

FEDERAL RESERVE SYSTEM

Deutsche Bank AG
Frankfurt am Main, Germany

Order Approving an Application to Become a Bank Holding Company and Notices to Acquire Nonbanking Companies

Deutsche Bank AG (“Deutsche Bank”), a foreign banking organization subject to the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to become a bank holding company by acquiring all the voting shares of Bankers Trust Corporation, New York, New York (“BT Corp”), and its wholly owned subsidiary banks, Bankers Trust Company, New York, New York (“Bankers Trust”); Bankers Trust (Delaware), Wilmington, Delaware (“Delaware Bank”); and Bankers Trust Florida, N.A., Palm Beach, Florida (“Florida Bank”).¹ Deutsche Bank also has requested the Board’s approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire the nonbanking subsidiaries of BT Corp and thereby engage worldwide in certain permissible nonbanking activities.² In addition, Deutsche Bank

¹ Deutsche Bank proposes to acquire BT Corp by merging an indirect, wholly owned acquisition subsidiary with and into BT Corp, with BT Corp as the surviving company. Deutsche Bank also proposes to hold BT Corp through an intermediate holding company in the United States. Because this intermediate company would indirectly control a U.S. bank, it would be a bank holding company for purposes of the BHC Act.

² The nonbanking activities in which BT Corp engages and for which Deutsche Bank has sought Board approval under section 4 of the BHC Act are listed in the Appendix.

proposes to acquire the Edge corporations of BT Corp pursuant to section 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.) and the Board's Regulation K (12 C.F.R. 211).³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 5061 (1999)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

Deutsche Bank, with total consolidated assets of \$734 billion, is the largest bank in Germany and one of the largest banking organizations in the world.⁴ Deutsche Bank operates a branch in New York, New York, which controls \$21.9 billion in deposits in New York State,⁵ and a representative office in San Francisco, California. Deutsche Bank also engages in a broad range of permissible nonbanking activities in the United States through subsidiaries, including underwriting and dealing in debt and equity securities to a limited extent.

BT Corp, with total consolidated assets of \$133 billion, is the eighth largest commercial banking organization in the United States, and the third largest commercial banking organization in New York, controlling deposits of approximately \$26.8 billion in the state. BT Corp also engages

³ Deutsche Bank also has requested the Board's approval to hold and exercise an option to acquire up to 19.9 percent of the shares of BT Corp's common stock. The option would expire on consummation of the proposal.

⁴ Asset and ranking data are as of December 31, 1998, and are based on exchange rates then applicable.

⁵ Deposit data are as of June 30, 1998.

in a broad range of permissible nonbanking activities in the United States, including underwriting and dealing in debt and equity securities to a limited extent.

The proposal would represent the largest acquisition by a foreign bank of a U.S. banking organization to date. On consummation of the proposal, Deutsche Bank would become the largest commercial banking organization in the world ranked by assets.

Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) (“CRA”) of the insured depository institutions involved in the transaction; the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking law; and, in the case of applications involving a foreign bank such as Deutsche Bank, whether the foreign bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor. In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with other provisions of section 3(d) of the BHC Act.

The Board has considered these factors in light of a comprehensive record that includes information provided by Deutsche Bank, confidential supervisory and examination information, and publicly reported

financial and other information. The Board also has considered information collected from the primary home country supervisors of Deutsche Bank and various federal and state agencies, including the New York State Banking Department, the United States Department of State (“State Department”), and other relevant agencies. In addition, the Board has considered information provided by public commenters in connection with the proposal.⁶

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Deutsche Bank is New York,⁷ and the subsidiary banks of BT Corp are located in New York, Delaware, and Florida.⁸ All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁹ In

⁶ The Board received comments from 17 public commenters.

⁷ A bank holding company’s home state is that state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). On consummation of the proposal, Deutsche Bank would become a bank holding company, and the state in which the total deposits of its U.S. banking subsidiaries are the largest would be New York.

⁸ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

⁹ Deutsche Bank is adequately capitalized and adequately managed, as defined by applicable law. 12 U.S.C. § 1842(d)(1)(A). Delaware Bank and

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light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

Deutsche Bank and BT Corp control banking operations that compete directly in the New York/New Jersey Metropolitan banking market (“New York banking market”).¹¹ On consummation of the proposal,

Florida Bank have been in existence and operated continuously for at least the period of time required by applicable state laws. See 12 U.S.C. § 1842(d)(1)(B); Del. Code Ann. tit. 5, § 795 (1997) (5 years); Fla. Stat. ch. 658.295 (1997) (3 years). Deutsche Bank and BT Corp do not operate insured depository institutions in the same states, and, on consummation of the proposal, Deutsche Bank and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1842(d)(2). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

¹⁰ 12 U.S.C. § 1842(c)(1).

¹¹ The New York banking market includes New York City; Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren, and a portion of Mercer Counties in New Jersey; Pike County in Pennsylvania; and portions of Fairfield and Litchfield Counties in Connecticut.

Deutsche Bank would control deposits of \$48.7 billion, including the deposits in Deutsche Bank's New York branch, in the New York banking market. After the transaction, the market would remain unconcentrated, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines").¹² In addition, numerous competitors would remain in the New York banking market. Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the New York banking market or any other relevant banking market.

Financial and Managerial Considerations

The Board has carefully considered the financial and managerial resources and future prospects of the companies and banks involved in the proposal, the effect the proposed transaction would have on such resources, and other supervisory factors in light of all the facts of record, including public comments.¹³

¹² See 49 Federal Register 26,823 (June 29, 1984). Under the DOJ Guidelines, a market in which the post-merger HHI is less than 1000 points is considered to be unconcentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities. The HHI in the New York banking market would remain less than 1000 points after consummation of the proposal.

¹³ Several commenters expressed concerns about the financial and

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In evaluating the financial and managerial factors, the Board has considered the terms of the merger, including the proposed financing arrangements for the transaction. The Board also has reviewed the proposed structure of the combined organization, including proposals to restructure the current operations of BT Corp, and various commitments made by Deutsche Bank regarding the proposal and the restructuring. In particular, the Board has considered that Deutsche Bank proposes to hold BT Corp and its subsidiaries, including BT Alex. Brown Incorporated (“BT Alex. Brown”), and Deutsche Bank’s U.S. nonbanking operations, through a registered bank holding company located in the United States. In addition, the Board has reviewed confidential examination and other supervisory information assessing the financial and managerial strength of Deutsche Bank and its subsidiaries and of BT Corp and its subsidiaries, including Bankers Trust in particular. Moreover, the Board has reviewed information submitted by Deutsche Bank about the programs that Deutsche Bank and BT Corp have implemented to prepare their systems for the Year 2000 and confidential examination and supervisory information assessing the

managerial resources of Deutsche Bank and BT Corp. The comments included contentions that: (i) Deutsche Bank’s financial resources may be impaired by the Holocaust-related class action lawsuits filed against the bank; (ii) Deutsche Bank has inadequate operating systems and back office arrangements; (iii) BT Corp has made risky investments in Russia and Indonesia and has insufficient risk management policies and programs; (iv) the executive officers of BT Corp receive excessive compensation; and (v) BT Corp’s management has demonstrated inadequacies in its involvement with Delta Funding Corporation, Woodbury, New York (“Delta”). The Board also has considered these comments, as relevant, in reviewing the convenience and needs factor in this case.

organizations' efforts to ensure Year 2000 readiness, both before and after the proposed transaction.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important.¹⁴ The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified in the Board's Capital Adequacy Guidelines. Deutsche Bank's capital ratios exceed the minimum levels that would be required under the Basle Capital Accord, and are considered equivalent to the capital that would be required of a U.S. banking organization. Moreover, the proposed transaction would not materially affect the capital of Deutsche Bank or BT Corp, and is not expected to have a significantly adverse effect on the financial resources of Deutsche Bank. Other financial factors are consistent with approval.

The Board also has carefully considered the managerial resources of Deutsche Bank and BT Corp in light of all the facts of record, including confidential examination and other supervisory information.¹⁵ Based on all the facts of record, the Board concludes that considerations

¹⁴ See Chemical Banking Corporation, 82 Federal Reserve Bulletin 230 (1996).

¹⁵ One commenter alleged that the current management of BT Corp does not include a sufficient number of minorities or women. The racial and gender composition of management are not factors the Board is authorized to consider under the BHC Act.

relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval.¹⁶

Convenience and Needs Factor

The Board also has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including comments received on the effect the proposal would have on the communities to be served by the combined organization.

A. 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 evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's

¹⁶ In reviewing the managerial resources factor, the Board has considered Bankers Trust's recent guilty plea on federal charges relating to the organization's client processing services unit. The Board has taken particular note of BT Corp's cooperation with regulatory authorities in identifying and remedying fraudulent activities, its actions to ensure future compliance with all laws and standards applicable to these activities, and its discipline of individuals responsible for the activities. The Board also has contacted and considered information provided by the U.S. Attorney for the Southern District of New York and other government agencies regarding this matter.

overall record of performance under the CRA by its appropriate federal supervisor.¹⁷

Deutsche Bank currently does not control an institution subject to evaluation under the CRA. The Board has reviewed in detail, however, the CRA performance records of the insured depository institutions of BT Corp. Bankers Trust received an “outstanding” CRA performance rating from the Federal Reserve Bank of New York (“Reserve Bank”) at its most recent examination, as of June 1, 1998 (the “1998 Examination”), and at its previous examination, as of May 28, 1996. In addition, the New York State Banking Department, as of May 29, 1998, rated Bankers Trust’s CRA performance “outstanding” pursuant to section 28-b of New York state banking law. Delaware Bank received a “satisfactory” rating from its appropriate federal supervisor, the Federal Deposit Insurance Corporation (“FDIC”), at its most recent examination for CRA performance, as of January 6, 1998. Florida Bank also received an overall rating of “satisfactory” from its appropriate federal supervisor, the Office of the Comptroller of the Currency (“OCC”), at its most recent evaluation for CRA performance, as of September 9, 1996.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at Bankers Trust, Delaware Bank, or Florida Bank and found no violations of fair lending laws. Examiners also reviewed the assessment areas delineated by the depository institutions and found that

¹⁷ The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution’s CRA record. See 64 Federal Register 23,641 (1999).

such assessment areas were reasonable and did not arbitrarily exclude low- and moderate-income (“LMI”) areas.

B. Community Development Record of Bankers Trust

Bankers Trust is a wholesale banking institution that provides investment banking, global sales and trading, asset management, and financial advisory services to major corporations, financial institutions, governments, and high net worth individuals. As such, Bankers Trust has been evaluated as a “wholesale bank” under the Board’s CRA regulations.¹⁸ Deutsche Bank proposes to continue to operate Bankers Trust as a wholesale bank and to maintain the CRA policies of Bankers Trust. Bankers Trust’s designation as a wholesale bank requires the Board to evaluate the bank’s record of CRA performance under a separate “community development test.”¹⁹ Community development activities as a general matter must benefit areas within an institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s).²⁰

¹⁸ A “wholesale bank” is a bank that (i) is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and (ii) has been designated as a wholesale bank by its appropriate federal supervisor. 12 C.F.R. 228.12(w). In August 1997, the Board designated Bankers Trust as a “wholesale bank” under the CRA.

¹⁹ See 12 C.F.R. 228.25(a). This test evaluates a wholesale bank on its record of community development services, community development investments, and community development lending. 12 C.F.R. 228.25(c). The primary purpose of any service, investment, or loan considered under the test must be “community development,” which is defined in terms of specific categories of activities that benefit LMI individuals, LMI areas, or small businesses or farms. See 12 C.F.R. 228.12(h).

²⁰ Community development activities outside an institution’s assessment area(s) may also be considered if the institution has adequately addressed the
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The 1998 Examination indicated that Bankers Trust's community development loan commitments during the examination period (May 28, 1996, through June 1, 1998) totalled \$137 million, and represented a 49.6 percent increase since the previous examination. Consistent with Bankers Trust's wholesale bank operations, 88 percent of these loans were indirect, i.e., they were made to intermediaries supporting housing and economic development within the bank's assessment area.²¹ Examiners made special mention of Bankers Trust's participation in several innovative lending programs, including Closing Assistance Support for Homebuyers, a joint effort by Neighborhood Housing Services of New York City and a consortium of local banks led by Bankers Trust to provide down payment and closing cost assistance loans to LMI homebuyers, and Global Resources for Affordable Neighborhood Development, a loan pool organized and administered by Bankers Trust that makes funds available, at below market rates, for the construction of new affordable housing units in LMI

needs of its assessment area(s). See 12 C.F.R. 228.25(e).

²¹ One commenter criticized BT Corp for making few home mortgage and small business loans. The Board notes that the CRA does not require an institution to offer any specific credit products but allows an institution to help serve the credit needs of the institution's community by providing credit of the types consistent with the institution's overall business strategy and expertise. As discussed above, Bankers Trust does not engage in the business of extending home mortgage or small business loans, and has been designated a wholesale bank, consistent with the CRA regulations of the banking agencies. Accordingly, its CRA performance is measured by a community development test rather than the traditional lending, investment, and service tests. As noted below, BT Corp's other insured subsidiary banks also have been designated as wholesale banks by their appropriate federal supervisors.

communities. The 1998 Examination also stated that, during the examination period, Bankers Trust received a \$975,000 incentive grant award from the U.S. Treasury's Community Development Financial Institutions Fund as a result of the bank's record of financing projects critically needed in its communities.

The 1998 Examination determined that Bankers Trust had an excellent level of community development investments. Qualified investments totalled \$164 million, a 126 percent increase over the bank's investment levels at the time of the previous examination. Examiners noted, in particular, Bankers Trust's tax credit investments of \$67.6 million in the New York Equity Fund, an investment pool for corporate equity investments supporting low-income housing development.²² Examiners also found that Bankers Trust provided a high level of community development services in its assessment area, including technical assistance, investment advisory services, in-kind donations, and mentoring programs.²³

²² Examiners also noted favorably (i) Bankers Trust's lead \$1 million investment in the Neighborhood 2000 Fund, which will provide support for about 50 nonprofit organizations with annual grants for operating expenses to support housing, economic development, and community building initiatives; and (ii) Bankers Trust's proprietary Microcredit Development Fund, which provides below market rate loans to nonprofit microcredit lending programs worldwide.

²³ The FDIC, which designated Delaware Bank as a wholesale bank on June 17, 1996, found at its most recent CRA examination of Delaware Bank that the bank provided an adequate level of community development loans, investments, and services to its assessment area. The OCC, which designated Florida Bank as a wholesale bank on April 16, 1996, found at its most recent CRA examination of Florida Bank that the bank's level of community development lending, investments, and services to its assessment area was reasonable.

C. Conclusion on Convenience and Needs

The Board has carefully considered all the facts of record,²⁴ including the public comments received, responses to the comments, and reports of examinations of CRA performance of the institutions involved, in reviewing the proposal's effect on the convenience and needs of the communities to be served by the combined organization.²⁵ The Board also

²⁴ One commenter urged the Board to condition approval of the proposal on BT Corp's making certain community reinvestment and other commitments. The Board notes that the CRA requires only that, in considering an acquisition proposal, the Board carefully review the actual record of past performance of the relevant depository institutions in helping to meet the credit needs of their communities. The CRA does not require depository institutions to make pledges of future performance under the CRA. The Board also notes that the future activities of Deutsche Bank's subsidiary banks will be reviewed by the appropriate federal supervisors in future performance examinations, and such CRA performance records will be considered by the Board in any subsequent applications by Deutsche Bank to acquire a depository institution.

²⁵ Several commenters maintained that BT Corp has engaged in discriminatory lending practices as a result of its relationships to certain subprime lenders, including in particular Delta. BT Corp provides trust and custodial services to Delta and other subprime lenders in connection with the securitization of home loans made by such lenders. BT Corp has indicated that (i) neither BT Corp nor any of its subsidiaries has had any involvement in the origination of mortgage loans by Delta; and (ii) BT Corp has no business relationship with Delta other than acting as custodian and trustee in the context of Delta's securitizations. The Board has considered these comments in light of BT Corp's limited role solely as trustee and custodian for the securitization trusts of subprime lenders, and its lack of involvement in originating the underlying loans that are securitized and in developing and monitoring the criteria governing the types of loans that may be securitized. The Board has forwarded a copy of all comments on Delta to the Departments of Justice and Housing and Urban Development and to the Federal Trade Commission, which have responsibility for reviewing

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has carefully considered the effect of the proposed acquisition of BT Corp by Deutsche Bank on the future performance of BT Corp's subsidiary banks under the CRA. In connection with the proposal, Deutsche Bank has indicated that it intends to continue BT Corp's outstanding record of CRA performance.

The Board expects that, after the proposed acquisition by Deutsche Bank, Bankers Trust and BT Corp's other subsidiary banks will demonstrate the same commitment to serving the community development needs of their communities that they have demonstrated to date. Deutsche Bank is a large banking organization with a satisfactory record of complying with U.S. banking regulations, and has financial and managerial resources that are sufficient to ensure compliance by BT Corp's subsidiary banks with all relevant regulatory requirements, including the CRA. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that convenience and needs considerations, including the CRA performance records of BT Corp's subsidiary banks, are consistent with approval of the proposal.²⁶

compliance with the fair lending laws by nonbanking companies.

²⁶ One commenter asserted that BT Corp has not provided sufficient information on the quantity of goods and services it acquires from minority-owned businesses. Although the Board fully supports programs designed to stimulate and create economic opportunities for all members of society, the Board considers the third-party contracting activities of BT Corp to be beyond the scope of the CRA and other relevant banking statutes. A few commenters expressed concern that the proposal would result in the loss of jobs. The effect of a proposed transaction on employment in a community is not among the factors included in the BHC Act, and the convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and Congress to relate to the effect of a proposal on the

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Other Comments on the Proposal

The Board has received several comments from individuals and organizations that expressed concern about certain activities of Deutsche Bank during World War II. The commenters, who included representatives in pending class action lawsuits against Deutsche Bank, generally alleged that the bank, before and during World War II, collaborated with the Nazi regime to confiscate and liquidate Jewish assets, and that the bank financed and controlled other companies that used slave or forced labor. Other commenters expressed concern that the bank may have handled gold stolen by the Nazis. Several commenters alleged that they, or the individuals they represent, had been unsuccessful in attempts to recover assets in World War II-era accounts from Deutsche Bank.

Some commenters urged the Board to investigate these alleged activities and produce a full accounting of any assets wrongfully retained by Deutsche Bank and any profits that the bank realized from companies controlled or financed by it that used slave labor. Others requested that the Board withhold approval of the proposal until the asset conversion and slave labor issues are resolved and appropriate restitution and compensation is made.

Deutsche Bank has provided substantial information about the steps that the bank has taken and is taking to address its activity during World War II.²⁷ In addition to the steps that it previously has taken to

availability and quality of banking services in the community. See Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

²⁷ See Historical Commission Appointed to Examine the History of Deutsche Bank in the Period of National Socialism (Avraham Barkai et al.), (continued...)

address its Holocaust-related activities, Deutsche Bank, along with 12 other German banks, insurers, and nonfinancial corporations, recently proposed the establishment of the Foundation Initiative of German Enterprises: Remembrance, Responsibility and Future (“Foundation Initiative”).²⁸ As proposed, the Foundation Initiative includes a humanitarian fund (the “Fund”) for the benefit of Holocaust victims and a foundation to support projects linked to the Fund’s purpose.²⁹ The Fund is expected to compensate forced and slave laborers and to resolve claims against German banks arising

The Deutsche Bank and Its Gold Transactions during the Second World War (1998) (“Gold Report”); and John Authers & Uta Harnischfeger, Deutsche Admits Auschwitz Link, Fin. Times, Feb 5, 1999. See also Lothar Gall et al., The Deutsche Bank: 1870-1995 (J.A. Underwood et al. trans., 1995) (a comprehensive history of Deutsche Bank commissioned by the bank and compiled by five independent scholars); Jewish Organizations to Receive Proceeds of Deutsche Bank Gold Sale, The Week in Germany, March 27, 1998.

²⁸ See the statement, dated February 16, 1999, released by the 13 German organizations that proposed the Foundation Initiative to the German Chancellor (“Joint Statement”).

One commenter stated that persons with disabilities should not be excluded from Holocaust reparations and argued that Deutsche Bank should make a commitment to disabled victims of the Holocaust as a condition of its acquisition of BT Corp. Although the Joint Statement does not specify categories of claimants or specifically address the rights of the disabled, the Joint Statement does state that its paramount goal is “to provide cooperative, fair, unbureaucratic and above all prompt assistance to Nazi victims.” The Joint Statement evinces no intent to exclude any category of Holocaust survivors from receiving reparations.

²⁹ See Joint Statement. The Board also notes that the German companies involved in establishing the Foundation Initiative intend to finalize arrangements and begin making payments from the Fund by September 1, 1999. Id.

from their conversion of Jewish assets and their handling of World War II-era bank accounts.³⁰

The Board sought the views of the State Department on current German efforts to address Holocaust-related issues. Although it took no position on the merits of the subject proposal, the State Department noted that it has sought to expedite resolution of Holocaust-era claims and has supported the Foundation Initiative. The State Department also indicated that it has supported Deutsche Bank's continuing efforts to conduct a historical review of the bank's activities under the Nazi regime. The State Department further noted that sanctions against German banks are not justified and would only retard progress on Holocaust-related issues.³¹

³⁰ See Letter dated March 25, 1999, from Ambassador Stuart Eizenstat, Under Secretary of State for Economic, Business, and Agricultural Affairs, United States Department of State, to Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System. Deutsche Bank publicly has denied that it used slave labor during the Holocaust era. See Suing for Reparations, Balt. Sun, Jan. 17, 1999, at 1D; see also Reuters, Deutsche Bank Pressed for Big Sums in Holocaust Talks, Feb. 8, 1999. Moreover, Deutsche Bank made reparations to slave laborers who worked for a company that the bank purchased in 1985. See U.P.I. Foreign News Briefs, December 26, 1985.

³¹ The Comptroller of the City of New York originally informed the Board of his view that Deutsche Bank's proposal should not be approved until all interested parties agreed on a structure to settle all Holocaust-era claims. Based on recent progress toward negotiation of a final settlement of outstanding Holocaust-era issues, however, the Comptroller withdrew his original objection and indicated that the Board should base its decision exclusively on the proposal's impact on the banks, the public, and the financial community.

The Board has carefully reviewed the issues presented by the commenters in light of all the facts of record, including the information received from the State Department, and in light of the Board's authority under the federal banking laws. To the extent that the matters raised by commenters relate to the factors that the Board is authorized to consider, the Board has considered, in particular, the past efforts of Deutsche Bank to investigate and address its Holocaust involvement, and the forthcoming and ongoing efforts of current management to resolve these matters. The Board also has taken into account that many of the matters raised by the commenters involve subjects of public concern that are not within the Board's limited jurisdiction to adjudicate or do not relate to the factors that the Board may consider when reviewing an application or notice under the BHC Act.³² For these reasons, and based on all the facts of record, the Board concludes that the Holocaust-related matters presented by commenters do not warrant denial of the proposal.

Other Supervisory Considerations

Under section 3 of the BHC Act, the Board may not approve an application involving a foreign bank unless the bank is "subject to comprehensive supervision or regulation on a consolidated basis by the

³² The factors that the Board may consider when reviewing an application or notice under the BHC Act are limited by the Act. Moreover, the Board previously has noted and the courts have held that the Board's limited jurisdiction to review applications and notices under the BHC Act does not authorize the Board to adjudicate disputes involving an applicant that do not arise under laws administered and enforced by the Board. See Union Bank of Switzerland, 84 Federal Reserve Bulletin 684 (1998); Norwest Corporation, 82 Federal Reserve Bulletin 580 (1996); see also Western Bancshares v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

appropriate authorities in the bank's home country.”³³ The Board previously has determined, in applications under the International Banking Act (12 U.S.C. § 3101 et seq.) (“IBA”) and the BHC Act, that certain German commercial banks were subject to comprehensive consolidated supervision by their home country authorities.³⁴ In this case, the Board has determined that Deutsche Bank is supervised on substantially the same terms and conditions as the other German banks.³⁵ Based on all the facts of record, the Board has concluded that Deutsche Bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.

The BHC Act also requires the Board to determine that the foreign bank has provided adequate assurances that it will make available to

³³ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. 12 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank may be considered subject to consolidated supervision if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank, including the relationships of the bank to its affiliates, to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 C.F.R. 211.24(c)(1)(ii).

³⁴ See Commerzbank AG, 85 Federal Reserve Bulletin 336 (1999); Sudwestdeutsche Landesbank Girozentrale, 83 Federal Reserve Bulletin 937 (1997); West Merchant Bank Limited, 81 Federal Reserve Bulletin 519 (1995).

³⁵ A commenter contended that the failure of German bank regulators to address Deutsche Bank's Holocaust-related activities calls into question the determinations under the Foreign Bank Supervision Enhancement Act that the Board must make in this case.

the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. The Board has reviewed the restrictions on disclosure in jurisdictions where Deutsche Bank has material operations and has communicated with relevant government authorities concerning access to information. Deutsche Bank has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of Deutsche Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. Deutsche Bank also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary in order to enable Deutsche Bank to make any such information available to the Board. In light of these commitments and other facts of record, the Board has concluded that Deutsche Bank has provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

Nonbanking Activities

Deutsche Bank also has filed notice under section 4(c)(8) of the BHC Act to acquire the nonbank subsidiaries of BT Corp. Deutsche Bank has proposed to hold these nonbank subsidiaries, in particular BT Alex. Brown, through a U.S. company that will be a registered bank holding company. Through these subsidiaries, Deutsche Bank would engage in a number of nonbanking activities, including lending activities, activities related to extending credit, leasing activities, performing trust company functions, providing investment and financial advisory services, providing

securities brokerage, private placement, riskless principal, futures commission merchant, and other agency transactional services, investing and trading activities, community development activities, data processing and transmission activities, underwriting and dealing to a limited extent in debt and equity securities, and providing administrative services to open-end investment companies (“mutual funds”).³⁶ The Board has determined by regulation or order that the types of activities for which notice has been provided are closely related to banking for purposes of section 4(c)(8) of the BHC Act.³⁷ Deutsche Bank has committed that it will conduct these activities in accordance with the Board’s regulations and in accordance with the orders approving these activities for BT Corp.

³⁶ BT Corp is currently engaged in providing investment advisory, brokerage, administrative, and other services to mutual funds. See Bankers Trust New York Corporation, 83 Federal Reserve Bulletin 780 (1997) (“BT/Alex. Brown”). Deutsche Bank proposes to continue providing such services to mutual funds and has proposed interlocks that are consistent with the limitations established by the Board in previous orders. See, e.g., Travelers Group Inc., 84 Federal Reserve Bulletin 985 (1998).

³⁷ See 12 C.F.R. 225.28(b)(1), (2), (3), (5), (6), (7), (8)(i) and (ii), (12), and (14); J.P. Morgan & Co. Inc., et al., 75 Federal Reserve Bulletin 192 (1989), aff’d sub nom. Securities Industry Ass’n v. Board of Governors of the Federal Reserve System, 900 F.2d 360 (D.C. Cir. 1990) (“J.P. Morgan”); Citicorp, 73 Federal Reserve Bulletin 473 (1987), aff’d sub nom. Securities Industry Ass’n v. Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988) (“Citicorp”) (underwriting and dealing, to a limited extent, in all types of securities); Mellon Bank Corporation, 79 Federal Reserve Bulletin 626 (1993), and Commerzbank AG, 83 Federal Reserve Bulletin 678 (1997) (“Commerzbank”) (providing administrative services to mutual funds).

A. Bank-Ineligible Securities Activities

Deutsche Bank currently is engaged in underwriting and dealing in bank-ineligible securities, to a limited extent, through Deutsche Bank Securities Inc. (“DBSI”).³⁸ BT Corp also currently is engaged in underwriting and dealing in bank-ineligible securities, to a limited extent, through BT Alex. Brown.³⁹ Deutsche Bank intends to make BT Alex. Brown a wholly owned subsidiary of DBSI on or immediately after consummation of the proposal and to merge BT Alex. Brown with and into DBSI as soon as practicable thereafter. DBSI and BT Alex. Brown are, and after consummation of the proposal will continue to be, registered as broker-dealers with the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) and members of the National Association of Securities Dealers, Inc. (“NASD”). Accordingly, DBSI and BT Alex. Brown are, and will continue to be, subject to the record-keeping and reporting obligations, fiduciary standards, and other requirements of the Securities Exchange Act of 1934, the SEC, and the NASD.

The Board has determined that, subject to the framework of prudential limitations established in previous decisions to address the potential for conflicts of interests, unsound banking practices, or other adverse effects, underwriting and dealing in bank-ineligible securities is so closely related to banking as to be a proper incident thereto within the

³⁸ See Deutsche Bank AG, 79 Federal Reserve Bulletin 133 (1993).

³⁹ See BT/Alex. Brown.

meaning of section 4(c)(8) of the BHC Act.⁴⁰ The Board also has determined that underwriting and dealing in bank-ineligible securities is consistent with section 20 of the Glass-Steagall Act (12 U.S.C. § 377), provided that the company engaged in the activities derives no more than 25 percent of its gross revenues from underwriting and dealing in bank-ineligible securities over a two-year period.⁴¹ Deutsche Bank has committed that, after consummation of the proposal, DBSI and BT Alex. Brown will conduct their bank-ineligible securities underwriting and dealing activities subject to the 25-percent revenue limitation and the prudential limitations previously established by the Board,⁴² and this order is conditioned on

⁴⁰ See J.P. Morgan; Citicorp; as modified by Review of Restrictions on Director, Officer and Employee Interlocks, Cross-Marketing Activities, and the Purchase and Sale of Financial Assets Between a Section 20 Subsidiary and an Affiliated Bank or Thrift, 61 Federal Register 57,679 (1996); Amendments to Restrictions in the Board's Section 20 Orders, 62 Federal Register 45,295 (1997); and Clarification to the Board's Section 20 Orders, 63 Federal Register 14,803 (1998) (collectively, "Section 20 Orders").

⁴¹ See Section 20 Orders. Compliance with the revenue limitation shall be calculated in accordance with the method stated in the Section 20 Orders, as modified by Order Approving Modifications to the Section 20 Orders, 75 Federal Reserve Bulletin 751 (1989); 10 Percent Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities, 61 Federal Register 48,953 (1996); and Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities, 61 Federal Register 68,750 (1996) (collectively, "Modification Orders").

⁴² As noted above, Deutsche Bank intends to merge BT Alex. Brown with and into DBSI as soon as practicable after consummation of the proposal. Until that merger occurs, both DBSI and BT Alex. Brown will be independently subject to the 25-percent revenue limitation on underwriting and dealing in bank-ineligible securities. See Citicorp at 486 n.5.

compliance by Deutsche Bank with the revenue restriction and the Operating Standards established for section 20 subsidiaries.⁴³

The Board also has reviewed the capitalization of Deutsche Bank, DBSI, and BT Alex. Brown in light of the standards set forth in the Section 20 Orders. The Board finds the capitalization of each to be consistent with approval of the proposal. The Board's determination is based on all the facts of record, including the projections of the volume of bank-ineligible securities underwriting and dealing activities to be conducted by DBSI and BT Alex. Brown.⁴⁴

B. Proper Incident Considerations

In order to approve the notice, the Board also must determine that the acquisition of the nonbank subsidiaries of BT Corp and the

⁴³ 12 C.F.R. 225.200. DBSI and BT Alex. Brown each may provide services that are necessary incidents to the proposed bank-ineligible securities underwriting and dealing activities. Unless DBSI or BT Alex. Brown receives specific approval under section 4(c)(8) of the BHC Act to conduct the incidental activities independently, any revenues from such activities must be treated as ineligible revenues subject to the Board's revenue limitation.

⁴⁴ In connection with its 1997 acquisition of Alex. Brown Incorporated, BT Corp committed to conform the activities and investments of Alex. Brown and its subsidiaries to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y within two years of acquiring Alex. Brown. See BT/Alex. Brown. Deutsche Bank now has requested a one-year extension of this conformance period, until September 1, 2000. Based on the good faith efforts made by BT Corp to fulfill the commitment, the additional restructuring options that would be made available to BT Corp by the Deutsche Bank acquisition, and the other facts of record, the Board has determined to approve this request for a one-year extension of the BT/Alex. Brown conformance period.

performance of the proposed activities by Deutsche Bank 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.

Deutsche Bank has indicated that the proposed transaction would allow the combined organization to reduce costs and realize revenue synergies by cutting back overlapping operations and blending complementary operations of Deutsche Bank and BT Corp. Deutsche Bank also has stated that the proposal would allow it to benefit from economies of scale in certain business lines, and that the acquisition would enable the combined organization to serve better the convenience and needs of its customers and communities. In addition, Deutsche Bank has indicated that the acquisition of BT Corp would assist Deutsche Bank in maintaining a well-balanced revenue stream and a broad capital base and, accordingly, would increase the financial stability of the combined organization.

In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

The Board has carefully considered the competitive effects of the proposed transaction under section 4 of the BHC Act. To the extent that Deutsche Bank and BT Corp offer different types of nonbanking products, the proposed acquisition would result in no loss of competition. Certain nonbanking subsidiaries of Deutsche Bank and BT Corp do compete,

however, in commercial lending, investment advisory, asset management, securities brokerage, private placement, and securities underwriting and dealing activities. The markets for each of these nonbanking activities are regional or national in scope. The record in this case indicates that there are numerous providers of these services and that the markets for these nonbanking services are unconcentrated. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition.

The Board also believes that the conduct of the proposed nonbanking activities within the framework established in this order, prior orders, and Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would not be outweighed by the public benefits of the proposal, such as increased customer convenience and gains in efficiency.

Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act is favorable and consistent with approval.

Deutsche Bank also has provided notice under section 25A of the Federal Reserve Act and sections 211.4 and 211.5 of Regulation K (12 C.F.R. 211.4 and 211.5) to acquire BT Corp's companies organized under section 25A of the Federal Reserve Act. The Board concludes that all the factors required to be considered under the Federal Reserve Act, the

BHC Act, and the Board's Regulation K are consistent with approval of the proposal.⁴⁵

Conclusion

Based on the foregoing, the Board has determined that the transaction should be, and hereby is, approved.⁴⁶ In reaching its conclusion,

⁴⁵ Bankers Trust controls an amount of shares of a non-U.S. company that, when aggregated with shares controlled by Deutsche Bank in the same company, would make this investment impermissible on consummation of the proposal. Deutsche Bank has committed to conform this investment to the requirements of Regulation K within six months of consummation of the proposal.

⁴⁶ Four commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

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

(continued...)

the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act and other applicable statutes.⁴⁷ The Board's approval is specifically conditioned on compliance by Deutsche Bank with all the commitments made in connection with this application and notice, including the commitments discussed in this order, and the conditions set forth in this order and the above-noted Board regulations and orders. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such

proposal are denied.

⁴⁷ A number of commenters requested that the Board delay action or extend the comment period on the proposal until (i) pending Holocaust-related lawsuits against Deutsche Bank and other Holocaust-related issues are resolved; (ii) Deutsche Bank makes certain CRA and diversity commitments; and (iii) Deutsche Bank submits additional information regarding the acquisition and its plans for BT Corp. The requests for delay do not warrant postponement of the Board's consideration of the proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and considerable public comment. In the Board's view, for the reasons discussed above, commenters have had ample opportunity to submit their views, and, in fact, have provided substantial written submissions that have been considered carefully by the Board in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board concludes that the record in this case is sufficient to warrant Board action at this time, and that further delay of consideration of the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision, and, as such, may be enforced in proceedings under applicable law. Underwriting and dealing in any manner other than as approved in this order and the Section 20 Orders (as modified by the Modification Orders) is not within the scope of the Board's approval and is not authorized for Deutsche Bank.

The acquisition of BT Corp's subsidiary banks may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,⁴⁸ effective May 20, 1999.

Robert deV. Frierson
Associate Secretary of the Board

⁴⁸ Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Meyer, Ferguson, and Gramlich.

APPENDIX

Nonbanking Activities of Bankers Trust Corporation

- (1) extending credit and servicing loans, in accordance with section 225.28(b)(1) of the Board's Regulation Y (12 C.F.R. 225.28(b)(1));
- (2) activities related to extending credit, in accordance with section 225.28(b)(2) of the Board's Regulation Y (12 C.F.R. 225.28(b)(2));
- (3) providing leasing services, in accordance with section 225.28(b)(3) of Regulation Y (12 C.F.R. 225.28(b)(3));
- (4) performing trust company functions, in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5));
- (5) providing investment and financial advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6));
- (6) providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, in accordance with section 225.28(b)(7) of Regulation Y (12 C.F.R. 225.28(b)(7));
- (7) underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. §§ 335 and 24(7), and investing and trading activities, in accordance with section 225.28(b)(8)(i) and (ii) of Regulation Y (12 C.F.R. 225.28(b)(8)(i) and (ii));
- (8) community development activities, in accordance with section 225.28(b)(12) of Regulation Y (12 C.F.R. 225.28(b)(12));
- (9) data processing and transmission activities, in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14));

(10) underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open-end investment companies, in accordance with previous Board decisions (see Bankers Trust New York Corporation, 83 Federal Reserve Bulletin 780 (1997)); and

(11) providing administrative services to open-end investment companies (“mutual funds”), in accordance with previous Board decisions (see Mellon Bank Corporation, 79 Federal Reserve Bulletin 626 (1993), and Commerzbank AG, 83 Federal Reserve Bulletin 678 (1997)).