

FEDERAL RESERVE press release



For immediate release

February 3, 1997

The Federal Reserve Board today announced its approval of the notice by HSBC Holdings PLC, London, United Kingdom, HSBC Holdings BV, Amsterdam, The Netherlands, and HSBC Americas, Inc., Buffalo, New York ("HSAI"), to acquire CTUS, Inc., Wilmington, Delaware, and its wholly owned subsidiary, First Federal Savings and Loan of Rochester, Rochester, New York ("First Federal"); the application by Marine Midland Bank, Buffalo, New York, a wholly owned subsidiary of HSAI, to merge First Federal with and into Marine Midland Bank; and the application by Marine Midland Bank to establish branches.

Attached is the Board's Order relating to this action.

Attachment

FEDERAL RESERVE SYSTEM

HSBC Holdings PLC
London, United Kingdom

HSBC Holdings BV
Amsterdam, The Netherlands

HSBC Americas, Inc.
Buffalo, New York

Marine Midland Bank
Buffalo, New York

Order Approving the Acquisition of a Savings Association,
the Merger of Savings Association into a State Member Bank,
and the Establishment of Branches

HSBC Holdings PLC, London, United Kingdom, HSBC Holdings BV, Amsterdam, The Netherlands, and HSBC Americas, Inc., Buffalo, New York ("HSAI") (collectively, "Notificant"), bank holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 4(c)(8) of the BHC Act of 1956 (12 U.S.C. § 1843(c)(8)) and section 225.23 of the Board's Regulation Y to acquire all the voting shares of CTUS, Inc., Wilmington, Delaware ("CTUS"), and its wholly owned subsidiary, First Federal Savings and Loan Association of Rochester, Rochester, New York ("First Federal").

Marine Midland Bank, Buffalo, New York ("Marine Bank"), a wholly owned subsidiary of HSAI, also has requested Board approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) ("Bank Merger Act") and section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. § 1815(d)(3)) ("FDI Act"), as amended by section 2201 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. No. 104-208, 110 Stat. 3009), to merge

First Federal with and into Marine Bank, and to establish branch offices pursuant to section 9 of the Federal Reserve Act (12 U.S.C. § 321).^{1/}

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (61 Federal Register 58,559 (1996)). As required by the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General, Department of Justice ("Attorney General"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS"). The time for filing comments has expired, and the Board has considered the applications and all the facts of record, including all comments received, in light of the factors set forth in the BHC Act, the Bank Merger Act, the FDI Act, and the Federal Reserve Act.

Marine Bank is the fifth largest depository institution in New York state, holding \$14.8 billion in deposits,^{2/} representing approximately 4.1 percent of the total deposits in depository institutions in the state.^{3/} First Federal is the sixteenth largest depository institution in the state, controlling deposits of \$4.3 billion. On consummation of this proposal, Marine Bank would become the fourth largest depository institution in the state, controlling deposits of \$19.1 billion, representing 5.3 percent of the deposits in depository institutions in the state.

^{1/} Notificant proposes to acquire CTUS, merge it into HSAI, and immediately thereafter merge First Federal into Marine Bank. On consummation of the proposal, the nonbanking subsidiaries of First Federal would become subsidiaries of Marine Bank. The branches that would be established as an incident to the First Federal/Marine Bank merger are listed in Appendix A.

^{2/} State deposit data are as of June 30, 1996, and market data are as of June 30, 1995.

^{3/} In this context, depository institutions include commercial banks, savings banks, and savings associations.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking within the meaning of section 4(c)(8) of the BHC Act.^{4/} In making this determination, the Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y. Notificant has committed to conform the activities of First Federal and its subsidiaries to those permissible under section 4(c)(8) of the BHC Act.^{5/}

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly, or would substantially lessen competition in any relevant banking market, unless the Board finds that

^{4/} 12 C.F.R. 225.25(b)(9).

^{5/} As noted, the nonbanking subsidiaries of First Federal would become subsidiaries of Marine Bank. Accordingly, Notificant and Marine Bank have committed to engage through these subsidiaries only in activities that are permissible for a state member bank. Notificant also has committed not to engage in activities through any inactive First Federal subsidiaries without prior Federal Reserve System approval.

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.^{6/} Marine Bank and First Federal compete directly in the following banking markets: Binghamton, Buffalo, Elmira-Corning, Ithaca, Rochester, and Syracuse, New York banking markets and the Metropolitan New York/New Jersey banking market ("Metro NY/NJ").^{7/} The Board has carefully reviewed the competitive effects of this proposal in these markets in light of all the facts of record, including the number of competitors that would remain in the markets, the characteristics of the markets, and the projected increase in the concentration of total deposits in depository institutions^{8/} in the markets ("market deposits"), as measured by the Herfindahl-Hirschman Index ("HHI") under the

^{6/} 12 U.S.C. § 1828(c)(5)(B).

^{7/} The geographic scope and market data for these banking markets are described in Appendix B. Deposit data for the appendix are as of June 30, 1995.

^{8/} Market share data before consummation are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Because the deposits of First Federal would be transferred to a commercial bank under this proposal, they are included at 100 percent in the calculation of the pro forma market share. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669 (1990).

Department of Justice Merger Guidelines ("DOJ Guidelines"),^{9/} and comments on the competitive effects of the proposal.

Two commenters maintained that the proposal would have an adverse effect on competition for mortgage loans in Buffalo, and that the geographic scope of the Rochester market as defined by the Federal Reserve Bank of New York ("Reserve Bank") is too broad.^{10/} Commenters alleged generally that the proposal would have an adverse effect on competition in the Buffalo, Ithaca, Elmira-Corning, Rochester, and Binghamton banking markets.^{11/}

The Board has long considered the cluster of products and services offered by insured institutions to be the appropriate product market for evaluating mergers and acquisitions of insured depository institutions, and the Supreme Court has indicated that it is this cluster of products and services that, as a matter of trade

^{9/} Under the revised DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is more than 1800 is considered highly concentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial entities.

^{10/} The commenters, which included the New York State Reinvestment Alliance ("NYSRA") and the Broome County CRA Coalition ("BCCRAC"), contended that the Rochester market as defined by the Reserve Bank should be disaggregated into three separate markets, but did not define the scope of such markets.

^{11/} These commenters included NYSRA, BCCRAC, and an individual.

reality, makes banking a distinct line of commerce.^{12/} The courts have continued to follow this position and several recent studies support the conclusion that both businesses and households still seek to obtain this cluster of services.^{13/} After carefully considering all the facts of record in light of relevant Board and judicial precedents, the Board concludes that the appropriate product market in this case is the cluster of banking products and services.^{14/}

The Board and the courts also have concluded that the relevant banking market for analyzing the competitive effects of a proposal must reflect the commercial and banking realities and should consist of the local area where the financial institutions involved offer their services and where local customers can

^{12/} See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966, 966-68 (1993); SouthTrust Corporation, 78 Federal Reserve Bulletin 710 (1992); United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963) ("Philadelphia National"). Accord United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1969) ("U.S. v. Phillipsburg").

^{13/} See United States v. Central State Bank, 621 F.Supp. 1276 (W.D. Mich,1985), aff'd per curiam, 817 F.2d 22 (6th Cir.1987); see also Elliehausen and Wolken, "Banking Markets and the Use of Financial Services by Households," 78 Federal Reserve Bulletin 169 (1992) (households continue to purchase the unique set of services and products as a bundle); and Elliehausen and Wolken, "Banking Markets and the Use of Financial Services by Small- and Medium-Sized Businesses," 76 Federal Reserve Bulletin 726 (1990) (businesses tend to purchase other banking products and services from the financial institutions where they maintain their primary transaction accounts).

^{14/} If mortgage lending were an appropriate product market, consummation of the proposal would not exceed the DOJ Guidelines. The HHI would increase by approximately 205 points to 1042 after the acquisition of First Federal. In addition, numerous other competitors would remain in the market. In this light, and based on all the facts of record, the Board concludes that consummation of the proposal would not result in significantly adverse competitive effects on mortgage lending in the Buffalo banking market or any other relevant banking market.

practicably turn for alternatives.^{15/} Banking markets, therefore, generally are larger than an individual institution's service area, and competing financial institutions need not serve the same set of customers in order to affect or be affected by pricing and product decisions by each other or other financial institutions, because factors indicating economic integration transmit competitive forces over larger areas.^{16/}

In applying these principles, the Reserve Bank has employed a methodology that defines the retail banking market around major cities or population concentrations by identifying a market core as cities or counties that contain substantial employment opportunities and then grouping surrounding counties with significant patterns of commuting into those cores as part of the same banking market. The criteria for adding counties to the market delineation become more stringent as the counties become more remote from the core.^{17/} Based on all the facts of record, the Board concludes that the appropriate banking market is the Rochester banking market, which is approximated by Genesee, Livingston, Monroe,

^{15/} See St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673, 674 (1982). The key question to be considered in making this decision "is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." Philadelphia National, at 357 (1963); U.S. v. Phillipsburg, at 364-65.

^{16/} See Pennbancorp, 69 Federal Reserve Bulletin 548 (1983).

^{17/} For a detailed discussion of the Reserve Bank's methodology defining banking markets, see David Holdsworth, "Definition of Banking Markets in New Jersey and New York," manuscript, Federal Reserve Bank of New York, December 1994. The Board also has considered the results of an informal survey of banks located primarily in counties outside the Rochester Metropolitan Statistical Area ("Rochester MSA"), which have been included within the Reserve Bank's definition of the Rochester banking market. The survey confirmed that those banks compete with banks that are located completely within the Rochester MSA.

Ontario, Seneca, Wayne, and Yates Counties and parts of Allegany, Orleans, Steuben, and Wyoming Counties, all in New York.^{18/}

Consummation of the proposal would not exceed the threshold levels of market concentration, as measured by the HHI, in any of the seven banking markets in the state.^{19/} Numerous competitors also would remain in each of the markets. In addition, the Board sought comments from the Attorney General, the OTS, and the FDIC on the competitive effects of this proposal. The Attorney General has indicated that the proposal would not likely have any significantly adverse competitive effects in any of the markets in which Marine Bank and First Federal compete. The OTS and the FDIC did not object to consummation of the proposal. Based on all the facts of record, and for the reasons discussed in this order, and after carefully considering public comments on the competitive factor, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or the concentration of banking resources in any relevant banking market.

Other Factors

The Bank Merger Act also requires the Board to consider the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served.

A. Supervisory Factors

^{18/} Commenters provided no facts to support a smaller geographic market. If only the Rochester MSA were considered to be the relevant geographic market, however, consummation of the proposal would not exceed the DOJ Guidelines. The HHI in the Rochester MSA would increase by 264 points to 1288 following consummation of this proposal.

^{19/} The changes in the HHI for each market and other market data are discussed in Appendix B.

The Board has carefully considered the financial and managerial resources and the future prospects of the institutions involved in the proposal in light of all the facts of record. The facts include supervisory reports of examination assessing the financial and managerial resources of the organizations and confidential financial information provided by Marine Bank. Based on all the facts of record, the Board concludes that all supervisory factors under the Bank Merger Act, including financial and managerial resources, weigh in favor of approving the proposal.

B. Convenience and Needs Considerations

The Board also has carefully considered the effect of the proposed acquisition on the convenience and needs of the community to be served in light of all the facts of record. As part of that review, the Board has considered comments from commenters criticizing the CRA performance record of Marine Bank and First Federal.^{20/} Three commenters maintained that the 1995 Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA") data for Marine Bank and First Federal demonstrate a poor record of marketing and lending to low- to moderate-income ("LMI") and minority residents in some of the areas where the institutions are

^{20/} Those commenters included NYSRA, BCCRAC, the Rural Opportunities, Inc. ("ROI"), and several individual commenters.

located.^{21/} Several commenters raised issues regarding potential branch closings, particularly in LMI communities.^{22/}

Marine Bank provides a full range of financial services, including trust, investment, management and custodial services, commercial lending, discount brokerage, and Small Business Administration ("SBA") loans and other small business deposit and loans services. Marine Bank also would provide increased access to automated teller machines (ATMs), account products, and expanded student loan programs. Accordingly, the proposed acquisition and merger would result in these services, many of which are not available through First Federal, being offered in the communities currently served by First Federal.

Performance Examinations. 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 Community Reinvestment Act (12

^{21/} BCCRAC and NYSRA also contended that the 1995 HMDA data for Marine Bank in the Binghamton, Buffalo, Syracuse, Albany, Rochester and Metro NY/NJ MSAs, and for First Federal in the Binghamton, Rochester, and Metro NY/NJ MSAs, indicate disparities in the rate of denials and originations for housing-related loans by race and income levels and evidence illegal discrimination. The commenters raised similar challenges to 1995 HMDA data reported by Marine Bank's mortgage subsidiary, Marine Midland Mortgage Company ("MMMC"). The Board has reviewed this data and, for purposes of this order, refers to Marine Bank and MMC collectively as "Marine Bank."

^{22/} The ROI contended that the proposal would reduce the supply of affordable housing products and resources in the Rochester area. The ROI requested that the Board condition approval of the proposal on Marine Bank's becoming a member in the Federal Home Loan Bank System ("FHLBS"), which would enable the bank to obtain FHLBS funds for affordable housing purposes. Marine Bank states that it intends to become a member of the FHLBS and participate as a member in the FHLBS's affordable housing and community investment programs.

U.S.C. § 2901 et seq.) ("CRA").^{23/} As provided in the CRA, the Board evaluates this factor in light of examinations by the primary federal supervisor of 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 primary federal supervisor.^{24/}

Marine Bank received a "satisfactory" rating at the most recent examination of its CRA performance by the Reserve Bank, as of May 30, 1995 ("Marine Examination"). First Federal received a "satisfactory" rating for CRA performance at its most recent examination by the OTS, as of September 3, 1996 ("First Federal Examination"). The Board also has considered confidential information concerning CRA performance examinations of Marine Midland and First Federal.

Lending Record. Marine Bank engages in housing-related and small business activities that are designed to assist in meeting the credit needs of its entire community. For example, Marine Bank offers a variety of affordable housing loan programs with flexible guidelines to meet the credit needs of LMI borrowers, including the Marine 97 2/1 Option Program, the Federal National Mortgage Association ("FNMA") Community Home Buyer Program, the FNMA Fannie 97

^{23/} In acting on a proposal to acquire a savings association under section 4(c)(8) of the BHC Act, the Board also reviews the record of the relevant depository institution under the CRA.

^{24/} The Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record and that reports of these examinations will be given great weight in the applications process. 54 Federal Register 13,742 and 13,745 (1989).

Program, and the Federal Home Loan Mortgage Corporation Affordable Gold Program. Those programs have lower down payment requirements, partial financing for down payments, less restrictive debt-to-income qualifying ratios, and higher minimum loan amounts to help fit the needs of individual borrowers.^{25/} During 1995 and the first nine months of 1996, Marine Bank extended or participated in loans totalling more than \$53 million under these affordable housing loan programs.

The bank also is involved in loan programs offered by the State of New York Mortgage Agency ("SONYMA"), including the Low Interest Program, the Low Down Payment Program, and the Modest Means Program. These SONYMA programs, which are designed to increase lending to LMI borrowers, generally offer low interest rates and/or low down payment options. In 1995 and the first nine months of 1996, Marine Bank extended or participated in loans totalling more than \$42 million under the SONYMA affordable housing loan programs.^{26/}

^{25/} The Marine 97 2/1 Option program permits borrowers to finance up to 97 percent of the purchase price of a home. The buyer provides 2 percent of the remaining 3 percent down payment, and 1 percent may be a gift to or separately financed by the buyer. Marine Bank states that it intends to continue all of First Federal's residential mortgage lending programs, including those designed particularly for LMI and minority borrowers such as the Afford-a-Home Program. The Afford-A-Home Program offers flexible underwriting guidelines, such as higher debt-to-income qualifying ratios, waivers of cash reserve requirements, and minimum down payments of 5 percent of which 2 percent may come from a gift or grant.

^{26/} The Marine Examination also found that Marine Bank was an active lender of Federal Housing Administration ("FHA") and Veterans Administration ("VA") loans. Examiners noted that in 1994 and the first quarter of 1995, the bank originated 893 FHA loans totalling more than \$55 million and 375 VA loans totalling more than \$28 million.

In addition, Marine Bank engages in a number of community development activities throughout its service communities in the state. For example, examiners noted that Marine Bank participated with other banks in providing \$1.5 million in financing to two non profit corporations that provide loans and home purchase counseling in Albany, Schenectady, and Rensselaer Counties. Marine Bank also extended a \$4.4 million revolving line of credit to an organization in New York City that provides construction, rehabilitation and permanent mortgage financing for LMI multi-family housing in New York City, Westchester County and the lower Hudson Valley region. In addition, the bank participates in the Neighborhood Housing Services of New York City's Home Ownership Center, which provides home purchase and debt counseling to clients in Brooklyn.

Examiners noted that, in Binghamton, Marine Bank approved a \$1.5 million mortgage in 1995 for renovation of a vacant downtown building and creation of a downtown technology center. The bank also participated with local banks in Broome County in issuing a loan to prevent the insolvency of the local Urban League. In addition, examiners noted that Marine Bank approved a mortgage loan to a not-for-profit day care facility in Buffalo, which provides services to approximately 220 children of LMI families. In 1995, Marine Bank approved a revolving line of credit for Rochester Neighborhood Housing Services for residential rehabilitation loans to individuals who cannot qualify under traditional bank credit standards. Examiners also noted that Marine Bank provided funding to an organization that provides affordable housing for LMI persons in the Brighton area of Syracuse.^{27/}

^{27/} Marine Bank states that it will continue First Federal's participation in 19 community development projects throughout the state. Marine Bank also states that it intends to continue the construction and sale of affordable housing

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In addition, Marine Bank participates in a variety of small business lending programs. For example, since 1994 the bank has participated in the New York State Excelsior Linked Deposit Program, an arrangement under which Marine Bank provides low-interest loans to small businesses and, in return, the state deposits a corresponding amount of state government funds in Marine Bank time deposit accounts at a reduced interest rate. Examiners noted that, during the first quarter of 1995, Marine Bank made six loans totalling \$3.1 million under this program. Marine Bank also provided capitalization funding to Ibero American Investors Corporation, a minority enterprise small business investment corporation that provides loans and investments to businesses owned by minorities and women. In addition, Marine Bank annually supports the Syracuse Area Small Business Loan Program, a non-profit corporation formed by a consortium of banks in Syracuse that acts as an agent in identifying small business loan applicants for loan requests under \$50,000. Marine Bank also committed to make an equity investment in the New York Community Investment Corporation, which provides loans to small businesses that do not qualify for conventional credit. In 1996, Marine Bank provided funding to the Community Commercial Development Partnership, a cooperative loan program in Rochester designed to meet the needs of small businesses.

The Marine Examination found that Marine Bank is an active SBA lender. Examiners noted that, as of April 1995, Marine Bank had a total of 880 SBA-guaranteed loans outstanding totalling \$103.5 million. In 1994 and the

^{27/}(...continued)

by First Federal's community development subsidiary, B.H.D. Properties, Inc. ("BHD"). For example, Marine Bank will continue BHD's participation with the City of Rochester in the development of First Place, a 50-unit affordable housing development in Rochester's Marketview Heights section. BHD, which is building the homes in First Place with local minority-owned building contractors, will refer home buyer applicants to Marine Bank for the mortgage application process.

first three months of 1995, the bank originated 302 combined SBA (7A), SBA Low Doc, and SBA 504 guaranteed loans with a total amount of \$54.2 million.^{28/}

The Board also has carefully reviewed the 1993, 1994, and 1995 HMDA data reported by Marine Midland and First Federal in light of the contentions about the institutions' lending records.^{29/} The 1995 HMDA data for Marine Bank generally indicate an increase in the number of loan applications from and loans extended to minority borrowers and borrowers who reside in LMI census tracts. In other respects, however, the data show disparities in application and origination rates to loan applicants who are minorities or residents of LMI census tracts compared to applicants who are not minorities or residents of LMI census tracts.

The Board is concerned when the record of an institution indicates such disparities, and it believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound lending, but also assure equal access to credit by creditworthy applicants regardless of race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a

^{28/} During 1994 and 1995, Marine Bank ranked as the second largest SBA lender in the state.

^{29/} Two commenters contended that the percentage of loans in the 1995 HMDA data for Broome County where the race of the borrower was designated as "not applicable" is significant and, consequently, that Marine Bank may have violated HMDA reporting requirements by failing to provide the race of the borrower as required by law. The facts of record, including confidential supervisory information relating to Marine Bank's record of compliance with consumer lending laws, do not support these contentions. The Board notes, moreover, that it has sufficient supervisory authority to address any weaknesses in Marine Bank's compliance with HMDA reporting requirements.

few categories of housing-related lending and provide limited information about the covered loans.^{30/} HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has engaged in illegal discrimination in lending.

In light of the limitations of HMDA data, the Board has carefully reviewed other information, particularly examination reports that provide an on-site evaluation of compliance by Marine Bank and First Federal with the fair lending laws. Examiners found no evidence of prohibited discrimination or other illegal credit practices at Marine Bank or First Federal, and concluded that both institutions were in compliance with the substantive provisions of the fair lending laws.^{31/} Examiners also found no evidence of any practices by Marine Bank or First Federal that were intended to discourage applications for the types of credit listed in the institution's CRA statement. Reserve Bank examiners specifically noted that Marine Bank solicits applications from all segments of its communities, including LMI census tracts.

Marine Bank has a number of policies and procedures in place to ensure compliance with fair lending laws and the bank's underwriting guidelines. For example, Marine Bank has implemented a second review process for all denied applications, a loan denial appeal process, centralized credit centers to ensure consistent application of loan underwriting guidelines, and a quality control

^{30/} The data, for example, do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income -- reasons most frequently cited by a credit denial -- are not available from the HMDA data.

^{31/} Examiners noted isolated technical violations by Marine Bank that were not considered to be inconsistent with the substantive provisions of the fair lending laws, and Marine Bank has initiated steps to address those matters.

program. After the bank's 1995 CRA performance examination, it also revised and expanded its fair lending compliance training programs and focussed its CRA training programs on increasing loans to minorities, LMI borrowers, and to borrowers who reside in LMI census tracts.

Ascertainment and Marketing. Since the Marine Examination, Marine Bank has taken a number of steps to strengthen its program to ascertain the credit needs of, and market its products and programs to, all the bank's communities.^{32/} In January 1995, Marine Bank hired a Community Relations Manager to develop and monitor the bank's ascertainment of community needs. Marine Bank's management monitors the bank's ascertainment program through quarterly meetings of the Senior CRA Committee, which includes the Chief Executive Officer, the Chief Operating Officer, and the Chief Credit Officer of the bank. Since the Marine Examination, the bank has expanded its ascertainment efforts by establishing CRA Advisory Councils,^{33/} conducting structured community assessment surveys, implementing a more formal officer calling program, and conducting formal and informal focus groups. Marine Bank also has contracted with a marketing firm to conduct a credit needs survey in the South Bronx.

In addition, the bank has expanded its marketing efforts in order to increase loans to minorities, LMI borrowers, and borrowers residing in LMI census tracts.^{34/} As part of its media plan for mortgage, installment, and small business

^{32/} BCCRAC and NYSRA contended that bank's CRA policies have not shown meaningful improvement since the 1995 examination.

^{33/} Marine Bank has CRA Advisory Councils in Albany, Brooklyn, and Buffalo, and plans to establish similar councils in Rochester, Syracuse, Newburgh, and lower Manhattan.

^{34/} Marine Bank adopted a minority marketing plan that focuses on African-
(continued...)

lending, Marine Bank uses advertisements on radio and in minority print media, including Spanish and Chinese language publications, to increase its lending in LMI and minority communities. Marine Bank also conducts mortgage, consumer loan, and small business seminars.^{35/}

Branches. Commenters have expressed concern that branch closings resulting from the proposal would adversely effect the community, particularly LMI neighborhoods.^{36/}

^{34/}(...continued)

American and Hispanic customers throughout the state and Asian-American customers in New York City. Since 1993, Marine Bank has increased the percentage of its print media spending in minority publications from 3 percent to 11.5 percent. Furthermore, the number of print advertisements in minority publications as a percentage of the bank's total ad insertions, increased from 3 percent in 1993 to 20 percent through the first quarter of 1996.

^{35/} In 1996, Marine Bank conducted or participated in more than 120 workshops and conferences relating to home ownership throughout the state.

^{36/} Three commenters also objected that branch closing and certain other information has been improperly kept confidential by Marine Bank. As noted above, Marine Bank does not expect to have a branch closing plan until after consummation of the proposal and has requested confidential treatment for the preliminary information provided in connection with the proposal. Two commenters asserted that this information should be disclosed under the Board's application processing procedures that generally prohibit ex parte communications during the processing of an application. The Board notes that its rules regarding access to information under the Freedom of Information Act ("FOIA") provide the appropriate framework for considering a commenter's

challenge to confidential treatment accorded an applicant's submissions.

One commenter requested the confidential submissions by Marine Bank concerning its preliminary branch closing information under the FOIA. This commenter's challenges were reviewed under the Board's rules and denied. The Board's rules do not provide commenters with access to information that is otherwise exempt from disclosure under the FOIA. This commenter has been provided with all non-

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Marine Bank states that it will not have a final branch closing plan until after consummation of the proposal, pending an analysis of each office's facilities, physical characteristics, lease terms, and the needs of the customers in the office's service area. Marine Bank projects, as a general matter, that any branch closings or consolidations that might result from the proposed merger would likely be due to Marine Bank and First Federal having branches in close proximity.

Marine Bank represents that the policies and procedures for branch closings under its Branch Closure Policy Statement and Procedures ("Marine Policy") would be followed for any branch closings, consolidations or relocations resulting from the proposal. Under this policy, before a branch is considered for closure, Marine Bank must consider a variety of factors, including the availability of other financial services in the branch's service area and the banking alternatives to customers affected by the closure. The Marine Policy requires the bank, moreover, to consider actions that would minimize the impact of a branch closing on the affected neighborhood. Marine Bank also is required to give at least 90 days written notice of all branch closings subject to the Joint Agency Policy Statement on Branch Closings ("Joint Policy Statement").^{37/}

^{36/}(...continued)

confidential submissions by Marine Bank that respond to particular issues raised by its comments.

^{37/} See Federal Register 49,083 (1993) (interpreting section 42 of the FDI Act (12 U.S.C. § 1831r-1)). Under these provisions, all insured depository institutions are required to submit a notice of any proposed branch closing to the appropriate federal banking agency no later than 90 days before the date of closure that contains: (1) the identity of the branch to be closed and the proposed closing date; (2) a detailed statement of the reasons for the decision to close the branch; and (3) statistical or other information supporting closure consistent with the institution's written policy for branch closings. Marine Bank has stated that it will follow its
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As part of the Marine Examination, examiners reviewed branches closed pursuant to the Marine Policy. Examiners found that Marine had complied with its branch closing policy in closing two branches since its last examination and had provided timely advance notice to the appropriate regulatory agencies, including supporting reasons for the closing, and to the affected customers. Examiners did not note any adverse effects on the communities where branches were closed.

In weighing the convenience and needs factor in this application, the Board has taken into account Marine Bank's branch closing policy and its record of closing branches as reviewed in the CRA performance examination process. Examiners have determined the policy is adequate and have found that it was consistently applied to Marine Bank's branch closings.

To ensure compliance with the Joint Policy Statement and the FDI Act and to permit the Board to monitor Marine Bank's continued efforts to serve the convenience and needs of its community, Marine Bank must provide a copy of its proposed plan for branch closures, consolidations and relocations as soon as available to the Reserve Bank. For branches to be closed in LMI or minority census tracts, Marine Bank's plan that is submitted to the Reserve Bank should indicate how Marine Bank would continue to help meet the convenience and needs of the affected community. Marine Bank also must notify the Reserve Bank of any proposed changes to this plan for a period of two years or until the Reserve Bank conducts the next CRA performance examination of Marine Bank after consummation of the proposal, whichever period is shorter. The Board also will

^{37/}(...continued)

branch closing procedures for branches that will be consolidated or relocated, as well as for those that will be closed.

review the record of branch closures resulting from the proposal in future applications to expand the operations of Notificant or Marine Bank.

Conclusion on Convenience and Needs Factor. The Board has carefully considered all the facts of record, including comments received from all commenters and responses to those comments and the CRA performance records of Marine Bank and First Federal, including relevant reports of examination from their primary federal supervisors. Based on a review of the entire record, the Board concludes that convenience and needs considerations, including the CRA records of performance of both organizations, are consistent with approval of this proposal.^{38/}

Other Considerations

In order to approve the proposal under section 4(c)(8) of the BHC Act, the Board also must determine that the proposed activities are a proper incident to banking, that is, that the proposal "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in

^{38/} Two commenters asserted that Marine Bank does not offer deposit products, service fees, and interest rates comparable to those offered by First Federal. Marine Bank stated that it offers several no-cost or low-cost account products with low minimum balance requirements, including its "basic checking" account and "Good Deal checking" account products. Marine Bank also offers various combinations of linked deposit, loan and investment services, known as "Marinextra," which reduce overall maintenance and transactional costs based on combined household balances. The Board notes that the CRA requires the federal banking agencies to encourage depository institutions to help meet the credit needs of the community, and does not establish a statutory preference for, nor require the provision of, any specific type of credit or service. In addition, the CRA does not impose any limitation on the fees or surcharges that can be charged for services. The record indicates that Marine Bank offers a full range of banking services in its delineated community, and there is no evidence in the Marine Examination, or in the record of this proposal, that the fees charged by the bank are discriminatory or based on any factor that would be prohibited by law.

efficiency, that outweigh possible adverse effects, such as decreased or unfair competition, conflicts of interests, or unsound banking practices."^{39/} As noted, the proposal would result in enhancement and expansion of the banking services available in the markets currently served by First Federal. Moreover, for the reasons previously discussed, the financial and managerial resources, future prospects, and CRA performance records of the organizations involved in the proposal are consistent with approval, and the potential effect on competition is minimal. There also is no evidence that the proposal would result in such adverse effects as decreased or unfair competition, conflicts of interests, or unsound banking practices. Based on all the facts of record, the Board concludes that the potential for adverse effects, if any, under the factors required to be considered under section 4(c)(8) of the BHC Act would be outweighed by the public benefits. Accordingly, the Board has determined that the proposal can reasonably be expected to produce public benefits under the proper incident to banking standard of section 4(c)(8) of the BHC Act. The Board also has reviewed the proposal in light of the considerations under the FDI Act^{40/} and the Federal Reserve Act, and concludes that the facts of record are consistent with approval.

Conclusion

^{39/} 12 U.S.C. § 1843(c)(8).

^{40/} Specifically under section 5(d)(3) of the FDI Act, the Board concludes that:

- (1) The transaction will not result in the transfer of any federally insured deposit insurance from one federal deposit insurance fund to the other;
- (2) Marine Bank currently meets, and on consummation of the proposed transaction will continue to meet, all applicable capital standards; and
- (3) The proposed transaction would comply with the interstate banking provision of the BHC Act if First Federal were a state bank that Notificant was applying to acquire directly. 12 U.S.C. § 1815(d)(3).

Based on the foregoing and all the facts of record, the Board has determined that the notice and applications should be, and hereby are, approved.^{41/} The Board's approval of this proposal is specifically conditioned on compliance by Marine Bank with all the commitments made in connection with this proposal, including the commitments and conditions discussed in this order.^{42/} The Board's

^{41/} Two commenters requested that the Board hold a public hearing or meeting on the proposal to review Marine Bank's fair lending record. The Board is not required under the Bank Merger Act or the Federal Reserve Act to hold a public hearing or meeting in this case. The Board's rules provide for a hearing on notices under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. See 12 C.F.R. 225.23(f). Commenters have not identified any disputes of material fact relating to the proposal.

Under the Board's rules, the Board also may, in its discretion, hold a public hearing or meeting on an application or notice to clarify factual issues related to the notice and to provide an opportunity for testimony, if appropriate. 12 C.F.R. 262.3(e) and 262.25(d). The Board has carefully considered these requests in light of all the facts of record. In the Board's view, interested parties have had ample opportunity to present written submissions, and they have submitted substantial written comments that have been considered by the Board. Commenters' requests fail to show why a written presentation would not suffice and to summarize what evidence would be presented at a hearing or meeting. 12 C.F.R. 262.3(e). After a careful review of all the facts of record, the Board concludes that commenters' request disputes the weight that should be accorded to, and the conclusions that may be drawn from, the existing facts of record, but do not identify any genuine dispute about facts that are material to the Board's decision. On the basis of all the facts of record, the Board has determined that a public hearing or meeting is not necessary to clarify the factual record in these notices and applications, and is not otherwise warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is hereby denied.

^{42/} Three commenters have requested that the Board extend the public comment period for the proposal until Marine Bank releases information on its branch closings, including a branch closing plan, that can be reviewed and commented on by these commenters. The Board is required under applicable law and its

(continued...)

determination also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(g) (12 C.F.R. 225.7 and 225.23(g)), 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. Approval of the proposal is further subject to Marine Bank obtaining any approvals required under applicable federal or state laws. The commitments and conditions referred to in this order shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision, and, as such, may be enforced in proceedings under applicable law.

The proposed merger shall not be consummated before the fifteenth day after the effective date of this order, and none of the proposed transactions shall be consummated later than three months after the effective date of this order, unless such period is extended by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,^{43/} effective February 3, 1997.

^{42/}(...continued)

regulations to act on applications and notices within specified time periods. The Board notes, moreover, that the commenters have had a reasonable opportunity to comment as provided under the Bank Merger Act, and the Board's application processing procedures and have, in fact, submitted substantial comments that have been considered by the Board. Based on all the facts of record, and for the reasons discussed above, the Board concludes that the record is sufficient to act on the proposal at this time, and that delay or denial of the proposal on grounds of informational insufficiency is not warranted.

^{43/} Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and
(continued...)

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(signed)

Jennifer J. Johnson
Deputy Secretary of the Board

^{43/}(...continued)

Governors Kelley, Phillips, and Meyer. Absent and not voting: Governors Lindsey and Yellen.

Appendix A

Branches to be established by Marine Bank in New York state

New York City

- (1) 217 Broadway*
- (2) 441 Lexington Avenue
- (3) One East Fordham Road
- (4) 107-60 Queens Boulevard
- (5) 8515 Bay Parkway
- (6) 1756 Crosby Avenue
- (7) 3478 Boston Road
- (8) 3825 East Tremont Avenue
- (9) 929 McLean Avenue, Yonkers
- (10) 4395 White Plains Road
- (11) 2030 Flatbush Avenue
- (12) 330 Route 211E, Middletown
- (13) 1095 Avenue of the Americas
- (14) 1580 Westchester Avenue
- (15) 6912 18th Avenue
- (16) 1271 Avenue of the Americas
- (17) 245 First Avenue
- (18) 1499 West Avenue
- (19) 569 West 235th Street
- (20) 63rd Drive & Saunder
- (21) 44-04 Kissena Boulevard
- (22) 86-26 Broadway

(23) 137-61 Queens Boulevard

(24) 35-48 Junction Boulevard

(25) 2960 Victory Boulevard

(26) 961 Kings Highway

(27) 244 South Main Street

Rochester

(28) One First Federal Plaza

(29) 228 East Main Street

(30) 1940 Monroe Avenue

(31) 525 Titus Avenue

(32) 1998 Empire Boulevard

(33) 3687 Dewey Avenue

(34) 3195 Monroe Avenue

(35) 2108 Chili Avenue

(36) 1100 Jefferson Road

(37) 1552 Ridge Road West

(38) 2362 Lyell Avenue

(39) 1485 Penfield Road

(40) 3228 Chili Avenue

(41) 3177 Latta Road

(42) 2315 East Main Street

(43) 1882 East Avenue

Buffalo

(44) 4574 Main Street

(45) 2016 Genesee Street

- (46) 2 Cathedral Park
- (47) 1989 Clinton Street
- (48) 8200 Transit Road
- (49) 366 Kenmore Avenue

Syracuse

- (50) 250 South Clinton Street
- (51) Grant Blvd. & Teall Avenue

Binghamton

- (52) 247 Main Street
- (53) 33 West State Street

Kenmore

- (54) 1750 Sheridan Drive
- (55) 2981 Delaware Avenue

Other locations in New York state

- (56) 4707 Lake Road, Brockport
- (57) 980 Ridge Road East, Webster
- (58) 750 West Miller Street, Newark
- (59) 2155 Penfield Road, Penfield
- (60) 149 French Road, Cheektowaga
- (61) 8503 Main Street, Williamsville
- (62) 825 Fairport Road, East Rochester
- (63) 300 North Tioga Street, Ithaca
- (64) 107 Oakdale Mall, Johnson City
- (65) 18 Lake Street, Oswego
- (66) 133 North Main Street, Horseheads

- (67) 32 Washington Street, Endicott
- (68) One Main Street, Sidney
- (70) 124 Delaware Street, Walton
- (71) 19 East Central Avenue, Pearl River
- (72) 147 Seventh Street, Garden City
- (73) 117 East Route 59, Nanuet
- (74) 4050 Merrick Road, Seaford
- (75) 99 Pondfield Road, Bronxville
- (76) Tops Plaza-Michael Road, Orchard Park
- (77) 953 Payne Avenue, North Tonawanda
- (78) 83 Main Street, Batavia
- (79) 46 Main Street, Hamburg
- (80) 2435 Grand Island Blvd., Grand Island
- (81) 350 Orchard Park Road, West Seneca**

* Relocating to 253 Broadway, New York City.

** Under construction.

Appendix B

Banking Markets and Market Data

(1) Binghamton (approximated by Broome and Tioga Counties and parts of Chenango County, in New York and Susquehanna County in Pennsylvania). Marine Bank is the fourth largest depository institution in the Binghamton market, controlling \$267 million in deposits, representing 11.8 percent of the total deposits in depository institutions in the market ("market deposits"). First Federal is the 11th largest depository institution in the Binghamton market, controlling \$47 million in deposits, representing 2.1 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 15.6 percent of the market deposits, and would become the third largest depository institution in the market. The HHI for the market would increase by 54 points to 1338.

(2) Buffalo (approximated by Erie and Niagara Counties and parts of Cattaraugus, Orleans and Wyoming Counties, all in New York). Marine Bank is the second largest depository institution in the Buffalo market, controlling \$3.385 billion in deposits, representing 23.1 percent of the total market deposits. First Federal is the eighth largest depository institution in the Buffalo market, controlling \$319 million in deposits, representing 2.2 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 26.9 percent of the market deposits, and would remain the second largest depository institution in the market. The HHI would increase by 117 points to 2221.

(3) Elmira-Corning (approximated by Chemung County and parts of Schuyler and Steuben Counties, all in New York). Marine Bank is the second largest depository institution in the Elmira-Corning market, controlling \$198 million in deposits, representing 15 percent of the total market deposits. First Federal is the 14th largest depository institution in the Elmira-Corning market, controlling \$12 million in deposits, representing 0.9 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 16.6 percent of the market deposits, and would remain the second largest depository institution in the market. The HHI would increase by 31 points to 1402.

(4) Ithaca (approximated by Thompsons County and parts of Cortland and Schuyler Counties, all in New York). Marine Bank is the sixth largest depository institution in the Ithaca market, controlling \$40 million in deposits, representing 4.8

percent of the total market deposits. First Federal is the eighth largest depository institution in the Ithaca market, controlling \$18 million in deposits, representing 2.1 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 8.8 percent of the market deposits, and would become the third largest depository institution in the market. The HHI would not increase.

(5) Metropolitan New York/New Jersey (approximated by Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren Counties and parts of Mercer County in New Jersey; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties in New York; Pike County, PA; and 24 municipalities in Fairfield and Litchfield Counties in Connecticut). Marine Bank is the 12th largest depository institution in the Metro NY/NJ market, controlling \$5.5 billion in deposits, representing 1.6 percent of the total market deposits. First Federal is the 36th largest depository institution in the Metro NY/NJ market, controlling \$1 billion in deposits, representing 0.3 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 2.3 percent of the market deposits, and would become the eighth largest depository institution in the market. The HHI would not increase.

(6) Rochester (approximated by Genesee, Livingston, Monroe, Ontario, Seneca, Wayne, and Yates Counties and parts of Allegany, Orleans, Steuben, and Wyoming Counties, all in New York). Marine Bank is the second largest depository institution in the Rochester market, controlling \$1.5 billion in deposits, representing 13.3 percent of the total market deposits. First Federal is the eighth largest depository institution in the Rochester market, controlling \$580 million in deposits, representing 5.1 percent of the total pre-acquisition market deposits. Following consummation of the merger, Marine Bank would control 22.4 percent of the market deposits, and would become the largest depository institution in the market. The HHI would increase 231 points to 1156.

(7) Syracuse (approximated by Cayuga, Onondaga, and Oswego Counties and parts of Cortland and Madison Counties, all in New York). Marine Bank is the fourth largest depository institution in the Syracuse market, controlling \$830 million in deposits, representing 11.6 percent of the total market deposits. First Federal is the 20th largest depository institution in the Syracuse market, controlling \$36 million in deposits, representing 0.5 percent of the total pre-acquisition market

deposits. Following consummation of the merger, Marine Bank would control 12.6 percent of the market deposits, and would become the third largest depository institution in the market. The HHI would increase by 8 points to 1581.