

Legal Developments: Third Quarter, 2008

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

C-B-G, Inc.
West Liberty, Iowa

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

C-B-G, Inc. (“C-B-G”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire additional voting shares sufficient to increase its holdings to more than 50 percent of the voting shares of Washington Bancorp (“Washington”) and thereby increase its indirect ownership interest in Washington’s subsidiary bank, Federation Bank, both of Washington, Iowa. C-B-G and related persons currently own 28 percent of Washington’s voting shares,² and C-B-G proposes that it and related persons will acquire additional voting shares through purchases on the open market.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (73 *Federal Register* 31,668 (2008)). The time for filing comments has expired, and the Board has

considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

As a standalone organization, C-B-G has banking assets of approximately \$206 million, and it is the 72nd largest depository organization in Iowa, controlling deposits of approximately \$174.2 million.⁴ Washington, with total banking assets of approximately \$111.7 million, is the 158th largest depository organization in Iowa, controlling deposits of approximately \$78.4 million. As a combined organization, C-B-G and Washington would be the 45th largest depository organization in Iowa, controlling deposits of approximately \$252.6 million, which represent less than 1 percent of total deposits of insured depository institutions in Iowa.⁵

The Board received comments objecting to the proposal from Washington’s management.⁶ 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, regardless of whether they are supported or opposed by the management of the institutions to be acquired.⁷ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the BHC 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.⁸

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

1. 12 U.S.C. § 1842.

2. In May 2007, the Board approved C-B-G’s application to acquire control of Washington and up to 35 percent of Washington’s voting shares. *C-B-G, Inc.*, 93 *Federal Reserve Bulletin* C88 (2007) (“2007 Order”). Previously, the Board approved in April 2005 C-B-G’s application to acquire up to 24.35 percent of Washington’s voting shares as a noncontrolling investment. *C-B-G, Inc.*, 91 *Federal Reserve Bulletin* 421 (2005).

3. In this context, “related persons” include C-B-G’s subsidiaries and the directors, executive officers, and principal shareholders of C-B-G and its subsidiaries (excluding Washington and its subsidiaries). The Board attributes acquisitions of Washington shares by related persons to C-B-G for purposes of the BHC Act. C-B-G has represented that under the current proposal, its total direct purchase of additional Washington shares will not exceed \$500,000. C-B-G also has represented that related persons will fund any acquisitions of Washington shares from their own resources and that C-B-G’s subsidiary banks will not lend to related persons to fund their acquisitions of Washington shares.

4. Asset data are as of June 30, 2008. Statewide deposit and ranking data are as of June 30, 2007, and reflect merger and acquisition activity as of July 21, 2008.

5. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. Washington’s management made many of the same comments in connection with the proposal by C-B-G to acquire control and up to 35 percent of the voting shares of Washington. The Board reaffirms and adopts by reference the findings it made in approving that proposal. See 2007 Order.

7. See, e.g., *Juniata Valley Financial Corp.*, 92 *Federal Reserve Bulletin* C171 (2006) (“Juniata”); *Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 94 (2004) (“Central Pacific”); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) (“North Fork”); and *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 259 (1988) (“BONY”).

8. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not receive adequate assurances that it can obtain information on the activities or operations of the company and its affiliates. See 12 U.S.C. § 1842(c).

company to be acquired and the acquiring organization. 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.⁹ As explained below, the Board has carefully considered the statutory criteria in light of all the comments received and information submitted by C-B-G. The Board also has carefully considered all other available information, including information accumulated in the application process, supervisory information of the Board and other agencies, and relevant examination reports. In considering the statutory factors, particularly the effect of the proposal on the financial and managerial resources of C-B-G, the Board has reviewed financial information, including the terms and cost of the proposal and the resources that C-B-G proposes to devote to the transaction.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by C-B-G, and public comment received on the proposal.¹⁰

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

9. See *Juniata; Central Pacific; North Fork; FleetBoston Financial Corporation*, 86 *Federal Reserve Bulletin* 751, 752 (2000); and *BONY*.

10. Washington's management reiterated its assertion that, because the voting rights of Washington shareholders owning more than 10 percent of voting shares are restricted under the articles of incorporation, C-B-G would have only limited influence over the organization. See 2007 Order at C89, footnote 7. The Board has considered the effect of the proposal on C-B-G's financial condition more generally and not just from the perspective suggested by the comment.

The Board has considered carefully the proposal under the financial factors. C-B-G, Washington, and their subsidiary banks currently are well capitalized and would remain so on consummation. Based on its review of the record, the Board also finds that C-B-G has sufficient financial resources to effect the proposal. C-B-G plans to make its direct acquisitions of additional Washington shares as cash purchases without any debt financing.

The Board also has considered the managerial resources of C-B-G, Washington, and their subsidiary depository institutions.¹¹ The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking laws, including anti-money-laundering laws. C-B-G, Washington, and their subsidiary banks are considered to be well managed.

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

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 would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹²

In connection with its review in 2007 of C-B-G's application to acquire control and up to 35 percent of Washington's shares, the Board considered the competitive effects of C-B-G's acquisition of control of Washington.¹³ The Board reaffirms, as noted in the 2007 Order, that C-B-G and Washington do not compete directly in any relevant banking market. In this light, and based on all the

11. In connection with its review of the managerial resources and future prospects of the organizations, the Board has considered carefully the assertion by Washington's management that the current application has made it difficult for Federation Bank to hire the additional personnel needed to implement a management succession program. The Board has also consulted with the Federal Deposit Insurance Corporation ("FDIC") and the Iowa Division of Banking, Federation Bank's primary supervisors, about the bank's managerial resources, the managerial challenges faced by the bank, and the bank's overall condition.

12. 12 U.S.C. § 1842(c)(1).

13. 2007 Order at C89.

facts of record, the Board has concluded that consummation of the current proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

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 ("CRA"),¹⁴ are consistent with approval of the application. Community Bank, Muscatine, Iowa, C-B-G's largest subsidiary bank as measured by assets and deposits, received a "satisfactory" rating and Federation Bank received an "outstanding" rating at their most recent evaluations for CRA performance by the FDIC.¹⁵ C-B-G has represented that the proposal will not result in any changes in the services or products offered by Federation Bank.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹⁶ 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 C-B-G with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 14, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

14. 12 U.S.C. § 2901 et seq.

15. The most recent CRA performance evaluations of Community Bank and Federation Bank were as of May 2004 and December 2004 respectively. Wilton Savings Bank, a subsidiary bank of C-B-G that was merged into Community Bank in January 2006, received a "satisfactory" rating at its last CRA evaluation, as of November 2003.

16. As noted, C-B-G has proposed that related persons acquire additional shares of Washington. Because the identity of related persons and the number of shares to be acquired by them are unknown, the Board's approval of the current application does not exempt related persons from any filing requirements that might be triggered under the BHC Act or the Change in Bank Control Act (12 U.S.C. § 1817(j)) by their purchases of Washington shares.

The Goldman Sachs Group, Inc.

Goldman Sachs Bank USA Holdings LLC New York, New York

Order Approving Formation of Bank Holding Companies

The Goldman Sachs Group, Inc. ("Goldman") and Goldman Sachs Bank USA Holdings LLC ("Goldman Holdings") each 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 on conversion of Goldman Sachs Bank USA, Salt Lake City, Utah ("Goldman Bank"), to a state-chartered bank.¹ Goldman Bank currently operates as an industrial loan company that is exempt from the definition of "bank" under the BHC Act.²

Goldman, with total consolidated assets of approximately \$1.1 trillion, engages in investment banking, securities underwriting and dealing, asset management, trading and other activities through a variety of subsidiaries both in the United States and overseas.³ Its principal subsidiaries include Goldman Sachs & Co., New York, New York, a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.).

Goldman Bank has total consolidated assets of approximately \$25 billion and has deposits of approximately \$23 billion. Goldman Bank engages primarily in extending credit, including corporate loans and loan commitments, and taking deposits of the type permissible under the exception in section 2(c)(2)(H) of the BHC Act for an industrial loan company.

FACTORS GOVERNING BOARD REVIEW OF TRANSACTION UNDER THE BHC ACT

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") of the insured depository institutions involved in the transaction; and the availability of informa-

1. Goldman Holdings is a wholly owned subsidiary of Goldman through which Goldman owns all of the voting stock of Goldman Bank.

2. See 12 U.S.C. § 1841(c)(2)(H).

3. Asset data for Goldman are as of May 30, 2008. Asset and deposit data for Goldman Bank are as of June 30, 2008.

tion needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.⁴

Section 3(b)(1) of the BHC Act⁵ requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the bank to be acquired and provide the supervisor a period of time (normally 30 days) within which to submit views and recommendations on the proposal. Section 3(b)(1) also permits the Board to shorten or waive this notice period in certain circumstances.

The Board has notified the Commissioner of the Utah Department of Financial Institutions (“Commissioner”), the appropriate state supervisory authority for Goldman Bank, of the proposed transaction. The Commissioner has notified the Board that the Commissioner does not object to approval of the proposal.

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal.⁶ For the same reasons, and in light of the fact that this transaction represents the conversion of an existing subsidiary of the applicants from one form of depository institution to another, the Board has waived public notice of this proposal.⁷

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of Goldman into a bank with no resulting change in the ownership of Goldman Bank or Goldman. In addition, Goldman does not propose to acquire an additional bank as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant

banking market and that the competitive factors under section 3 of the BHC Act are consistent with approval of the proposal.

FINANCIAL, MANAGERIAL, AND OTHER SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.⁹ The Board has carefully considered the factors in light of all the facts of record, including supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by Goldman.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors. Goldman is adequately capitalized, and all the Goldman entities that are subject to regulatory capital requirements currently exceed the relevant requirements. In addition, Goldman Bank currently is well capitalized under applicable federal guidelines. Goldman Bank also would be well capitalized on a pro forma basis on consummation of the proposal. Other financial factors are consistent with approval.

The Board also has carefully considered the managerial resources of Goldman in light of all the facts of record, including confidential supervisory information and information provided by Goldman. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval, as are the other supervisory factors the Board must consider.

CONVENIENCE AND NEEDS FACTOR

The Board also has carefully 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. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant 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.¹⁰

4. In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

5. 12 U.S.C. § 1842(b)(1).

6. See 12 CFR 225.14(d)(4).

7. 12 CFR 225.16(b)(3).

8. 12 U.S.C. § 1842(c)(1).

9. 12 U.S.C. § 1842(c)(2) and (3).

10. The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution’s CRA record. See 64 *Federal Register* 23,641 (1999).

Goldman Bank, which is the only institution that Goldman controls that is subject to evaluation under the CRA, received a “satisfactory” CRA performance rating from the Federal Deposit Insurance Corporation at its most recent examination, as of May 22, 2006. In addition, Goldman’s conversion of Goldman Bank into a bank for purposes of the BHC Act will enhance the ability of Goldman Bank to meet the convenience and needs of its communities by permitting the bank to offer a wider array of deposit products.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of Goldman Bank are consistent with approval of the proposal.

NONBANKING ACTIVITIES AND FINANCIAL HOLDING COMPANY DECLARATION

Goldman engages in a wide range of nonbanking activities that have been determined to be financial in nature, incidental to a financial activity, or complementary to a financial activity pursuant to section 4(k) of the BHC Act.¹¹ These activities include, among other things, underwriting, dealing, and making a market in securities; providing financial, investment, or economic advisory services; acting as a placement agent in the private placement of securities; engaging in merchant banking activities; acting as principal in foreign exchange and in derivative contracts based on financial and nonfinancial assets; and making, acquiring, or brokering loans or other extensions of credit.¹²

Goldman expects promptly to file an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y. Section 4 of the BHC Act by its terms provides any company that becomes a bank holding company two years to conform its nonbanking investments and activities to the requirements of section 4 of the BHC Act, with the possibility of three one-year extensions.¹³ Goldman must conform to the BHC Act any impermissible nonfinancial activities it may conduct within the time requirements of the Act.

Goldman has also provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

CONCLUSION

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications under section 3 of the BHC Act should be, and hereby are, approved. In reaching its decision, the Board has considered all the facts of record in light of the factors that the

Board is required to consider under the BHC Act. The Board’s approval is specifically conditioned on compliance by Goldman and Goldman Bank with all the commitments made in connection with the applications, including the commitments and conditions discussed in this order. The Board’s approval also is subject to all the conditions set forth in Regulation Y and to the Board’s authority to require such modification or termination of the nonbanking 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 issued thereunder. 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.

Because the proposal does not involve the acquisition, merger, or consolidation of a bank, the post-consummation period in section 11 of the BHC Act does not apply.¹⁴ Accordingly, the transaction may be consummated immediately and 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.

By order of the Board of Governors, effective September 21, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Morgan Stanley

Morgan Stanley Capital Management LLC

Morgan Stanley Domestic Holdings, Inc.
All of New York, New York

Order Approving Formation of Bank Holding Companies and Notice to Engage in Certain Nonbanking Activities

Morgan Stanley (“Morgan”), Morgan Stanley Capital Management LLC, and Morgan Stanley Domestic Holdings, Inc. (collectively, “Applicants”) each 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 on conversion of Morgan Stanley Bank, Salt Lake City, Utah (“MS Bank”), to a bank.¹ MS

14. 12 U.S.C. § 1849(b)(1).

11. See 12 U.S.C. § 1843(k).

12. See 12 U.S.C. § 1843(k)(4)(C), (E), and (H); 12 CFR 225.28(b)(1) and (b)(8)(ii) and 225.171 et seq.

13. See 12 U.S.C. § 1843(a)(2).

1. In addition to controlling MS Bank, Morgan also controls Morgan Stanley Trust National Association, Wilmington, Delaware (“MSTNA”), a limited-purpose national bank that engages solely in

Bank currently operates as an industrial loan company that is exempt from the definition of “bank” under the BHC Act.² Morgan also has provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act.³ In addition, as part of its proposal to become a bank holding company, Morgan 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 (j)) and section 225.24 of the Board’s Regulation Y (12 CFR 225.24) to retain its voting shares of Morgan Stanley Trust National Association (“MSTNA”) and Morgan Stanley Trust (“MST”).

Morgan, with total consolidated assets of approximately \$1.0 trillion, engages in investment banking, securities underwriting and dealing, asset management, trading, and other activities both in the United States and overseas.⁴ Its principal subsidiaries include Morgan Stanley & Co., Incorporated, New York, New York, a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.).

MS Bank, with total consolidated assets of approximately \$38.5 billion has deposits of approximately \$30 billion. MS Bank engages primarily in financing and lending activities and taking deposits of the type that are permissible for an industrial loan company under the exception in section 2(c)(2)(H) of the BHC Act. MST, with total consolidated assets of approximately \$5.4 billion, has deposits of approximately \$4.8 billion. MST engages primarily in transfer agency and sub-accounting activities.

FACTORS GOVERNING BOARD REVIEW OF TRANSACTION

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”) of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.⁵

trust or fiduciary activities pursuant to section 2(c)(2)(D) of the BHC Act (12 U.S.C. § 1841(c)(2)(D)), and Morgan Stanley Trust, Jersey City, New Jersey (“MST”), a federal savings association. These subsidiaries are described in the appendix.

2. 12 U.S.C. § 1841(c)(2)(H).

3. 12 U.S.C. § 1843(c)(13).

4. Asset data for Morgan are as of May 31, 2008, and asset and deposit data for MS Bank and MST are as of June 30, 2008.

5. In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by

Section 3(b)(1) of the BHC Act⁶ requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the bank to be acquired and provide the supervisor a period of time (normally 30 days) within which to submit views and recommendations on the proposal. Section 3(b)(1) also permits the Board to shorten or waive this notice period in certain circumstances.

The Board has notified the Commissioner of the Utah Department of Financial Institutions (“Commissioner”), the appropriate state supervisory authority for MS Bank, of the proposed transaction. The Commissioner has notified the Board that the Commissioner does not object to approval of the proposal.

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal.⁷ For the same reasons, and in light of the fact that this transaction represents the conversion of an existing subsidiary of Applicants from one form of depository institution to another, the Board has waived public notice of the proposals involving retention of the depository institutions.⁸

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that 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 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.⁹

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of Morgan into a bank with no resulting change in the ownership of Morgan, MS Bank, or any other depository institution controlled by Morgan. In addition, Morgan does not propose to acquire any additional bank or depository institution as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors under section 3 of the BHC Act are consistent with approval of the proposal. The competitive effects of the proposed nonbanking activities are discussed below.

a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

6. 12 U.S.C. § 1842(b)(1).

7. See 12 CFR 225.14(d)(4).

8. 12 CFR 225.16(b)(3).

9. 12 U.S.C. § 1842(c)(1).

FINANCIAL, MANAGERIAL, AND OTHER SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.¹⁰ The Board has carefully considered these factors in light of all facts of record, including supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by Morgan.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors. Morgan is adequately capitalized and all the Morgan entities that are subject to regulatory capital requirements currently exceed the relevant requirements. In addition, MS Bank and MST are currently well capitalized under applicable federal guidelines. MS Bank and MST also would be well capitalized on a pro forma basis on consummation of the proposal. Other financial factors are consistent with approval.

The Board also has carefully considered the managerial resources of Morgan in light of all the facts of record, including confidential supervisory information and information provided by Morgan. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS FACTOR

The Board also has carefully 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. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant 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.¹¹

MS Bank received an "outstanding" rating under the CRA at its most recent performance evaluation by the Federal Deposit Insurance Corporation, as of January 30,

2006 (the "2006 Examination").¹² Consistent with the CRA regulations adopted by the federal banking agencies, MS Bank was evaluated under the community development test as a wholesale bank.¹³ The 2006 Examination indicated that MS Bank originated and funded new community development loans totaling \$7.7 million during the examination period (March 11, 2003, through January 30, 2006) and had more than \$14 million in unfunded community development loan commitments. The 2006 Examination also determined that MS Bank provided an outstanding level of community development investments. Morgan's conversion of MS Bank to a bank for purposes of the BHC Act purposes also will enhance the ability of the bank to meet the convenience and needs of its communities by permitting the bank to offer a wider array of deposit products.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance record of MS Bank are consistent with approval of the proposal.

NONBANKING ACTIVITIES AND FINANCIAL HOLDING COMPANY DECLARATIONS

Morgan engages in a wide range of nonbanking activities that have been determined to be financial in nature, incidental to a financial activity, or complementary to a financial activity pursuant to section 4(k) of the BHC Act.¹⁴ These activities include, among other things, underwriting, dealing, and making a market in securities; providing financial, investment, or economic advisory services; acting as a placement agent in the private placement of securities; engaging in merchant banking activities; acting as principal in foreign exchange and in derivative contracts based on financial and nonfinancial assets; and making, acquiring, or brokering loans or other extensions of credit.¹⁵

Morgan has filed an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board's Regulation Y. Section 4 of the BHC Act by its terms also provides any company that becomes a bank holding company two years to conform its existing nonbanking investments and activities to the requirements of section 4 of the BHC Act, with the possibility of three one-year extensions.¹⁶ Morgan must conform to the BHC Act any impermissible nonfinancial activities it may conduct within the time requirements of the Act.

Morgan also has filed notice under sections 4(c)(8) and 4(j) of the BHC Act to retain its ownership interests in MST and MSTNA and thereby operate a savings association and

10. 12 U.S.C. § 1842(c)(2) and (3).

11. The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 64 *Federal Register* 23,641 (1999).

12. MSTNA is not an insured depository institution, and MST is not subject to the CRA pursuant to regulations issued by the Office of Thrift Supervision. See 12 CFR 563e.11(c)(2).

13. See, e.g., 12 CFR 228.21(a)(2).

14. See 12 U.S.C. § 1843(k).

15. See 12 U.S.C. § 1843(k)(4)(C), (E), and (H); 12 CFR 225.28(b)(1) and (8)(ii) and 225.171 et seq.

16. See 12 U.S.C. § 1843(a)(2).

engage in trust company activities. The Board determined by regulation before November 12, 1999, that such activities are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.¹⁷

To approve the notice, the Board also must determine that the acquisition of the nonbank subsidiaries and the performance of the proposed nonbanking activities by Morgan 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.¹⁸

The proposed transaction is expected to create a stronger and more diversified financial services organization and would provide the current and future customers of Morgan, MST, and MSTNA with improved financial products and services. In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

As part of its evaluation of the statutory factors, the Board considers the financial and managerial resources of the notificant, its subsidiaries, and any company to be acquired; the effect the transaction would have on such resources; and the management expertise, internal control and risk-management systems, and capital of the entity conducting the activity.¹⁹ For the reasons discussed 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 carefully considered the competitive effects of Morgan's proposed retention of MST and MSTNA under section 4 of the BHC Act. The proposal would result in no loss of competition because it does not result in the acquisition of any entity and instead is tantamount to a corporate reorganization. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect on competition.

The Board also believes that the conduct of the proposed nonbanking activities within the framework established in this order, prior orders, 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. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must

consider under the standard of section 4(j) of the BHC Act is favorable and consistent with approval.

Morgan also has provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

CONCLUSION

Based on the foregoing, the Board has determined that the applications under section 3 and the notice under section 4(c)(8) of the BHC Act should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Morgan with all the commitments made in connection with the applications and notice, including the commitments and conditions discussed in this order. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y 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 issued thereunder. 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.

Because the proposal does not involve the acquisition, merger, or consolidation of a bank, the post-consummation period in section 11 of the BHC Act does not apply.²⁰ Accordingly, the transaction may be consummated immediately and 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.

By order of the Board of Governors, effective September 21, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

NONBANKING SUBSIDIARIES OF MORGAN STANLEY

- (1) Morgan Stanley Trust, Jersey City, New Jersey, and thereby engage in operating a savings association in accordance with section 225.28(b)(4)(ii) of Regulation Y (12 CFR 225.28(b)(4)(ii)); and

17. See 12 CFR 225.28(b)(4)(ii) and (5).

18. See 12 U.S.C. § 1843(j)(2)(A).

19. See 12 CFR 225.26.

20. 12 U.S.C. § 1849(b)(1).

- (2) Morgan Stanley Trust National Association, Wilmington, Delaware, and thereby engage in trust company functions in accordance with section 225.28(b)(5) of Regulation Y (12 CFR 225.28(b)(5)).

*Whitney Holding Corporation
New Orleans, Louisiana*

Order Approving the Merger of Bank Holding Companies

Whitney Holding Corporation (“Whitney”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Parish National Corporation (“Parish”), Covington, and its subsidiary bank, Parish National Bank (“Parish Bank”), Bogalusa, both of Louisiana.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (73 *Federal Register* 150 (2008)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.³

Whitney, with total consolidated assets of \$11 billion, controls one subsidiary bank, WNB, which operates in five states.⁴ Whitney is the fourth largest depository organization in Louisiana, controlling deposits of approximately \$5.7 billion, which represent approximately 8 percent of total deposits of insured depository institutions in the state (“state deposits”).⁵

Parish is the eighth largest insured depository organization in Louisiana, controlling deposits of approximately \$690 million. Its only subsidiary bank, Parish Bank, operates in Louisiana and Florida.

On consummation of this proposal, Whitney would remain the fourth largest depository organization in Louisiana, controlling deposits of approximately \$6.3 billion, which represent 8.9 percent of state deposits.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the

business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁶

Whitney and Parish have subsidiary depository institutions that compete directly in three banking markets: New Orleans and Tangipahoa, both in Louisiana, and Fort Walton Beach, Florida. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Whitney and Parish,⁷ and the concentration level of market deposits and the increase in that level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”).⁸

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in all three banking markets.⁹ On consummation, one banking market would remain unconcentrated, and the other two markets would remain moderately concentrated. In addition, numerous competitors would remain in each of the three banking markets.

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

6. 12 U.S.C. § 1842(c)(1).

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

8. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

9. Those banking markets and the effects of the proposal on the concentration of banking resources therein are described in the appendix.

1. 12 U.S.C. § 1842.

2. Under the proposal, Parish would merge with and into Whitney. Immediately thereafter, Whitney would merge Parish Bank with and into Whitney’s subsidiary bank, Whitney National Bank (“WNB”), New Orleans, Louisiana, subject to approval of the Office of the Comptroller of the Currency (“OCC”).

3. Seven commenters expressed concerns with the proposal.

4. WNB operates branches in Alabama, Florida, Louisiana, Mississippi, and Texas.

5. Asset data are as of June 30, 2008, and statewide deposit and ranking data are as of June 30, 2007, adjusted to reflect mergers and acquisitions through September 11, 2008. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the three banking markets where Whitney and Parish compete directly, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by Whitney.

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

The Board has considered carefully the proposal under the financial factors. Whitney, Parish, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Whitney has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase.¹⁰

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Whitney, Parish, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws.

10. Whitney proposes to use existing resources and cash dividends from WNB to fund the purchase.

Whitney, Parish, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Whitney's plans for implementing the proposal, including the proposed management after 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 the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹¹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals.¹²

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of Whitney and Parish, data reported by Whitney and Parish under the Home Mortgage Disclosure Act ("HMDA"),¹³ other information provided by Whitney, confidential supervisory information, and public comments received on the proposal. Seven comment letters were received by the Board.¹⁴ The commenters generally alleged, based on a national organization's study of 2006 HMDA data reported by lenders in the city of New Orleans and the New Orleans Metropolitan Statistical Area ("MSA"), that WNB made an insufficient proportion of its prime home purchase loans to LMI borrowers and women and African American borrowers in the New Orleans MSA. One commenter asserted that WNB needed to increase its small business lending activity in LMI census tracts in the New Orleans MSA. Several commenters urged WNB to improve its CRA and fair lending records by expanding products and services for these borrowers in New Orleans.¹⁵ Various commenters

11. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

12. 12 U.S.C. § 2903.

13. 12 U.S.C. § 2801 et seq.

14. One comment letter was submitted on behalf of 27 entities.

15. Most of the commenters urged the Board to require Whitney to commit to increase its lending activity, enter into a CRA agreement, or to take other future actions, including meeting with particular organizations. The Board consistently has found that (1) neither the CRA nor the federal supervisory agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements concerning future performance under the CRA with any organization

also contended, based on HMDA data, that WNB had engaged in disparate treatment of minority individuals in its home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁶

WNB received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of February 7, 2007 ("WNB Evaluation").¹⁷ Parish Bank received a "satisfactory" CRA performance rating by the OCC, as of June 15, 2006. Whitney represented that it would continue its CRA program in the combined organization.

In the WNB Evaluation, the bank received an "outstanding" rating on each of the lending, investment, and service tests for its CRA performance overall and in Louisiana.¹⁸ Examiners noted that WNB was primarily a small business lender but had recently increased its volume of home mortgage-related lending. Examiners reported that WNB's lending volume was excellent given its size and the competition in its primary markets. They also reported that the bank's geographic distribution of loans and its distribution of loans to borrowers of different income levels were good, including in Louisiana and the bank's New Orleans AA. They also reported that WNB's community development lending activity significantly enhanced its overall lending-test performance.¹⁹ Examiners further noted that WNB had

an overall excellent level of community development investments given the bank's resources and capacity.

In Louisiana, examiners characterized Whitney's lending responsiveness to the credit needs of its assessment areas as excellent, particularly in the New Orleans AA. They concluded that the bank's distribution of home purchase and home improvement loans by borrower income level was good. Examiners noted that WNB's use of innovative and flexible loan products contributed significantly to the bank's lending performance. Such products included its specialized residential loan programs designed to assist LMI individuals and communities and low-rate bridge loans for small businesses affected by hurricanes Katrina and Rita. Examiners particularly commended Whitney's level of community development lending in Louisiana. During the evaluation period, Whitney CDC and WNB originated approximately 300 community development loans totaling \$399.5 million in Louisiana, including \$273 million to address affordable housing needs in the New Orleans AA. Examiners reported that Whitney's excellent level of community development lending for affordable housing and revitalization of LMI geographies in the New Orleans AA particularly benefited low-income areas, neglected neighborhoods, and other areas affected by hurricanes Katrina and Rita. Since WNB's last performance evaluation, Whitney represented that WNB and Whitney CDC originated community development loans totaling approximately \$27 million to address reconstruction and affordable housing needs in the New Orleans AA.

In the WNB Evaluation, examiners rated WNB's overall performance under the investment test as "outstanding" in Louisiana and found that the bank's performance in the New Orleans AA was excellent. Examiners concluded that despite the disruption of normal business activities as a result of Hurricane Katrina, WNB's investments were responsive to the identified needs in the New Orleans AA and in Louisiana in general. Examiners noted that during the evaluation period, WNB invested \$25 million in a state bond program that provided funds for debt-service payments by political subdivisions affected by hurricanes Katrina and Rita while they focused on revitalizing and stabilizing disaster areas. In addition, WNB directly made 184 qualified investments totaling \$2.3 million in the New Orleans AA, including approximately \$1.8 million in donations to organizations in the New Orleans AA that help provide affordable housing and community services to LMI individuals. Since WNB's last performance evaluation, Whitney represented that WNB directly or indirectly made approximately \$96 million in community development investments, including a \$6.5 million investment to rebuild a school in New Orleans and various other projects in the New Orleans AA.

Examiners rated WNB's overall performance under the service test in Louisiana as "outstanding" and found that the bank's performance in the New Orleans AA was

or to meet with particular persons or organizations, and (2) the enforceability of any third-party pledges, initiatives, or agreements is a matter outside the purview of the CRA. See *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 232-33 (2004). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal.

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

17. The evaluation period for the WNB Evaluation was January 1, 2003, through December 31, 2006, for the lending test, and January 7, 2003, through February 7, 2007, for the investment and service tests. Examiners stated that more weight was placed on the 2004-2006 evaluation period, except in the bank's New Orleans assessment area ("AA"), where slightly more weight was placed on WNB's performance in 2004-2005 because the effects of Hurricane Katrina made it difficult to realistically assess performance for 2006. The bank's New Orleans AA included seven parishes in the New Orleans-Metairie-Kenner MSA.

18. WNB's statewide rating for Louisiana was based primarily on a full-scope evaluation conducted in the bank's New Orleans AA, the bank's primary market in Louisiana. The New Orleans AA represented approximately 45 percent of the bank's branch network and 70 percent of its deposit base in Louisiana.

19. Whitney conducts community development lending through WNB and through its own Community Development Corporation

("Whitney CDC"), whose lending efforts were included by examiners in the most recent performance evaluation.

excellent. Examiners reported that WNB's branches and other service-delivery systems were readily accessible to geographies and individuals of different income levels. In addition, examiners noted that WNB had a highly effective program for providing a high level of community development services, particularly in the New Orleans AA.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Whitney and Parish in light of public comments received on the proposal. As previously stated, various commenters alleged, based on 2006 HMDA data, that WNB made a disproportionately low number of HMDA-reportable prime home purchase loans to minority applicants in WNB's New Orleans AA. The Board has focused its analysis on the 2007 HMDA data reported by WNB.²⁰

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Whitney is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.²¹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by Whitney and its subsidiary. The Board also has consulted with the OCC about WNB's record of fair lending compliance.

The record of this application, including confidential supervisory information, indicates that Whitney has taken steps to ensure compliance with fair lending and other

consumer protection laws and regulations. Whitney represented that it has corporate-wide policies and procedures to help ensure compliance with all fair lending laws applicable to its lending activities. Whitney's compliance program includes annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring of lending functions. Whitney represented that WNB uses a centralized underwriting process for all residential mortgage loans and that the bank performs secondary and in some cases tertiary post-denial reviews on all denied HMDA-reportable loans to ensure that it does not overlook any factors in analyzing a mortgage loan application and to determine whether an applicant qualifies for any other available program. In addition, Whitney represented that it performs a semiannual analysis of denied HMDA-reportable loans, which includes a comparative file review of all such denials, a review of the terms offered to the customers, and further data analysis to verify equivalent treatment of similarly qualified applicants. Whitney represented that its fair lending policies will apply to the combined institution on consummation of the proposal. The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance record of WNB under the CRA. These established efforts and record of performance demonstrate that the institution is active in helping to meet the credit needs of its entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Whitney, comments received on the proposal, and confidential supervisory information. The record indicates that consummation of the proposal would result in benefits to consumers currently served by Parish by allowing Whitney to offer a wider array of banking products and services to Parish customers. Whitney represented that the proposal would result in greater convenience for Parish customers through 24-hour automated account information, toll-free customer service, an expanded ATM network, and online access to information and services through WNB's website. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance record of the relevant insured depository institutions are consistent with approval of the proposal.

CONCLUSION

Based on the foregoing and 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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by Whitney with the conditions

20. The Board reviewed HMDA data reported by WNB in its New Orleans AA and its assessment areas in Alabama, Florida, Louisiana, Mississippi, and Texas.

21. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by

the Board or the Reserve Bank of Atlanta, acting pursuant to delegated authority.

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

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
LOUISIANA BANKING MARKET						
<i>New Orleans—Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes and St. James Parish, excluding the town of Union</i>						
Whitney Pre-consummation.....	3	4,233,690	11.29	1,764	56	39
Parish.....	9	473,620	2.20	1,764	56	39
Whitney Post-consummation.....	3	4,707,310	13.50	1,764	56	39
<i>Tangipahoa—Tangipahoa Parish, excluding the city of Kentwood</i>						
Whitney Pre-consummation.....	15	0	.00	1,457	0 ¹	14
Parish.....	5	78,381	6.38	1,457	0 ¹	14
Whitney Post-consummation.....	5	78,381	6.38	1,457	0 ¹	14
FLORIDA BANKING MARKET						
<i>Fort Walton Beach—Okaloosa and Walton counties and the town of Ponce de Leon in Holmes County</i>						
Whitney Pre-consummation.....	7	243,946	6.51	753	5	23
Parish.....	20	13,133	.35	753	5	23
Whitney Post-consummation.....	6	257,079	6.85	753	5	23

NOTE: Data are as of June 30, 2007. All deposit amounts are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

1. No deposit data are available for WNB's branch in this market because it is a de novo branch that opened in 2008.

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Andhra Bank Hyderabad, India

Order Approving Establishment of a Representative Office

Andhra Bank, Hyderabad, India (“Bank”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Jersey City, New Jersey. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New Jersey (*The Star-Ledger*, July 24, 2007). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$14.2 billion,² is the 21st largest bank in India. The Government of India owns approximately 52 percent of Bank’s shares.³ The remaining shares are held widely by individuals and institutional investors.⁴ Bank currently has operations primarily in India, where it provides commercial and retail banking services and investment banking services throughout the country. Bank also operates a representative office in the United Arab Emirates. The proposed representative office would market products of Bank in the United States, act as a liaison between Bank’s head office in India and its prospective U.S.-based customers, and conduct research.

In acting on a foreign bank’s application under the IBA and Regulation K to establish a representative office, the Board shall take into account whether the foreign bank 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.⁵ The Board shall also take into account whether the foreign bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁶ Under Regulation K, a representative-office application may be approved if the

Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁷ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.⁸ The Board also considers additional standards set forth in the IBA and Regulation K.⁹

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. At the proposed representative office, Bank may engage only in activities permissible for a representative office under Regulation K, which include the proposed customer-liaison, marketing, and research activities noted above.¹⁰

With respect to supervision by home-country authorities, the Board has considered that Bank is supervised by the Reserve Bank of India (“RBI”), the primary regulator of financial institutions in India. The Board previously has considered, in connection with applications involving other Indian banks, the supervisory regime in India for financial institutions.¹¹ Bank is supervised by the RBI on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.¹² With

7. 12 CFR 211.24(d)(2).

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

9. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (3) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; and (4) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

10. See *supra* note 7.

11. See *State Bank of India*, 94 *Federal Reserve Bulletin* C69 (2008) and see *ICICI Bank Limited*, 94 *Federal Reserve Bulletin* C26 (2008). In connection with each of these applications, the Board determined that the RBI is actively working to establish arrangements for the consolidated supervision of the particular bank.

12. See *supra* note 8.

1. 12 U.S.C. § 3107(a).

2. Data are as of March 31, 2008.

3. The President of India, acting through the Ministry of Finance, holds these shares on behalf of the government of India.

4. Life Insurance Corporation of India owns 7.5 percent, and Genesis Indian Investment Co. Limited owns 5.7 percent. No shareholder of the bank, other than the government of India, by law is entitled to exercise voting rights in excess of 1 percent of the total voting rights of all the shareholders of the bank.

5. 12 U.S.C. § 3107(a)(2).

6. *Id.*

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

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

India is a member of the Asia/Pacific Group on Money Laundering, an observer organization to the Financial Action Task Force ("FATF"), and is actively seeking to join FATF as a member.¹³ India is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. International Convention for the Suppression of the Financing of Terrorism.

Bank has policies and procedures to comply with Indian laws and regulations and the RBI's Guidelines regarding anti-money laundering. Bank has represented that it will adopt a compliance program for the proposed representative office to establish and maintain procedures to monitor compliance with the Bank Secrecy Act and its implementing regulations.

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

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on its operations and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, 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 addition, subject to certain conditions, the RBI 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.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.¹⁴ 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. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁵ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with these findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective July 23, 2008.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

14. 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 CFR 265.7(d)(12).

15. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of New Jersey to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New Jersey or its agent, the New Jersey Department of Banking and Insurance, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

*Industrial and Commercial
Bank of China, Limited
Beijing, People's Republic of China*

Order Approving Establishment of a Branch

Industrial and Commercial Bank of China Limited (“ICBC”), Beijing, People’s Republic of China, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA¹ to establish a branch in 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 a newspaper of general circulation in New York, New York (*The New York Times*, April 11, 2007). The time for filing comments has expired, and the Board has considered all comments received.

ICBC, with total assets of approximately \$1.3 trillion, is the largest bank in China.² The government of China owns approximately 74.8 percent of ICBC’s shares.³ No other shareholder owns more than 5 percent of ICBC’s shares.⁴

1. 12 U.S.C. § 3105(d).

2. Asset and ranking data are as of March 31, 2008.

3. The government of China directly owns approximately 35.3 percent of ICBC’s shares through its Ministry of Finance. Central SAFE Investments Limited (also known as “Huijin”) and the Social Security Fund of the People’s Republic of China hold approximately 35.3 and 4.2 percent of ICBC’s shares respectively. Huijin is currently owned directly by the government of China and was formed to assist in the restructuring of major Chinese banks. The government transferred shares of several Chinese banks, including ICBC, to Huijin at the time of the recapitalization and restructuring of these banks between 2004 and 2006. In addition to its interest in ICBC, Huijin also owns a majority interest in Bank of China Limited, which operates three branches in the United States. The government of China intends to transfer the ownership of Huijin to China Investment Corporation (“CIC”), a recently created investment fund that is also wholly owned by the government of China.

Under the IBA, any company that owns a foreign bank with a branch in the United States is subject to the Bank Holding Company Act (“BHC Act”) as if it were a bank holding company. As a result of its ownership of Bank of China Limited, Huijin is subject to the BHC Act. Upon the transfer of Huijin to CIC, CIC would also become subject to the BHC Act.

Both CIC and Huijin are non-operating companies that hold investments on behalf of the government of China. Neither CIC nor Huijin engages directly in commercial or financial activities. By letter of August 5, 2008, the Board provided certain exemptions to CIC and Huijin under section 4(c)(9) of the BHC Act (12 U.S.C. § 1843(c)(9)). Section 4(c)(9) authorizes the Board to grant exemptions to foreign companies from the nonbanking restrictions of the BHC Act where the exemptions would not be substantially at variance with the purposes of the BHC Act and would be in the public interest. The exemptions provided to CIC and Huijin would not extend to ICBC or any other banking subsidiary of CIC or Huijin that operates a branch or agency in the United States.

4. Goldman Sachs and American Express own 4.9 percent and less than 1 percent of ICBC’s shares respectively.

ICBC engages primarily in corporate and retail banking and treasury operations throughout China, including Hong Kong and Macau. Outside China, ICBC operates subsidiary banks in Almaty, Jakarta, London, Luxembourg, and Moscow and branches in a number of countries, including Japan, Indonesia, Korea, Germany, and the United Kingdom. In the United States, ICBC operates a representative office in New York. ICBC would meet the requirements for a qualifying foreign banking organization under Regulation K.⁵

The proposed New York branch would engage in wholesale deposit-taking, lending, trade finance, and other banking services.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisors.⁶ The Board also considers additional standards as set forth in the IBA and Regulation K.⁷

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.⁸ This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application provided that (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.⁹ In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.¹⁰ The Board also may take into account whether the home country of the foreign bank is developing a legal

5. 12 CFR 211.23(a).

6. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

7. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

8. 12 U.S.C. § 3105(d)(6).

9. 12 U.S.C. § 3105(d)(6)(A).

10. 12 U.S.C. § 3105(d)(6)(B).

regime to address money laundering or is participating in multilateral efforts to combat money laundering.¹¹ This is the standard applied by the Board in this case.

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

Based on all the facts of record, the Board has determined that ICBC's home-country supervisory authority is actively working to establish arrangements for the consolidated supervision of the bank and that considerations relating to the steps taken by ICBC and its home jurisdiction to combat money laundering are consistent with approval under this standard. The China Banking Regulatory Commission ("CBRC") is the principal supervisory authority of ICBC, including its foreign subsidiaries and affiliates, for all matters other than laws with respect to anti-money laundering.¹² The CBRC has the authority to license banks, regulate their activities, and approve expansion, both domestically and abroad. It supervises and regulates ICBC, including its subsidiaries and foreign operations, through a combination of targeted on-site examinations and continuous consolidated off-site monitoring. Since its establishment in 2003, the CBRC has enhanced existing supervisory programs and developed new policies and procedures designed to create a framework for the consolidated supervision of banks in China.

On-site examinations by the CBRC cover, among other things, the major areas of operation: corporate governance and senior management responsibilities; capital adequacy; asset structure and asset quality (including the structure and quality of loans); off-balance-sheet activities; earnings; liquidity; liability structure and funding sources; expansionary plans; internal controls (including accounting control and administrative systems); legal compliance; accounting supervision and internal auditing (including accounting control and administrative systems); and any other areas deemed necessary by the CBRC.

Off-site monitoring is conducted through the review of required annual, semiannual, quarterly, or monthly reports on, among other things, asset quality, capital adequacy, liquidity, risk management, corporate governance, affiliate transactions, and internal controls.

ICBC is required to be audited annually by an accounting firm approved by the PBOC, and the results are shared with the CBRC and the PBOC. The scope of the required audit includes a review of ICBC's financial statements, asset quality, and internal controls. The CBRC may order a special audit at any time. In addition, in connection with its

listings on the Shanghai and Hong Kong stock exchanges, ICBC is required to have external audits conducted under both International Financial Reporting Standards and generally accepted accounting practices under Chinese law. ICBC is required to publish its financial statements annually. ICBC conducts internal audits of its offices and operations, including its overseas operations, generally based on an annual schedule. The internal audit results are shared with the CBRC, the PBOC, and the external auditors of ICBC. The proposed branch would be subject to internal audits.

Chinese laws impose various prudential limitations on banks, including limits on transactions with affiliates and large exposures. The CBRC is authorized to require any bank to provide information and to impose sanctions for failure to comply. The CBRC also has the power to apply administrative penalties, including warnings, fines, and removal from office, for violations of applicable laws and rules. Criminal violations are transferred to the judicial authorities for investigation and prosecution.

In recent years, the Chinese government has enhanced its anti-money-laundering regime. In 2005, the Chinese government took initial steps to adopt an anti-money-laundering law, the PRC Anti-Money Laundering Law ("AML Law"). The AML Law and two related rules, the Rules for Anti-Money Laundering by Financial Institutions ("AML Rules") and the Administrative Rules for the Reporting of Large-Value and Suspicious Transactions by Financial Institutions ("LVT/STR Rules") were enacted in October 2006 and December 2006 respectively. The AML Law and AML Rules became effective on January 1, 2007, and the LVT/STR Rules became effective on March 1, 2007. Together, the law and related rules establish a regulatory infrastructure to assist China's anti-money-laundering effort.

An Anti-Money Laundering Bureau ("AML Bureau") was established within the PBOC in 2003.¹³ The AML Bureau coordinates anti-money-laundering efforts at the PBOC and among other agencies. The AML Bureau also supervised the creation in September 2004 of the China Anti-Money Laundering Monitoring and Analysis Center ("AML Center"). The AML Center collects, monitors, analyzes, and disseminates suspicious transaction reports and large-value transaction reports. The AML Center sends suspicious transaction reports to the AML Bureau for further investigation. The PBOC issued additional rules in June 2007 providing clarification on reporting suspicious transactions to the AML Center and on customer due diligence and recordkeeping.

China participates in international fora that address the prevention of money laundering and terrorist financing. China is a member of the Financial Action Task Force ("FATF")¹⁴ and is a party to the 1988 U.N. Convention

11. *Id.*

12. Before April 2003, the People's Bank of China ("PBOC") acted as both China's central bank and primary banking supervisor, including with respect to anti-money-laundering matters. In April 2003, the CBRC was established as the primary banking supervisor and assumed the majority of the PBOC's regulatory functions. The PBOC maintained its roles as China's central bank and primary supervisor for anti-money-laundering matters.

13. The AML Bureau conducts administrative investigations and handles violations of AML Rules. Money laundering cases are referred to the Ministry of Public Security, China's main law enforcement body, for investigation and prosecution.

14. China became a member of FATF in June 2007.

Against the Illicit Traffic of Narcotics and Psychotropic Substances, the U.N. Convention Against Transnational Organized Crime, the U.N. Convention Against Corruption, and the U.N. International Convention for the Suppression of the Financing of Terrorism.

As noted, the PBOC is China's primary supervisor for anti-money-laundering matters. Like the CBRC, the PBOC supervises and regulates ICBC through a combination of on-site examinations and off-site monitoring. On-site examinations focus on ICBC's compliance with anti-money-laundering laws and rules, including the AML Law, AML Rules, and LVT/STR Rules. Off-site monitoring is conducted through the review of periodic reports. In performing its responsibilities, the PBOC may require any bank to provide information and can impose administrative penalties for violations of applicable laws and rules.

ICBC has policies and procedures to comply with Chinese laws and rules regarding anti-money laundering. ICBC represents that it has taken additional steps on its own initiative to combat money laundering and other illegal activities. ICBC states that it has implemented measures consistent with the recommendations of the FATF and that it has put in place policies, procedures, and controls to ensure ongoing compliance with all statutory and regulatory requirements, including designating anti-money-laundering compliance personnel and conducting routine employee training at all ICBC branches. ICBC's compliance with anti-money-laundering requirements is monitored by the PBOC and by ICBC's internal and external auditors.

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

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

money-laundering policies and procedures at the branch consistent with U.S. law and regulation and will establish an internal control system at the branch consistent with U.S. requirements to ensure compliance with those policies and procedures.

With respect to access to information about ICBC's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which ICBC operates and has communicated with relevant government authorities regarding access to information. ICBC has committed to make available to the Board such information on the operations of ICBC and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC 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, ICBC has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that ICBC 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 ICBC, as well as the terms and conditions set forth in this order, ICBC's application to establish a branch is hereby approved. Should any restrictions on access to information on the operations or activities of ICBC and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by ICBC or its affiliates with applicable federal statutes, the Board may require termination of any of ICBC's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by ICBC with the commitments made in connection with this application and with the conditions in this order.¹⁶ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against ICBC and its affiliates.

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

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

15. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). The additional standards set forth in section 7 of the IBA and Regulation K include the following (1) whether the bank's home-country supervisor has consented to the establishment of the office; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

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

International Bank of Azerbaijan Baku, Azerbaijan

Order Approving Establishment of a Representative Office

International Bank of Azerbaijan (“Bank”), Baku, Azerbaijan, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, August 13, 2007). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$3.2 billion,² is the largest commercial bank in Azerbaijan and provides wholesale and retail banking services through a network of domestic branches as well as several foreign offices and subsidiaries.³

The proposed representative office is intended to act as a liaison between Bank’s head office in Azerbaijan, other U.S. financial institutions, and its existing and prospective customers in Azerbaijan and the United States. The office would engage in representative functions in connection with the activities of Bank, solicit new business, provide information to customers concerning their accounts, promote business investment in and trading opportunities with Azerbaijan, conduct research, and receive applications for extensions of credit and other banking services on behalf of Bank.

In acting on a foreign bank’s application under the IBA and Regulation K to establish a representative office, the Board shall take into account whether the foreign bank 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.⁴ The Board shall also take into account whether the foreign bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁵ Under Regulation K, a representative-office application may be approved if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account

the nature of such activities.⁶ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.⁷

The Board also considers additional standards set forth in the IBA and Regulation K.⁸ 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.

In connection with this application, Bank has provided certain commitments that limit the activities of the representative office. It has committed that the representative office will engage only in certain specified activities and will not make credit decisions, solicit or accept deposits, process or initiate transactions on behalf of Bank, or engage in activities related to securities trading, foreign exchange, or money transmission.

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 has considered the following information. Bank is supervised by the National Bank of Azerbaijan (“NBA”), which is responsible for the regulation and supervision of financial institutions operating in Azerbaijan and is in the process of enhancing its supervisory framework. The NBA issues rules and implements regulations concerning accounting requirements, asset quality, management, operations, capital adequacy, loan classification, and loan-loss-reserve requirements. In addition, the NBA has authority to order corrective measures, impose sanctions, and assume management of a financial institution or liquidate it.

The NBA supervises and regulates Bank in Azerbaijan through a combination of on-site examinations and off-site

6. 12 CFR 211.24(d)(2).

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

8. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (3) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; and (4) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

1. 12 U.S.C. § 3107(a).

2. Unless otherwise indicated, data are as of December 31, 2007.

3. Bank is majority owned by the government of Azerbaijan through its Ministry of Finance and operates as a commercial bank in addition to promoting trade by and with Azeri companies. No other shareholder owns more than 5 percent of the shares of Bank.

4. 12 U.S.C. § 3107(a)(2).

5. *Id.*

monitoring. On-site examinations are conducted annually and cover capital adequacy, asset quality, profitability, liquidity, and compliance with the law. If necessary, the NBA can also conduct special on-site examinations. The NBA conducts off-site monitoring of Bank through the review of required biannual reports. An external audit is also part of the supervisory process and must be conducted at least annually.

Based on all the facts of record, including the commitments provided by Bank limiting the activities of the proposed office, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.⁹ The NBA has no objection to the establishment of the proposed representative office.

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

Although Azerbaijan is not a member of the Financial Action Task Force, it participates in international fora that address the prevention of money laundering.¹⁰ Money laundering is a criminal offense in Azerbaijan, and banks are required to establish internal policies and procedures for the detection and prevention of money laundering.¹¹ Legislation and regulations require banks to adopt know-your-customer policies and maintain records.¹² Bank has established anti-money-laundering policies and procedures, which include the implementation of know-your-customer policies, suspicious activity reporting procedures, and related training programs and manuals. Bank's internal and external auditors review compliance with requirements to prevent money laundering.

9. *See supra* note 8.

10. Azerbaijan is a party to the 1988 UN Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the UN International Convention Against Transnational Organized Crime, the UN International Convention for the Suppression of the Financing of Terrorism, the 2004 UN Convention Against Corruption, and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of Proceeds from Crime. Azerbaijan is also a member of the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures.

11. Azerbaijan has taken steps to strengthen its anti-money-laundering policies and procedures; the Board believes that factors related to anti-money laundering are consistent with approval of the application to establish a representative office.

12. Bank's internal guidelines require that it report suspicious transactions.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank 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 addition, subject to certain conditions, the NBA 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.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and to the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹³ 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 and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁴ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and 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 July 31, 2008.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

13. *See* 12 CFR 265.7(d)(12).

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

The Shizuoka Bank, Ltd.
Shizuoka, Japan

Order Approving Establishment of a Branch

The Shizuoka Bank, Ltd. ("Bank"), Shizuoka, Japan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to upgrade its existing agency in New York, New York, to a branch. 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 a newspaper of general circulation in New York, New York (*The New York Times*, November 29, 2007). The time for filing comments has expired, and the Board has considered all comments received.

Bank, with total assets of approximately \$91.6 billion, is the 13th largest bank in Japan.² No shareholder owns more than 5 percent of Bank's shares.

Bank is a commercial bank and engages primarily in retail banking and foreign exchange operations. It also engages in other related services through its subsidiaries, including bill collections, issuance of guarantees, acceptances of letters of credit, e-banking services, and securities investments. Outside Japan, Bank operates a subsidiary bank in Belgium, a branch in Hong Kong SAR, People's Republic of China, and representative offices in China and Singapore. In the United States, Bank operates a branch in Los Angeles and an agency in New York. Bank is a qualifying foreign banking organization under Regulation K.³

Bank's home state is California. Bank proposes to establish a branch outside its home state by upgrading its New York agency to a branch pursuant to section 5(a)(7)(B) of the IBA.⁴ The proposed branch would continue the business of the New York agency, but the upgrade would also enable Bank to accept at its New York office wholesale and other limited deposits from U.S. residents.

To approve a proposal to establish a branch in a state outside a foreign bank's home state by upgrading an agency under section 5(a)(7)(B) of the IBA, the Board is required to determine that the establishment of such branch is permitted by the state where the branch is to be established and that the agency to be upgraded was in operation in that state (i) prior to September 28, 1994; or (ii) for a period of time that meets the state's minimum age requirements

permitted under section 44(a)(5) of the Federal Deposit Insurance Act.⁵ These requirements have been met in this case.⁶

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

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 Federal Reserve previously has determined, in connection with applications involving other banks in Japan, that those banks were subject to comprehensive supervision on a consolidated basis by their home-country supervisor, Japan's Financial Services Agency ("FSA").⁹ Bank is supervised by the 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 is subject to

5. 12 U.S.C. § 1831u(a)(5).

6. New York permits a foreign bank to upgrade an existing agency to a branch. See N.Y. Banking Law § 202-g. Bank's existing agency in New York was established in June 1989.

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

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

9. See *Mizuho Holdings, Inc.*, 89 *Federal Reserve Bulletin* 181 (2003); *Mitsubishi Tokyo Financial Group, Inc.*, 87 *Federal Reserve Bulletin* 349 (2001); *The Fuji Bank, Limited*, 85 *Federal Reserve Bulletin* 338 (1999).

10. The additional standards set forth in section 7 of the IBA and Regulation K include the following (1) whether the bank's home-country supervisor has consented to the establishment of the branch; the financial and managerial resources of the bank; (2) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (3) whether the bank and its home country have adopted and implemented policies and procedures to address and combat money laundering; and (4) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

1. 12 U.S.C. § 3105(d).

2. Asset and ranking data are as of March 31, 2008.

3. 12 CFR 211.23(a).

4. 12 U.S.C. § 3103(a)(7)(B).

comprehensive supervision on a consolidated basis by its home-country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.¹⁰ The FSA has no objection to the establishment of the proposed agency.

Japan's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are 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 and for its operations in general.

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

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been contacted 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 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, as well as the terms and conditions set forth in this order, Bank's application to establish a branch in New York, New York, is hereby approved.¹¹ 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. 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.¹² The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective September 23, 2008.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

11. 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.

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