

# FEDERAL RESERVE press release



For immediate release

December 10, 1997

The Federal Reserve Board today announced its approval of the proposal by NationsBank Corporation and NB Holdings Corporation, both of Charlotte, North Carolina, to merge with Barnett Banks, Inc., Jacksonville, Florida, and thereby acquire Barnett's bank and nonbank subsidiaries.

The Board's approval is conditioned on the divestiture by NationsBank of 67 branches in twelve markets in Florida and Georgia.

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

Attachment

FEDERAL RESERVE SYSTEM

NationsBank Corporation  
Charlotte, North Carolina

NB Holdings Corporation  
Charlotte, North Carolina

Order Approving the Merger of Bank Holding Companies

NationsBank Corporation and NB Holdings Corporation (collectively, "NationsBank"), 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 merge with Barnett Banks, Inc., Jacksonville, Florida ("Barnett"), and thereby acquire Barnett's subsidiary banks, Barnett Bank, National Association, Jacksonville, Florida ("Barnett Bank"), and Community Bank of the Islands, Sanibel, Florida ("Community Bank").<sup>1/</sup> NationsBank also has requested the Board's approval under section 4(c)(8) of the BHC Act and section 225.24 of the Board's Regulation Y to acquire the nonbanking subsidiaries of Barnett and thereby engage in the nonbanking activities listed in Appendix A.<sup>2/</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published both in the Federal Register (62 Federal Register 54,460 and 55,645 (1997)) and newspapers in accordance with the Board's

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<sup>1/</sup> Barnett would merge with and into NB Holdings Corporation with NB Holdings as the surviving corporation. NationsBank and Barnett also have requested the Board's approval to acquire certain options to purchase up to 19.9 percent of the other's voting shares if certain events occur. The options would expire on consummation of the merger of NationsBank with Barnett.

<sup>2/</sup> As discussed in the order, Barnett has entered into a binding contract to sell all the branches and deposits of First of America Bank-Florida, FSB, Tampa, Florida ("FOA"), to SouthTrust Corporation, Birmingham, Alabama ("SouthTrust").

rules. The comment period provided interested persons with approximately 39 days in which to submit their views on all aspects of the proposal, and approximately 115 commenters provided written submissions. The Board has considered the application and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

NationsBank, with total consolidated assets of approximately \$240.4 billion, is the fifth largest commercial banking organization in the United States, controlling approximately 5 percent of total banking assets of insured commercial banks in the nation ("total banking assets").<sup>3/</sup> The subsidiary banks of NationsBank operate in North Carolina, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Missouri, Maryland, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. NationsBank also engages through other subsidiaries in a number of permissible nonbanking activities. Barnett, with total consolidated assets of approximately \$44.7 billion, is the 23rd largest commercial banking organization in the United States, controlling less than 1 percent of total banking assets in the United States. Barnett owns one subsidiary bank that operates in Florida and Georgia and another that operates in Florida, and engages through subsidiaries in a variety of permissible nonbanking activities.

On consummation of the proposal, and accounting for all proposed divestitures, NationsBank would become the third largest commercial banking organization in the United States, with total consolidated assets of approximately

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<sup>3/</sup> Asset and ranking data are as of June 30, 1997. Deposit and market data are as of June 30, 1996, adjusted for mergers and acquisitions through November 25, 1997, and, as discussed in the order, account for NationsBank's commitment to divest certain deposits.

\$285.1 billion, representing approximately 5.9 percent of total banking assets in the United States. NationsBank also would control 29.6 percent and 18.4 percent of the total deposits held by insured depository institutions ("total deposits") in Florida and Georgia, respectively.<sup>4/</sup> State deposit and ranking data for NationsBank and Barnett are discussed in Appendix B.

### 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 ("Riegle-Neal Act"), allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company, if certain conditions are met. For purposes of the BHC Act, the home state of NationsBank is North Carolina, and Barnett has operations in Florida and Georgia.<sup>5/</sup> All of the conditions for an interstate acquisition enumerated in

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<sup>4/</sup> In this context, depository institutions include commercial banks, savings banks, and savings associations.

<sup>5/</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, 1966, or the date on which the company became a bank holding company, whichever is later.

section 3(d) are met in this case.<sup>6/</sup> In view of all the facts of record, the Board is permitted to approve the 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 if the proposal would substantially lessen competition in any relevant banking market and the Board has not found that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.

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<sup>6/</sup> 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). NationsBank is adequately capitalized and adequately managed as defined in the Riegle-Neal Act, and Barnett's subsidiary banks have been in existence and operated for the minimum periods of time necessary to satisfy age requirements established by applicable state law. See Fla. Stat. Ch. 658.295 (1996) (3 years) and Ga. Code Ann § 7-1-622 (1997) (5 years). One commenter stated that NationsBank would control a larger percentage of insured deposits in Florida than permitted under federal and state law. Section 3(d) of the BHC Act, as amended by section 101 of the Riegle-Neal Act, prohibits the Board from approving a proposal if after consummation the applicant would control more than 10 percent of the total deposits of insured depository institutions in the United States or 30 percent of the total deposits of insured depository institutions in any state (unless another percentage is permitted under applicable state law). See 12 U.S.C. §§ 1842(d)(2)(A) and (B). Florida and Georgia law also each impose a 30 percent limitation on the amount of deposits in insured depository institutions that a banking organization may control through acquisition. On consummation of the proposal, accounting for all proposed divestitures, NationsBank 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 of insured depository institutions in Florida and Georgia, respectively.

The NationsBank/Barnett proposal would combine two banking organizations that compete in a large number of banking markets in Florida. These organizations are among the largest providers of banking services in these markets and have a significant competitive effect in many markets. Accordingly, the Board has taken special care in analyzing the effect of this transaction on competition in the relevant markets and the comments submitted regarding the competitive effects of this transaction.<sup>7/</sup> While in several markets this is a close case, as explained below and in the attached Appendices, the Board has taken particular account of the fact that Florida and the markets affected by this transaction are among the fastest growing and most attractive locations for entry by banking organizations in the United States. The attractiveness of many of the markets affected by this transaction has been demonstrated by recent de novo entry by banking organizations, including several large multi-state bank holding companies, as well as by entry through acquisition by banking organizations that include Florida and large multi-state bank holding companies.

The Board and the courts consistently have recognized that the appropriate product market for evaluating the competitive effects of bank mergers and acquisitions is the cluster of products and services offered by banking institutions.<sup>8/</sup> The Board and the courts also have found that the relevant geographic

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<sup>7/</sup> Commenters also contended that the anticompetitive effects of the proposal would result in a decrease in interest rates on deposits, an increase in fees, and a reduction in service for customers of Barnett.

<sup>8/</sup> See United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963) ("Philadelphia National"). Accord United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S.

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market for analyzing the competitive effect of a proposal must reflect commercial and banking realities and should consist of the local area where the banks involved offer their services and where local customers can practicably turn for alternatives.<sup>9/</sup> In making a determination on the geographic markets in this case, the Board has considered worker commuting patterns (as indicated by census data), shopping patterns, and other indicia of economic integration and the transmission of competitive forces among depository institutions, and relevant banking data. In considering the competitive effects of the NationsBank/Barnett proposal, the Board concludes, based on all the facts of record, that the appropriate product market is the cluster of banking products and services, and that the appropriate geographic markets are as defined in Appendix C.

NationsBank and Barnett compete in a total of 28 banking markets: 25 in Florida and three in Georgia.<sup>10/</sup> Consummation of the proposal, without

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350 (1969) ("Phillipsburg National"). See also Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1996) ("Chemical Order").

<sup>9/</sup> See, e.g., St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982); see Philadelphia National at 357; Phillipsburg National.

<sup>10/</sup> In evaluating the competitive effects of this transaction, the Board has taken into account the fact that Barnett has entered into a binding contract to sell all the branches and deposits of FOA to SouthTrust. The Barnett/FOA acquisition was recently approved by the Board (order dated September 15, 1997), and FOA has been operated separately and not been integrated into the Barnett organization. Accordingly, market concentration calculations in this order attribute FOA's branches and deposits to SouthTrust, and the amount of divestitures discussed in this order that have been proposed by NationsBank are in addition to the sale of FOA branches and deposits. The Department of Justice ("DOJ") also attributed the

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divestitures, would be consistent with the Department of Justice Merger Guidelines ("DOJ Guidelines")<sup>11/</sup> and prior Board precedent in the nine banking markets in Florida and the two banking markets in Georgia identified in Appendix D. In these eleven markets, the Board has determined, in light of the number of competitors that would remain in each market, the characteristics of each market, the projected increase in the concentration of total deposits in depository institutions<sup>12/</sup> in each market ("market deposits") as measured by the HHI under the DOJ Guidelines, and

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<sup>10/</sup>(...continued)

FOA branches and deposits to SouthTrust in conducting its competitive analysis of the proposal.

<sup>11/</sup> Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger Herfindahl-Hirschman Index ("HHI") is between 1000 and 1800 is considered moderately concentrated. 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 or acquisition increases the HHI by at least 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers or acquisitions for anticompetitive effects implicitly recognize the competitive effect of limited-purpose lenders and other non-depository financial institutions.

<sup>12/</sup> Market concentration calculations include 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 Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board has regularly included thrift deposits in the calculation of market share on a 50-percent weighted basis. See, e.g., First Hawaiian Inc., 77 Federal Reserve Bulletin 52 (1991). Because FOA would be acquired by a commercial banking organization, FOA's deposits are included at 100 percent in the calculation of market share. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669, 670 n.9 (1990).

the resulting market share, that consummation of the proposal would not be likely to result in a significantly adverse effect on competition.

Consummation of the proposal in the remaining 17 banking markets would exceed the DOJ Guidelines as measured by the HHI. The Board previously has indicated that HHI levels are only guidelines that are used by the Board, the DOJ, and other banking agencies to help identify cases in which a more detailed competitive analysis is appropriate to assure that the proposal would not have a significantly adverse effect on competition in any relevant market. A proposal that fails to pass the HHI market screen may, nonetheless, be approved because other information indicates that the proposal would not have a significantly adverse effect on competition.<sup>13/</sup> As discussed below and in Appendices D and E, the Board

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<sup>13/</sup> A commenter proposed that the Board establish absolute limits on bank mergers and acquisitions. The commenter suggested imposing a 30 percent limitation on the amount of deposits that one bank may control in any local banking market. The commenter also proposed that the following limits be imposed on the market share of the largest bank in any local banking market: (1) a ratio of 1.5 when compared with the market share of the second largest bank in the market; and (2) a ratio of 1 when compared with the combined market share of the second and third largest banks in the market. The Board and the courts have recognized that the competitive effects of a proposal are complex and are analyzed best by reviewing and considering a variety of data and measures. The Board's approach examines changes in and pro forma levels of the HHI in addition to a number of other factors, including the number of competitors in the market, the structure and characteristics of the market, and the relative and absolute market shares of all depository institutions in the market as well as the three largest competitors. This approach takes into account the commenter's principles while at the same time permitting a consideration of a variety of other factors that may affect competition in a particular banking market. Based on long-standing experience in conducting competitive analyses of bank acquisitions and mergers, the Board concludes that this approach  
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believes that a number of additional factors in these 17 banking markets mitigate the potential effect of the proposal on competition.

(a) Banking Markets with No Proposed Divestitures.

In the five banking markets of Naples, Orlando, Punta Gorda, Polk County, and Tallahassee, Florida, the change in market concentration as measured by the HHI would exceed the DOJ Guidelines. No divestitures have been proposed in these markets. However, a number of factors indicate that the proposal is not likely to have a significantly adverse effect on competition in any of these markets.

Naples. NationsBank is the third largest of 22 depository institutions in the Naples banking market, and controls deposits of \$402.5 million, representing 12.3 percent of market deposits. Barnett is the largest depository institution in the market, and controls deposits of \$724.3 million, representing approximately 22.2 percent of market deposits. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 34.5 percent of the market deposits. The HHI would increase 548 points to 1839.

Twenty-one depository institutions would remain in the Naples banking market after consummation of the proposal, including four large multi-state banking organizations other than NationsBank. In addition to NationsBank, two of the multi-state competitors would each control more than 10 percent of market deposits. Naples is a Metropolitan Statistical Area ("MSA") that is attractive for entry to out-of-market competitors. The rate of growth in population and deposits exceeds, on average, that of other Florida MSAs, and the average per capita income in the

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<sup>13</sup>(...continued)

provides a more complete economic analysis of the competitive effects in a local banking market.

Naples banking market is substantially higher than the average per capita income for other Florida MSAs.<sup>14/</sup> Since 1995, six depository institutions have entered the market de novo and three have entered by acquisition. In addition, two banking organizations have announced plans to make de novo entries.

Orlando. NationsBank is the fourth largest of 36 depository institutions in the Orlando banking market, and controls deposits of \$1.3 billion, representing 10.6 percent of market deposits. Barnett is the second largest depository institution in the market, and controls deposits of \$2.5 billion, representing approximately 21 percent of market deposits. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 31.6 percent of the market deposits, and the HHI would increase 445 points to 2063.

Thirty-five depository institutions would remain in the Orlando banking market after consummation of the proposal, including six large multi-state banking organizations other than NationsBank. In addition to NationsBank, two of the multi-state competitors would each control more than 10 percent of market deposits. The Orlando banking market also is attractive for entry. The rate of growth in population and market deposits, population per banking office, and per capita

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<sup>14/</sup> Between 1990 and 1996, the population of the Naples MSA increased at a rate of 23.6 percent as compared to 10.8 percent for other Florida MSAs. The rate of growth of deposits in the MSA was 9.7 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs. In 1996, the average per capita income in the Naples MSA was \$26,815 as compared to \$18,182 for other Florida MSAs.

income exceeds, on average, that of other Florida MSAs.<sup>15/</sup> Since 1994, two banks and one thrift have entered de novo and two banks have entered by acquisition.

Punta Gorda. NationsBank is the fifth largest of 12 depository institutions in the Punta Gorda banking market, and controls deposits of \$174.1 million, representing 10 percent of market deposits. Barnett is the third largest depository institution in the market, and controls deposits of \$346.4 million, representing approximately 20 percent of market deposits. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 30 percent of the market deposits, and the HHI would increase 400 points to 2131.

Eleven depository institutions would remain in the Punta Gorda banking market after consummation of the proposal, including four large multi-state banking organizations other than NationsBank. In addition to NationsBank, one of the multi-state competitors would control 23.7 percent of market deposits and two other competitors would each control more than 15 percent of market deposits. The Punta Gorda banking market also has characteristics that make it attractive for entry. The rate of growth in population and market deposits in the Punta Gorda MSA

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<sup>15/</sup> Between 1990 and 1996, the population of the Orlando MSA increased at a rate of 15.7 percent as compared to 10.8 percent for other Florida MSAs. The rate of growth of deposits in the MSA was 6.7 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs. In 1996, average per capita income in the Orlando MSA was \$18,900 as compared to \$18,182 for other Florida MSAs; and the average population per banking office was 4318 as compared to 3596 for other Florida MSAs.

exceeds, on average, that of Florida MSAs and the state as a whole.<sup>16/</sup> Since 1991, three depository institutions have entered the banking market de novo, and four depository institutions have entered through acquisitions.

Polk County and Tallahassee. As discussed in Appendix D, in the Polk County and Tallahassee banking markets, at least 11 depository institution competitors would remain in the markets following consummation of the proposal. Each of these markets is also attractive for entry and has experienced recent entry by new competitors.

(b) Banking Markets with Proposed Divestitures.

In order to mitigate the potential anticompetitive effects of the proposal in the remaining 12 banking markets, NationsBank has committed to divest 67 branches in these markets.<sup>17/</sup> The branches proposed to be divested account for approximately \$3.1 billion in deposits and represent approximately 9 percent of the

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<sup>16/</sup> Between 1990 and 1996, the population of the Punta Gorda MSA increased at a rate of 15.6 percent as compared to 10.8 percent for other Florida MSAs. The rate of growth of deposits in the MSA was 1 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs.

<sup>17/</sup> With respect to each market in which NationsBank has committed to divest offices to mitigate the anticompetitive effects of the proposal, NationsBank has committed, prior to consummation of the acquisition of Barnett, to execute sales agreements with a purchaser determined by the Board to be competitively suitable and to complete the divestitures within 180 days of consummation of the acquisition. In addition, NationsBank has committed that, in the event it is unsuccessful in completing any divestiture within 180 days of consummation of the proposal, NationsBank will transfer the unsold branch(es) to an independent trustee that is acceptable to the Board and that will be instructed to sell the branches promptly. BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

total deposits controlled by Barnett.<sup>18/</sup> After accounting for the proposed divestitures, consummation of the proposal in five banking markets in Florida -- Columbia County, Key Largo, Key West, Marathon, and Suwanee County -- would be consistent with the DOJ Guidelines and prior Board precedent. These markets are discussed in Appendix E.

Consummation of the proposal in the remaining seven banking markets -- Ocala, Ft. Myers, Daytona Beach, Tampa Bay, Brevard County and Sarasota in Florida and Brunswick County in Georgia -- would exceed the DOJ Guidelines after accounting for the proposed divestitures.

#### *Florida Banking Markets*

Ocala. NationsBank is the fourth largest of 15 depository institutions in the Ocala banking market, and controls deposits of \$316.1 million, representing 13.4 percent of market deposits. Barnett is the largest depository institution in the market, and controls deposits of \$542 million, representing 23 percent of market deposits. NationsBank proposes to divest two branches in this market, with deposits of \$42.6 million to a competitor suitable to the Board. In this market, a competitor suitable to the Board is an out-of-market commercial banking organization or an in-market commercial banking organization that currently controls less than 3 percent of market deposits. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 34.6 percent of the market deposits, and the HHI would increase not more than 503 points or exceed a post-merger HHI of 2067.

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<sup>18/</sup> All divestiture dollar amounts are based on June 30, 1996, summary of deposit data for the branches that NationsBank has committed to divest.

At least 14 depository institutions would remain in the Ocala banking market after consummation of the proposal, including five large multi-state banking organizations other than NationsBank. In addition to NationsBank, two of the multi-state competitors would each control more than 15 percent of market deposits. The proposed divestiture of approximately 1.8 percent of market deposits to a new entrant or a smaller competitor would either add a new competitor or would increase the competitive presence of a smaller competitor. The Ocala banking market also has characteristics that make it attractive for entry. The rate of growth in population and market deposits exceeds, on average, that of other Florida MSAs.<sup>19/</sup> Since 1992, two commercial banks have entered the market de novo and five commercial banks have entered by acquisition.

Fort Myers. NationsBank is the second largest of 17 depository institutions in the Fort Myers banking market, and controls deposits of \$1.1 billion, representing 20.8 percent of market deposits. Barnett is the third largest depository institution in the market, and controls deposits of \$944.9 million, representing 18.5 percent of market deposits. NationsBank proposes to divest six branches in this market, with deposits of \$300.7 million, to an out-of-market commercial banking organization. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 33.4 percent of the market deposits, and the HHI would increase 377 points to 2035.

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<sup>19/</sup> Between 1990 and 1996, the population of the Ocala MSA increased at a rate of 17.9 percent as compared to 10.8 percent for other Florida MSAs. The rate of growth of deposits in the MSA was 3.9 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs.

The proposed divestiture of approximately 5.9 percent of market deposits to a new commercial banking organization entrant would keep the number of depository institutions unchanged at 17 and provide an effective new competitor in the banking market. Three large multi-state banking organizations other than NationsBank also would each control at least 8 percent of market deposits, and one of the multi-state competitors would control 24.9 percent of market deposits. Since 1993, ten depository institutions have entered the Fort Myers banking market de novo and five depository institutions have entered by acquisition, indicating that the market is attractive for entry.<sup>20/</sup>

Daytona Beach. NationsBank is the fourth largest of 17 depository institutions in the Daytona Beach banking market, and controls deposits of \$440.1 million, representing 10.8 percent of market deposits. Barnett is the second largest depository institution in the market, and controls deposits of \$912.7 million, representing 22.5 percent of market deposits. NationsBank proposes to divest four branches in this market, with deposits of \$77 million, to an out-of-market commercial banking organization. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 31.4 percent of the market deposits, and the HHI would increase 368 points to 2121.

The number of depository institutions in the market would remain unchanged at 17, and would include two large multi-state banking organizations other than NationsBank that would each control more than 19 percent of market

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<sup>20/</sup> In addition, between 1990 and 1996, the population of the Fort Myers-Cape Coral MSA increased at a rate of 14.5 percent as compared to 10.8 percent for other Florida MSAs.

deposits. Daytona Beach is also an MSA that is attractive for entry.<sup>21/</sup> Four banking organizations and one savings association have entered the market de novo since 1996, and a banking organization has announced its intent to enter the market.

Tampa Bay. NationsBank is the second largest of 58 depository institutions in the Tampa Bay banking market, and controls deposits of \$4.6 billion, representing 18.2 percent of market deposits. Barnett is the largest depository institution in the market, and controls deposits of \$6.5 billion, representing 25.5 percent of market deposits. NationsBank proposes to divest 34 branches in this market, with deposits of \$1.6 billion, to an out-of-market commercial banking organization. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 37.6 percent of the market deposits, and the HHI would increase 467 points to 1918.

The number of depository institutions in the market would remain unchanged at 58, including six large multi-state banking organizations other than NationsBank. In addition to NationsBank, three of the multi-state banking organizations would each control more than 8 percent of market deposits. The new commercial banking organization entrant would acquire 6.1 percent of market deposits and a substantial branch network that should enable the new entrant to be an effective competitor in the market. The Tampa Bay banking market also is a

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<sup>21/</sup> Between 1990 and 1996, the population of the Daytona Beach MSA increased at a rate of 12.4 percent as compared to 10.8 percent for Florida MSAs. The rate of growth of deposits in the MSA was 7.5 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs.

large MSA that has features that make it attractive for entry.<sup>22/</sup> Since 1992, five depository institutions have entered the market de novo and 15 have entered by acquisition.

Brevard and Sarasota. As discussed in Appendix E, the proposed divestitures in the Brevard County and Sarasota banking markets would either add a new commercial banking organization competitor or would increase the competitive presence of a smaller commercial banking organization competitor. Each of these markets is attractive for entry and has experienced recent entry by new competitors.

*Georgia Banking Market*

Brunswick County. NationsBank is the largest of ten depository institutions in the Brunswick County banking market, and controls deposits of \$216.1 million, representing 25.8 percent of market deposits. Barnett is the fourth largest depository institution in the market, and controls deposits of \$99.9 million, representing 11.9 percent of market deposits. NationsBank proposes to divest one branch in this market, with deposits of \$23.1 million, to a competitor suitable to the Board. In this market, a competitor suitable to the Board is an out-of-market commercial banking organization. After consummation of the proposal, NationsBank would remain the largest depository institution in the market, controlling 34.9 percent of the market deposits, and the HHI would increase 421 points to 2025.

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<sup>22/</sup> The Tampa-St. Petersburg MSA ranks second in total deposits out of the 20 Florida MSAs. In 1996, the average per capita income for the MSA was \$18,587 as compared to \$18,182 for other Florida MSAs; and the average population per banking office for the MSA was 3,703 as compared to 3,596 for other Florida MSAs.

The number of depository institutions would remain unchanged at ten, and would include two large multi-state banking organizations other than NationsBank that would each control more than 12 percent of market deposits. The proposed divestiture of approximately 2.8 percent of market deposits would provide an effective new competitor in the Brunswick banking market. The banking market also has features that make it attractive for entry by out-of-market banking organizations. The rate of growth of market deposits, and average per capita income are higher for the Brunswick County banking market than for non-MSA counties in Georgia.<sup>23/</sup> Two commercial banks entered the market de novo in 1997.

#### Conclusion Regarding Competitive Factors

The Board has sought comments from the United States Attorney General ("Attorney General"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") on the competitive effects of this proposal. The Attorney General has conducted a detailed review of this proposal and has advised the Board that, subject to the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant market. The OCC and the FDIC also have not objected to consummation of the proposal.

For the reasons discussed in this order and the accompanying appendices, and after carefully considering public comments on the competitive

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<sup>23/</sup> Between 1991 and 1996, deposits in the Brunswick banking market increased at a rate of 25.6 percent between 1991 and 1996 as compared to an increase of 20.7 percent for other non-MSA counties in Georgia. In 1996, the average per capita income in the Brunswick banking market was \$17,085 as compared to \$14,161 for other non-MSA Georgia counties.

effects of the proposal, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. This finding is based on all the facts of record and is conditioned on consummation of the proposed divestitures discussed in this order and its Appendices.

This is a difficult case in many respects and highlights some of the complexities of analyzing the competitive effects of mergers that affect a large number of local markets. As explained above, the proposal meets the criteria that the Board have traditionally applied to bank acquisition cases. The Board's experience in analyzing these cases, however, suggests that, in future cases, increased importance should be placed on a number of factors where the proposal involves a combination that exceeds the DOJ guidelines in a large number of local markets. In these cases, the Board believes that it is important to give increased attention to the size of the change in market concentration as measured by the HHI in highly concentrated markets, the resulting market share of the acquiror and the pro forma HHIs in these markets, the strength and nature of competitors that remain in the market, and the strength of additional positive and negative factors that may affect competition for financial services in each market. The Board believes that this refined focus would better address the challenges of analyzing the complex competitive effects of combinations that affect multiple markets.

#### Other Factors under the BHC Act

The BHC Act also requires the Board, in acting on an application, to consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal, the convenience and needs of the community to be served, and certain other supervisory factors.

A. Financial, Managerial, and Other Supervisory Factors

The Board has carefully considered the financial and managerial resources and future prospects of NationsBank, Barnett, and their respective subsidiary banks, and other supervisory factors in light of all the facts of record, including the public comments.<sup>24/</sup> The Board notes that the bank holding companies and their subsidiary banks are currently well capitalized and are expected to remain so after consummation of the proposal.

The Board also has considered other aspects of the financial condition and resources of the two organizations, the structure of the proposed transaction, and the managerial resources of each of the entities and the combined organization.<sup>25/</sup> In connection with the Board's assessment of the financial and

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<sup>24/</sup> The comments received include comments contending that: (i) NationsBank has not performed a sufficient due diligence examination of Barnett; (ii) an unlicensed Barnett broker misappropriated a customer's funds; (iii) recent developments in Asian currency and other emerging markets would adversely affect NationsBank's financial resources; (iv) fluctuations in NationsBank's stock price and debt ratings reflect concerns about the bank's managerial and financial resources; (v) NationsBank's safety and soundness would be threatened by the size of the proposed transaction; and (vi) Barnett has announced publicly a settlement of an alleged violation of the Bank Secrecy Act.

<sup>25/</sup> Commenters cited, as indications of concern regarding managerial resources, several pending or settled lawsuits, including actions involving securities brokerage activities by NationsBank and Barnett, an administrative complaint filed by the Department of Labor alleging that NationsBank engaged in discriminatory hiring practices in Charlotte, North Carolina, in 1993, and civil actions alleging that NationsBank discriminated against minority borrowers. Some commenters requested that the Board not act on the NationsBank/Barnett proposal until particular lawsuits were settled, and other commenters contended the record of litigation and administrative actions raised adverse considerations under the

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managerial resources of NationsBank and Barnett, the Board has considered its supervisory experience with the two companies as well as that of other federal supervisory authorities, including assessments of the organizations' efforts to ensure Year 2000 readiness. Based on these and other facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of NationsBank, Barnett, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.

B. Convenience and Needs Considerations

The Board 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, including comments on the effects the proposal would have on the communities to be served by the combined organization. Overall, the Board received approximately 25 comments in favor of the proposal and approximately 90 opposed to the proposal.<sup>26/</sup>

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<sup>25/</sup>(...continued)

convenience and needs factor. The Board previously has reviewed and considered the lawsuits against NationsBank in connection with approving other NationsBank acquisitions. See NationsBank Corporation, 83 Federal Reserve Bulletin 924 (1997); NationsBank Corporation, 83 Federal Reserve Bulletin 148 (1997). In addition, the Board notes that, as in the previous applications, there has been no adjudication of wrongdoing by NationsBank or Barnett, and that each proceeding is pending before a forum that has the authority to provide the plaintiffs with adequate remedies if their allegations of wrongdoing can be sustained.

<sup>26/</sup> One commenter suggested that the Board conduct surveys in the affected communities. As discussed in the order, the Board's public comment procedure gives any interested person an opportunity to provide any information on the

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Most of the commenters supporting the proposal were community-based organizations, and they commented favorably on NationsBank's record of performance under Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA").<sup>27/</sup> These commenters generally commended the assistance NationsBank provided in community redevelopment activities and applauded NationsBank for reinvesting in various communities. These commenters expected that a combined NationsBank/Barnett organization would benefit the communities to be served.

Approximately nine community-based organizations criticized various aspects of the CRA performance record of NationsBank, including its community development and small business lending, and expressed concern that the proposed acquisition would adversely affect the communities served by Barnett, primarily in Florida.<sup>28/</sup> The remaining commenters opposing the proposal were individuals who primarily criticized NationsBank's banking products and services and, in some cases, praised the banking products and services provided by Barnett. In addition, some individual commenters and community-based organizations raised concerns that the proposed acquisition would result in numerous branch closings that would

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<sup>26/</sup>(...continued)

effects of the proposal in the community, and numerous comments were received in response to the invitation for public comment.

<sup>27/</sup> These commenters included the ACORN Housing Corporation, the Urban League of Greater Miami, the Tampa Bay Community Development Corporation, the Orlando Neighborhood Improvement Corporation, and St. Petersburg Neighborhood Housing Services, Inc.

<sup>28/</sup> These commenters included Vickers & Associates, Inner City Press/Community on the Move, the Fair Housing Continuum, People Acting for Community Together, and the North Carolina Fair Housing Center.

adversely affect low- and moderate- income ("LMI") neighborhoods and senior citizens, and would result in a reduction in community development and home mortgage lending.<sup>29/</sup> Several commenters also maintained that NationsBank's record of CRA performance and compliance with the fair lending laws was deficient in a number of areas, in part on the basis of 1996 data submitted under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA").

In reviewing the convenience and needs of communities to be served, the Board notes that NationsBank provides a full range of financial services through its bank and nonbank subsidiaries, including commercial and retail banking, trust and investment management, corporate and investment banking, and international banking services. NationsBank has stated that the proposed acquisition would enhance and expand the banking services available to all of its and Barnett's customers, including LMI households. The Board has given substantial consideration to the comments received in addition to the existing record of NationsBank of helping to serve the convenience and needs of all its communities, as reflected in NationsBank's CRA and supervisory examinations and in its current programs and policies.

#### 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. As provided in the CRA, the Board has evaluated the convenience

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<sup>29/</sup> Several commenters presented complaints against NationsBank or Barnett based on individual customer transactions. These complaints have been referred to the appropriate federal supervisor of the NationsBank's subsidiary involved in the transaction for consideration.

and needs factor in light of examinations by the primary federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institutions's overall record of performance under the CRA by its primary federal supervisor.<sup>30/</sup>

The majority of NationsBank's subsidiary banks, representing more than 96 percent of the total assets of banks and thrifts controlled by NationsBank, received "outstanding" ratings at the most recent examinations of their CRA performance, and all the NationsBank's subsidiary banks received either "outstanding" or "satisfactory" ratings from their primary federal supervisor. NationsBank's lead bank, NationsBank, N.A., Charlotte, North Carolina ("Lead Bank"), its bank in Florida, NationsBank of Florida, N.A., Tampa, Florida ("NationsBank/Florida"), and its bank in Georgia, NationsBank of Georgia, N.A., Atlanta, Georgia ("NationsBank/Georgia"), each received "outstanding" ratings from the OCC, at the most recent examinations of their CRA performance, as of July, 1995.<sup>31/</sup> In addition, Barnett's lead bank, Barnett Bank received a "satisfactory"

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<sup>30/</sup> 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).

<sup>31/</sup> After the examinations were conducted, Lead Bank, NationsBank/Florida, and NationsBank/Georgia were merged with and into a single bank named NationsBank, N.A., Charlotte, North Carolina.

rating from the OCC on August 19, 1997, and Community Bank received an "outstanding" rating from the Federal Reserve System on January 27, 1997.<sup>32/</sup>

Examiners found no evidence of prohibited discrimination or other illegal credit practices at the subsidiary banks of NationsBank or Barnett. The examinations found that the banks' delineations of their local communities were reasonable and did not arbitrarily exclude LMI communities, and that the banks solicited and accepted credit applications from all segments of their delineated communities. Examinations also determined that the banks effectively made loans throughout their respective service areas, including in LMI areas and to LMI individuals.

#### Lending Performance Record of NationsBank

The Board has carefully considered the lending performance record of NationsBank in general, and in particular, the records of Lead Bank and its subsidiary banks in Florida and Georgia where the combined organization would operate after consummation of this proposal. The Board has reviewed in detail all aspects of NationsBank's CRA-related activities, including its farm, affordable housing, and small-business lending activities; its community investment and development programs; and its initiatives to increase lending in LMI areas.

*Lead Bank.* According to its most recent CRA performance examination, Lead Bank received credit applications from all segments of the communities it serves, including LMI areas, and had a good distribution of loans throughout its communities, including LMI areas. Examiners noted that Lead Bank

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<sup>32/</sup> Barnett's third subsidiary depository institution, FOA, received a "satisfactory" rating for CRA performance from the Office of Thrift Supervision as of April, 1997.

effectively identified potentially underserved areas and targeted the areas for additional resources. Examiners also noted that the bank offered a variety of credit and depository products to help meet the needs of its communities. Examiners found that Lead Bank assisted in meeting housing-related credit needs in its communities by originating loans with flexible terms and underwriting standards through NationsBanc Mortgage Corporation ("NBMC"), a subsidiary of NationsBank's Lead Bank.<sup>33/</sup> Lead Bank also helped meet the needs of small businesses in its communities, including LMI areas.

*Florida.* NationsBank/Florida's lending activities reflected a reasonable geographic distribution of applications received and loans made throughout its service communities, according to the bank's most recent CRA performance examination. The OCC's examiners noted, for example, that NationsBank/Florida took an active role in addressing the affordable housing, small business, and other credit needs of its community, and that the bank originated a larger percentage of consumer real estate loans in LMI areas than the average for other lenders.

The OCC's examiners also favorably commented on other CRA-related activities by NationsBank/Florida, including: (i) active participation in government-insured and guaranteed loan programs for housing and small businesses offered through the Federal Housing Authority ("FHA"), Veterans Administration ("VA"), and the Small Business Administration ("SBA"); (ii) marketing and outreach

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<sup>33/</sup> In 1994, Lead Bank originated more than 300 affordable mortgage loans totalling \$19 million in North Carolina, more than 450 affordable mortgage loans totalling \$27 million in South Carolina, and more than 950 affordable mortgage loans totalling \$90 million in Virginia, Maryland and Washington, D.C.

activities, which established on-going, productive relationships with its service communities; and (iii) marketing program, which informed all segments of its communities served about available banking products and services, including LMI areas and areas with predominately minority populations.

Examiners considered NationsBank/Florida's participation in local development and redevelopment projects, particularly within metropolitan markets, which was characterized as very active. Examiners also noted that the bank's participation through various national corporate and local initiatives and partnerships often reflected a leadership role.

*Georgia.* Examiners found that the lending activities of the bank effectively reached all segments of the community, including LMI individuals and geographies, in the most recent examination for CRA performance for NationsBank/Georgia. According to the examination, the bank identified potentially underserved areas and targeted them for priority attention and additional resources. The examination also concluded that the bank had undertaken significant efforts to meet the credit needs of its delineated community through the origination of loans for residential mortgages, home improvement, small businesses, and small farms. The bank participated in governmentally-insured, guaranteed, or subsidized loan programs for housing and small business. The bank also established contacts with local authorities and low-income housing developers to maintain an awareness of community development needs.

The Board also has considered NationsBank's lending record, particularly in Florida, in light of comments about NationsBank's HMDA data for its

housing-related lending in 1996.<sup>34/</sup> The 1996 HMDA data generally show that NationsBank has continued to provide a significant volume of home mortgage credit in LMI census tracts and to minority applicants and that NationsBank has increased the volume of its home mortgage lending to African-American and Hispanic applicants, in LMI census tracts and to LMI borrowers. The data also show increases in housing-related loans to African-American and Hispanic applicants, in LMI census tracts and to LMI borrowers in Florida.

The data also reflect, however, 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 in lending, and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.<sup>35/</sup> HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not

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<sup>34/</sup> A commenter contended that the 1996 HMDA data for NationsBank show disparities by race in the rate of loan originations, denials, and applications in certain MSAs in Florida, Georgia, New Mexico, North Carolina, Texas, and Virginia.

<sup>35/</sup> 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 for a credit denial) are not available from HMDA data.

assisted in meeting the communities' credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has carefully considered those data in light of other information. Specifically, the Board has considered information about all of NationsBank's lending and other activities related to the CRA,<sup>36/</sup> and information in examination reports and other supervisory information that provide an on-site evaluation of compliance within the fair lending laws by NationsBank.<sup>37/</sup> The Board also has considered NationsBank's lending activities generally and particularly in Florida since the last CRA performance examinations. These activities indicate that NationsBank continues to assist in

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<sup>36/</sup> Several commenters stated that NationsBank has declined to enter into agreements, make specific pledges regarding lending for LMI communities, and enter into a commitment to lease space in a shopping center. The Board has stated that, although communications between depository institutions and community groups are a valuable method of assessing the credit needs of the community, the CRA does not mandate a depository organization to enter into an agreement with any organization. See Chemical Order at 246 n.44.

<sup>37/</sup> One commenter argued that multi-state bank holding companies tend to make fewer loans to customers located outside their home state than single-state institutions, which serve only their home state. As explained above, the Board has carefully reviewed NationsBank's record of assisting to meet the credit needs of the communities served by its subsidiary banks, including in Florida and Georgia. The CRA requires that every bank, including a bank owned by an out-of-state parent holding company, be regularly examined and rated on a state-by-state basis on its performance in helping to meet the credit needs of its community. NationsBank's activities in Florida have been and will continue to be reviewed by the OCC in its performance examinations and by the Board in future applications by NationsBank to acquire a depository facility under the BHC Act.

meeting the credit needs of all its communities, including the credit needs of LMI and minority borrowers.

*NationsBank's 1996-97 Lending Activities.* NationsBank made more than 20,000 home mortgage and home improvement loans totalling \$941 million to LMI borrowers in 1996. NationsBank also increased from \$500 million to \$750 million the funding for its first-time home buyers program, which is administered by the Neighborhood Assistance Corporation of America and provides 100 percent financing and extensive credit and home ownership counseling. This partnership, which was piloted in four cities, is being expanded to seven new cities, including Tampa, Florida. NationsBank also expanded its partnership with ACORN Housing Corporation to provide home ownership counseling in four additional cities.

During 1997, NBMC increased its commitment to fund home mortgages for LMI borrowers by reducing its interest rate and expanding the eligibility criteria to qualify for the mortgage funds. Outstanding loan volume increased within the first nine months of 1997 from \$323 million for approximately 4,600 families to \$530 million for approximately 7,400 families.

NationsBank also has increased its community development funding since the 1995 CRA performance examinations. NationsBank doubled its \$100 million commitment in Nations Housing Fund, which, in partnership with the Enterprise Social Investment Corporation, invests in projects to construct and rehabilitate affordable housing. This program has helped to develop 83 multi-family projects in 42 communities in 13 states and the District of Columbia, and has produced nearly 10,000 units of affordable housing. In 1996, NationsBank also made a \$100 million commitment to lending and investment for neighborhood development in St. Louis, Missouri, and NationsBank increased by \$3.8 million its

funding to its Community Development Financial Institutions Initiative, which invests in intermediary institutions that finance specialized community development projects.

In 1996, NationsBank made more than 11,000 loans totalling more than \$1 billion to small and minority-owned businesses located in LMI areas. For 1996, NationsBank was the leading volume lender for the SBA in Florida, South Carolina, Tennessee, and the District of Columbia, and it was the second largest SBA lender in Georgia, Texas, and Maryland.

*NationsBank's 1996-97 Lending Activities in Florida.* In 1996, NationsBank made more than \$5.2 billion of home purchase and refinance, small business and farm, community development, and consumer loans in LMI areas in Florida. This amount of lending represented 40 percent of the total amount of lending for NationsBank in Florida for these types of loans, although only 23 percent of all Florida households are located in LMI neighborhoods. The bank also assisted several local community organizations in providing more than 100 credit counseling seminars for first-time home buyers in Florida.

In 1997, NationsBank introduced a pilot program in Florida to provide an alternative to SBA loans that offers less cumbersome application requirements. During the first ten months of the year, NationsBank closed 61 loans under the program totalling \$6 million. NationsBank's community development corporation opened a new office in Tampa. NationsBank committed to fund the opening and operation of at least two Make-A-Difference child-care centers in Florida in 1998, among 25 such after-school centers serving children of LMI families that NationsBank has plans to open by the year 2000.

The Board also notes that NationsBank's record of CRA performance was recently reviewed in connection with the Board's approval of NationsBank's acquisition of Boatmen's Bancshares, Inc., St. Louis, Missouri ("Boatmen's") (order dated December 16, 1996).<sup>38/</sup> In the 1996 Order, the Board considered the lending performance record of NationsBank generally and in specific states, which included Florida, Georgia, North Carolina, Texas, and Virginia. That review also included HMDA data for 1993, 1994, and 1995 reported by NationsBank's bank subsidiaries and NBMC. The review indicated generally that NationsBank had improved its record of home mortgage lending in LMI census tracts and census tracts with predominately minority residents. The Board concluded that NationsBank's record at that time was consistent with approval of the application under the BHC Act.

#### Branch Closings

NationsBank has more than 380 branches in Florida and has approximately 270 branches in Georgia. Barnett operates more than 600 branches in Florida and has approximately 10 branches in Georgia.

A number of these branches serve the same communities.

NationsBank has indicated that it has not developed final plans regarding branch closings after acquiring Barnett. NationsBank has preliminarily and confidentially identified the number of branches by county that are under review, based on a geographic mapping of existing branches of NationsBank and Barnett that appear to service the same community. NationsBank cannot, prior to acquiring Barnett, consider or apply all the criteria or follow all the procedures set forth in its corporate branch closing policy for analyzing branches that may be affected by the acquisition

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<sup>38/</sup> 83 Federal Reserve Bulletin 148 (1997) ("1996 Order").

of Barnett and, consequently, has indicated that it has not reached a final decision on which branches may be closed.

The Board has considered the areas of geographic overlap in light of the total number of branches, the dispersion of branches, and examination reports. Also, the Board has considered the preliminary branch information from NationsBank in light of all comments received on branch closings.<sup>39/</sup>

The Board also has carefully reviewed the branch closing policy of NationsBank in light of the bank's record of providing all segments of the communities served with reasonable access to banking services. NationsBank's corporate Banking Center Opening and Closing Policy requires that the appropriate Community Investment Program manager ("CIP manager"), who must approve all branch closings, consider whether (i) the closing would have an adverse impact on the community served and what actions will be taken to minimize that impact, and (ii) other financial institutions serve the area and the banking alternatives available to customers affected by the closure. The CIP manager may hold meetings with neighborhood leaders to assess, and to solicit suggestions to minimize, the impact of the closure if the manager approves the closure of a branch.

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<sup>39/</sup> Several commenters argued that NationsBank should be required to disclose all branch closing information and to provide a branch closing plan for comment before the Board acts on the proposal. These contentions relate to information that is confidential or that relates to decisions that NationsBank has indicated it is not in a position to make finally before consummation of the proposal. Branch closings resulting from the proposal, and any information or analyses that commenters wish to provide on branches that are closed can be reviewed in the CRA examination process and in future applications to acquire depository institutions.

The OCC also has reviewed NationsBank's branch closing policy as part of the OCC's examination of the CRA performance record of the subsidiary banks of NationsBank and found the policy to be effective in enabling NationsBank's subsidiary banks to provide reasonable access to banking services in their communities. As part of the most recent CRA performance examinations of NationsBank's subsidiary banks, OCC examiners reviewed branches closed pursuant to the policy and concluded that NationsBank subsidiary banks generally had good records of opening, closing and relocating their offices while providing all segments of the communities with reasonable access to bank services.

The Board also has taken account of NationsBank's record of closing branches in other cases, in particular NationsBank's reports of branch closings submitted in accordance with the 1996 Order.<sup>40/</sup> After consummation of the NationsBank/Boatmen's acquisition, NationsBank closed or designated for closure or consolidation approximately 44 branches in the states in which Boatmen's had operated. More than 500 NationsBank branches continue to operate in these states. Approximately eight of the closed branches were in LMI communities. Accounting for these closures and consolidations, the percentage of the combined organization's banking centers located in LMI areas, when compared to the combined organization's total number of branches in all areas, did not decrease. In some states, including Arkansas, Iowa, and Illinois, the percent of NationsBank's branches in LMI communities increased as a percentage of its total branches in those states.

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<sup>40/</sup> Commenters raised concerns about the branches closed or to be closed by NationsBank as a result of the NationsBank/Boatmen's acquisition.

Before closing any of the eight branches in LMI communities, NationsBank assessed whether the closing would adversely affect the LMI community being served, as required by its branch closing policy.<sup>41/</sup> In the case of three closings, competitors maintained branches in short walking or driving distance from the closed branch. Three other LMI branches were closed because of deficiencies in the facilities -- such as extensive termite damage, poor building access that posed security concerns, or limited parking facilities -- that could not be economically remedied. Each of the three branches was located near other NationsBank branches that had better facilities, offered easier access, or were better situated to serve the community.<sup>42/</sup> In the case of the remaining two branches closed in LMI areas, NationsBank followed its branch closing policy, which, as noted, has been deemed by the OCC to be effective in providing reasonable access to banking services.

In addition to these factors, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to

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<sup>41/</sup> A commenter criticizes NationsBank's efforts as inadequate by noting, for example, that before closing LMI branches in New Mexico, NationsBank did not consult the New Mexico Alliance, an organization currently in litigation with NationsBank over the Boatmen's acquisition.

<sup>42/</sup> For example, in one case in which an LMI branch was closed because of limited parking and lack of drive-through lanes, another NationsBank branch was located three blocks away, on the same public transportation line. The remaining branch had more teller windows, improved customer accessibility, exterior ATM machines, and better security features.

the appropriate regulatory agency at least 30 days prior to closing a branch. The law does not authorize federal regulators to prevent the closing of any branch.<sup>43/</sup>

The Board expects that NationsBank will apply its corporate branch closing policy in determining whether to close any branches in connection with the Barnett transaction. To permit the Board to assess the effectiveness of this policy, the Board has determined to require NationsBank to report branch closures in Florida and Georgia to the Federal Reserve System during the two-year period following consummation as part of NationsBank's next applications to the System to acquire a depository institution. For branches closed in LMI census tracts, NationsBank should indicate the proximity to the closest NationsBank branch and the steps NationsBank took to mitigate the impact of the branch closure.

#### NationsBank's Nonbank Subsidiaries

Several commenters contended that nonbank lending subsidiaries of NationsBank, including NationsCredit Corporation ("NationsCredit") and SunStar Acceptance Corporation ("Sunstar"), have engaged in discriminatory lending practices.<sup>44/</sup> In reviewing similar allegations in the 1996 Order, the Board noted that

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<sup>43/</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1, as implemented by the Joint Policy Statement Regarding Branch Closings (see 58 Federal Register 49,083 (1993)), requires that a bank provide the public with at least 30 days notice and the primary federal supervisor with at least 90 days notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

<sup>44/</sup> A few commenters provided copies of consumer complaints filed in several states against NationsCredit, Sunstar, and NBMC. These complaints have been filed with the appropriate state regulatory agencies and have been

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the OCC's fair lending examination findings found no evidence of illegal discrimination at the subsidiary banks of NationsBank or NBMC and the most recent examinations by the OCC favorably commented on NationsBank's fair lending policies and its procedures to prevent illegal practices like pre-screening.<sup>44/</sup> The Board also noted that NationsCredit has a consumer compliance program in place and that staff of NationsCredit's compliance group work closely with the

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<sup>44/</sup>(...continued)

reviewed by the Board in light of all the facts of record, including supervisory evaluations and supervisory information. The Board notes that these complaints generally involve matters of customer service, not fair lending laws, and that in most cases the complaints have been resolved.

Several commenters also raised concerns about NationsBank's 1-800-number call center for consumer complaints, including that callers may not be adequately served and could in fact be misled into thinking that they had filed a complaint with the appropriate federal supervisor. Commenters presented no facts to support their concerns. The Board notes, moreover, that federal banking supervisors have sufficient authority to investigate and address complaints of improper activities that are substantiated by facts.

<sup>45/</sup> Commenters also raised a number of concerns regarding the referral policies of NationsCredit, NBMC, and NationsBank's subsidiary banks. Commenters reiterated allegations, made at the time that NationsBank sought approval from the Board to acquire Boatmen's, that loan applicants are illegally "steered" from NationsBank's subsidiary banks to NationsCredit on a prohibited basis like race. The Board carefully considered these allegations in the 1996 Order, and commenters have presented no new facts to support their allegations. The Board also has reviewed referral practices from NationsCredit to NationsBank's banks in light of supervisory information provided by the OCC in this application. Commenters' allegations regarding the referral practices of NationsBank's banks also will be provided to the OCC, the primary supervisor of NationsBank, N.A.

compliance group responsible for overseeing the compliance program for NationsBank's subsidiary banks.<sup>46/</sup>

Conclusion on Convenience and Needs Considerations

The Board has carefully considered all the facts of record, including all of the comments received, responses to the comments, and the CRA performance records of the subsidiary depository institutions of NationsBank and Barnett, including the relevant reports of examination and other supervisory information.<sup>47/</sup>

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<sup>46/</sup> Some commenters requested the Board to conduct an on-site fair lending law examination of NationsBank's nonbanking subsidiaries before acting on the proposal. The Board notes that primary authority for enforcement of the fair lending laws for nonbanking companies such as NationsCredit and Sunstar is conferred by statute on the Federal Trade Commission and the Department of Housing and Urban Development. As discussed above and in the 1996 Order, NationsBank's subsidiary banks -- which account for a substantial majority of NationsBank's total assets and total revenue -- have satisfactory records of compliance with fair lending laws and the compliance program for NationsCredit has been implemented by the group responsible for overseeing the compliance programs of the subsidiary banks. In addition, commenters' request relies in large measure on consumer complaints filed with state authorities that, as noted above, do not raise fair lending law issues. In this light and based on all the facts of record, and for the reasons discussed above and in the 1996 Order, the Board concludes that it should not conduct a special on-site examination of NationsBank's nonbank subsidiaries for fair lending law compliance.

<sup>47/</sup> Many individual commenters argued that Barnett's banking products and services were superior to those of NationsBank, particularly in terms of customer service, fees charged, and interest earned. Commenters expressed concern that the proposal would result in a reduction in interest rates paid on accounts or certificates of deposit, loss of free banking services, increases in fees for banking services, and the general loss of convenient banking services. One commenter argued that multi-state banking institutions, such as NationsBank, tend to charge higher fees to customers located outside their home

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Based on a review of the entire record and for the reasons discussed above and in the 1996 Order, which are specifically incorporated by reference, the Board concludes that the convenience and needs considerations are consistent with approval of the application and notice.<sup>48/</sup>

### Nonbanking Activities

NationsBank also has filed notice under section 4(c)(8) of the BHC Act to acquire the nonbanking subsidiaries of Barnett listed in Appendix A and thereby engage in the described nonbanking activities. The Board previously has determined by regulation that each of the activities described in Appendix A is

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<sup>47/</sup>(...continued)

state than they charge to customers in their home state.

As discussed in this order and in the 1996 Order, NationsBank provides a full range services that assist in meeting the banking needs of its community, including special low-fee accounts for LMI customers. NationsBank maintains that the combined NationsBank/Barnett organization will continue to offer competitive rates on deposits and to charge competitive fees on transaction accounts. NationsBank also represents that it will not raise consumer fees for customers of the combined organization after the acquisition and continuing to August 1998.

<sup>48/</sup> Commenters also expressed concerns that significant job losses would result from the consolidation of NationsBank and Barnett. NationsBank responded that NationsBank and Barnett have instituted hiring freezes that should reduce materially the need for reducing the number of employees. The Board notes, moreover, that the convenience and needs factor of the BHC Act has been consistently interpreted by the federal banking agencies, the courts, and Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. On this basis, the Board previously has concluded that the effect of a proposed acquisition on employment in a community is not among the factors included in the BHC Act. See, e.g., Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

closely related to banking within the meaning of section 4(c)(8) of the BHC Act, and NationsBank has committed to conduct these activities in accordance with Regulation Y.<sup>49/</sup>

In order to approve the proposal, the Board also must determine that the performance of the proposed activities are a proper incident to banking, that is that the proposed transaction "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>50/</sup> As part of the Board's evaluation of these factors, the Board considers the financial and managerial resources of the notificant and its subsidiaries, including any company to be acquired, and the effect the transaction would have on such resources.<sup>51/</sup> As noted above, 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 carefully considered the competitive effects of the proposed acquisition of the nonbanking companies and, in so doing, has considered the information and views provided by commenters regarding the competitive effects of the proposed acquisition. Each of the markets for the nonbanking services affected by this proposal is unconcentrated, and there are numerous providers of each of these services. As a result, consummation of this proposal is expected to have a de minimis effect on competition for these services.

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<sup>49/</sup> See 12 C.F.R. 225.28(b)(1), (4), (11), and (12).

<sup>50/</sup> See 12 U.S.C. § 1843(c)(8).

<sup>51/</sup> See 12 C.F.R. 225.24.

The Board expects, moreover, that the acquisition of Barnett by NationsBank would provide added convenience to Barnett customers, to NationsBank's customers, and to the public by increasing operating efficiencies and by improving convenience and expanding services available to customers of both NationsBank and Barnett.<sup>52/</sup> Additionally, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies may make potentially profitable investments in nonbanking companies when those investments are consistent, as in this case, with the relevant considerations under the BHC Act, and from permitting banking organizations to allocate their resources in the manner they believe is most efficient. The Board also believes that the conduct of the proposed activities within the framework established in this order, prior orders, and Regulation Y is not likely to result in significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, or unsound banking practices, that would not be outweighed by the public benefits of the proposal, such as increased consumer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the proposal can reasonably be expected to produce public benefits that outweigh any adverse effects under the proper incident to banking standard of section 4(c)(8) of the BHC Act.

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<sup>52/</sup> Commenters questioned whether there would be any public benefits from the merger and maintained, without providing any facts, that any public benefits from the proposal would accrue only to securities customers and large corporate customers.

## Conclusion

Based on the foregoing and all the facts of record, the Board has determined that this transaction should be, and hereby is, approved.<sup>53/</sup> In reaching its conclusion, the Board has considered all the issues raised in public comments

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<sup>53/</sup> Several commenters requested that the Board convene a public hearing or meeting 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. In this case, the Board has not received such a recommendation from any state supervisory authority. 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. 225.25(a)(2). Commenters have not identified any material facts relating this proposal that are in dispute.

Under its rules, the Board also may, in its discretion, hold a public hearing or meeting on an application to acquire a bank if a hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony, if appropriate. 12 C.F.R. 225.16(e). In making such a determination, the Board takes into account what facts, if any, are in dispute and whether other considerations, such as the scope of the transaction, the degree of interest expressed in having a public hearing or meeting, and the CRA performance records of the applicant and target, indicate that written submissions would be inadequate. In the Board's view, the commenters had ample opportunity to submit their views, and have submitted substantial written comments that have been carefully considered by the Board in acting on the application. The commenters' requests fail 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, moreover, the Board has concluded that commenters 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 in this case. Accordingly, the requests for a public hearing or meeting on the proposal are hereby denied.

filed in connection with this proposal in light of the factors that the Board is required to consider under the BHC Act and concludes that the comments do not warrant a delay or denial of the proposal.<sup>54/</sup>

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<sup>54/</sup> Several commenters requested that the Board delay action on this proposal or extend the public comment period for the proposal. Some commenters contended that NationsBank had not sufficiently responded to requests for additional information or to the issues raised by the Protestants. These commenters also maintained that the Board should not consider any divestiture commitments that are not subject to public comment. In addition, some commenters asserted that they did not have sufficient time to review and comment on information provided to them in the applications process.

The requests for delay do not warrant postponement of the Board's consideration of the case. Though not required by the BHC Act, the Board provides a public comment period of at least 30 days in every case involving a bank acquisition in order to allow interested persons an opportunity to provide information, analyses and arguments regarding all aspects of the proposal, including the CRA performance record of an applicant and other relevant companies. In this case, interested persons were provided a period of approximately 39 days to submit their views and any relevant information and analyses regarding the proposal. As noted above, the Board received and considered substantial information and views from a number of commenters.

The Board's rules permit an applicant a limited opportunity to comment on allegations and information submitted during the public comment period. These rules do not guarantee commenters an opportunity to continue the process of submitting additional comments in rebuttal to an applicant's response after the close of the public comment period. These rules are designed to permit a meaningful opportunity for the public to comment on a proposal and for the applicant to provide a response to those comments within the time constraints of the BHC Act. In this case, comments and responses were submitted in accordance with the Board's rules.

For these reasons and based on a review of all the facts of record, the Board concludes that the record in this case is sufficient to warrant Board consideration and action on this proposal at this time, and that further delay of

(continued...)

The Board's approval of this proposal is specifically conditioned on compliance by NationsBank with all the commitments made in connection with this proposal and the conditions in this order. The Board's determination on the proposed nonbanking activities also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board 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. For purposes of this action, these commitments and conditions shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision, and, as such, may be enforced in proceedings under applicable law.

The acquisition of Barnett's subsidiary banks may not be consummated before the 15th calendar day after the effective date of this order, and this proposal

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<sup>54</sup>(...continued)

consideration of this proposal or denial of this proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

may not 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 of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>55/</sup> effective December 10, 1997.

(signed)

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Jennifer J. Johnson  
Deputy Secretary of the Board

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<sup>55/</sup> Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Phillips, Meyer, Ferguson, and Gramlich.

## **APPENDIX A**

### **Nonbank Subsidiaries of Barnett to be Acquired by Nationsbank**

- (1) EquiCredit Corporation, Jacksonville, Florida, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit pursuant to section 225.28(b)(1) (12 C.F.R. 225.28(b)(1)) and credit life insurance activities pursuant to section 225.28(b)(11)(ii) of Regulation Y (12 C.F.R. 225.28(b)(11)(ii));
- (2) First of America Bank - Florida, FSB, Tampa, Florida, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y (12 C.F.R. 225.28(b)(4)(ii));
- (3) Honor Technologies, Inc., Maitland, Florida, and thereby engage in operating an electronic funds transfer network and in data processing and management consulting activities, pursuant to sections 225.28(b)(9) and (b)(14), respectively, of Regulation Y (12 C.F.R. 225.28(b)(9) and (b)(14)); and
- (4) Barnett Community Development Corporation, Jacksonville, Florida, and thereby engage in community development activities pursuant to section 225.28(b)(12) of Regulation Y (12 C.F.R. 225.28(b)(12)).

## **APPENDIX B**

### State Deposit and Ranking Data

#### *Florida*

NationsBank is the third largest depository institution in Florida, controlling deposits of \$21.8 billion, representing approximately 12.2 percent of all deposits in depository institutions in the state ("state deposits"). Barnett is the largest depository institution in Florida, controlling deposits of \$34.2 billion, representing approximately 19.2 percent of all state deposits. NationsBank proposes to divest approximately \$3.1 billion in deposits in Florida. On consummation of the proposal, and accounting for all proposed divestitures, NationsBank would become the largest depository institution in the state, controlling deposits of \$52.9 billion, representing approximately 29.6 percent of state deposits in Florida.

#### *Georgia*

NationsBank is the largest depository institution in Georgia, controlling deposits of \$13.7 billion, representing approximately 17.9 percent of all state deposits. Barnett is the 16th largest depository institution in Georgia, controlling deposits of \$410.5 million, representing less than 1 percent of all state deposits. NationsBank proposes to divest \$23.1 million in deposits in Georgia. On consummation of the proposal, and accounting for all proposed divestitures, NationsBank would remain the largest depository institution in the state, controlling deposits of \$14.2 billion, representing approximately 18.4 percent of state deposits in Georgia.

## APPENDIX C

### Banking Markets in which NationsBank and Barnett Compete<sup>56/</sup>

#### *Florida Banking Markets*

Beverly Hills: Citrus County, excluding Citrus Springs.

Brevard County: Brevard County.

Columbia County: Columbia County.

Daytona Beach: Flagler County, the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County, and the town of Astor in Lake County.

Fort Myers: Lee County excluding the towns located on Gasparilla Island plus the town of Immokalee in Collier County.

Fort Pierce: St. Lucie and Martin Counties, excluding Indiantown and Hobe Sound in Martin County.

Gainesville: Alachua, Gilchrist, and Levy Counties.

Highlands County: Highlands County.

Indian River County: Indian River County.

Jacksonville: Baker, Clay, Duval, and Nassau Counties, the towns of Fruit Cove, Ponte Verde, and Ponte Verde Beach in St. Johns County, all in Florida, and the City of Folkston in Charlton County, Georgia.

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<sup>56/</sup> All banking markets are entirely within Florida or Georgia unless otherwise noted.

Key Largo: The northern third of the Florida Keys in Monroe County, including Islamorada, Key Largo, Plantation Key, and Tavernier.

Key West: The cities of Key West, Sugarloaf, Summerland Key, and Big Pine Key in Monroe County.

Marathon: The towns of Marathon and Marathon Shores in Monroe County.

Miami-Fort Lauderdale: Broward and Dade Counties.

Naples: Collier County, excluding the town of Immokalee.

Ocala: Marion County, plus the town of Citrus Springs in Citrus County.

Orlando: Orange, Osceola, and Seminole Counties, the western half of Volusia County, and the towns of Clermont and Groveland in Lake County.

Pensacola: Escambia and Santa Rosa Counties.

Polk County: Polk County.

Punta Gorda: That portion of Charlotte County east of both the harbor and the Myakka River and that portion of Sarasota County both east of the Myakka River and south of Interstate 75 (currently the town of Northport).

Sarasota: Manatee and Sarasota Counties, excluding that portion of Sarasota County both east of the Myakka River and south of Interstate 75 (currently the town of Northport), plus that portion of Charlotte County west of both the harbor and the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida), and Gasparilla Island (the town of Boac Grande) in Lee County.

Suwanee County: Suwanee County.

Tallahassee: Leon County and the towns of Quincy and Havana in the eastern half of Gadsden County.

Tampa Bay: Hernando, Hillsborough, Pinellas, and Pasco Counties.

West Palm Beach: Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

*Georgia Banking Markets*

Brunswick: Brantley, Glynn, and McIntosh Counties.

Thomas County: Thomas County.

Valdosta: Echols, Lanier, and Lowndes Counties.

## APPENDIX D

### Banking Markets with No Proposed Divestitures

1. Banking markets in which consummation of the proposal would not exceed DOJ Guidelines:

#### *Florida Banking Markets*

Beverly Hills: After consummation of the proposal, NationsBank would control 23.4 percent of the market deposits and would become the largest of eight depository institutions in the market. The HHI would increase 91 points to 1783.

Fort Pierce: After consummation of the proposal, NationsBank would control 18.9 percent of the market deposits and would become the second largest of 15 depository institutions in the market. The HHI would increase 84 points to 1494.

Gainesville: After consummation of the proposal, NationsBank would control 27.5 percent of the market deposits and would become the largest of 16 depository institutions in the market. The HHI would increase 127 points to 1663.

Highlands County: After consummation of the proposal, NationsBank would control 35.4 percent of the market deposits and would become the largest of seven depository institutions in the market. The HHI would increase 176 points to 2442.

Indian River: After consummation of the proposal, NationsBank would control 22.9 percent of the market deposits and would become the second largest of 13 depository institutions in the market. The HHI would increase 205 points to 1584.

Jacksonville: After consummation of the proposal, NationsBank would control 24.8 percent of the market deposits and would become the second largest of 19 depository institutions in the market. The HHI would increase 64 points to 2634.

Miami-Fort Lauderdale: After consummation of the proposal, NationsBank would control 33.5 percent of the market deposits and would become the largest of 83 depository institutions in the market. The HHI would increase 560 points to 1636.

Pensacola: After consummation of the proposal, NationsBank would control 21.9 percent of the market deposits and would become the second largest of 15 depository institutions in the market. The HHI would increase 52 points to 1325.

West Palm Beach: After consummation of the proposal, NationsBank would control 31.6 percent of the market deposits and would become the largest of 44 depository institutions in the market. The HHI would increase 480 points to 1556.

### *Georgia Banking Markets*

Thomas County: After consummation of the proposal, NationsBank would control 12.9 percent of the market deposits and would become the third largest of seven depository institutions in the market. The HHI would increase 54 points to 2595.

Valdosta: After consummation of the proposal, NationsBank would control 22.8 percent of the market deposits and would become the largest of ten depository institutions in the market. The HHI would increase 57 points to 1453.

2. Banking markets in which consummation of the proposal would exceed DOJ Guidelines, but other factors substantially mitigate the competitive effect of the increases in concentration as measured by the HHI:

### *Florida Banking Markets*

Polk County: After consummation of the proposal, NationsBank would control 32.6 percent of market deposits and would become the largest of 13 depository institutions in the market. The HHI would increase 383 points to 1906. Of the 12 remaining depository institutions, two large multi-state banking organizations other than NationsBank would each control more than 17 percent or more of market deposits. Polk County is an MSA with recent entry suggesting that it is attractive for entry. Two banking organizations have entered de novo and two banking organizations have entered by acquisition since 1994.

Tallahassee: After consummation of the proposal, NationsBank would control 27.9 percent of market deposits and would become the largest of 14 depository institutions in the market. The HHI would increase 254 points to 1815. Of the 14 remaining depository institutions, two banking organizations other than

NationsBank would control 25.4 percent and 13.9 percent, respectively, of market deposits. In addition, the Tallahassee banking market has features that make it attractive for entry. The rate of growth in population and deposits exceeds, on average, that of other Florida MSAs.<sup>57/</sup> There have been three de novo entries into the market since 1995.

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<sup>57/</sup> Between 1990 and 1996, the population of the Tallahassee MSA increased at a rate of 11.9 percent as compared to 10.8 percent for other Florida MSAs. The rate of growth of deposits in the MSA was 9.5 percent between 1991 and 1996 as compared to a decrease of 2.8 percent for other Florida MSAs.

## APPENDIX E

### Banking Markets with Proposed Divestitures

1. Consummation of the proposal in the following banking markets would not exceed DOJ Guidelines with divestitures. In each of these markets, a competitor suitable to the Board is an out-of-market commercial banking organization or an in-market commercial banking organization that would not control more than 35 percent of total market deposits (including 50 percent of thrift deposits) or the divestiture would not result in an increase in the HHI of more than 200 points if the market has a post-merger HHI of at least 1800.

#### *Florida Banking Markets*

Columbia County: NationsBank proposes to divest one branch controlling deposits of \$33.2 million to a competitor suitable to the Board.

Key Largo: NationsBank proposes to divest one branch controlling deposits of \$25.5 million to a competitor suitable to the Board.

Key West: NationsBank proposes to divest one branch controlling deposits of \$89.2 million to a competitor suitable to the Board.

Marathon: NationsBank proposes to divest one branch controlling deposits of \$23.1 million to a competitor suitable to the Board.

Suwanee County: NationsBank proposes to divest one branch controlling deposits of \$27.8 million to a competitor suitable to the Board.

2. Banking markets in which consummation of the proposal would exceed DOJ Guidelines with divestitures, but other factors substantially mitigate the competitive effect of the increases in concentration as measured by the HHI:

Brevard County. NationsBank proposes to divest four branches controlling deposits of \$153.1 million to a competitor suitable to the Board. In this market, a competitor suitable to the Board is an out-of-market commercial banking organization or an in-

market commercial banking organization that currently controls less than 3.2 percent of market deposits. After consummation of the proposal, NationsBank would become the largest depository institution in the market, controlling 33.7 percent of the market deposits, and the HHI would increase not more than 342 points or exceed a post-merger HHI of 1962. NationsBank would become the largest of 17 depository institutions in the market. Seventeen depository institutions would remain in the market and the divestiture of approximately 4.6 percent of market deposits to an existing competitor would strengthen that organization's competitive presence. Two large multi-state banking organizations other than NationsBank would compete in the market and would each control 15 percent or more of market deposits. In addition, the Brevard County banking market has features that make it attractive for entry. The rate of growth in population and the average population per banking office for the Melbourne-Titusville-Palm Bay MSA, which closely approximates the Brevard County banking market, exceeds, on average, that of other Florida MSAs.<sup>58/</sup> There have been three de novo entries into the market and two entries by acquisition by depository institutions since 1994.

Sarasota: After consummation of the proposal, and divestiture of 11 branches controlling deposits of \$746.8 million to an out-of-market commercial banking organization, NationsBank would control 37 percent of market deposits and would become the largest of 33 depository institutions in the market. The HHI would increase 380 points to 1808. Thirty-three depository institutions would remain in the market and the divestiture of approximately 9 percent of market deposits and a substantial branch network to an out-of-market entrant should make that entrant an effective competitor. The Sarasota-Bradenton MSA, which closely approximates the Sarasota banking market, is a large MSA with recent entry suggesting that it is attractive for entry.<sup>59/</sup> Six banking organizations have entered de novo and six banking organizations have entered by acquisition since 1993.

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<sup>58/</sup> Between 1990 and 1996, the population of the Melbourne-Titusville-Palm Bay MSA increased at a rate of 14.1 percent as compared to 10.8 percent for other Florida MSAs. In 1996, the average population per banking office for the MSA was 4,025 as compared to 3,596 for other Florida MSAs.

<sup>59/</sup> The Sarasota-Bradenton MSA ranks sixth in total deposits out of the 20 Florida MSAs. In 1996, average per capita income for the Sarasota-Bradenton MSA was \$21,293 as compared to \$18,182 for other Florida MSAs.

