial and its subsidiary depository institutions, including assessments of their risk management systems and other policies. In addition, the Board has considered Citizens Financial's plans to implement the proposed acquisition, including its available managerial resources, and Citizens Financial's record of successfully integrating recently acquired institutions into its existing operations. Based on these and all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

Records of Performance Under the Community Reinvestment Act

As previously noted, the Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire a savings association.¹⁷ The CRA requires the Board to assess each insured depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, consistent with the institution's safe and sound operation, and to take this record into account in evaluating bank holding company notices.¹⁸

The Board has carefully considered the CRA performance records of each subsidiary insured depository institution of Citizens Financial and Thistle in light of all the facts of record, including comments received on the effect of the proposal on the communities to be served by the relevant insured depository institutions. The Board recently conducted a detailed review of the CRA performance records of the insured depository institutions controlled by Citizens Financial (the "Citizens Banks") and found those records to be consistent with approval of a bank expansion proposal.¹⁹ The Board's analysis of the CRA performance records of the Citizens Banks, as detailed in the Citizens/Port Order, is incorporated herein by reference.

Two commenters opposed the current proposal. One commenter expressed concern that Citizens Financial's provision of loans and retail banking services in LMI areas in Philadelphia was not as extensive as the current array of products and services provided by Roxborough. The other

commenter alleged, based on data submitted under the Home Mortgage Disclosure Act ("HMDA"),²⁰ that Citizens Financial and Roxborough engaged in disparate treatment of minority individuals in their assessment areas with respect to home mortgage lending.²¹ This commenter also expressed concern about possible branch closings resulting from this proposal.²²

A. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations 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

Citizens MA and the other Citizens Financial subsidiary depository institutions that have been rated for CRA performance all received "outstanding" ratings at their most recent CRA performance examinations by the FDIC, as of December 2, 2002.²⁴ Roxborough received a "satisfactory" rating at its most recent CRA performance examination by the OTS, as of April 22, 2002.

Citizens PA and Citizens DE (together, the "Mid-Atlantic Banks") are newly chartered and have not received ratings for performance under the CRA. Notifi-

20. 12 U.S.C. § 2801 *et seq.*

21. The commenter also alleged that Citizens Financial engaged in discriminatory employment practices, citing a news report of a complaint filed with the Massachusetts Commission Against Discrimination ("MCAD") by a former employee. These allegations are outside the limited statutory factors that the Board is authorized to consider when reviewing a notice under the BHC Act. *See Western Bancshares*, 480 F.2d at 752. The Board also notes that the Equal Employment Opportunity Commission has jurisdiction to determine whether banking organizations like Citizens Financial are in compliance with federal equal employment opportunity statutes under the regulations of the Department of Labor. In addition, matters related to private employment are governed by state law and, in this case, are being reviewed by MCAD.

22. The commenter also expressed concern about the small business lending of Citizens Bank of Massachusetts, Boston, Massachusetts ("Citizens MA"), in one county in the Boston metropolitan area, alleging that Citizens MA made few small business loans in LMI census tracts. The commenter also raised this issue in the Port Financial proposal. The Board carefully considered this comment and Notificants' response in light of all the facts of record in approving the proposal. *See RBS/Port Order* at 389. The commenter has not provided any new information that would warrant a different conclusion in this proposal, and the Board reaffirms its findings in the RBS/Port Order.

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

24. Citizens Bank of Rhode Island, Providence, Rhode Island ("Citizens RI"); Citizens Bank of Connecticut, New London, Connecticut; and Citizens Bank of New Hampshire, Manchester, New Hampshire (together with Citizens MA, the "New England Banks"), all received "outstanding" ratings at their most recent CRA performance examinations. United States Trust Company, Boston, Massachusetts, a subsidiary of Citizens, is a limited-purpose trust company and, therefore, is not subject to the CRA.

17. *See, e.g., Northfork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767 (2000).

18. 12 U.S.C. § 2903.

19. *See RBS/Port Order* at 387–89.

cants have represented that the Mid-Atlantic Banks are subject to the same CRA and fair lending policies as the New England Banks. Accordingly, the Board has particularly considered the 2002 performance evaluations of the New England Banks and the fair lending policies and procedures of Citizens Financial and the Citizens Banks. The Board notes that the CRA performance records of the New England Banks demonstrate the Notificants' ability and willingness to help meet effectively the credit needs of the communities served by their subsidiary depository institutions.

Because the Mid-Atlantic Banks are recently chartered and yet to be examined, the Board also has evaluated substantial information submitted by Citizens Financial concerning the CRA performance of the Citizens Banks, especially the Mid-Atlantic Banks. This information includes reviews of the Mid-Atlantic Banks' CRA-related activities; loan programs designed to address the needs of LMI borrowers and communities; community development lending and investments; retail banking products and services; data from Citizens Banks' affiliate, Citizens Mortgage Company ("CMC");²⁵ and confidential supervisory information from the FDIC.

Notificants state that the Mid-Atlantic Banks have endeavored to continue Notificants' success in meeting the credit needs of the communities they serve, including LMI areas. In general, the 2002 HMDA data indicate that the loans to LMI borrowers and to borrowers in LMI census tracts made by the Mid-Atlantic Banks and CMC, as a percentage of their total HMDA-reportable loans, exceeded or were comparable with that percentage for the aggregate of lenders.²⁶ For example, in 2002, Citizens PA originated approximately 14.3 percent of its HMDA-reportable loans in its Philadelphia assessment area to borrowers in LMI census tracts (the aggregate of lenders made approximately 11.6 percent) and 25.8 percent of such loans to LMI borrowers (the aggregate of lenders made 25.2 percent).

According to Notificants, the Mid-Atlantic Banks and CMC offer approximately 22 programs that feature home purchase, refinance, and home improvement loans specifically designed to address the needs of LMI borrowers and communities ("CRA-program loans").²⁷ These programs provide LMI borrowers with affordable home mortgage and home improvement loans using flexible underwriting guidelines. Notificants report that, in 2002, the Mid-Atlantic Banks and CMC originated more than 900 loans,

totaling more than \$81 million, under their CRA-program loans.

In addition, Notificants state that the Mid-Atlantic Banks made numerous community development loans to and investments in a diverse group of organizations and programs in Pennsylvania and Delaware. Notificants state that, since January 2002, Citizens PA and Citizens DE have provided more than \$62 million and \$11 million, respectively, in community development lending to support various organizations involved in affordable housing development, economic development, and job creation. During the same time period, Citizens PA made more than \$5.5 million in investments, sponsorships, and grants, and Citizens DE funded \$315,000 of its \$3.5 million in community development investment commitments.

The Mid-Atlantic Banks generally provide the same services as the New England Banks, such as a full-service ATM network, 24-hour telephone banking, bank-by-mail, and internet banking services. In addition, all the Citizens Banks provide a number of community development services, such as financial education seminars.

B. HMDA Data and Fair Lending Record

The Board also has carefully considered the HMDA data reported by subsidiaries of Citizens Financial in light of the comments received on these data. Based on 2001 and 2002 HMDA data, a commenter alleged that the Citizens Banks disproportionately excluded African-American and Hispanic applicants for home mortgage loans in various Metropolitan Statistical Areas ("MSAs") in Connecticut, Delaware, Massachusetts, Pennsylvania, and Rhode Island. Substantially similar comments regarding Connecticut, Massachusetts, and Rhode Island were considered by the Board in the Port Financial proposal, and the Board's analysis of the Citizens Banks' HMDA data in the RBS/Port Order is incorporated herein by reference.

As noted in the RBS/Port Order, the Citizens Banks' denial disparity ratios reported for African-American and Hispanic applicants in 2002 were generally lower than or comparable with those ratios reported by the aggregate of lenders in each of the markets reviewed.²⁸ In their Pennsylvania and Delaware assessment areas, the Mid-Atlantic Banks' denial disparity ratios reported for African-American and Hispanic applicants in 2002 were lower than those ratios reported by the aggregate of lenders in these assessment areas.

Importantly, the HMDA data do not indicate that the Citizens Banks have excluded any segment of the population or geographic areas on a prohibited basis. The Board, nevertheless, is concerned when the record of an institution indicates disparities in lending and believes that all banks 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

25. CMC is a subsidiary of Citizens RI. CMC's HMDA data were considered in the 2002 evaluation of the lending records of the Citizens Banks by the FDIC.

26. In this context, "HMDA-reportable loans" refers to loans that are required to be reported under HMDA: home purchase, home improvement, and multifamily mortgage loans and refinancings of those types of loans. Loans made by the aggregate of lenders refers to all HMDA-reportable loans made in the assessment area by all lenders required to report under HMDA.

27. These programs include the EZ Home Improvement Loan, the ACORN Housing Partnership Loan, and the Philadelphia Home Improvement Loan Program, which is offered in partnership with the Philadelphia Redevelopment Authority and the Greater Philadelphia Urban Affairs Coalition.

28. The denial disparity ratio is the denial rate of a particular racial category (e.g., African Americans) divided by the denial rate for whites.

applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about covered loans.²⁹ Therefore, HMDA data have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by the Citizens Banks with fair lending laws. Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of Citizens Financial's subsidiary depository institutions. The record also indicates that Citizens Financial has taken a number of affirmative steps to ensure compliance with fair lending laws. The Citizens Banks have a "second-look" policy with two procedures for reviewing credit decisions for compliance with their fair lending policy. Under this policy, a committee conducts a weekly review of marginal approvals and denials for consistency in the application of investor underwriting guidelines, and the quality control department conducts a quarterly statistically based regression analysis of all applications to identify possible instances or indications of disparate treatment. In addition, Citizens Financial has established a fair lending committee and a mandatory, ongoing employee training program on compliance with fair lending and other consumer protection laws.

The Board also has considered the HMDA data in light of the Citizens Banks' overall performance under the CRA, which demonstrates that these institutions are actively helping to meet the credit needs of their entire communities.³⁰ The Board believes that, when viewed in light of the entire record, the HMDA data and other CRA-related information indicate that the Citizens Banks' records of perfor-

mance in helping to serve the credit needs of their communities are consistent with approval of the proposal.

C. Branch Closings

A commenter expressed concern about the possible effect of branch closings that might result from this proposal, and the Board has considered these comments in light of all the facts of record. Citizens Financial has represented that it will apply its current branch closing policy to any potential closing or consolidation of a branch acquired under this proposal. Accordingly, the Board has carefully reviewed Citizens Financial's branch closing policy. The policy provides that Citizens Financial will review a number of factors before closing or consolidating a branch, including the impact on the community, the business viability of the branch, and the impact on access to credit, as well as ensuring that the branch closing has no discriminatory effect. The most recent CRA examinations of the Citizens Banks indicated that they had satisfactory records of opening and closing branches. The Board expects that Citizens Financial would continue to apply a branch closing policy to any branch closed in connection with the proposed transaction that is satisfactory to examiners.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.³¹ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of the Citizens Banks, will review the branch closing records of the banks in the course of conducting CRA performance examinations.

D. Conclusion on Convenience and Needs Considerations

In reviewing the proposal's effect on the convenience and needs of the communities to be served by the combined organization, the Board has carefully considered the entire record, including the public comments received, reports of examinations of the CRA performance of the institutions involved, and confidential supervisory information from the FDIC. The record and examinations show that Citizens Financial's subsidiary banks have a variety of programs in place that are designed to meet the credit and banking needs of their communities, including LMI borrowers and areas. Based on all the facts of record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs of the communities to be served, including the CRA performance records of

29. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

30. A commenter reiterated an allegation, considered previously by the Board in both the Mellon and Port Financial proposals, that Notificants indirectly supported predatory lending activities that were conducted by a number of unaffiliated consumer lenders through the securitization activities and warehouse-lending services of Notificants' subsidiary, Greenwich Capital Markets, Greenwich, Connecticut ("GCM"). Notificants have stated that GCM conducts periodic due diligence reviews in connection with its securitization activities. The Board carefully considered this comment and Notificants' response in light of all the facts of record in approving the Mellon and Port Financial proposals. See RBS/Mellon Order and RBS/Port Order. Commenter has not provided any new information that would warrant a different conclusion in this proposal.

31. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

the relevant depository institutions, are consistent with approval of the proposal.

Public Benefits and Other Considerations

As part of its evaluation of the public interest factors, the Board also has reviewed carefully the other public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses. The proposal would enable Notificants to provide Thistle's customers with access to a broader array of products and services, including commercial and investment banking products, in an expanded service area. Among the Citizens Financial products that would become available to customers of Roxborough are products specifically designed for small- and medium-size businesses and trust and asset management services. Customers of Roxborough would have access to an expanded branch and ATM network and internet banking services. Based on the foregoing and all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved.³² 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 Notificants with all the representations and commitments made in connection with the notice and all the conditions in this order.

The Board's determination also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and

32. One commenter requested that the Board hold a public meeting on the proposal. Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 C.F.R. 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenter has submitted extensive written comments that the Board has considered carefully in acting on the proposal. The commenter failed to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting. In addition, the commenter failed to demonstrate why its written comments did not adequately present its views, evidence, and allegations. For these reasons and based on all the facts of record, the Board has determined that a public meeting is not required or warranted in this case. Accordingly, the request for a public meeting on the proposal is denied.

225.25(c)), and to 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 action, the representations, commitments, and conditions relied on by the Board in reaching its decision 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 transaction 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 Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 19, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

Banking Markets in which Citizens Financial Competes Directly with Thistle

A. Philadelphia Banking Market

Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania; and Burlington, Camden, Gloucester, and Salem Counties and a portion of Mercer County in New Jersey.

B. Wilmington Banking Market

New Castle County in Delaware; and Cecil County in Maryland.

Appendix B

Market Data

Philadelphia Banking Market

Notificants operate the third largest depository institution in the market, controlling deposits of approximately \$9.5 billion, which represents approximately 10.6 percent of market deposits. Thistle operates the twenty-eighth largest depository institution in the market, controlling deposits of approximately \$503 million, which represents less than 1 percent of market deposits. On consummation of the proposal, Citizens would operate the second largest depository institution in the market, controlling deposits of approximately \$10 billion, which represents approximately

11.2 percent of market deposits. One hundred twenty-four depository institutions would remain in the market, and the HHI would increase 12 points to 947.

Wilmington Banking Market

Notificants operate the twelfth largest depository institution in the market, controlling deposits of approximately \$568 million, which represents approximately 1.5 percent of market deposits. Thistle operates the twenty-sixth largest depository institution in the market, controlling deposits of approximately \$48 million, which represents less than 1 percent of market deposits. On consummation of the proposal, Citizens would remain the twelfth largest depository institution in the market, controlling deposits of approximately \$616 million, which represents less than 1 percent of market deposits. Thirty-two depository institutions would remain in the market, and the HHI would remain unchanged at 1793.

Orders Issued Under Sections 3 and 4 of the Bank Holding Company Act

Central Pacific Financial Corp. Honolulu, Hawaii

Order Approving the Acquisition of a Bank Holding Company

Central Pacific Financial Corp. (“Central Pacific”), 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 CB Bancshares, Inc. (“CBBI”), and CBBI’s subsidiary bank, City Bank (“City Bank”), both in Honolulu, Hawaii. Central Pacific 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)) to acquire Datatronix Financial Services, Inc., also in Honolulu (“Datatronix”), a nonbanking subsidiary of CBBI that engages in data processing and data transmission activities.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (68 *Federal Register* 24,478 (2003)). The time for filing comments has expired, and the Board has considered the proposal and all comments received during the comment period in light of the factors set forth in sections 3 and 4 of the BHC Act.

Central Pacific is the third largest commercial banking organization in Hawaii and controls Central Pacific Bank in Honolulu (“CP Bank”), with total deposits of approximately \$1.7 billion, which represent approximately 8.3 percent of total deposits in depository institutions in the state (“state deposits”).¹ CBBI is the fourth largest commercial banking organization in Hawaii and controls City Bank, with total deposits of approximately \$1.2 billion, which

represent approximately 5.7 percent of state deposits. On consummation of the proposal, Central Pacific would remain the third largest commercial banking organization in Hawaii, controlling deposits of approximately \$2.9 billion, which represent 14 percent of state deposits.

The proposal by Central Pacific to acquire CBBI and City Bank is opposed by management of CBBI, and CBBI has submitted comments to the Board urging denial on several grounds. The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed by the management of the institutions to be acquired.² Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the Act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.³ Section 4(j) of the BHC Act requires the Board to consider whether the nonbanking aspects of the transaction 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.

In considering these factors, the Board is mindful of the potential adverse effects that contested acquisitions might have on the financial and managerial resources of the company to be acquired and the acquiring organization. In addition, the Board takes into account the potential for adverse effects that a prolonged contest may have on the safe and sound operation of the institutions involved. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board’s discretion under the BHC Act.⁴

As explained below, the Board has carefully considered the statutory criteria in light of all of the comments and information provided by CBBI and the responses submitted by Central Pacific.⁵ The Board also has carefully con-

2. See *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) (“*North Fork*”); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 259 (1988) (“*BONY*”).

3. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates, or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. See 12 U.S.C. §1842(c).

4. See *FleetBoston Financial Corporation*, 86 *Federal Reserve Bulletin* 751, 752 (2000); *North Fork*; *BONY*.

5. CBBI has provided comments and information on a number of issues, including the competitive impact of the proposal; potential branch closures; the accuracy and sufficiency of Central Pacific’s financial projections and resources; the managerial resources of Central Pacific; the ability of Central Pacific to consummate the proposed acquisition in light of CBBI’s corporate defenses and opposition, ongoing litigation, and provisions of Hawaiian corporate law; the

1. In this context, depository institutions include commercial banks, savings banks, and savings associations. Deposit data are as of June 30, 2003.

sidered all other information available, including information accumulated in the application process, supervisory information of the Board and other agencies, relevant examination reports, and information provided by the Hawaii Division of Financial Institutions (“DFI”) and the Federal Deposit Insurance Corporation (“FDIC”). In considering the statutory factors, particularly the effect of the proposal on the financial and managerial resources of Central Pacific, the Board has received detailed financial information, including the terms and cost of the proposal and the resources that Central Pacific proposes to devote to the transaction.

After reviewing the proposal in light of the requirements of the BHC Act, and for the reasons explained below, the Board has determined to approve the application and notice subject to Central Pacific’s commitments and the conditions established herein by the Board. The Board’s decision is conditioned on the requirement that Central Pacific’s offer not differ in any material aspect from the terms that it has provided to the Board. Accordingly, if Central Pacific amends or alters the terms of the offer as described by Central Pacific to the Board or is unable to complete all aspects of its proposal, it must consult with the Board to determine whether the difference is material to the Board’s analysis and conclusions regarding the statutory factors and, therefore, would require a modification to this order, a new application, or further proceedings before the Board.

In reviewing this proposal, the Board has taken into account the potential for adverse effects on the financial and managerial resources of the companies involved if there is prolonged opposition to the proposal. As discussed below, the Board has followed its standard practice of requiring that consummation of the proposal, including the acquisition of at least a majority of the shares of CBBI, be completed within three months from the date of this order. If the transaction is not concluded within this period, the Board will review carefully any requests by Central Pacific to extend the consummation period and would expect to grant an extension of the period only if the Board is satisfied that the statutory factors continue to be met.

The Board’s decision and conclusions on this proposal are limited to the application of the statutory factors set out in the BHC Act to the proposal. The Board expresses no view or recommendation on whether this transaction is in the best interests of the shareholders or whether it should be accepted by the management or shareholders of CBBI.

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. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any

potential loss of CBBI’s status as a minority-owned depository institution; and the effect of the proposed acquisition on the convenience and needs of the communities served by CBBI and Central Pacific.

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.⁶

The proposed merger of Central Pacific and CBBI would combine the third and fourth largest commercial banking organizations in Hawaii. The Board has reviewed carefully the competitive effects of the proposal in each relevant banking market in light of all the facts of record, including information collected by the Federal Reserve System, information provided by Central Pacific and CBBI, information provided by the Department of Justice and other relevant agencies, and public information. The Board also has carefully considered comments submitted by CBBI on the competitive effects of the proposal. CBBI contends that the merger would reduce competition for several reasons, including alleging that the transaction will result in a reduction in banking services, higher fees, the elimination of certain banking products, and reduced customer convenience.

To determine the effect of a particular transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant “line of commerce,” or product market, and the geographic market. CBBI contends that the competitive analysis should focus on the impact of the merger on the provision of banking services to small- and medium-size businesses and consumers. On this basis, CBBI contends that the proposed merger would have anticompetitive effects in certain Hawaiian banking markets as well as the entire state.

The Board and the courts consistently have recognized that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.⁷ According to the Supreme Court, the clustering of banking products and services facilitates convenient access to these products and services, and vests the cluster with economic significance beyond the individual products and services that constitute the cluster.⁸ Several studies support the conclusion that both businesses and households continue to seek this cluster of services.⁹ Consistent with these precedents and studies,

6. 12 U.S.C. § 1842(c)(1).

7. See *Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239 (1996) (“*Chemical*”), and the cases and studies cited therein. The Supreme Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963) (“*Philadelphia National*”); accord *United States v. Connecticut National Bank*, 418 U.S. 656 (1974); *United States v. Phillipsburg National Bank*, 399 U.S. 350 (1969) (“*Phillipsburg National*”).

8. See *Phillipsburg National*, 399 U.S. at 361.

9. Cole and Wolken, *Financial Services Used by Small Businesses: Evidence from the 1993 National Survey of Small Business Finance*, 81 *Federal Reserve Bulletin* 629 (1995); Elliehausen and Wolken, *Banking Markets and the Use of Financial Services by Households*, 78 *Federal Reserve Bulletin* 169 (1992); Elliehausen and Wolken,

and on the basis of the facts of record in this case, the Board concludes that the cluster of banking products and services represents the appropriate product market for analyzing the competitive effects of this proposal.

In defining the relevant geographic market, the Board consistently has sought to identify the area in which the cluster of banking products and services is provided by competing institutions and in which purchasers of the products and services seek to obtain these products and services.¹⁰ In applying these standards to bank acquisition proposals, the Board and the courts repeatedly have held that the geographic market for the cluster of banking products and services is local in nature.¹¹ In delineating the relevant geographic market in which to assess the competitive effects of a bank merger or acquisition, the Board reviews population density; worker commuting patterns; the usage and availability of banking products; advertising patterns of financial institutions; the presence of shopping, employment, and other necessities; and other indicia of economic integration and transmission of competitive forces among banks.¹² In Hawaii, the Board has paid particular attention to an analysis of relevant commuting data, the state's mountainous island geography, the economic integration of the local areas, and evidence of where customers conduct their banking business.¹³

In applying these principles in Hawaii, the Board previously has identified five local geographic markets in which effects of bank expansion proposals on competition must be analyzed.¹⁴ Based on these and all other facts of record in this case, the Board continues to believe that Hawaii is comprised of five local banking markets and that the record in this case supports a competitive analysis based on these five local markets.

Central Pacific and CBBI compete directly in four of these local banking markets: East Hawaii Island (Hilo), Honolulu, Kauai and West Maui.¹⁵ The Board has reviewed

Banking Markets and the Use of Financial Services by Small- and Medium-Sized Businesses, 76 *Federal Reserve Bulletin* 726 (1990).

10. See, e.g., *Sunwest Financial Services, Inc.*, 73 *Federal Reserve Bulletin* 463 (1987); *Pikeville National Corporation*, 71 *Federal Reserve Bulletin* 240 (1985); *Wyoming Bancorporation*, 68 *Federal Reserve Bulletin* 313 (1982), aff'd 729 F.2d 687 (10th Cir. 1984).

11. See *Philadelphia National*, 374 U.S. at 357; *Phillipsburg National*; *First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998); *Chemical*; *St. Joseph Valley Bank*, 68 *Federal Reserve Bulletin* 673 (1982) ("St. Joseph").

12. See *Crestar Bank*, 81 *Federal Reserve Bulletin* 200, 201, n. 5 (1995); *Pembancorp*, 69 *Federal Reserve Bulletin* 548 (1983); *St. Joseph*.

13. See *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, n. 13 (1991) ("First Hawaiian"). In reaching this conclusion, the Board relied in part on evidence derived from a survey conducted by the Federal Reserve Bank of San Francisco. All the consumers surveyed reported that they maintained their primary transaction accounts in local markets. All the businesses surveyed maintained their primary transaction accounts with the local offices of depository institution, and all the businesses that borrowed from depository institutions obtained their loans from local offices. See *id.*

14. See *Bancorp Hawaii, Inc.*, 76 *Federal Reserve Bulletin* 759 (1990), which identified the following Hawaiian banking markets: East Hawaii Island (Hilo), Honolulu, Kauai, West Hawaii Island (Kailua-Kona), and West Maui.

15. These markets are described in Appendix A.

carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions controlled by Central Pacific and CBBI in the markets ("market deposits"),¹⁶ 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 Guidelines ("DOJ Guidelines"),¹⁷ and other characteristics of the markets.¹⁸ Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of the four banking markets.¹⁹

The Department of Justice also has conducted a detailed review of the expected competitive effects of the proposal. The Department of Justice has advised the Board that consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. The FDIC and the DFI have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, including public comments on the competitive effects of the proposal, and for the reasons discussed in the order and appendices, the Board concludes that consummation of the proposal would not be likely to result in a significantly

16. Deposits and market share data are as of June 30, 2003, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously 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 deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian*.

17. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered highly concentrated if the post-merger HHI is more than 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 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.

18. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

19. As previously noted, CBBI contends that the competitive analysis should focus on the impact of the merger on providing banking services to small- and medium-sized businesses and consumers. CBBI provides no information that supports finding lending to small or mid-size businesses as a separate product market. Even if the competitive analysis defined the relevant product market more narrowly to comprise only lending to small or mid-size businesses, the Board does not believe that consummation of the proposal would have a significantly adverse effect on competition in those products in any relevant banking market. In each case there are numerous competitors, the changes in market share resulting from this transaction are not significantly adverse, and the barriers to entry by depository institutions and others are relatively low. CBBI argues that branch closures and the elimination of services will hurt consumers. As discussed below, Central Pacific has stated that it will open a new branch for every branch closed. CBBI currently provides a wide array of services to its customers and expects to integrate CBBI's products and services into its operations as appropriate.

adverse effect on competition or on the concentration of banking resources in any of the markets in which Central Pacific and CBBI directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive factors are consistent with approval of the proposal.

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 financial institutions to help meet the credit needs of 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 an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Central Pacific and CBBI in light of all the facts of record. As part of its review, the Board carefully considered comments submitted by CBBI expressing concerns about the record of Central Pacific in meeting the convenience and needs of the communities it serves and Central Pacific’s responses to those concerns.²¹ In particular, CBBI criticized Central Pacific’s record of small business and home mortgage lending to LMI borrowers and its record of lending in LMI communities in Hawaii. In addition, CBBI expressed concern about potential branch closings.²²

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of 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

20. 12 U.S.C. § 2901 *et seq.*

21. In connection with this application, Central Pacific has also publicly announced its willingness to commit an additional \$1 million in qualified investments and charitable donations to support local community needs.

22. CBBI has expressed concern that the proposal might result in the loss of jobs. Central Pacific has announced publicly its intention to retain almost all the employees of City Bank after consummation of this proposal. Moreover, the factors that the Board can consider when reviewing an application are limited by applicable law. The effect of a proposed transaction on employment in a community is not among the factors included in the acts administered by the Board. The convenience and needs factor has been consistently interpreted by the federal financial supervisory agencies, the courts, and Congress to relate to the effects of a proposal on the availability and quality of banking services in the community. See *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 455, 457 (1996).

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

The subsidiary banks of Central Pacific and CBBI each received “satisfactory” ratings at their most recent CRA performance evaluations. Central Pacific’s subsidiary bank, CP Bank, received a “satisfactory” rating by the FDIC, as of August 23, 2002 (the “2002 Evaluation”), and CBBI’s subsidiary bank, City Bank, received a “satisfactory” rating by the FDIC, as of September 11, 2001 (the “2001 Evaluation”). Examiners found no evidence of prohibited discrimination or other illegal credit practices at either of the insured depository institutions involved in this proposal and found no violations of the substantive provisions of fair lending laws.

B. CRA Performance of Central Pacific

1. Lending Test

CP Bank received a rating of “low satisfactory” under the lending test in the 2002 Evaluation, in which examiners concluded that CP Bank’s lending record reflected adequate responsiveness to community credit needs and adequate penetration throughout its assessment area.²⁴ They also commented that CP Bank had adopted a business strategy that focused on commercial and industrial and nonfarm, nonresidential loans, with residential lending correspondingly de-emphasized. As previously noted by the Board, the CRA does not require financial institutions to provide any particular type of products or services to its customers.

The 2002 Evaluation reported that CP Bank’s lending record demonstrated good penetration among business customers of different sizes, including loans to small businesses and small loans to businesses.²⁵ During the review period, CP Bank originated approximately \$149.2 million in small loans to businesses in its assessment areas, of which approximately 18.6 percent by number were made to businesses in LMI areas. Examiners also noted that approximately 65 percent of CP Bank’s small loans to businesses were made to small businesses, which significantly exceeded the record of lenders in the aggregate (“aggregate lenders”), and concluded that CP Bank was clearly addressing the credit needs of small businesses.

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

24. The review period was January 1, 2000, through June 30, 2002. CP Bank’s assessment areas for the 2002 Evaluation included the Honolulu Metropolitan Statistical Area (“MSA”) and the non-MSA portions of Hawaii (“Hawaii non-MSA”), which together comprised the entire state. CP Bank’s deposits and lending activities were more heavily concentrated in its Honolulu MSA assessment area. Accordingly, examiners gave substantially more weight to CP Bank’s activities in the Honolulu MSA assessment area when determining the bank’s overall CRA rating.

25. In this context, “loans to small businesses” includes loans to businesses with gross annual revenues of \$1 million or less, and “small loans to businesses” includes loans of \$1 million or less to businesses.

Examiners also concluded that CP Bank's lending to small businesses in the Honolulu MSA was excellent relative to aggregate lenders. In this assessment area, CP Bank originated 73.3 percent and 55.8 percent of its business loans to small businesses in 2000 and 2001, respectively. In 2000 and 2001, CP Bank originated 83.6 percent and 63.6 percent, respectively, of its loans to small businesses in amounts of \$100,000 or less. In CP Bank's Hawaii non-MSA assessment area, examiners found that 19 percent of the loans CP Bank made to small businesses were made to businesses in moderate-income tracts in 2000 (the only year for which aggregate lending data were available), which compared favorably with aggregate lenders. Moreover, the majority of CP Bank's small loans to small businesses in its Hawaii non-MSA assessment area were extended to small businesses.

The 2002 Evaluation noted CP Bank's participation in flexible lending programs tailored to the needs of small businesses and LMI individuals who might not qualify for more traditional loan products. CP Bank, as a Small Business Administration ("SBA") Preferred Lender, originated approximately \$9.7 million in SBA loan products during the review period. Examiners reported that CP Bank assisted new or very small businesses in qualifying for credit by offering term business loans with minimum loan amounts of \$10,000 and business lines of credit with no minimum loan amount.

During the review period, CP Bank originated approximately \$149.4 million in loans reportable under the Home Mortgage Disclosure Act (12 U.S.C. §2801 *et seq.*) ("HMDA") in its assessment areas, of which approximately 15.1 percent by number were in LMI geographies.²⁶ In its Honolulu MSA assessment area, CP Bank extended 15.4 percent and 18.8 percent of its HMDA loans to borrowers in moderate-income census tracts in 2000 and 2001, respectively, which examiners described as very good relative to aggregate lenders. Examiners found that CP Bank's distribution of HMDA loans to moderate-income borrowers in the Hawaii non-MSA portions of its assessment areas was comparable with the percentage of moderate-income households in the area. Although CP Bank did not originate a significant number of loans in low-income areas in its assessment areas, examiners concluded that there were limited opportunities to make such loans. Examiners noted that in the Honolulu MSA, owner-occupied housing represented less than 1 percent of housing units in low-income areas. In the Hawaii non-MSA assessment areas, examiners noted that there were only two low-income census tracts, that both were very isolated, and that one had been partially evacuated.

The 2002 Evaluation also noted CP Bank's participation in mortgage loan programs sponsored at the federal, state, and local level, including programs of the Federal National Mortgage Association, the County of Kauai Home Buyer

Gap Mortgage program, and the Hula Mae program that were designed to increase home ownership among LMI individuals. Through these flexible lending programs and CP Bank's Affordable Program/First Time Homebuyer Program, CP Bank originated more than \$600,000 in mortgage loans during the reporting period.

Central Pacific represented that since the 2002 Evaluation, it has undertaken certain initiatives to further enhance its lending performance, including hiring additional mortgage lending personnel and instituting a monetary incentive program for CRA-related mortgage loans. In addition, CP Bank has instituted a new training program for branch managers and loan officers with respect to flexible mortgage lending programs.

Examiners characterized CP Bank as a leader in making community development loans and noted that the majority of these loans addressed the need for financing for affordable rental housing. Examiners reported that CP Bank's emphasis on affordable housing and its investment in a community loan fund that served LMI individuals and provided loans to small business entrepreneurs demonstrated good responsiveness to the credit needs of its community. During the review period, CP Bank extended \$14.2 million in community development loans and a \$9 million standby letter of credit in its assessment area, including \$2.7 million in loans in its Hawaii non-MSA assessment area. CP Bank's community development loans benefited affordable housing projects and community organizations, which included a 91-unit apartment complex that provides affordable housing to low-income, disabled persons; a hospital in a LMI community; and a micro-enterprise development program.

2. Investment Test

CP Bank received an "outstanding" rating for investment activities in the 2002 Evaluation. During the review period, CP Bank's qualified investments in its assessment areas totaled approximately \$20.5 million. Examiners noted that CP Bank's investment, grant, and donation activities were very responsive to the credit and economic needs of its assessment areas. The 2002 Evaluation also reported that CP Bank's grants and donations benefited community organizations that provided affordable housing projects for LMI individuals, financing and other services for small businesses, and community development services tailored to LMI individuals.

3. Service Test

CP Bank received an "outstanding" rating for its retail banking services in the 2002 Evaluation. Examiners reported that CP Bank's retail banking delivery services were readily accessible to all portions of its assessment areas. In addition, the 2002 Evaluation found that CP Bank's 14 full-service branches offered a full array of bank products and services, and that all branches maintained hours that did not inconvenience any portion of the bank's assessment areas or any group of individuals. Examiners

26. Although CP Bank increased both the number of and dollar volume of its mortgage loans, the bank's market share remained almost unchanged, in part because of the increased number of lenders in the market.

noted that CP Bank maintained alternative delivery systems, including automated teller machines (“ATMs”), 24-hour telephone banking, and internet banking. The 2002 Evaluation also noted that since its previous CRA evaluation, CP Bank had initiated new banking products to help meet certain retail banking needs of LMI individuals and small businesses, including a low-cost checking account with no minimum balance and unlimited check-writing privileges.

C. CRA Performance of CBBI

1. Lending Test

City Bank received a “high satisfactory” rating for lending activities at the 2001 Evaluation.²⁷ Examiners reported that City Bank’s overall lending performance in its assessment areas reflected a responsiveness to community credit needs.²⁸ The 2001 Evaluation stated that City Bank’s lending record demonstrated good penetration among home mortgage borrowers of different income levels. During the review period, City Bank funded residential mortgage loans totaling more than \$347 million in its combined assessment areas. Examiners found that the percentages of City Bank’s total HMDA-reportable loans in LMI census tracts and to LMI borrowers in its assessment areas during the review period was comparable with those percentages for aggregate lenders.

Examiners indicated that City Bank’s small business lending in its combined assessment areas also reflected a responsiveness to area credit needs. City Bank made small loans to businesses totaling approximately \$11.1 million during the review period, including approximately \$5.1 million in loans to small businesses. In the 2001 Evaluation, examiners reported that approximately 31 percent of City Bank’s small loans to businesses, by number and dollar volume, were extended to businesses in LMI census tracts.

The 2001 Evaluation also found that City Bank had made a relatively high level of community development loans during the review period. Examiners noted that many of City Bank’s community development loans had financed affordable housing programs and were made in conjunction with nonprofit community development organizations and developers. During the review period, City Bank originated approximately \$27 million in community development loans, including \$8.9 million in multifamily affordable housing loans and \$14.2 million in loans that promoted economic development.

2. Investment Test

City Bank received a “low satisfactory” rating for investment activities in the 2001 Evaluation. The 2001 Evaluation

reported that City Bank maintained an adequate level of community development investments. Examiners noted that City Bank made qualified investments totaling approximately \$3.3 million, including approximately \$1 million in qualified investments in low-income, community financial organizations and \$1.2 million in securities backed by mortgage loans to LMI borrowers.

3. Service Test

City Bank received a “high satisfactory” rating for retail banking services in the 2001 Evaluation. Examiners reported that the bank’s banking services were accessible to essentially all portions of its assessment areas, and noted that it offered alternative delivery systems, including ATMs, 24-hour telephone banking, and internet banking. During the review period, City Bank offered a low-cost checking account for LMI customers.

D. Branch Closings

The Board has considered the public comments about potential branch closings in light of all the facts of record. Central Pacific has provided the Board with its branch closing policy and states that it has not made final decisions about branches that may be closed after consummation of the proposal. Moreover, Central Pacific has represented that it will open a new branch for every branch of CP Bank or City Bank that is closed as a result of this merger. The Board has considered carefully CP Bank’s branch closing policy and its record of opening and closing branches. The branch closing policy provides that if CP Bank considers closing a branch in a low-income or predominantly minority area, bank management must meet with community representatives to discuss measures that might keep the branch open. Examiners reviewed its branch closing policy as part of the 2002 Evaluation and found it to be in compliance with federal law. The Board expects that Central Pacific would continue to follow a branch closing policy satisfactory to examiners for any branch closed in connection with the proposed transaction.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.²⁹ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisor before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of CP Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

27. The review period was January 1, 1999, through June 30, 2001.

28. City Bank’s assessment areas for the 2001 Evaluation included the Honolulu MSA, Hawaii County, and Maui County, except for the islands of Lanai and Molokai.

29. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days’ notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days’ notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution’s written policy for branch closings.

E. Minority Depository Institution

CBBI also has expressed concern that the proposed transaction and merger of City Bank and CP Bank might result in the termination of City Bank's status as a minority depository institution under Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA").³⁰

The Board is mindful of the beneficial role played by minority depository institutions in promoting access to banking services for all communities. However, neither section 308 of FIRREA nor the guidance issued under that section by the relevant agencies prohibits bank holding companies from acquiring minority depository institutions, and the current proposal does not involve the types of competing bids contemplated by section 308. In addition, the Board notes that the FDIC would be required to review the merger of CP Bank and City Bank before such a merger could proceed. Central Pacific has stated that, after consummation of the proposal, the resulting organization will continue to have substantial minority ownership and management participation. The Board expects Central Pacific and CP Bank to continue to conduct their businesses in a manner that promotes equal access to banking services for all segments of their communities, including minority individuals.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of CRA record of the institutions involved, information provided by Central Pacific, all comments received and responses to the comments, and confidential supervisory information.³¹ 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, including the CRA performance records of the relevant depository institutions, are consistent with approval.

30. Section 308 of FIRREA requires the Secretary of the Treasury to consult with the Office of Thrift Supervision and the FDIC to devise methods to achieve certain goals for minority depository institutions, including preserving the number of such institutions and favoring bids by minority depository institutions to acquire another minority depository institution over bids by other acquirers. See Pub. L. No. 101-73, 103 Stat. 354 (1989) (see 12 U.S.C.A. § 1463 note). See also FDIC Policy Statement Regarding Minority Depository Institutions, 67 *Federal Register* 18,618 (2002).

31. CBBI also expressed concern that the merger would result in a diminution in products available to customers. Central Pacific indicates that it expects to integrate CBBI's products and services into its offices as appropriate, thereby providing customers with access to a broader array of services. In analyzing the potential effects of this proposal on the availability of banking products, the Board has placed significant weight on Central Pacific's actual record of performance in meeting the convenience and needs of the communities it serves. The Board expects Central Pacific to continue to meet the convenience and needs of its communities, including LMI areas, by offering products and services that help meet the banking needs of its customers, including LMI individuals and small businesses, after the acquisition of CBBI.

Financial and Managerial Factors

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 carefully considered these factors in light of all the facts of record, including public comments, reports of examination, and other confidential supervisory information assessing the financial and managerial resources of the organizations. The Board has also considered information provided by other banking agencies, including the FDIC and the DFI. In addition, the Board has considered publicly available financial and other information on the organizations and their subsidiaries, and all the information submitted on the financial and managerial aspects of the proposal by Central Pacific and CBBI. CBBI, in particular, has expressed concerns about the integration of the organizations' operations, Central Pacific's estimates of the cost savings that might result from the proposed merger, and Central Pacific's managerial depth and experience.³²

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important.³³ The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified in the Board's Capital Adequacy Guidelines. Strong capital is particularly important in proposals that involve higher transaction costs or risks, such as proposals that are contested.

Central Pacific, CP Bank, CBBI, and City Bank are currently well capitalized. Central Pacific has described in detail the terms and costs of its proposed offer to acquire CBBI. Central Pacific proposes to acquire the shares of CBBI with a combination of cash and shares of Central Pacific's common stock. Funds to acquire the common stock of CBBI will come from Central Pacific's available cash on hand, dividends from CP Bank, funds that Central Pacific has recently raised through the issuance of trust preferred securities, and funds that Central Pacific anticipates raising in further issuances of trust preferred or other securities.³⁴ On consummation of the proposal, Central

32. CBBI alleges that integrating the organizations would be especially difficult for Central Pacific in light of the contested nature of the transaction and the potential that officers and managers of CBBI might leave the combined organization. CBBI also argues that Central Pacific has not adequately accounted for the possible financial effects if CBBI shareholders assert dissenter's rights. In addition, CBBI argues that information provided by Central Pacific to the Board and to the public is insufficient to permit an analysis of the financial and managerial aspects of the proposal, including the likely cost savings from the proposal. After receiving Central Pacific's initial application and notice, the Board requested additional information on all aspects of the proposal, including plans for integration and revised financial projections and cost estimates, and has received substantial confidential and nonconfidential information that has been included in the record.

33. See, e.g., *First Union Corporation*, 87 *Federal Reserve Bulletin* 683, 688 (2001); *Chemical*.

34. CBBI has expressed concerns about Central Pacific's reliance on trust preferred securities in light of recent opinions by the Financial

Pacific, CP Bank, CBBI, and City Bank would have a cushion above the minimum levels necessary to meet the regulatory definition of well capitalized. In addition, Central Pacific has committed to the Board that Central Pacific and CP Bank will remain well capitalized.

In addition to carefully reviewing the capital structure of the resulting institution, the Board has considered the impact of this transaction on the other financial resources of Central Pacific. Central Pacific's earnings historically have exceeded those of institutions in its peer group. The Board also has reviewed the financial resources of the combined organization, taking into account Central Pacific's projected costs as well as projections regarding potential customer attrition and cost savings.³⁵ These projections indicate that Central Pacific should be able to remain well capitalized on consummation of this proposal and to continue to meet its cash obligations.³⁶

The Board also has considered the managerial resources of the entities involved and of the proposed combined organization. CBBI alleges that the management of Central Pacific is inexperienced in transactions involving bank acquisitions and lacks the managerial skill to consummate the transaction. CBBI also alleges that managing the combined entity would put severe strain on the management of Central Pacific because the transaction would almost double the size of Central Pacific.

The Board has carefully reviewed all available information on the management of Central Pacific, including confi-

dential reports of examination, information submitted by Central Pacific and CBBI, and publicly available information. In particular, the Board has reviewed the information submitted by Central Pacific, including confidential information, about its plans for integrating and managing the combined organization. Several factors reduce concern with respect to the managerial resources of the combined entity. Central Pacific, CBBI, and their subsidiary depository institutions currently are satisfactorily managed, with appropriate risk management processes in place. Both institutions operate in the same markets and engage in similar types of activities. In addition, Central Pacific has represented that both institutions use much of the same information technology for their banking operations. As mentioned above, Central Pacific and City Bank are well capitalized, and both institutions have records of positive earnings. Central Pacific's plan for integrating CBBI and its subsidiaries into Central Pacific appears adequate.³⁷ Based on these and all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory considerations that the Board must consider under section 3 of the BHC Act.

Provisions of Hawaiian Law and CBBI's Shareholders' Rights Plan

CBBI is a Hawaiian corporation and Hawaiian law contains various provisions governing proposals to acquire Hawaiian corporations that are unsolicited by the management.³⁸ In addition, CBBI's bylaws provide certain rights to shareholders that are intended to protect against bidders that are not approved by CBBI's management

Accounting Standards Board ("FASB") regarding the status of trust preferred securities. See Consolidation of Variable Interest Entities, *FASB Interpretation*, No. 46 (2003); Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity, *Statement of Financial Accounting Standards*, No. 150 (May 2003). Earlier this year, the Board issued supervisory guidance directing bank holding companies to continue to include certain trust preferred securities as tier 1 capital for regulatory capital purposes pending further review of this matter by the Board. See Federal Reserve Board Supervisory Letter, SR 03-13 (July 2, 2003). The Board is in the process of considering the regulatory capital implications of the FASB opinions and will provide further guidance as appropriate on the treatment of trust preferred securities as capital. The Board has also considered information provided by Central Pacific on its alternatives to using trust preferred securities to meet its capital requirement.

35. Under Hawaiian law, dissenting shareholders in a merger between corporations may request to receive cash consideration instead of shares of the resulting company. CBBI has argued that there would be adverse financial consequences to Central Pacific if 25 percent of CBBI's shareholders dissent from the merger and elect to receive a cash payment for their CBBI shares in an amount equal to the value of Central Pacific's tender offer or greater. In evaluating the potential effects of this proposal on the financial resources of Central Pacific, the Board has considered the effects of the assertion of dissenter's rights consistent with CBBI's assumptions in light of Central Pacific's ability to raise additional funds to consummate this transaction, its commitment to remain well capitalized, and the terms and conditions of its proposal as outlined in the application process.

36. CBBI has expressed concern that Central Pacific's projected cost savings are unrealistic in light of Central Pacific's representations that it would retain almost all City Bank employees and would open a new branch for every branch it closes in connection with the proposal. The Board has evaluated the financial effects of this proposal under the assumption that Central Pacific will not realize any cost savings and that customer attrition will be greater than anticipated by Central Pacific.

37. CBBI also expressed concern about the ability of Central Pacific to manage and operate CBBI and City Bank in the event that Central Pacific does not acquire sufficient shares of CBBI to effect a corporate merger. The Board previously has noted that the BHC Act permits a company to acquire less than all the shares of a bank or a bank holding company. See *North Fork, BONY*. Central Pacific has stated that it expects to acquire sufficient shares to effect a corporate merger with CBBI and does not intend to be a minority shareholder of CBBI. The Board is unable to predict at this time whether Central Pacific will succeed with its proposal or whether the level it is able to acquire will cause dissension in the ongoing operation of CBBI. However, the Board notes that both Central Pacific and CBBI have capable managements, and the Federal Reserve maintains sufficient authority to take appropriate action if necessary to require the safe and sound operation and management of the institutions.

38. See Haw. Rev. Stat. § 414E (2003) (the "Hawaii Control Share Acquisition Act" or "HCSAA") (any shares of a Hawaiian corporation held by a party that has acquired more than 10 percent of the corporation without the approval of either the corporation's directors or a majority of the voting shares of the corporation are denied voting rights for one year, are nontransferable, and may be redeemed at book value by the acquired corporation). On May 28, 2003, CBBI convened a shareholder meeting pursuant to the HCSAA. The shareholders voting at this meeting failed to approve Central Pacific's offer to acquire CBBI. CBBI asserts that, in light of the results of the May 28 meeting, Central Pacific is barred from consummating its offer to acquire CBBI.

(“CBBI rights plan”).³⁹ CBBI argues that the HCSAA and the CBBI rights plan present insurmountable barriers to Central Pacific’s contested acquisition of CBBI.⁴⁰

The Board may not approve the acquisition of a bank by a bank holding company if the acquisition is prohibited by state law.⁴¹ The Board, however, has previously approved transactions on condition that the particular transaction is consummated only in compliance with applicable state law.⁴²

The HCSAA is part of the general corporate law, not a statute governing the banking activities or operations of the companies involved in the proposal. Whether the HCSAA is an obstacle to consummation of this transaction depends on the actions taken by the management and shareholders of CBBI. For example, the HCSAA would not prevent consummation of the proposal if either CBBI’s management or shareholders approve the transaction. Central Pacific has stated that it will not consummate the proposal unless it obtains approval as required by the HCSAA. The Board’s approval is conditioned on compliance by Central Pacific with all applicable Hawaiian law governing this transaction.

CBBI’s board of directors has significant discretion in determining whether the CBBI rights plan will become effective in a particular case and, specifically, whether it will have any effect on this proposal. Central Pacific has stated that it will condition its tender offer for CBBI shares on, among other things, the inapplicability of the CBBI rights plan. Because the cost of consummating the transaction would be significantly affected if the CBBI rights plan is triggered, the Board’s approval is limited to consummation of the proposal without applying the CBBI rights plan.

Nonbanking Activities

Central Pacific also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Datatronix, a nonbanking subsidiary of CBBI that engages in data processing and data transmission activities. The Board has determined by

regulation that the activity for which notice has been provided is closely related to banking for purposes of section 4(c)(8) of the BHC Act and, therefore, permissible for bank holding companies.⁴³ Central Pacific has committed to conduct this activity in accordance with the Board’s regulations and orders governing this activity for bank holding companies.

In order to approve this notice, the Board also must determine that the acquisition of Datatronix and the performance of the proposed activities by Central Pacific 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.⁴⁴ As part of its evaluation of these factors, the Board considers the financial and managerial resources of Central Pacific and its subsidiaries, and the company 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 has considered the competitive effects of Central Pacific’s proposed acquisition of Datatronix in light of all the facts of record. The markets for data processing and data transmission activities are national and unconcentrated. The record in this case also indicates that there are numerous providers of these services. Based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect on competition for the proposed services. Accordingly, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the nonbanking acquisition proposed in the transaction.

Central Pacific has indicated that the proposal would enable it, through its bank and nonbank subsidiaries, to provide CBBI and Datatronix customers with access to certain investment and trust products and services that CBBI and Datatronix currently do not offer. Furthermore, customers of CBBI would have an expanded service area, with numerous offices and ATMs throughout the state. In addition, Central Pacific has stated that it might integrate Datatronix with Central Pacific’s existing bank servicing data processing assets, which could yield cost savings to consumers through the elimination of certain operational and administrative redundancies.

The Board also concludes that the conduct of the proposed nonbanking activities within the framework established in this order and Regulation Y 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 not be outweighed by 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

39. Under the CBBI rights plan, rights to purchase additional shares of CBBI or any successor corporation at a set price will be distributed to all shareholders of CBBI at a specified time. CBBI’s board of directors may cause the company to redeem these rights at any time before the distribution date.

40. CBBI has initiated a lawsuit alleging that Central Pacific and other parties violated the HCSAA through a voting agreement and Central Pacific has initiated a lawsuit challenging the validity of the CBBI rights plan. CBBI asserts that the Board should delay consideration of the Central Pacific/CBBI application until the legal actions are resolved. The matters raised by CBBI and Central Pacific are matters of general corporate law appropriately within the jurisdiction of the courts to determine, and Board action under the BHC Act would not interfere with judicial review of the pending lawsuits. In light of this order’s condition, discussed in this section, that Central Pacific must comply with state law in consummating the transaction, the Board does not believe that a delay in its review under the BHC Act is warranted.

41. See *Whitney National Bank of Jefferson Parish v. Bank of New Orleans and Trust Company*, 379 U.S. 411 (1965); *Security Pecos Bancshares, Inc.*, 85 *Federal Reserve Bulletin* 640, 641 (1999).

42. See *North Fork; BONY*.

43. See 12 C.F.R. 225.28(b)(14).

44. See 12 U.S.C. § 1843(j)(2)(A).

determined that the balance of public interest factors that it must consider under the standard of section 4(j) of the BHC Act is favorable and consistent with approval of the proposal.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposed transaction should be, and hereby is, approved.⁴⁵ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Central Pacific with the conditions imposed in this order and the commitments made in connection with the application and notice, including compliance with state law. In particular, in the event of any material change in the transaction, such as a material change in the price, financing, terms, conditions, or structure of the transaction, or an inability to complete all the aspects of the transaction as proposed, Central Pacific must consult with the Board to determine whether the change is consistent with the Board's action in this case, or whether further Board action is necessary. The Board reserves the right in the event of significant changes in the proposal to require a new application from Central Pacific. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and to 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 find necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders

45. CBBI requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) 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 timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's regulations provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C. § 1843(c)(8); 12 C.F.R. 225.25(a)(2). The Board has considered carefully CBBI's request in light of all the facts of record. In the Board's view, CBBI has had ample opportunity to submit its views, and has submitted written comments that have been considered carefully by the Board in acting on the proposal. CBBI's request fails to demonstrate why its written comments do not present its evidence adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. 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.

issued thereunder. The commitments made in the application process 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.

In previous cases, the Board has recognized that a prolonged contest for ownership of a banking institution might result in adverse effects on the financial and managerial resources of the organizations or other factors.⁴⁶ CBBI has expressed concern that a prolonged, contested acquisition of CBBI would be costly to CBBI and Central Pacific and would divert the time and resources of the management of these institutions.

The BHC Act does not provide a specific time period for consummation of a transaction. Generally, however, the Board requires consummation of an approved transaction within three months from the date of the Board's order to ensure that there are no substantial changes in an applicant's or target's condition or other factors that might require the Board to reconsider its approval.

In this case, although prolonged delay may have a negative impact on Central Pacific and CBBI, a short delay should not affect the financial or managerial resources of either organization or other factors so severely as to warrant denial of the proposal. Accordingly, the Board has followed its standard practice and requires that the transaction, including the acquisition of at least a majority of the shares of CBBI, be consummated within three months after the effective date of this order unless that period is extended by the Board. If Central Pacific requests an extension of time to consummate the proposal, the Board will examine carefully all relevant circumstances, and may require Central Pacific to provide supplemental information if necessary to evaluate the managerial and financial resources of Central Pacific and CBBI or other factors at the time any extension is requested, and the impact of any extension on those resources and on the other statutory factors that the Board must consider under the BHC Act. The Board would extend the consummation period only if the Board is satisfied that the statutory factors continue to be met. The proposed banking acquisition may not be consummated before the fifteenth calendar day after the effective date of this order.

By order of the Board of Governors, effective December 15, 2003.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

Hawaiian Banking Markets in which Central Pacific Competes Directly with CBBI

46. See *North Fork* at 775; *BONY* at 259, 272.

East Hawaii Island (Hilo)

Eastern portion of the island of Hawaii, including the Hilo Ranally Metro Area (“RMA”) and the town of Pahoa.

Honolulu

Honolulu RMA.

Kauai

The island of Kauai, including the towns of Eleele, Hanalei, Hanapepe, Kapaa, Koloa, Lihue, Princeville, and Waimea.

West Maui

Western portion of the island of Maui, including the towns of Kahului, Kihei, Lahaina, Paia, Pukalani, Wailea, and Wailuku.

Appendix B

Banking Markets

East Hawaii Island (Hilo)

Central Pacific operates the fourth largest depository institution in the market, controlling deposits of approximately \$59.1 million, which represent approximately 8.5 percent of market deposits. CBBI operates the fifth largest depository institution in the market, controlling deposits of approximately \$30.3 million, which represent approximately 4.3 percent of market deposits. On consummation of the proposal, Central Pacific would operate the third largest depository institution in the market, controlling deposits of approximately \$89.4 million, which represent approximately 12.8 percent of market deposits. Seven depository institutions would remain in the market. The HHI would increase by 73 points to 2727.

Honolulu

Central Pacific operates the fourth largest depository institution in the market, controlling deposits of approximately \$1.5 billion, which represent approximately 10.1 percent of market deposits. CBBI operates the fifth largest depository institution in the market, controlling deposits of approximately \$1.1 billion, which represent approximately 7.5 percent of market deposits. On consummation of the proposal, Central Pacific would operate the third largest depository institution in the market, controlling deposits of approximately \$2.6 billion, which represent approximately 17.6 percent of market deposits. Eight depository institutions would remain in the market. The HHI would increase by 150 points to 2659.

Kauai

Central Pacific operates the fourth largest depository institution in the market, controlling deposits of approximately

\$47.4 million, which represent approximately 6.8 percent of market deposits. CBBI operates the sixth largest depository institution in the market, controlling deposits of approximately \$1.1 million, represent less than 1 percent of market deposits. On consummation of the proposal, Central Pacific would remain the fourth largest depository institution in the market, controlling deposits of approximately \$48.6 million, which represent approximately 7 percent of market deposits. Five depository institutions would remain in the market. The HHI would increase by 2 points to 3598.

West Maui

Central Pacific operates the fourth largest depository institution in the market, controlling deposits of approximately \$79 million, which represent approximately 5.6 percent of market deposits. CBBI operates the fifth largest depository institution in the market, controlling deposits of approximately \$51.8 million, which represent approximately 3.7 percent of market deposits. On consummation of the proposal, Central Pacific would remain the fourth largest depository institution in the market, controlling deposits of approximately \$130.7 million, which represent approximately 9.3 percent of market deposits. Six depository institutions would remain in the market. The HHI would increase by 42 points to 3095.

*ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT**HBOS Treasury Services plc
London, United Kingdom*

Order Approving Establishment of a Branch

HBOS Treasury Services plc (“Bank”), London, United Kingdom, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA (12 U.S.C. § 3105(d)) to establish a branch 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 branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers of general circulation in New York, New York (*New York Post*, July 10, 2003). The time for filing comments has expired, and all comments have been considered.

Bank, with total assets of \$272 billion, is a wholly owned subsidiary of The Governor and Company of the Bank of Scotland (“Bank of Scotland”), Edinburgh, United Kingdom. Bank of Scotland, in turn, is a wholly owned subsidiary of HBOS plc (“HBOS”), also in Edinburgh, which is the top tier holding company for the HBOS group. HBOS, with consolidated assets of \$631 billion, is the third

largest banking organization in the United Kingdom.¹ The shares of HBOS plc are publicly traded, and no person holds more than 5 percent of its voting shares. Bank provides global treasury services and serves as the main funding source for HBOS. HBOS is primarily engaged in banking, insurance, and investment and has operations throughout the world. HBOS, Bank of Scotland, and Bank are qualifying foreign banking organizations pursuant to Regulation K.

Bank currently has no operations in the United States. Its parent, Bank of Scotland, operates a branch in New York and representative offices in Chicago, Houston, Los Angeles, Minneapolis, Seattle, and Boston and engages through nonbank subsidiaries in a range of financial activities. Bank's proposed New York branch would assume the treasury functions of Bank of Scotland's New York branch, which include deposit taking, issuance of high-denomination certificates of deposit, purchases of medium-term notes, and interbank lending and borrowing.

In order to approve an application by a foreign bank to establish a branch in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant engages directly in the business of banking outside of the United States and has furnished to the Board the information it needs to assess the application adequately. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 C.F.R. 211.24).² The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 C.F.R. 211.24(c)(2)–(3)).

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.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in the United Kingdom, including Bank of Scotland, that those banks were subject

to home country supervision on a consolidated basis.³ Bank is, and Bank of Scotland remains, supervised by the Financial Services Authority (“FSA”) on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank and Bank of Scotland are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K (see 12 U.S.C. § 3105(d)(3)–(4); 12 C.F.R. 211.24(c)(2)–(3)). The FSA has no objection to the establishment of the proposed branch.

The United Kingdom'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 Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered 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, as well as controls and procedures for its worldwide operations generally.

The United Kingdom is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, the United Kingdom has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in the United Kingdom, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations. Bank's compliance with applicable laws and regulations is monitored by Bank's internal auditors and the FSA.

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 and its ultimate parent, HBOS, 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, 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 its ultimate parent 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

1. Asset data are as of June 30, 2003.

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;
- (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.

3. See, e.g., *The Royal Bank of Scotland*, 89 *Federal Reserve Bulletin* 386 (2003); *Abbey National Treasury Services plc*, 87 *Federal Reserve Bulletin* 750 (2001); see also *Bank of Scotland*, 84 *Federal Reserve Bulletin* 230 (1998).

information. In addition, subject to certain conditions, the FSA 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 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 Bank and its ultimate parent, as well as the terms and conditions set forth in this order, Bank's application to establish a branch is hereby approved.⁴ 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 activities in the United States, or in the case of any such operation licensed by the Office of the Comptroller of the Currency, recommend termination of such operation. 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.⁵ The commitments and conditions referred to above are conditions imposed in writing in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective November 7, 2003.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

*Macquarie Bank Limited
Sydney, Australia*

Order Approving Establishment of Representative Offices

Macquarie Bank Limited ("Bank"), Sydney, Australia, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish representative offices in New York, New York, and Houston, Texas. 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 comment, has been published in a news-

4. 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.

5. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the Office of the Comptroller of the Currency to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the Office of the Comptroller of the Currency to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

paper of general circulation in New York, New York (*New York Post*, March 28, 2003), and Houston, Texas (*Houston Chronicle*, April 17, 2003). The time for filing comments has expired, and all comments have been considered.

Bank, with total assets of approximately \$25 billion, is the sixth largest bank in Australia.¹ Bank's shares are publicly traded. The largest shareholder, Commonwealth Bank of Australia Group, holds 12 percent of Bank's shares.² Bank is engaged substantially in investment banking activities. It is the parent of the Macquarie Group and conducts a wide range of nonbanking activities through its subsidiaries, including investment management and advisory services, investment in infrastructure projects, and underwriting and dealing as principal and agent in securities and derivatives. Bank currently operates a number of nonbanking subsidiaries in the United States engaged in real estate financing, commodities trading, and investment banking.

Bank seeks to establish representative offices in New York and Houston to provide liaison services and to market corporate loans, project finance loans, commodities forwards, options, swaps, and other structured derivatives. The representative offices will not make any credit decisions; will not have responsibility for the execution, delivery, or performance of any contract; and will not bind Bank to any contract other than contracts necessary for the operation of the offices, such as leases and personnel contracts.

In order to approve an application by a foreign bank to establish a representative office in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant engages directly in the business of banking outside the United States and has furnished to the Board the information it needs to assess the application adequately. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3107(a)(2); 12 C.F.R. 211.24(d)(2)).³ In the case of an

1. Asset data are as of September 30, 2003.

2. Substantially all these shares are held by fund management entities in the Commonwealth Bank of Australia Group in trust for investors. In addition, the Permanent Trustee Company Limited holds 7.21 percent, Deutsche Australia Limited holds 6.08 percent, Merrill Lynch Investment Management holds 5.27 percent, and ING Australia Holdings Limited holds 5 percent of Bank's shares. No other shareholder holds 5 percent or more of the Bank's shares.

3. 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;

application to establish a representative office, the standard with respect to home country supervision will be met if the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of the activities and the operating record of the applicant. (12 C.F.R. 211.24(d)(2)). The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 C.F.R. 211.24(c)(2)).

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.

With respect to supervision of Bank by home country authorities, the Board has considered the following information. Bank is an authorized deposit-taking institution and is supervised by the Australian Prudential Regulation Authority (“APRA”). APRA supervises and regulates Bank through a combination of regular on-site reviews and off-site monitoring. On-site examinations cover the areas of credit quality, balance sheet and market risk, insurance risk and operational risk. Off-site monitoring is conducted through a monthly review of Bank’s balance sheet for domestic operations and a quarterly review of Bank’s international operations and consolidated balance sheets. APRA also obtains quarterly global consolidated data on capital adequacy, market risk, impaired assets, large exposures and profit and loss.

Bank is subject to annual statutory audit, the results of which are communicated to APRA. Bank, its external auditors, and APRA meet annually to discuss any issues arising from reports of the external auditors. Bank’s internal controls are also subject to review by the external auditors.

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 offices.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 C.F.R. 211.24(c)(2)) have also been taken into account. APRA has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank’s record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, it has been determined that financial and managerial factors are consistent with approval of the proposed representative offices. Bank appears to have the experience and capacity to support the proposed representative offices and has established controls and procedures for the proposed representative offices to ensure compliance with U.S. law.

(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.

Australia is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Australia has enacted laws and developed regulatory standards to deter money laundering. Money laundering is a criminal offense in Australia, and Bank has established internal policies, procedures, and systems for the detection and prevention of money laundering throughout its worldwide operations. Bank’s anti-money laundering policies and procedures are monitored by the Australian Transaction Reports and Analysis Centre, which is Australia’s financial intelligence unit and anti-money laundering agency.

With respect to access to information about 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 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 conditions described below, it has been determined that Bank 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 Bank, as well as the terms and conditions set forth in this order, Bank’s application to establish representative offices in New York and Houston is hereby approved.⁴ Should any restrictions on access to information on the operations or activities of Bank or any of 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 or recommend termination of any of Bank’s direct or indirect 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.⁵ The commitments and conditions referred to above are deemed to be conditions imposed in

4. 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. *See* 12 C.F.R. 265.7(d)(12).

5. The authority to approve the establishment of the proposed representative offices parallels the continuing authority of New York and Texas to license offices of a foreign bank. Approval of this application does not supplant the authority of those states or their agents to license the proposed representative offices of Bank in accordance with any terms or conditions that they may impose.

writing in connection with these findings and decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective November 26, 2003.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board