

For immediate release

April 29, 1997

The Federal Reserve Board today announced its approval of the notice and application of Banc One Corporation, Columbus, Ohio, and its wholly owned subsidiary, Banc One Oklahoma Corporation, Oklahoma City, Oklahoma, to acquire all the voting shares of Liberty Bancorp, Inc., Oklahoma City ("Liberty"), and thereby to acquire the nonbanking subsidiaries of Liberty and Liberty's subsidiary banks, Liberty Bank & Trust Company of Oklahoma City, N.A., Oklahoma City, and Liberty Bank & Trust Company of Tulsa, N.A., Tulsa, both in Oklahoma.

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

Attachment

## FEDERAL RESERVE SYSTEM

Banc One Corporation  
Columbus, Ohio

Banc One Oklahoma Corporation  
Oklahoma City, Oklahoma

## Order Approving the Acquisition of a Bank Holding Company

Banc One Corporation, Columbus, Ohio ("Banc One"), and its wholly owned subsidiary, Banc One Oklahoma Corporation, Oklahoma City, Oklahoma ("BOC"), bank holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire all the voting shares of Liberty Bancorp, Inc., Oklahoma City ("Liberty"), and its wholly owned subsidiary banks, Liberty Bank & Trust Company of Oklahoma City, N.A., Oklahoma City ("Liberty Bank"), and Liberty Bank & Trust Company of Tulsa, N.A., Tulsa, all in Oklahoma. Banc One and BOC also have requested the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire the nonbanking subsidiaries of Liberty and thereby engage in certain trust, credit life insurance, lending, and leasing activities.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's rules (62 Federal Register 7231 (1997)). The time for filing comments has expired, and the

Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.<sup>1/</sup>

Banc One, with total consolidated assets of \$98.5 billion, operates subsidiary banks in twelve states: Arizona, Colorado, Illinois, Indiana, Kentucky, Louisiana, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. Banc One is the tenth largest commercial banking organization in the United States, controlling deposits of \$71.6 billion.<sup>2/</sup> BOC is the eighth largest commercial banking organization in Oklahoma, controlling deposits of \$472.4 million, representing approximately 1.6 percent of the total deposits in the state. Banc One also engages through various subsidiaries in a broad range of permissible nonbanking activities throughout the United States.

Liberty, with total consolidated assets of \$2.9 billion, is the third largest commercial banking organization in Oklahoma, controlling \$2.3 billion in deposits, representing approximately 7.7 percent of the total deposits in the state. After consummation of the proposal, Banc One would be the third largest commercial banking organization in Oklahoma, controlling deposits of \$2.8 billion, representing approximately 9.3 percent of the total deposits in the state.

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<sup>1/</sup> Commenters to the proposal contend that the Board should not consider the substance of Banc One's submissions filed after time periods prescribed in the Board's Rules of Procedure for an applicant's response to comments. See 12 C.F.R. 262.3(e). The Board has the sole discretion under its Rules of Procedure to consider comments and responses, including late submissions of information. In reviewing the proposal, the Board has considered all the submissions filed, including submissions filed by commenters that responded to Banc One's submissions.

<sup>2/</sup> Asset data are as of September 30, 1996; ranking data are as of June 30, 1996.

### Interstate Analysis

Section 3(d) of the BHC Act, as amended by section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Banc One is Ohio, and Banc One proposes to acquire banks in Oklahoma.<sup>3/</sup> The conditions for an interstate acquisition enumerated in section 3(d) are met in this case,<sup>4/</sup> and the Board is permitted to approve this proposal under section 3(d) of the BHC Act.

### Competitive Considerations

The BHC Act prohibits the Board from approving an application under section 3 of the BHC Act if the proposal would result in a monopoly, or would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the

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<sup>3/</sup> Pub. L. No. 103-328, 108 Stat. 2338 (1994). A bank holding company's home state is that state in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1996, or the date on which the company became a bank holding company, whichever is later.

<sup>4/</sup> 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Banc One is adequately capitalized and adequately managed. On consummation of the proposal, Banc One and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States, and less than 30 percent of the total amount of deposits in Oklahoma. In addition, Liberty's two subsidiary banks have been in existence and have continuously operated for at least five years as required by Oklahoma law. All other requirements of section 3(d) of the BHC Act also would be met on consummation of the proposal.

public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.

BOC and Liberty compete directly in the Oklahoma City banking market.<sup>5/</sup> BOC's depository subsidiary, Bank One, Oklahoma City, Oklahoma City, Oklahoma ("Bank One Oklahoma"), is the fourth largest depository institution in the market, controlling deposits of \$485.4 million and representing approximately 6.0 percent of the total deposits in depository institutions in the market ("market deposits").<sup>6/</sup> Liberty Bank is the largest depository institution in the market, controlling market deposits of \$1.36 billion and representing approximately 16.8 percent of market deposits.

On consummation of the proposal, BOC would become the largest depository institution in the market, controlling deposits of \$1.85 billion, representing approximately 22.8 percent of market deposits. The change in market concentration, as measured by the Herfindahl-Hirschman Index ("HHI"), would not exceed the threshold levels in the Department of Justice ("DOJ") Merger Guidelines.<sup>7/</sup> In addition, more than 55 competitors, including several of the state's

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<sup>5/</sup> The Oklahoma City banking market consists of the Oklahoma City Ranally Metro Area, plus the community of Blanchard in McClain County.

<sup>6/</sup> Market data are as of June 30, 1995. Market share data are based on calculations that include the deposits of thrift institutions at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989). Thus, the Board has regularly included thrift deposits in the calculation of market share on a 50-percent weighted basis. See, e.g., First Hawaiian Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>7/</sup> On consummation of the proposal, the HHI would increase  
(continued...)

largest banking and thrift organizations, would continue to operate in the market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not result in any significantly adverse effects on competition or the concentration of banking resources in any relevant banking market.<sup>8/</sup>

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<sup>7/</sup>(...continued)

by 202 points to a level of 992. Under the revised DOJ Merger Guidelines, 49 Federal Register 26,823 (1984), a market in which the post-merger HHI is less than 1000 is considered unconcentrated. The DOJ has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial institutions.

<sup>8/</sup> Comments from Inner City Press/Community on the Move, the Delaware Community Reinvestment Action Council ("DCRAC"), and the Black Citizens for Justice, Law & Order (collectively, "Protestants") contend that consummation of the proposal would have an adverse competitive effect because the largest depository institution in the Oklahoma City banking market would be acquired by an out-of-state holding company and thereby become less responsive to the credit needs of farmers and small businesses. The argument relies on subdividing the market in a manner that is inconsistent with Board precedent. The Board traditionally has recognized that the appropriate product market for evaluating the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions. See Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1997), and the discussion of relevant case law and economic studies therein. Protestants present no facts to support an alternative product market defined by small business and small farm loans. Based on all the facts of record, the Board concludes that competitive considerations are consistent with approval for the reasons discussed above. The effects of the proposal in meeting the credit needs of the community, including small business and small farm credit needs, are discussed later in the order.

### Other Factors Under the BHC Act

The BHC Act also requires the Board to consider the financial and managerial resources of the companies and banks involved, the convenience and needs of the communities to be served, and certain other supervisory factors.

#### A. Supervisory Factors

The Board has carefully considered the financial and managerial resources and future prospects of Banc One, Liberty, and each of their respective subsidiaries, as well as other supervisory factors, in light of all the facts of record. These facts include supervisory reports of examination assessing the financial and managerial resources of the organizations and recent pro forma financial information provided by Banc One. The Board notes that Banc One, Liberty, and each of their subsidiary banks meets or exceeds the "well capitalized" thresholds under applicable law and is expected to continue to do so after consummation of the proposal. Based on all the facts of record, the Board has concluded that the financial and managerial considerations, and all other supervisory factors that must be considered under section 3 of the BHC Act, are consistent with approval of the proposal.<sup>9/</sup>

#### B. Convenience and Needs Factor

The Board also has considered the effect of the proposed acquisition on the convenience and needs of the community to be served in light of all the facts

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<sup>9/</sup> Protestants maintain that their allegations relating to Banc One's compliance with fair lending laws, branch closings, and lending practices present adverse managerial considerations. In light of the facts discussed above and the consideration given to the allegations later in the order, the Board concludes that managerial and other supervisory factors are consistent with approval of the proposal.

of record. As part of its review, the Board has carefully considered comments received from Protestants contending that the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA") data for Banc One and its affiliates, Banc One's record of consumer complaints and branch closings, and the marketing and lending practices at Banc One's bank and nonbank subsidiaries warrant denial of the proposal.<sup>10/</sup> Protestants also maintain that Banc One, as an out-of-state acquirer, would reduce the amount of credit Liberty makes available to small businesses and farmers in Oklahoma.

Protestants also allege that HMDA data from Banc One and Banc One Mortgage Corporation ("BOMC") show illegal discrimination against minority credit applicants in violation of the Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act (collectively, "fair lending laws"), and that BOMC and Banc One's subsidiary banks illegally "steer" minority applicants to Banc One's nonbank lending subsidiary, BOFS, which charges higher interest rates on its loans. In addition, Protestants allege that there are disparities in the denial rates of credit applications, based on race or other prohibited factors, among the various Banc One subsidiaries.<sup>11/</sup>

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<sup>10/</sup> Protestants question the accuracy of Banc One's HMDA data because the data do not reflect the loans that Banc One states were purchased by Banc One Financial Services ("BOFS") from Banc One affiliates. The Board has concluded that the allegation is not correct with respect to the 1996 HMDA data, which show loan purchases. To the extent that any loan purchases in previous years might not have been reported by BOFS under HMDA, the Board may address these issues under its supervisory authority.

<sup>11/</sup> Protestants cite litigation and consumer complaints filed against Banc One as additional evidence of improper practices.

The Board notes that Banc One assists in meeting the credit needs of the communities it serves by providing a full range of financial services, including commercial and retail banking services, trust and investment management services, and corporate and international banking services, through various bank and nonbank subsidiaries. Banc One has stated that services currently available from Liberty would be expanded and improved as a result of the proposal. In particular, Banc One expects to expand the products and services offered to consumers and small businesses in the communities currently served by Liberty. Banc One proposes to provide small businesses in Oklahoma with different types of assistance, including access to federally subsidized loans and guarantees through the Small Business Administration ("SBA"). Banc One also notes that its subsidiary bank in Oklahoma engages in a substantial amount of agricultural lending and that Banc One intends to continue to make small farm loans in communities served by Liberty.<sup>12/</sup>

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<sup>12/</sup> The Board has considered Banc One's small business and farm lending in light of articles cited by Protestants in support of their assertion that multi-state bank holding companies tend to make fewer loans to small businesses and farms than small single-state bank holding companies. As a general matter, the articles cited reviewed only selected data from the Federal Reserve System's Tenth District and, as the author of the studies noted, the data used in the studies do not rule out alternative conclusions. The Board has carefully reviewed Banc One's record of ascertaining and helping to meet the credit needs, including the small business and farm credit needs, of the communities served by its subsidiary banks. The Board also notes that Banc One has represented that it will make its programs available to customers of Liberty in connection with the proposal. The Board notes that the CRA requires every bank, including banks owned by out-of-state bank holding companies, to be examined regularly and rated on its performance in helping meet the credit needs of its community. In addition, the Board is required to review this performance in future applications by Banc One to acquire depository facilities under the BHC Act.

Banc One also indicates that it would enhance Liberty's community reinvestment program by integrating it with the Banc One program. In this light, the Board has given substantial consideration to the existing record of Banc One, as reflected in its programs and in the supervisory assessments of its performance, of helping to meet the convenience and needs of all its communities, including low- and moderate-income ("LMI") communities.

*CRA 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 CRA (12 U.S.C. § 2901 et seq.). As provided in the CRA, the Board evaluates the convenience and needs factor in light of examinations by the primary federal supervisor 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 primary federal supervisor.<sup>13/</sup>

All of Banc One's existing thirty subsidiary banks  
have received "outstanding" or "satisfactory" ratings at the most recent

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<sup>13/</sup> DCRAC contends that CRA performance examinations conducted before 1995 relied too heavily on the banks' presentation of their performance and are therefore unreliable. The Board notes that the Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act ("Agency CRA Statement") 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. See 54 Federal Register 13,742 and 13,745 (1989).

examinations of their CRA performance.<sup>14/</sup> Fifteen of Banc One's subsidiary banks, representing a majority of the organization's banking assets, received "outstanding" CRA ratings from their primary federal supervisors. Banc One's lead bank, Bank One, Columbus, N.A., Columbus, Ohio ("Lead Bank"), and Banc One's largest bank in terms of assets, Bank One, Texas, N.A., Dallas, Texas ("Bank One Texas"), both received "outstanding" performance ratings from their primary supervisor, the Office of the Comptroller of Currency ("OCC"). Bank One Oklahoma also received an "outstanding" rating from the Federal Reserve Bank of Kansas City in an examination completed in April 1996.<sup>15/</sup> Liberty's two subsidiary banks received "satisfactory" ratings for CRA performance from the OCC.

#### *Lending Record*

The Board has carefully considered other aspects of Banc One's CRA performance record, including the lending, marketing, and investment activities of

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<sup>14/</sup> Protestants maintain that Banc One's CRA performance record is incomplete because Banc One's nonbanking subsidiaries, and in particular BOFS, have not been examined for CRA performance. Protestants, therefore, argue that the CRA examination record should not be accorded normal weight in analyzing the proposal. The CRA requires federal financial supervisory agencies to assess the record of CRA performance in connection with their examination of an insured depository institution, and to take such record into account in their evaluation of an application for a depository facility. See 12 U.S.C. § 2903. BOFS and other nonbank lending subsidiaries of Banc One are not insured depository institutions and, therefore, are not subject to evaluation under the CRA.

<sup>15/</sup> The CRA performance ratings for each of Banc One's subsidiary banks is set forth in the Appendix.

its subsidiary banks, in light of Protestants' comments relating to several Banc One subsidiary banks.<sup>16/</sup>

Lead Bank. According to the 1995 CRA performance examination conducted by the OCC, Banc One's Lead Bank, which serves the Columbus, Ohio, Metropolitan Statistical Area ("MSA"), developed a comprehensive program to identify the credit needs of its delineated community and effectively responded to those needs through a wide variety of credit products and banking services. Lead Bank had a significant volume of consumer, mortgage, and small business loans in all segments of its community. For example, in 1994, Lead Bank had more than 3,700 small business credit relationships and made small business loans totalling more than \$243 million.

Lead Bank, working in conjunction with BOMC, also offered a range of loans for affordable housing and home improvements. In 1993, the bank introduced a new affordable mortgage product with lower payments and flexible debt-to-income limits. In 1994, the Lead Bank originated 182 of the affordable mortgages, totalling \$8.9 million. The examination further noted that the bank

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<sup>16/</sup> Protestants also contend that Banc One's subsidiary banks charge excessive fees for cashing welfare and Social Security Administration checks for individuals who do not have bank accounts with Banc One. Protestants allege that the fees discriminate against individuals who are minorities, elderly and poor. Protestants present no facts to substantiate that the fees are illegally discriminatory, and there is no evidence in the record that the fees are based on any factor that would be prohibited by law. The Board has recognized that although banks help serve the needs of their community by offering basic services at nominal or no charge, the CRA does not impose any limitation on the fees or surcharges that can be assessed for services.

outperformed competitors in origination of home improvement loans, particularly in LMI and minority census tracts.

Examiners also noted that Lead Bank took a leadership role in local, state and federal government-insured guaranteed and subsidized loan programs for families, small businesses, and small farms. In 1994, Lead Bank participated in government-sponsored loans totalling more than \$24 million.

Bank One Texas. The OCC also concluded that Bank One Texas effectively made its credit services available to all segments of its community and that the bank's extensions of credit addressed a significant portion of the credit needs of its service community. Bank One Texas made a number of mortgage, home improvement, consumer, credit card, and small business loans in 1994 and 1995. Examiners commended Bank One Texas for its lending performance to LMI areas, noting that 32 percent of the bank's lending was in LMI census tracts, while 30 percent of the population of the bank's delineated community resided in these LMI areas.

Examiners further noted that the management of Bank One Texas had focused on meeting the mortgage needs of LMI segments of the bank's community. Bank One Texas offered a variety of affordable mortgage products, including an "American Dream" mortgage product that is available to LMI home buyers who do not meet the standards for Federal National Mortgage Association ("Fannie Mae") and Federal Housing Administration ("FHA") products. Bank One Texas originated 215 mortgages under the program for a total amount of \$8.3 million in the first half of 1995.

Examiners also noted that Bank One Texas offered a variety of small business credit products. The bank was a certified SBA lender and was the sixth largest originator of SBA loans in the country.

Bank One Oklahoma. Examiners found that Bank One Oklahoma offered a wide range of conventional and government-related loan programs that were responsive to the needs of the local community. Examiners noted that Bank One Oklahoma used an internal CRA committee to develop products and services designed to address community needs. The bank was one of the largest home construction originators in the Oklahoma City banking market and participated in programs to provide home purchase and rehabilitation loans to LMI borrowers.

Examiners noted that Bank One Oklahoma was an active small business lender and had originated small business loans throughout its service community. Examiners reported, for example, that the bank originated 1,950 small business loans, totalling over \$125 million, to address identified small business capital needs. In November 1995, the bank also made available a new Bank One Business Line of Credit ("BOBLOC") for small businesses seeking loans of \$5,000 to \$100,000. Since its introduction, Bank One Oklahoma has made 39 BOBLOC loans, totalling more than \$296,000. The 1996 CRA performance examination also indicates that Bank One Oklahoma participated in two public-private partnerships to help meet the credit needs of small businesses and LMI individuals interested in starting their own businesses.

The bank participated in other loan programs to meet the needs of small businesses, small farms, and LMI families. Bank One Oklahoma, for example, made SBA loans totalling \$215,000 and, working in conjunction with BOMC, made FHA loans totalling \$1.15 million.

Other Banks. Banc One's subsidiary banks have been found by their primary federal supervisors to be effective in identifying the credit needs of their communities and in meeting those needs. Additionally, all the banks participated in various lending programs designed to make credit available for affordable housing and for small businesses.<sup>17/</sup> Examiners noted, for example, that Bank One, Arizona, N.A., Phoenix, Arizona, had made a number of mortgage loans and participated in a variety of public-private partnerships to finance affordable housing, including a Department of Housing and Urban Development ("HUD") guarantee program to make home construction, purchase, and rehabilitation loans to Native Americans. Similarly, the CRA performance examinations for Liberty National Bank and Trust Company of Kentucky, Louisville, Kentucky, a wholly owned subsidiary of Banc One Kentucky Corporation,<sup>18/</sup> noted that a significant portion of the bank's mortgage lending was to LMI individuals. Examiners also noted that the bank had extended a significant volume of small business loans. All of Banc One's banks offered community development lending, investment, and technical assistance.

Investments. In addition to the lending programs discussed above, Banc One helps meet the credit needs of the communities it serves through its community development corporation, Banc One Community Development Corporation ("CDC"). Examiners commended Banc One's participation in local

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<sup>17/</sup> Protestants object that Banc One's subsidiary banks do not originate a significant volume of purchase money mortgages. The CRA does not require an institution to offer any specific credit products but allows an institution to help to serve the credit needs of the institution's community by providing credit of the types consistent with the institution's overall business strategy and expertise.

<sup>18/</sup> The bank is now named Bank One, Kentucky, N.A.

development and redevelopment projects, and noted that CDC helps Banc One's bank subsidiaries to finance projects to promote community development. CDC has invested more than \$120 million in community development projects and has supplemented such investment activities with on-site community development technical assistance.

Marketing and Ascertainment. Examiners noted that Banc One's subsidiary banks have effectively identified the credit needs of their communities and adequately made their credit services available to all segments of their communities. Officers of the Lead Bank, for example, made hundreds of calls to churches, schools, neighborhood groups, and local chambers of commerce to identify un-met credit needs and to determine how the bank could respond to those needs, provide other banking services, and improve its marketing efforts. Examiners noted that Bank One Texas undertook various marketing efforts tailored to reach LMI communities, including direct mailings to LMI areas, Spanish or bilingual advertisements and bank brochures, and advertisements in ethnic and special interest publications such as church newsletters. Bank One Oklahoma also employed a call program to meet with a variety of civic, religious, and neighborhood groups. The bank also placed advertisements on radio stations and in local newspapers aimed at African-American and Hispanic populations.

#### *Branch Closings*

Protestants have expressed concerns that branch closings resulting from the proposal would have a materially adverse effect on the community, particularly in LMI neighborhoods.<sup>19/</sup> Protestants also contend that Banc One's

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<sup>19/</sup> Protestants also have expressed concerns about Banc  
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banks have been systematically closing branches in LMI communities since their last CRA examinations, and that branches sold by Banc One to other depository institutions often are closed.<sup>20/</sup>

Banc One has indicated that it does not have final plans for closing branches in Oklahoma after acquiring Liberty.

Banc One has identified, on a preliminary basis, six branches in Oklahoma City and Tulsa, Oklahoma, that might be appropriate for closing or consolidation with other nearby branches. Only one of the branches that Banc One has indicated may be closed is located in a LMI census tract, and the operations of that branch would be combined with another branch located approximately one mile away.<sup>21/</sup>

The Board has carefully reviewed Banc One's branch closing policy. The policy requires that, when a branch is identified for closing, a discussion of the proposed closing be accompanied by an analysis of how the closing would affect banking access for LMI consumers. If, based on that analysis and other factors, a decision is made to close a branch, a retention plan must be developed that sets forth a strategy for serving customers of the community affected by the closing, with particular attention given to serving LMI consumers. CRA personnel participate in

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<sup>19/</sup>(...continued)

One's reliance on alternative delivery mechanisms, such as automated teller machines, to serve LMI communities.

<sup>20/</sup> The closing of a branch purchased by another banking organization that is subsequently closed by that banking organization would be evaluated by the primary federal supervisor of the purchasing organization.

<sup>21/</sup> The other five branches that Banc One has identified for possible action are located in upper- or middle-income census tracts or are located in a business district.

the process and review branch closing plans with neighborhood leaders to ensure that the retention plan takes into account community suggestions. The Board expects that the policy would be used for any branch closings that result from the proposal.

The primary federal supervisors of Banc One's subsidiary banks have considered the effect of branch closings under the policy on the communities served by Banc One's subsidiary banks. The OCC's CRA performance examinations concluded that Lead Bank and Bank One Texas have satisfactory records of opening and closing branches and provided reasonable access to services for all segments of the banks' communities. The most recent CRA performance examinations of Banc One's banks generally noted no materially adverse effects on LMI neighborhoods from branch closings.

In examining the convenience and needs factor, the Board has taken into account Banc One's preliminary branch closing plans in Oklahoma, its record of closing branches as reviewed by the primary supervisors of Banc One's banks in the CRA examination process, and its corporate branch closing policy. The Board notes that branch closings resulting from the proposal will be assessed by the Oklahoma banks' primary federal supervisor for CRA performance in future CRA examinations. The Board also notes that Banc One 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").<sup>22/</sup> Additionally, the Board

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<sup>22/</sup> See 58 Federal Register 49,083 (1993) (interpreting section 42 of the Federal Deposit Insurance 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  
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will review the branch closures resulting from the proposal in its analysis of future applications to expand the operations of Banc One's depository institutions.

*Other Aspects of Banc One's Lending Activities*

The Board also has carefully reviewed Banc One's lending activities and its compliance with fair lending laws in light of all the facts of record. As part of this review, the Board has reviewed the 1994, 1995, and 1996 HMDA data reported by Banc One, including the data for BOMC and BOFS.<sup>23/</sup> The HMDA data reflect some disparities in the rate of loan originations, denials, and applications by racial group and income level. The Board is concerned when the record of an institution indicates such disparities and believes that all banks and other lending institutions are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound lending but also 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 few categories of housing-related

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<sup>22/</sup>(...continued)

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.

<sup>23/</sup> Protestants object to consideration of 1996 HMDA data because Protestants have not reviewed these data. The record indicates that Protestants only recently requested the data, which were required to be publicly available under HMDA by March 31, 1997. See section 203.5 of the Board's Regulation C (12 C.F.R. 203.5).

lending, and provide only limited information about the covered loans.<sup>24/</sup> HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

In light of the limitations of HMDA data, the Board has carefully reviewed other information, particularly examination reports that provide on-site evaluation of compliance by Banc One with the fair lending laws. The examinations of Banc One's subsidiary banks found no evidence of prohibited discrimination or other illegal credit practices at the institutions.<sup>25/</sup> Examiners also found no evidence of practices intended to discourage applications for the types of credit listed in the banks' CRA statements.<sup>26/</sup>

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<sup>24/</sup> HMDA data, for example, do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy.

<sup>25/</sup> The most recent CRA performance examination for Bank One, Bloomington, N.A., Bloomington, Indiana, which represents less than 1 percent of Banc One's total consolidated assets, noted certain violations of the ECOA. In considering the overall managerial record and convenience and needs factors in this case, the Board has carefully reviewed these violations in light of information regarding the type and scope of the violations, the response of Banc One to the findings, and additional supervisory information from the OCC. The Board notes that the OCC determined that the violations were not widespread and that appropriate actions to correct the problems were taken by senior management of the bank.

<sup>26/</sup> Protestants refer to two class action lawsuits against Banc One as evidence of improper credit practices. The two class actions involved practices related to BOMC's escrow accounts and Banc One's private mortgage insurance ("PMI") activities. Both actions were settled and no conclusions of wrongdoing were made. DCRAC also cites an Ohio Supreme Court decision in a law suit against Banc One and other defendants involving the forced purchase of collateral insurance if the collateral becomes

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Banc One also has implemented policies and programs to ensure that its subsidiary banks engage in fair lending practices. For example, Banc One has a system of periodic file reviews at its subsidiary banks to confirm the consistency of loan decisions.<sup>27/</sup> Banc One's fair lending program is directed by the Fair Lending/CRA Steering Committee, which is chaired by Banc One's General Counsel and includes senior management of each affected line of business, including BOMC and BOFS. Compliance with the program is monitored by compliance officers at each business unit, who report to Banc One's national director of regulatory compliance.

Protestants have questioned Banc One's practice of referring applicants for credit to its nonbank lending subsidiaries. Banc One maintains that applicants are referred to its nonbank lending subsidiaries like BOFS only after the application has been denied by a Banc One bank and after the loan applicant has agreed to the referral. Banc One views its referral program as an effort to permit a denied applicant with an additional opportunity to qualify for a loan. Referrals made under

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<sup>26/</sup> (...continued)  
uninsured. The decision found no wrongdoing by the defendants but rather permitted the plaintiffs the opportunity to substantiate the allegations of wrongdoing at a trial on the merits of the action. Protestants also cite several consumer complaints against Banc One in Michigan and allege that there may be similar complaints in other states in which Banc One does business. The Board has reviewed the complaints in Michigan in light of all the facts of record, including confidential information from the state authorities that reviewed these complaints, as part of the Board's consideration of the managerial and convenience and needs factors in this proposal.

<sup>27/</sup> The most recent examination of Banc One's Lead Bank noted favorably the bank's compliance monitoring and internal loan testing procedures. Protestants object that the file review program is only now being implemented at BOFS.

the program are not compensated, and referral program guidelines prohibit illegal steering or prescreening and require that applicants be treated uniformly. Under one recently introduced referral program, existing borrowers of BOFS wishing to refinance their loans are referred to BOMC to determine whether they qualify for a BOMC loan product.

The Board also has considered certain preliminary information developed in the course of its supervision of Banc One that raises a question about fair lending oversight, procedures and practices at BOMC, one of its nonbank units. BOMC accounts for less than 1 percent of Banc One's consolidated net income, and the information appears to be limited in the context of Banc One's overall managerial and lending record. The Board is conducting a thorough examination of BOMC to resolve the question and to ensure compliance with law. In the event that the examination indicates a problem with fair lending oversight, procedures, or practices, the Board has broad supervisory authority under the banking laws to require bank holding companies and their nonbank subsidiaries to address such deficiencies.

In deciding to act on this case, the Board also has considered Banc One's record of addressing supervisory and other issues identified by its supervisor. In light of that record, the Board fully expects that Banc One will take all necessary steps, including adopting and implementing practices and procedures developed in consultation with the Board, to ensure that any areas of weakness in its fair lending policies and practices that may be identified through the Board's examination are adequately addressed, and the Board conditions its approval of this proposal on Banc One taking such actions. For these reasons, and based on all the facts of record, the Board does not believe that denial of the proposal is appropriate,

or that the Board's action on the proposal should be delayed for the period of time necessary to complete its examination.<sup>28/</sup>

The Board also has carefully considered all the facts of record, including the comments received from Protestants, the responses to those comments, and the CRA performance records of the subsidiary banks of Banc One and Liberty, including relevant reports of examination from their primary federal supervisors. Based on the facts of record, and for the reasons discussed above, the Board concludes that convenience and needs considerations and related managerial considerations, including the CRA records of performance of both organizations' subsidiary banks, are consistent with approval of the proposal. The Board also concludes that this proposal satisfies the criteria specified by statute to be applied by the Board in reviewing proposed acquisitions of this type, and that the record does not provide a basis to deny this application under the statutory factors.

#### Nonbanking Activities

Banc One and BOC also have filed notice, pursuant to section 4(c)(8) of the BHC Act, to acquire the nonbanking subsidiaries of Liberty and thereby engage in lending activities, providing equipment leasing services, trust company activities, and underwriting and brokering life insurance directly related to extensions of credit by Banc One and its affiliates.<sup>29/</sup> The Board has determined by

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<sup>28/</sup> Protestants also request that the proposal be denied or delayed until the Board conducts an examination of BOFS for fair lending law compliance. In light of all the facts of record, including a review of the HMDA data, the Board concludes that the record in this case does not warrant granting Protestants' request.

<sup>29/</sup> Banc One proposes to engage in these activities through the following non-banking subsidiaries of Liberty: Mid-America  
(continued...)

regulation that each of these activities is closely related to banking,<sup>30/</sup> and Banc One has committed to conduct the nonbanking activities in accordance with Regulation Y.

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 efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>31/</sup> As part of its evaluation of these factors, the Board considers the financial condition and managerial resources of the notificant and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources.<sup>32/</sup> For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of the proposed acquisition by Banc One of Liberty's nonbanking businesses and, in doing so, has

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<sup>29/</sup>(...continued)  
Credit Life Assurance Company, Mid-America Insurance Agency, Inc., Liberty Trust Company of Texas, and Liberty Financing Corporation.

<sup>30/</sup> See 12 C.F.R. 225.28(b)(1), (b)(3), (b)(5), and (b)(11)(i).

<sup>31/</sup> 12 U.S.C. § 1843(c)(8).

<sup>32/</sup> See 12 C.F.R. 225.26; see also The Fuji Bank, Limited, 75 Federal Reserve Bulletin 94 (1989); Bayerische Vereinsbank AG, 73 Federal Reserve Bulletin 155 (1987).

considered the comments submitted by Protestants regarding the competitive effects of the proposal.<sup>33/</sup> The Board notes the markets for the nonbanking services are, in each case, unconcentrated and that there are numerous providers of the services. As a result, consummation of the proposal would have a de minimis effect on competition. Based on all the facts of record, the Board has concluded that the proposal would not have a significantly adverse effect on competition in any relevant market.

In addition, the Board expects that the acquisition would provide added convenience to Liberty's customers and the public. Banc One has stated that consumers in the markets currently served by Liberty would have access to a variety of services through Banc One that are not available through Liberty. Banc One also notes that the proposed transaction would result in operational efficiencies that would allow Liberty to be a more effective competitor and thereby provide improved services at a lower cost to its customers. Accordingly, based on all the facts of record, the Board has determined that the balance of public benefits that the Board must consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act is favorable and consistent with approval of the proposal.

### Conclusion

Based on the foregoing, and in light of all the facts of record, including the comments submitted by Protestants,<sup>34/</sup> the Board has determined that the

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<sup>33/</sup> Protestants also raise concerns about the acquisition by Banc One of a thrift subsidiary of Liberty. Liberty does not have a thrift subsidiary.

<sup>34/</sup> The Black Citizens for Justice, Law & Order and DCRAC contend that there are disproportionately low numbers of African Americans in management and staff positions at Banc One. The  
(continued...)

applications and notices should be, and hereby are, approved.<sup>35/</sup> Approval of the

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<sup>34/</sup>(...continued)

Board has carefully reviewed these comments in light of all the facts of record, which include supervisory reports of examination assessing the financial and managerial resources of Banc One. The Board also has previously stated that its limited jurisdiction to review applications under the BHC Act does not authorize the Board to adjudicate disputes raised by a commenter that arise under statutes exclusively administered and enforced by another federal regulatory agency other than banking laws. See, e.g., Norwest Corporation, 82 Federal Reserve Bulletin 580 (1996); see also Western Bancshares v. Board of Governors, 40 F.2d 749 (10th Cir. 1973). Under the Department of Labor's regulations, Banc One is required to file an annual report with the Equal Employment Opportunity Commission ("EEOC") covering all employees in its corporate structure. See 41 C.F.R. 60-1.7(a) and 60-1.40. The Department of Labor, and the EEOC in particular, have sufficient statutory authority to address disputes regarding illegal discriminatory labor practices.

<sup>35/</sup> Protestants have requested a hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. In this case, the Board has not received such a recommendation from a state or federal supervisory agency. The Board's rules also provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner regarding the acquisition of a savings association. See 12 C.F.R. 225.25(a)(2). As previously noted, Liberty does not have a savings association subsidiary.

Under its rules, the Board may also, 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. See 12 C.F.R. 262.3(e) and 262.25(d). The Board has carefully considered Protestants' request for a hearing in light of all the facts of record. In the Board's view, Protestants have had ample opportunity to present their views, and they have submitted substantial written comments that have been carefully considered by the Board in acting on the proposal. Protestants' request fails to demonstrate why their written presentations do not adequately present their evidence, allegations, and views. After a careful review of all the facts of record, the Board has

(continued...)

applications and notices is specifically conditioned on compliance by Banc One with all the commitments made in connection with the proposal and with the conditions stated or referred to in this order.

The Board's determination on the nonbanking activities also is subject to all the terms and conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this transaction, the commitments and conditions referred to above 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.<sup>36/</sup>

The acquisition of Liberty shall not be consummated before the fifteenth calendar day following the effective date of this order, and the proposal

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<sup>35/</sup>(...continued)

concluded that Protestants dispute the weight that should be accorded to, and the conclusions that the Board should draw from, the facts of record but do not identify disputed issues of fact that are material to the Board's decision. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted to clarify the factual record in the proposal, or otherwise warranted in this case. Accordingly, the request for a hearing on the proposal is hereby denied.

<sup>36/</sup> Protestants have requested that consideration of the proposal be consolidated with consideration of Banc One's proposal to acquire First USA, Inc., Dallas, Texas. The Banc One/First USA proposal is a separate proposal under the BHC Act, and the Board will review that proposal in light of all the facts of record in that case, including Protestants' comments, under the statutory factors required under section 4 of the BHC Act.

shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>37/</sup> effective April 29, 1997.

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Jennifer J. Johnson  
Deputy Secretary of the Board

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<sup>37/</sup> Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Phillips, and Meyer.

Appendix

<u>Institution</u>	<u>CRA Rating</u>	<u>Date</u>
Bank One, Columbus, N.A.	Outstanding	1/31/95
Bank One, Akron, N.A.	Outstanding	1/29/96
Bank One, Athens, N.A.	Satisfactory	11/30/96
Bank One, Louisiana, N.A.	Satisfactory	9/19/96
Bank One, Bloomington, N.A.*	Satisfactory	4/30/93
Bank One, Cambridge, N.A.	Satisfactory	4/21/93
Bank One, Cincinnati, N.A.	Satisfactory	3/16/95
Bank One, Cleveland, N.A.	Satisfactory	9/15/94
Bank One Trust Co., N.A.	Not rated for CRA	
Bank One, Coshocton, N.A.	Outstanding	6/30/94
Bank One, Crawfordsville, N.A.*	Outstanding	9/13/94
Bank One, Texas, N.A.	Outstanding	1/29/96
Bank One, Dayton, N.A.	Outstanding	4/30/95
Bank One, Colorado, N.A.	Outstanding	9/10/95
Bank One, Dover, N.A.	Outstanding	8/26/96
Bank One, Fremont, N.A.	Satisfactory	6/21/93
Bank One, Merrillville, N.A.*	Satisfactory	6/28/94
Bank One, West Virginia, N.A.	Satisfactory	6/16/95
Bank One, Indiana, N.A.	Outstanding	4/19/95
Bank One, Lafayette, N.A.*	Satisfactory	12/13/94
Bank One, Lima, N.A.	Outstanding	6/08/93
Bank One, Kentucky, N.A.	Outstanding	6/20/95

Bank One, Mansfield**	Outstanding	4/29/96
Bank One, Marietta, N.A.	Outstanding	11/30/96
Bank One, Marion Indiana, N.A.*	Satisfactory	6/5/96
Bank One, Marion	Satisfactory	1/29/96
Bank One, Wisconsin Trust Co.	Not rated for CRA	
Bank One, Quad Cities, N.A.	Satisfactory	2/15/95
Bank One, Oklahoma City	Outstanding	4/22/96
Bank One, Arizona, N.A.	Satisfactory	9/30/96
Bank One, Portsmouth, N.A.	Satisfactory	11/30/96
Bank One, Rensselaer, N.A.*	Outstanding	6/3/96
Bank One, Richmond, N.A.*	Outstanding	9/3/93
Bank One, Utah, N.A.	Outstanding	9/27/95
Bank One, Sidney, N.A.	Satisfactory	11/30/96
Bank One, Illinois, N.A.	Satisfactory	5/10/95
Bank One, Wheeling-Steuben., N.A.	Satisfactory	10/24/96
Bank One, Youngstown, N.A.	Outstanding	10/31/96
Bank One, Wisconsin	Satisfactory	1/17/95

\* Merged with Bank One, Indianapolis, N.A., on March 22, 1997. Bank One, Indianapolis, N.A., then changed its name to Bank One, Indiana, N.A.

\*\* Expected to be consolidated into Bank One Columbus, N.A. on May 17, 1997.