

For immediate release

August 30, 1999

The Federal Reserve Board today announced its approval of the proposal of AmSouth Bancorporation, Birmingham, Alabama, to merge with First American Corporation, Nashville, Tennessee, and thereby acquire its subsidiary bank, First American National Bank, and its nonbank subsidiaries, including First American Federal Savings Bank, all in Nashville, Tennessee.

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

Attachment

FEDERAL RESERVE SYSTEM

AmSouth Bancorporation
Birmingham, Alabama

Order Approving the Merger of Bank Holding Companies

AmSouth Bancorporation (“AmSouth”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to merge with First American Corporation (“First American”), and thereby acquire First American’s only subsidiary bank, First American National Bank (“FANB”), Nashville, Tennessee. AmSouth 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 First American’s nonbanking subsidiaries, First American Federal Savings Bank (“FA-FSB”) and First American Community Development Corporation, both in Nashville, Tennessee.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 36,875 (1999)). The time for filing comments has expired, and the Board

¹ Under the proposal, First American would merge with a newly formed, wholly owned subsidiary of AmSouth and, shortly thereafter, this subsidiary would merge into AmSouth, with AmSouth surviving the transactions. AmSouth and First American also each have requested the Board’s approval to hold and exercise an option to acquire up to 19.9 percent of the other’s voting shares. These options would expire on consummation of the proposed merger.

has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

AmSouth, with total consolidated assets of \$19.9 billion, is the 43rd largest commercial banking organization in the United States, controlling less than 1 percent of the total assets of insured commercial banks in the United States (“total banking assets”).² AmSouth is the third largest depository institution in Alabama, controlling deposits of \$6.9 billion, representing approximately 13.6 percent of total deposits in depository institutions in the state.³ AmSouth’s subsidiary bank also operates in Florida, Georgia, and Tennessee, and AmSouth engages in a number of permissible nonbanking activities.

First American, with total consolidated assets of \$20.7 billion, is the 41st largest commercial banking organization in the United States, controlling less than 1 percent of total banking assets. First American is the second largest depository institution in Tennessee, controlling deposits of \$9 billion in the state, representing approximately 13.7 percent of total deposits in depository institutions in the state. First American’s subsidiary depository institutions also operate in Arkansas, Georgia, Kentucky, Louisiana, Mississippi, and Virginia.

After consummation of the proposal, AmSouth would become the 22nd largest commercial banking organization in the United States, with

² All data used for purposes of calculating nationwide rankings are as of December 31, 1998. All other banking data are as of June 30, 1998, and have been adjusted to account for mergers consummated since that date.

³ In this context, depository institutions include commercial banks, savings banks, and savings associations.

total consolidated assets of \$40.6 billion, representing less than 1 percent of total banking assets. After consummation, AmSouth's subsidiary insured depository institutions would operate in nine states.

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 such bank holding company if certain conditions are met.⁴ For purposes of the BHC Act, the home state of AmSouth is Alabama, and AmSouth proposes to acquire FANB, which is located in Arkansas, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee.⁵ All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁶ In light of all the facts of record, the

⁴ See 12 U.S.C. § 1842(d). A bank holding company's home state is the 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.

⁵ For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. §§ 1842(d)(1)(A) and (2)(B) and 1841(o)(4), (5), (6), and (7).

⁶ 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). AmSouth meets the capital and managerial requirements established under applicable law. FANB also has been in existence and operated for the minimum period of time required by applicable state law. On consummation, AmSouth 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, or the appropriate percentage established by applicable state law, of total deposits held by insured depository institutions in Georgia and Tennessee, the states in which AmSouth and First American both operate insured depository institutions. See Ga. Code Ann. § 7-1-622(b); Tenn. Code

Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Factors

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or be in furtherance of a monopoly. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal in that banking market 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.⁷

AmSouth and First American compete directly in the Cleveland, Nashville, and Rhea County banking markets, all in Tennessee, and the Chattanooga banking market, in Tennessee and Georgia.⁸ The

Ann. § 45-2-1404. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

⁷ See 12 U.S.C. § 1842(c).

⁸ The Cleveland banking market is defined as Bradley County, and the towns of Benton and Ocoee in Polk County, all in Tennessee. The Nashville banking market is defined as the counties of Cheatham, Davidson, Robertson, Rutherford, Sumner, Williamson, and Wilson, all in Tennessee. The Rhea County banking market is defined as Rhea County, Tennessee. The Chattanooga banking market is defined to include Hamilton and Marion Counties in Tennessee (excluding the town of Monteagle in Marion County), and Catoosa, Dade, and Walker Counties in Georgia.

The Board notes that AmSouth has withdrawn its request that the Chattanooga banking market be expanded to include Rhea County. Accordingly, the Board has considered the Chattanooga and Rhea County banking markets as separate markets in reviewing the competitive effects of

Board has carefully reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including the number of competitors that would remain in the market, the share of total deposits in depository institutions in the market (“market deposits”) controlled by each competitor in the market,⁹ the concentration level of market deposits in the market and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”),¹⁰ and other characteristics of the markets.

the proposal and has treated comments challenging the proposed expansion of the Chattanooga banking market to include Rhea County as moot.

⁹ Market share data are based on calculations that include the deposits of thrift institutions, which include savings banks and savings associations, weighted at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift 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). FA-FSB operates a branch in the Chattanooga banking market. Because FA-FSB is, and would continue to be, controlled by a bank holding company, the thrift’s deposits have been included in the calculation of market shares on a 100-percent weighted basis.

¹⁰ Under the Department of Justice Merger Guidelines (“DOJ Guidelines”), 49 Federal Register 26,923 (June 29, 1984), a market in which the post-merger HHI is more than 1800 is considered to be highly concentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in the Cleveland and Nashville banking markets in Tennessee, and the Chattanooga banking market in Tennessee and Georgia.¹¹ Each of these banking markets would remain moderately concentrated after consummation of the proposal and numerous competitors would remain in each market relative to the size of the market.

Consummation of the proposal in the Rhea County banking market, without divestitures, would exceed the DOJ Guidelines as measured by the HHI. AmSouth is the third largest depository institution in the Rhea County banking market, controlling deposits of \$47.5 million, representing approximately 20.5 percent of market deposits. First American is the second largest depository institution in the market, controlling deposits of \$65.3 million, representing approximately 28.2 percent of market deposits.

To mitigate the potential anticompetitive effects of the proposal in the Rhea County banking market, AmSouth has committed to divest one branch of First American, which currently controls approximately \$41.4 million in deposits.¹² After accounting for the proposed divestiture,

the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹¹ The competitive effects of the proposal in these three banking markets are summarized in the Appendix.

¹² AmSouth has committed to execute, before consummation of the proposal, an agreement to sell the relevant branch to an out-of-market commercial banking organization that is competitively suitable to the Board and to complete the proposed divestiture within 180 days of consummation of the proposal. AmSouth also has committed that, if it is unsuccessful in

consummation of the transaction would result in AmSouth controlling approximately 30.6 percent of market deposits in the Rhea County banking market, and AmSouth would become the largest depository institution in the market. A new competitor would control approximately 18 percent of market deposits, and would become the third largest depository institution in the market. In light of the proposed divestiture, the HHI in the Rhea County banking market would increase by 50 points to 3901, and consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines.

The Board has sought and considered the views of the Department of Justice regarding the competitive effects of the proposal in each relevant banking market, including Rhea County. Based on all the facts of record, including the proposed branch divestiture in Rhea County, 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 banking markets in which AmSouth and First American now compete or any other relevant banking market.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act also requires that the Board consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal and certain other supervisory factors. The

completing the divestiture within the 180-day period, it will transfer the unsold branch to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the branch promptly to an alternative purchaser acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

Board has carefully considered the financial and managerial resources and future prospects of AmSouth, First American, and their respective subsidiary banks and other supervisory factors in light of all the facts of record, including comments received on the proposal,¹³ reports of examination and other confidential supervisory information assessing the financial and managerial resources of the organizations, and financial information provided by AmSouth. The Board notes that AmSouth and First American and their subsidiary depository institutions currently are well capitalized and are expected to remain so on consummation of the proposal. Based on these and all the other facts of record, the Board concludes that the financial and managerial resources and future prospects of AmSouth, First American, and their subsidiary banks are consistent with approval, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.¹⁴

¹³ These comments include submissions (i) contending that AmSouth and First American improperly terminated employees in anticipation of receiving Board approval of the proposal, and (ii) citing reports that, in 1959, a branch employee of a bank subsequently acquired by First American notified certain Mississippi public officials that a local chapter of the National Association for the Advancement of Colored People had opened a deposit account with the bank. AmSouth has indicated that First American independently determined to discontinue certain operations in light of the proposed merger and in furtherance of previously initiated business reorganizations and the record does not support a finding that AmSouth exercised a controlling influence over First American regarding this or any other management decision or policy. AmSouth also has indicated that the branch employee responsible for the 1959 incident is no longer with First American.

¹⁴ Certain commenters criticized the manner in which the management of AmSouth or First American handled loan, banking, and other financial

Convenience and Needs Factor

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effect of the proposal on the convenience and needs of the communities to be served. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”). Accordingly, the Board has carefully considered the effect of the proposed merger on the convenience and needs of the communities to be served and the CRA records of performance of the institutions involved in light of all the facts of record, including comments received on the proposal.

Approximately 54 interested persons submitted comments either supporting the proposal or commenting favorably on the CRA-related activities of AmSouth or First American. Some of these commenters commended AmSouth or First American for providing loans, investments, technical assistance, or other forms of support to community development and nonprofit organizations in their local communities. Others commented

service transactions in individual cases. These comments included allegations of improper treatment by First American and its predecessors arising from a 1984 loan transaction that has been the subject of three separate judicial proceedings, each of which has been resolved in favor of First American. Some of the other transactions mentioned by commenters also have been the subject of suits that were judicially resolved in favor of AmSouth or First American, or are the subject of litigation that remains pending with no adjudication of wrongdoing on the part of AmSouth or First American. The Board has considered these comments in light of all the facts of record in reviewing the managerial and convenience and needs factors, and has forwarded those comments relating to FANB to the Office of the Comptroller of the Currency, the bank’s appropriate federal supervisor.

favorably on AmSouth's announced \$3.5 billion, five-year lending and community development pledge, which would include formation of a new AmSouth Community Development Corporation.¹⁵

Two commenters opposed the proposal, alleging that AmSouth and First American have inadequate records of meeting the banking and credit needs of the communities they serve, particularly in areas with predominantly low- and moderate-income ("LMI") and minority populations.¹⁶ Commenters opposing the proposal also alleged, on the basis of individual customer transactions or housing-related lending data submitted by AmSouth and First American under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) ("HMDA"), that AmSouth and First American have violated the fair lending laws.¹⁷

¹⁵ This pledge includes a \$2 billion goal for small business lending in low- and moderate-income areas, and a \$1.5 billion goal for housing-related loans to low- or moderate-income individuals or in low- or moderate-income areas. The proposed new community development organization would provide homeownership counseling programs and technical assistance to nonprofit organizations that support affordable housing, small businesses, or community development.

¹⁶ The commenters that opposed the proposal were Inner City Press/Community on the Move and Inner City Public Interest Law Center, Bronx, New York, and Citizens Against Legal Abuse, Inc., New Orleans, Louisiana.

¹⁷ One commenter submitted information contending that AmSouth has discriminated against minorities in its hiring practices and placement of personnel. The racial composition of an applicant's workforce is not a factor the Board is permitted to consider in acting on an application under the BHC Act. The Board notes that the Equal Employment Opportunity Commission ("EEOC") has jurisdiction to determine whether banking organizations such as AmSouth and AmSouth Bank are in compliance with federal equal

A. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations of the CRA performance records of the relevant depository institutions by the appropriate federal financial supervisory agency.¹⁸ AmSouth's only subsidiary bank, AmSouth Bank, Birmingham, Alabama, received a "satisfactory" rating at its most recent CRA performance examination by the Federal Reserve Bank of Atlanta, as of September 1998. In addition, FANB, which accounts for approximately 97 percent of First American's total consolidated assets, received a "satisfactory" rating at its most recent CRA performance examination by the Office of the Comptroller of the Currency ("OCC"), as of July 1998. FA-FSB also received a "satisfactory" rating from the Office of Thrift Supervision ("OTS") at its most recent CRA performance examination, as of August 1998.

AmSouth has indicated that it does not expect to implement significant changes in the products or services of First American and that the CRA-related programs and activities of the combined organization would be based on the current programs of the two individual organizations.

employment opportunity statutes under the regulations of the Department of Labor. See 41 C.F.R. 60-1.7(a), 60-1.40. Accordingly, the Board has forwarded commenter's contentions to the EEOC for consideration.

¹⁸ The Interagency Questions and Answers Regarding Community Reinvestment provides that an institution's most recent CRA performance evaluation is an important and often controlling factor in the consideration of an institution's CRA record because it represents a detailed evaluation of the institution's overall record of performance under the CRA by its appropriate federal banking supervisor. 64 Federal Register 23,618 and 23,641 (1999).

Consequently, the Board has carefully considered the CRA performance records of AmSouth and First American in evaluating the proposal.

B. CRA Performance Record of AmSouth

In the 1998 examination of AmSouth Bank, examiners found that the bank offered a variety of loan products designed to meet the credit needs of its local communities, including fixed- and adjustable-rate mortgage loans, Federal Housing Administration and Veterans Administration loans, business loans of varying types and duration, and consumer loans. Examiners favorably commented on the bank's use of innovative and flexible lending programs to assist in meeting the credit needs of its communities, including LMI borrowers. These programs included the AmSouth Affordable Housing Program, which required only a 3-percent down payment, allowed higher debt-to-income ratios than typically accepted, and permitted waivers of private mortgage insurance requirements. AmSouth Bank originated more than 500 loans, totaling approximately \$27 million, under this program from January 1, 1997, through August 27, 1998.¹⁹ The bank also participated in the Federal National Mortgage Association Community Home Buyer's Program, a low down payment mortgage product designed for LMI individuals.

Examiners found that AmSouth Bank solicited loan applications from all segments of its communities, including LMI

¹⁹ Examiners also noted that the AmSouth Affordable Housing Program loans were marketed by community lending officers of the bank to real estate professionals who assisted LMI individuals in purchasing a home. Six of the bank's community lenders were located in each of the following communities: Birmingham, Alabama; Tampa, St. Petersburg, and Pensacola, Florida; and Chattanooga and Nashville, Tennessee.

neighborhoods, and that a high percentage of the bank's loan originations were within the bank's assessment areas, which included portions of Alabama, Florida, Georgia, and Tennessee.²⁰ Examiners concluded that the bank had performed well in lending to borrowers of different income levels, and that the distribution of the bank's lending activity in census tracts of different income levels was adequate. In addition, examiners found that the bank's branches were reasonably distributed throughout its communities, including LMI neighborhoods.

Examiners also found that AmSouth Bank had assisted in meeting the credit needs of small businesses in its local communities, and that the bank's small business lending was well distributed among businesses of different sizes. The bank made more than 7,800 small business loans, totaling approximately \$548 million, during the assessment period, and approximately 85 percent of the number and 36 percent of the total dollar amount of these loans were made to businesses with total annual revenues of \$100,000 or less.²¹ Examiners noted that approximately 20 percent of the bank's small business loan originations were in LMI census tracts.

The 1998 CRA performance examination also found that AmSouth Bank had a strong record of community development investments

²⁰ For example, examiners found that more than 90 percent of the number and dollar amount of the bank's home purchase, home improvement, home refinancing, and small business loans were made within the bank's assessment areas.

²¹ The assessment period for the 1998 examination of AmSouth Bank was January 1, 1997, to June 30, 1998.

and a high level of community development loans. Examiners noted that AmSouth Bank made community development investments totaling approximately \$12 million during the assessment period, and held an additional 14 qualified community development investments, totaling approximately \$18 million. Examiners also noted that the bank made 18 qualified community development loans, totaling approximately \$44.5 million, during the assessment period that assisted in providing housing for more than 1,100 LMI families. AmSouth Bank's community development loans included a \$9.45 million loan to construct a 252-unit apartment project in Orlando, Florida, that qualified for low-income housing tax credits and a \$5.1 million loan for the construction and development of four apartment complexes in Albertville, Alabama, under the Alabama Housing Finance Authority HOME Program.

C. CRA Performance Record of First American

Examiners at the most recent CRA performance examination of FANB found that the bank offered a wide variety of products to address the credit and banking needs of its communities, including LMI individuals and communities. FANB originated more than 17,900 HMDA-reportable loans, totaling approximately \$1.23 billion, and more than 11,700 small business loans, totaling approximately \$600 million, in its assessment areas during the examination period.²² Examiners reviewed the distribution of the bank's lending in its assessment areas and concluded that the bank's lending was

²² The 1998 examination of FANB reviewed the bank's activities during 1996, 1997, and the first quarter of 1998. During this period, the bank's assessment area consisted of Tennessee and certain areas of Kentucky and Virginia.

reasonably distributed among geographies and individuals with different income levels area including LMI neighborhoods and individuals.

Examiners at the 1998 examination favorably noted that FANB offered two mortgage products that used flexible underwriting criteria and that were designed for LMI borrowers. FANB made 1,571 loans, totaling approximately \$46.5 million, under these flexible mortgage programs during the assessment period in Tennessee, Kentucky, and Virginia. Examiners also noted that FANB offered a consumer loan product designed for LMI individuals, which permitted debt-to-income ratios that were higher than normal and alternative sources of credit verification.²³

In addition, the 1998 examination found that FANB had demonstrated a strong commitment to lending to small businesses located in LMI areas. Examiners favorably noted that 38 percent of the bank's small business loans in the Knoxville, Tennessee, Metropolitan Statistical Area ("MSA") were originated in LMI areas, and 32 percent of the bank's small business loans in the Nashville, Tennessee, MSA were originated in LMI areas. These percentages exceeded the respective percentage of small businesses located in LMI census tracts in each of these MSAs.

Furthermore, examiners concluded that FANB had demonstrated an excellent record of community development lending and investments within its assessment areas. During the assessment period, FANB originated more than 30 community development loans in Tennessee,

²³ The 1998 examination also noted that FANB offered special checking accounts with lower minimum balances and monthly fees for small businesses and LMI individuals.

totaling approximately \$21.3 million,²⁴ and nine community development loans, totaling approximately \$2.5 million, in Kentucky. These loans included a \$1.2 million loan to a nonprofit organization in Knoxville to renovate a 32-unit assisted living facility for low-income senior citizens, and a \$1.2 million loan to a housing development agency to develop low-income census tracts in Nashville.

During the assessment period, FANB also made community development investments totaling approximately \$30 million in Tennessee, and \$2.5 million in Kentucky. Examiners noted that the largest of these investments was an innovative and complex investment, which involved the securitization of a portion of the bank's portfolio of affordable mortgage loans and the subsequent swap of these securities for securities issued by the Federal Home Loan Bank Board and backed by affordable mortgages originated throughout Tennessee. The bank's other community development investments included an investment of \$250,000 in 1996 in a Nashville area loan pool that provided downpayment and closing-costs assistance to qualified LMI borrowers. The bank also purchased \$707,000 in low-income housing tax credits to finance the construction of 24 units of affordable housing in Bowling Green, Kentucky.²⁵

²⁴ Of this amount, approximately \$12.9 million was originated in the Nashville MSA, and \$2.4 million was originated in the Knoxville MSA.

²⁵ AmSouth has stated that First American recently made a \$1 million investment in the Enterprise Corporation of the Delta, which provides capital, education, and technical support to emerging and expanding small businesses throughout the Mississippi delta region.

Examiners found that FANB's branches and alternative delivery systems were accessible to all portions of the bank's communities. Examiners noted that approximately 22 percent of the bank's branches in Tennessee were located in LMI census tracts, which approximated the percentage of census tracts in the state that were LMI census tracts. In addition, examiners concluded that FANB, both alone and in conjunction with a variety of community groups, provided a high level of community development services in its assessment areas, including counseling to first-time homebuyers and technical assistance to small businesses and community development organizations.²⁶

D. HMDA Data

The Board also has considered the lending record of AmSouth and First American in light of comments about the HMDA data reported by the organizations' subsidiaries. These data show that in 1996, 1997, and 1998, AmSouth Bank originated a higher percentage of its housing-related loans in LMI areas in the Birmingham and Mobile, Alabama, MSAs than lenders in the aggregate in these MSAs. In addition, in the Birmingham and Mobile, Alabama, MSAs, the percentage of AmSouth Bank's housing-related loan originations to African Americans in 1997 and 1998, compared with the bank's total housing-related originations for those years, exceeded

²⁶ After completion of the 1998 CRA examination of FANB, First American acquired Deposit Guaranty National Bank, Jackson, Mississippi ("Deposit Guaranty"), and merged the bank into FANB, with FANB surviving the merger. Deposit Guaranty received a "satisfactory" rating from the OCC at its last CRA performance examination before this merger, as of August 1995. The CRA and fair lending policies and programs of FANB were implemented at Deposit Guaranty after consummation of the banks' merger.

or approximated the performance of lenders in the aggregate in the relevant MSA. These data also show that in 1996, 1997, and 1998, FANB originated a higher percentage of its housing-related loans in LMI areas in Tennessee than lenders in the aggregate in the state.

The data, however, reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and individuals at different income levels. The Board is concerned when an institution's record indicates such disparities in lending, and believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound banking, but also equal access to credit by creditworthy applicants regardless of their race or income level.

The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because the data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.²⁷ HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not adequately assisted in meeting its community's credit needs or has engaged in illegal lending discrimination.

²⁷ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

Because of the limitations of HMDA data, the Board has carefully considered the data and comments in light of other information, including information provided by AmSouth and First American and confidential supervisory information and examination reports that provide an on-site evaluation of the compliance by the subsidiary depository institutions of AmSouth and First American with the fair lending laws. AmSouth has stated that AmSouth and First American use a centralized underwriting process for all HMDA-reportable loans to ensure the fair and consistent application of the banks' underwriting guidelines, and provide a second review process for all denials of HMDA-reportable loans. AmSouth also has indicated that both AmSouth and First American employ community lenders that focus on marketing the organization's credit and other products to communities with large LMI or minority populations.

Furthermore, as noted above, examiners at the most recent examination of AmSouth Bank found that the bank solicited loan applications from all segments of the bank's communities. Examiners also found that AmSouth Bank had adequate policies and procedures to ensure that the evaluations of credit applications were based solely on financial and economic factors, and found no evidence of prohibited discrimination or other illegal credit practices. Examiners at the most recent examination of FANB reviewed the bank's fair lending policies and procedures and found these policies and procedures appropriate for ensuring the bank's compliance with the fair lending laws. Examiners found no evidence of prohibited discrimination or other illegal credit practices at the most recent examinations of FANB and FA-FSB.

E. Branch Closings

Two commenters expressed concern that consummation of the proposal would result in branch closings and that these closings would have adverse effects on the local communities in which the branches are located. AmSouth has stated that it currently is reviewing 24 full-service branches of the two organizations for potential closure and has submitted preliminary and confidential information about these branches. AmSouth has indicated that it continues to review information about the branches identified for potential closure, and that it has not made a final determination with respect to the closing of any branch.

The Board has carefully considered the comments concerning branch closings in light of all the facts of record, including the preliminary branch closing information submitted by AmSouth, the branch closing policies of AmSouth and First American, and the record of the two organizations in opening and closing branches. The Board notes that only two of the 24 full-service branches identified for potential closure are located in LMI areas, and that each of these branches is located close to another AmSouth or First American facility. Furthermore, examiners at the most recent CRA examination of AmSouth Bank and FANB reviewed the banks' records of opening and closing branches and found that the banks' branch closings had not adversely affected the accessibility of banking services in their communities.

The Board also 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 the appropriate federal supervisory agency before closing a branch.²⁸ The law does not authorize federal regulators to prevent the closing of any branch. Any branch closings resulting from the proposal will be considered by the appropriate federal supervisor at the next CRA examination of the relevant subsidiary depository institution.

Conclusion on the Convenience and Needs Factor

In its review of the convenience and needs factor under the BHC Act, the Board has carefully considered the entire record, including the CRA performance examinations of each of the insured depository institutions involved in the proposal, all the information provided by the commenters, AmSouth, and First American, and confidential supervisory information.²⁹ Based on all the facts of record, and for the reasons discussed

²⁸ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days notice and the appropriate federal supervisory agency 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.

²⁹ Two commenters criticized the size and scope of AmSouth's announced \$3.5 billion, five-year lending and community development pledge and questioned whether AmSouth would work with community groups located throughout the organization's franchise to develop and implement the pledge. The Board previously has stated that, to gain approval of a proposal to acquire an insured depository institution, an applicant must demonstrate a satisfactory record under the CRA without reliance on plans or commitments for future action. See NationsBank Corporation, 84 Federal Reserve Bulletin 858, 876 (1998); Totalbank Corporation, 81 Federal Reserve Bulletin 876 (1995). The Board also previously has noted that, while communications with community groups provide a valuable method of

above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant insured depository institutions, are consistent with approval of the proposal.

Nonbanking Activities

AmSouth also has filed notice under section 4(c)(8) of the BHC Act to acquire FA-FSB and First American Community Development Corporation and thereby engage in operating a savings association and in community development activities. The Board has determined by regulation that operation of a savings association and community development activities are, within certain limits, closely related to banking for purposes of the BHC Act.³⁰ AmSouth has committed to conduct these nonbanking activities in accordance with the limitations set forth in Regulation Y and the Board's orders and interpretations governing each of these activities.

assessing and determining how an institution may best address the credit needs of the community, the CRA does not require depository institutions to enter into agreements with any organization. See Fifth Third Bancorp, 80 Federal Reserve Bulletin 838 (1994). Accordingly, the Board has carefully considered the actual record of past performance of the insured depository institution subsidiaries of AmSouth and First American under the CRA, and has reviewed AmSouth's pledge only as an indication of the company's intent to maintain and strengthen these records of past performance. The Board notes, moreover, that the future activities of the combined organization, including efforts to implement the proposed lending and community development plan, would be reviewed by the appropriate federal supervisors of the relevant depository institutions in future performance examinations, and would be considered by the Board in future applications by AmSouth to acquire an insured depository institution.

³⁰ See 12 C.F.R. 225.28(b)(4)(ii) and (12).

In order to approve a notice under section 4(c)(8) of the BHC Act, the Board also must determine that the proposed activities are a proper incident to banking, that is, that the proposal “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”³¹ As noted above, FA-FSB received a “satisfactory” rating from the OTS at its most recent CRA performance examination, as of August 1998.

As part of its evaluation of the public interest factors, the Board considers the financial condition and managerial resources of the notificant and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the proposal.

The Board also has considered the competitive effects of the proposed acquisition by AmSouth of the nonbanking subsidiaries of First American. FA-FSB has eight branches located in Virginia and Georgia, and competes with AmSouth only in the Chattanooga, Tennessee, banking market. For the reasons discussed above, the Board has concluded that the acquisition of First American’s subsidiary depository institutions, including FA-FSB, is not likely to have any significantly adverse effects in the Chattanooga, Tennessee, banking market or any other relevant banking market. Numerous competitors also would remain in the market for community development services, and the market structure for providing

³¹ 12 U.S.C. § 1843(c)(8).

these services would remain unconcentrated. Based on all the facts of record, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the nonbanking acquisitions proposed in the transaction.

AmSouth has indicated that consummation of the proposal would provide current and future customers of the two organizations greater convenience. AmSouth also has stated that the proposal would permit the combined organization to achieve greater operational efficiencies and economies of scale, and that these efficiencies and economies of scale would strengthen AmSouth's ability to compete in the markets in which it operates. In addition, as the Board has previously noted, 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.³²

The Board also concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and prior Board precedent is not likely to result in adverse effects, such as undue concentration of resources, conflicts of interests, or unsound banking practices, that would outweigh 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

³² See, e.g., Banc One Corporation, 84 Federal Reserve Bulletin 553 (1998); First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).

interest factors that the Board must consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act are consistent with approval of AmSouth's notice.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved.³³ The Board's approval is specifically conditioned on

³³ The Board received comments, including numerous untimely comments, requesting that the Board hold a public meeting or hearing on the proposal. Section 3 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. The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. See 12 C.F.R. 225.25(a)(2). 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).

The Board has carefully considered the requests for a public meeting or hearing in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit their views and, in fact, have submitted written comments that have been carefully considered by the Board in acting on the proposal. The requests fail to identify disputed issues of fact that are material to the Board's decision and that may be clarified by a public meeting or hearing. Commenters have provided substantial written comments that have been carefully considered by the Board, and the requests fail to show why a public meeting or hearing is necessary for the proper presentation or consideration of commenters' views. 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 are hereby denied.

compliance by AmSouth with all the commitments made in connection with this application and with the conditions stated or referred to in this order. The Board's determination on the nonbanking activities also is subject to all the terms and conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision 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.³⁴

The merger with First American shall not be consummated before the thirtieth calendar day following the effective date of this order, or such shorter period as agreed to by the Attorney General of the United

³⁴ Certain commenters also requested that the Board delay action on the proposal and investigate the allegations made by the commenters, including allegations that AmSouth and First American have violated the fair lending laws. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and public comment. In addition, the 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. 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 the proposal at this time, and further delay of consideration of the proposal or an extension of the comment period is not warranted.

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

By order of the Board of Governors,³⁵ effective August 30, 1999.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

³⁵ This action was taken pursuant to the Board's Rules Regarding Delegation of Authority (12 C.F.R. 265.4(b)(1)) by a committee of Board members. Voting for this action: Governors Kelley, Meyer, and Ferguson. Absent and not voting: Chairman Greenspan and Governor Gramlich.

APPENDIX

Summary of Market Structure
in Banking Markets Without DivestituresTennessee

Cleveland

AmSouth is the sixth largest depository institution in the market, controlling deposits of \$64 million, representing approximately 7.1 percent of market deposits. First American is the third largest depository institution in the market, controlling deposits of \$129.5 million, representing approximately 14.3 percent of market deposits. After the proposed merger, AmSouth would become the second largest depository institution in the market, controlling deposits of \$193.5 million, representing approximately 21.3 percent of market deposits. On consummation of the proposal, the HHI would increase 202 points to 1790, and eight other competitors would remain in the market.

Nashville

AmSouth is the 12th largest depository institution in the market, controlling deposits of \$186.9 million, representing approximately 1.3 percent of market deposits. First American is the largest depository institution in the market, controlling deposits of \$3.6 billion, representing approximately 25 percent of market deposits. After the proposed merger, AmSouth would become the largest depository institution in the market, controlling deposits of approximately \$3.8 billion, representing approximately 26.3 percent of market deposits. The HHI would increase 64 points to 1483, and 29 other competitors would remain in the market.

Tennessee and Georgia

Chattanooga AmSouth is the fourth largest depository institution in the market, controlling deposits of \$584.2 million, representing approximately 12.2 percent of market deposits. First American is the third largest depository institution in the market, controlling deposits of \$648.3 million, representing approximately 13.4 percent of market deposits. After the proposed merger, AmSouth would become the largest depository institution in the market, controlling deposits of \$1.2 billion, representing approximately 25.6 percent of market deposits. On consummation of the proposal, the HHI would increase 331 points to 1668, and 21 other competitors would remain in the market.