FEDERAL RESERVE SYSTEM

Wells Fargo & Company
San Francisco, California

Order Approving Acquisition of a Bank Holding Company

Wells Fargo & Company ("Wells Fargo"), 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 acquire First Security Corporation, Salt Lake City, Utah ("First Security"), and thereby acquire the subsidiary banks of First Security.[1] Wells Fargo also has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and 1843(j)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire certain nonbanking subsidiaries of First Security and thereby engage in permissible nonbanking activities.[2] In addition, Wells Fargo has filed an application under section 25 of the Federal Reserve Act (12 U.S.C. §§ 601 et seq.) and the Board's Regulation K (12 C.F.R. Part 211) to acquire certain foreign operations and agreement corporation subsidiaries of First Security.

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[1] First Security controls the following subsidiary banks: First Security Bank, National Association, Ogden, Utah; First Security Bank of California, National Association, West Covina, California; First Security Bank of Nevada, Las Vegas, Nevada; and First Security Bank of New Mexico, National Association, Albuquerque, New Mexico.

[2] These nonbanking activities are listed in Appendix A. Wells Fargo also is a financial holding company and intends to acquire the remaining nonbanking subsidiaries of First Security under section 4(k)(4) of the BHC Act.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 45,081 and 45,986 (2000)). 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.

Wells Fargo, with total consolidated assets of $236.9 billion, is the seventh largest commercial banking organization in the United States, controlling approximately 3.4 percent of banking assets in the United States ("total U.S. banking assets").[3] Wells Fargo operates subsidiary banks in 23 western and midwestern states. Wells Fargo is the third largest commercial banking organization in California, controlling deposits of $55.6 billion, representing approximately 13 percent of total deposits in insured depository institutions in the state ("state deposits").[4] Wells Fargo also engages in a broad range of permissible nonbanking activities, including mortgage banking, consumer finance, securities brokerage, and equipment leasing.

First Security, with total consolidated assets of $22.5 billion, is the 39th largest commercial banking organization in the United States, controlling less than 1 percent of total U.S. banking assets. First Security is the largest commercial banking organization in Utah, controlling deposits of $5.1 billion, representing approximately 26.5 percent of state deposits. First Security also engages in a broad range of permissible nonbanking activities

[3] Asset and ranking data are as of June 30, 2000.

[4] Deposit data are as of June 30, 1999, and are adjusted to reflect mergers and acquisitions approved after this date. In this context, depository institutions include commercial banks, savings banks, and savings associations.

in the United States, including underwriting and dealing in debt and equity securities, providing financial consulting services, and providing data processing services.

After consummation of the proposal and accounting for the proposed divestitures discussed in this order, Wells Fargo would remain the seventh largest commercial banking organization in the United States, with total consolidated assets of $259.4 billion, representing approximately 3.8 percent of total U.S. banking assets. Wells Fargo also would become the largest commercial banking organization in Utah, controlling deposits of $5.5 billion, representing approximately 28.8 percent of state deposits. In addition, Wells Fargo would become the largest commercial banking organization in Idaho and Nevada.

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 Wells Fargo is California,[5] and the subsidiary banks of First Security are located in California, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.[6] All

[5] A bank holding company's home state is that state in which the total deposits of all banking subsidiaries of the 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).

[6] 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. In addition to the interstate aspects of this proposal, Wells Fargo would acquire a California bank in an intrastate transaction.

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the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[7] In light of all the facts of record, the Board is permitted to approve the proposed transaction 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 or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The

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[7] Wells Fargo is adequately capitalized and adequately managed, as defined by applicable law. 12 U.S.C. § 1842(d)(1)(A). Each subsidiary bank of First Security has been in existence and operated continuously for at least the period of time required by applicable state law. See 12 U.S.C. § 1841(d)(1)(B). On consummation of the proposal and after accounting for the proposed divestitures, Wells Fargo and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States, and less than 30 percent, or the applicable percentage established by state law, of total deposits held by insured depository institutions in each state in which the insured depository institutions of Wells Fargo and First Security both operate, except as discussed below. See Idaho Code § 26-1606 (LEXIS 1999). Wells Fargo would control more than 30 percent of state deposits in Idaho. However, the state deposit cap contained in section 3(d) does not bar Board approval of a proposal if the appropriate state bank supervisor approves a transaction that exceeds the cap under a provision of state law that does not discriminate against out-of-state banking organizations. See 12 U.S.C. § 1842(d)(2)(D)(ii). The Idaho state bank supervisor has approved the proposed transaction under an appropriate provision of law and, consequently, the state deposit cap contained in section 3(d) does not prevent the Board from approving the proposal. After reviewing the laws of each state in which Wells Fargo would acquire banking operations and consulting with the appropriate state banking regulator in each of those states about the proposed transaction, the Board has concluded that all other requirements of section 3(d) would be met on consummation of the proposal.

BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[8]

Wells Fargo and First Security are among the largest providers of banking services in the western United States and compete directly in 31 local banking markets in eight states.[9] The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record, including the number of competitors that would remain in the markets, the relative share of total deposits in depository institutions in the markets ("market deposits") controlled by Wells Fargo and First Security,[10] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the

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[8] 12 U.S.C. § 1842(c)(1).

[9] The banking markets are described in Appendix B.

[10] Market share data are as of June 30, 1999, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, except as discussed in the order. The Board has indicated previously 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 has regularly included thrift deposits in the calculation of market share on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

Department of Justice Guidelines ("DOJ Guidelines"),[11] and other characteristics of the markets.[12]

A. Certain Banking Markets without Divestitures

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in 18 banking markets.[13] After consummation of the proposal, nine of these banking markets would remain moderately concentrated as measured by the HHI.[14]

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[11] Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. 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 institutions.

[12] Several commenters expressed concern that the proposal would have anticompetitive effects in the relevant banking markets. The Board has carefully reviewed these comments in connection with its consideration of the competitive effects of the proposal.

[13] These markets are: Hesperia-Apple Valley-Victorville, Los Angeles, and Riverside-San Bernardino, California; Idaho Falls and Sandpoint, Idaho; Reno, Nevada; Rio Arriba County, Roswell-Artesia, and Santa Fe, New Mexico; Corvallis, Deschutes, Ontario, Portland, and Salem, Oregon; El Paso, Texas; Ogden, and Provo-Orem, Utah; and Spokane, Washington. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix C.

[14] These markets are: Hesperia-Apple Valley-Victorville, Los Angeles, Riverside-San Bernardino, Roswell-Artesia, Santa Fe, Corvallis, Ontario, Salem, and Spokane.

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The other nine banking markets would be highly concentrated as measured by the HHI, but the increase in the HHI would be within the threshold levels in the DOJ Guidelines.[15]

B. Certain Banking Markets with Divestitures

To reduce the potential for adverse effects on competition in nine of the 13 remaining markets in which Wells Fargo and First Security compete directly,[16] Wells Fargo has committed to divest 37 branches, which account for approximately $1.4 billion in deposits.[17] In light of the proposed

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[15] These markets are: Idaho Falls, Sandpoint, Reno, Rio Arriba County, Deschutes, Portland, El Paso, Ogden, and Provo-Orem.

[16] Several commenters criticized Wells Fargo for not identifying the specific branches that it would divest in the Box Elder, Carson City, Park City, Sandpoint, and South Lake Tahoe markets during the public comment period and indicated that this omission hindered their ability to comment on the competitive effects of the proposal in these markets. The Board has concluded, however, that the public information provided by Wells Fargo on the proposed divestitures, including the resulting structural effects in each market, was sufficient for interested persons to evaluate and comment on the competitive effects of the proposal.

[17] These markets are: South Lake Tahoe, California; Boise and Hailey, Idaho; Carson City and Las Vegas, Nevada; Albuquerque and Las Cruces, New Mexico; and Box Elder and Park City, Utah. With respect to each market in which Wells Fargo has committed to divest offices to mitigate the anticompetitive effects of the proposal, Wells Fargo has committed to execute, before consummation of the proposal, a sales agreement for the proposed divestiture with a purchaser determined by the Board to be competitively suitable and to complete the divestiture within 180 days after consummation of the proposal. Wells Fargo also has committed that, if it is unsuccessful in completing any divestiture within 180 days of consummation, it will transfer the unsold branch(es) to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the

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divestitures, consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in eight of the markets.[18] The transaction would result in no increase in the HHI in four of these markets: South Lake Tahoe, Hailey, Box Elder, and Park City. In three of the remaining markets, Boise, Carson City, and Albuquerque, the increase in the HHI would be within the threshold levels in the DOJ Guidelines. In the Las Cruces market, a large number of competitors relative to total market deposits would remain, and the market would remain moderately concentrated as measured by the HHI.

C. Other Banking Markets

In the Las Vegas, Nevada; Salt Lake City, Utah; Pocatello and Twin Falls, Idaho; and Truckee-Tahoe California, markets, consummation of the proposed acquisition, accounting for the proposed divestitures in the Las Vegas market, would exceed the DOJ Guidelines. In these markets, the Board has considered whether other factors either mitigate the competitive

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branch(es) promptly to one or more alternative purchasers acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991). Wells Fargo also has committed to submit to the Board, before consummation of the proposal, an executed trust agreement acceptable to the Board stating the terms of the divestitures.

[18] These markets are: Albuquerque, Boise, Box Elder, Carson City, Hailey, Las Cruces, Park City, and South Lake Tahoe. The effects of the proposed merger and divestitures on the concentration of banking resources in these markets are described in Appendix D.

effects of the proposal in the market or indicate that the proposal would have a significantly adverse effect on competition in the market.[19]

Las Vegas, Nevada. Wells Fargo operates the second largest depository institution in the market, controlling deposits of $2.8 billion, representing approximately 26.2 percent of market deposits. First Security operates the fourth largest depository institution in the market, controlling deposits of $904 million, representing approximately 8.3 percent of market deposits. Wells Fargo proposes to divest seven branches in the market, with $392.5 million of deposits, representing approximately 3.6 percent of market deposits, to an out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $3.3 billion, representing 30.9 percent of market deposits. The HHI would increase by 213 points to 2062.

Several factors indicate that the increase in market concentration in the Las Vegas banking market, as measured by the HHI, does not reflect a significantly adverse effect on competition. Twenty-two other commercial banks and savings associations would remain in the market as competitors of Wells Fargo, including one large multistate banking organization with more than 30 percent of market deposits and another large multistate banking organization with more than 10 percent of market deposits. The market also has several factors that make it attractive for entry by out-of-market competitors. From 1990 to 1999, the population

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[19] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the level of concentration and size of the increase in market concentration. See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

in the Las Vegas Metropolitan Statistical Area ("MSA") increased 73.5 percent, which was the largest percentage increase in population in any MSA during this period. From 1990 to 1999, employment in Clark County, Nevada, the location of the City of Las Vegas, increased 57.6 percent and, from 1990 to 1998, per capita income in the Las Vegas MSA increased 43 percent. In the Las Vegas banking market, from June 1995 to June 1999, deposits increased 71.4 percent, compared with a national rate of increase of 18 percent during this period. Ten depository institutions have entered the market de novo since 1995.

Salt Lake City, Utah. Wells Fargo operates the sixth largest depository institution in the market, controlling deposits of $387.1 million, representing approximately 4.9 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $2.8 billion, representing approximately 34.8 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $3.1 billion, representing approximately 39.7 percent of market deposits. The HHI would increase by 340 points to 2234.

The presence of numerous bank and thrift competitors is an important consideration in this market. Eighteen other commercial banks and three savings associations would remain after consummation of the proposal, including a large bank holding company that would control more than 18 percent of market deposits. The third, fourth, and fifth largest depository institutions in the market are operated by large multistate banking organizations, each of which controls between 4 percent and 10 percent of market deposits.

In reviewing the competitive effects of the proposal, the Board also has taken into account that credit unions are particularly active competitors in the Salt Lake City market. The Board has noted previously that numerous credit unions in the market are open to all or a substantial majority of persons in the market and operate through street-level branches that are accessible to the public.[20] In light of the activities, open membership, branch operations, size, number, and market share of credit unions in the market, the Board has concluded that credit unions exert a competitive influence that mitigates in part the potential anticompetitive effects of the proposal.[21]

In addition, the Salt Lake City market is attractive for entry by additional depository institutions. The population in the Salt Lake City Ranally Marketing Area ("RMA") increased 17.6 percent from 1990 to 1999, which was significantly higher than the national rate of increase.

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[20] See First Security Corporation, 86 Federal Reserve Bulletin 122, 126 (2000) ("First Security Order").

[21] Thirty-one credit unions with competitively significant characteristics compete with banks in the Salt Lake City market and account for approximately 19.9 percent of total deposits in the market. Credit unions control approximately 8.5 percent of all insured deposits in the United States. Although these credit unions are a competitive force, the Board has not considered them to be full competitors of banks because they do not provide the full range of banking products and services. If the Board were to include the deposits of these credit unions in the market and weight them at 50 percent, Wells Fargo would have a post-merger market share of 35.2 percent, and the HHI would increase by 267 points to 1768.

Employment in the City of Salt Lake City increased 30 percent during this period, which was more than twice the national rate.[22]

Pocatello, Idaho. Wells Fargo operates the fifth largest depository institution in the market, controlling deposits of $18.7 million, representing approximately 5 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $127.2 million, representing approximately 34.4 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of approximately $145.9 million, representing approximately 39.4 percent of market deposits. The HHI would increase by 347 points to 2541.

Several factors mitigate the potential adverse effects that may result from the proposal in the Pocatello banking market. A large number of competing depository institutions, relative to total market deposits, would remain in the market. Eight commercial banks, including Wells Fargo, and two savings associations would remain in the market after consummation of the proposal. One of these savings institutions is a significant source of commercial loans in the market. Twelve credit unions also compete in the market and control approximately 29 percent of insured deposits in the market. The largest credit union in the market controls approximately

[22] Employment increased 12.4 percent in the United States between 1990 and 1998.

4.9 percent of insured deposits in the market and is open for membership by substantially all residents of the market.[23]

The market also has several characteristics that make it attractive for entry. From 1990 to 1999, population in the market increased 12.7 percent; employment in the City of Pocatello increased 31.9 percent; and per capita income in the Pocatello MSA increased 39.4 percent. Four commercial banks and one thrift institution have entered the market de novo since 1995. One of these commercial banks has become the fourth largest depository institution in the market and controls 7.9 percent of market deposits. Moreover, the market is becoming less concentrated. From June 1996 to June 1999, the market's HHI decreased approximately 500 points.

Twin Falls, Idaho. Wells Fargo operates the seventh largest depository institution in the market, controlling deposits of $24.5 million, representing approximately 2.6 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $379.7 million, representing approximately 39.6 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of approximately $404.2 million, representing approximately 42.2 percent of market deposits. The HHI would increase by 203 points to 2471.

Several factors mitigate the adverse competitive effects that might result from the proposal in the Twin Falls market. From 1990 to 1999, the population in the City of Twin Falls increased 23 percent and

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[23] If the Board were to include the deposits of this credit union in the market at 50 percent, Wells Fargo would have a post-merger market share of 38.1 percent and the HHI would increase by 324 points to 2390.

employment increased 27 percent. Eleven depository institutions, including Wells Fargo, would remain in the market. Two commercial bank competitors of Wells Fargo each would control more than 15 percent of market deposits, and three large multistate banking organizations operate in the market. Two banks and one savings association have entered the market de novo since 1994.

Truckee-Tahoe, California. Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $71 million, representing approximately 12.9 percent of market deposits. First Security operates the fifth largest depository institution in the market, controlling deposits of $45.8 million, representing approximately 8.3 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the third largest depository institution in the market, controlling deposits of approximately $116.8 million, representing approximately 21.2 percent of market deposits. The HHI would increase by 214 points to 2485.

A number of factors indicate that the competitive effects of the proposal are not likely to be significantly adverse in this market. First, a large number of financial institutions compete in this market relative to the size of total market deposits. Five commercial banks, including Wells Fargo, and one savings association would remain in the market. Three of the competing commercial banks, including the two largest depository institutions in the market, are subsidiaries of large multistate banking organizations. Second, the Truckee-Tahoe banking market has characteristics that make it attractive for entry. From 1990 to 1998, the population in the market's principal towns increased 15 percent, more than twice the average for California. From 1990 to 1999, employment increased

21 percent in Truckee and 32.4 percent in the north shore area of Lake Tahoe. From June 1996 to June 1999, total market deposits in Truckee-Tahoe increased 18.9 percent. One commercial bank entered the market de novo in 1995.

D. Views of Other Agencies and Conclusion

The Department of Justice also has conducted a detailed review of the anticipated competitive effects of the proposal. The Department has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, including public comments on the competitive effects of the proposal, and for the reasons discussed in the order and appendices, the Board has concluded that consummation of the proposal would not be likely to result in a significantly adverse effect on competition or on the concentration of banking resources in any of the 31 markets in which Wells Fargo and First Security both compete or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including public comments.[24]

Wells Fargo is, and after the proposed transaction would remain, well capitalized and the earnings of the company are strong. The proposed acquisition is structured as an exchange of shares of Wells Fargo for shares of First Security, and Well Fargo would not incur any debt as a result of the transaction. The Board has considered that Wells Fargo recently acquired other bank holding companies and that Wells Fargo's management successfully integrated the acquired institutions into Wells Fargo's existing operations.

Based on all the facts of record, including confidential reports of examination and other supervisory information received from the primary federal banking agency that supervises each institution, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Wells Fargo, First Security, and their respective banking subsidiaries are consistent with approval, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience

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[24] Several commenters expressed concern about the financial and managerial resources of Wells Fargo and First Security. Some commenters asserted that the rate of Wells Fargo's expansion through bank acquisitions has compromised its ability to operate in a safe and sound manner. Commenters also noted that First Security recently experienced a decline in earnings.

and needs of the community to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[25] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with safe and sound operation, and requires the appropriate federal supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Wells Fargo and First Security in light of all the facts of record, including public comments received on the effect the proposal would have on the communities to be served by the combined organization.

A. Summary of Public Comments

The Board received approximately 25 comments on the proposal. Most comments expressed concerns about the records of either Wells Fargo, First Security, or both in meeting the convenience and needs of the communities they serve.[26] Commenters asserted that Wells Fargo's commitment to lending, community investment, and local decision making had declined after previous bank acquisitions, particularly in Wells Fargo's home state of California, and expressed concern that Wells Fargo's proposed

[25] 12 U.S.C. § 2901 et seq.

[26] Several commenters who objected to the transaction stated that, if the Board were to approve the transaction, the approval should be subject to conditions suggested by the commenters.

acquisition of First Security would worsen this perceived trend. Commenters also expressed concern about Wells Fargo's record of lending to LMI and minority individuals and small businesses in various areas and about Wells Fargo's record of providing banking services, particularly in LMI areas.[27] One commenter alleged specifically that Wells Fargo Home Mortgage, Inc. ("WFHM", formerly Norwest Mortgage, Inc.), a nonbanking subsidiary engaged in mortgage lending, denied applications by minority individuals at a disproportionately high rate. Some commenters also expressed concern that Wells Fargo had unusually high default rates on mortgage loans made in Washington. In addition, several commenters questioned the business practices of Wells Fargo's subprime lending operations.[28]

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[27] Commenters expressed concern about Wells Fargo's record of home mortgage and small business lending to LMI and minority borrowers in California, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wisconsin. A coalition of commenters provided survey data from several states in support of its allegations. In particular, commenters alleged that Wells Fargo made a disproportionately low share of its mortgage loans to LMI and minority borrowers relative to these borrower's share of the general population and lagged behind other lenders in the share of its mortgage loans originated among these groups.

[28] A coalition of commenters also asserted that Wells Fargo's record of lending to minority individuals suffered as a result of a lack of diversity among Wells Fargo's employees. The BHC Act does not authorize the Board to consider the racial composition of any organization's employees. Under regulations of the Department of Labor, the banking subsidiaries of Wells Fargo are required to file reports with the Equal Employment Opportunity Commission ("EEOC") concerning all employees, and the EEOC has jurisdiction to determine whether companies are in compliance with equal employment opportunity statutes. See 41 C.F.R. 60-1.7(a), 60-1.40.

Some commenters also criticized First Security's record of home mortgage lending to LMI and minority individuals, particularly in Idaho, Oregon, Nevada, and Washington. These commenters alleged that First Security's subsidiary banks did not market conventional and government-subsidized loan products adequately to LMI and minority individuals, and that the banks denied loan applications of LMI and minority applicants at a disproportionately high rate. They also asserted that First Security had a poor record of providing banking products and services to LMI individuals and communities in Idaho, Oregon, and Washington.

B. CRA Performance Examinations

The Board long has 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 overall record of performance under the CRA by its appropriate federal supervisor.[29]

All Wells Fargo's subsidiary banks received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, Wells Fargo's lead bank, Wells Fargo

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[29] See Interagency Questions and Answers Regarding Community Reinvestment, 64 Federal Register 23,618 and 23,641 (1999).

Bank, N.A., San Francisco, California ("Wells Fargo Bank"),[30] which accounts for approximately 45 percent of the total consolidated assets of Wells Fargo, received an "outstanding" rating at its most recent CRA examination by its primary federal supervisory agency, the OCC, as of June 1998.[31] All First Security's subsidiary banks received either "outstanding"

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[30] Wells Fargo Bank operates in California, where it holds 81 percent of its deposits, and eight other western states.

[31] Norwest Corporation acquired Wells Fargo in 1998 and retained the Wells Fargo name and is in the process of merging and renaming banks under the combined organization. See Norwest Corporation, 84 Federal Reserve Bulletin 1088 (1998). Norwest Bank Montana, N.A., Billings, Montana (now Wells Fargo Bank Montana, N.A.), received an "outstanding" CRA performance rating from the OCC, as of August 1997. Although Wells Fargo Bank Wisconsin, N.A., Milwaukee, Wisconsin, has not been examined for CRA performance, each of its predecessor banks received at least a "satisfactory" CRA performance rating from its appropriate federal supervisory agency: Norwest Bank Wisconsin, N.A., Milwaukee, Wisconsin, received an "outstanding" CRA performance rating from the OCC, as of November 1996; Norwest Bank La Crosse, N.A., La Crosse, Wisconsin, received a "satisfactory" CRA performance rating from the OCC, as of February 1997; and Midamerica Bank Hudson, Hudson, Wisconsin, received a "satisfactory" CRA performance rating from the FDIC, as of March 1995 (before the acquisition of the bank by Norwest Corporation). Norwest Bank South Dakota, N.A., Sioux Falls, South Dakota, received an "outstanding" CRA performance rating from the OCC, as of November 1996. Norwest Bank New Mexico, N.A., Albuquerque, New Mexico (now Wells Fargo Bank New Mexico, N.A.), received a "satisfactory" CRA performance rating from the OCC, as of July 1997. Norwest Bank Nevada, N.A., Las Vegas, Nevada (now Wells Fargo Bank Nevada, N.A.), received a "satisfactory" CRA performance rating from the OCC, as of August 1999. Dial Bank, Sioux Falls, South Dakota (now Wells Fargo Financial Bank), a credit card bank controlled by Wells Fargo, received an "outstanding" CRA performance rating from the FDIC, as of June 1999.

or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, First Security Bank, N.A., Salt Lake City, Utah, ("First Security Bank"), which is First Security's lead bank and represents approximately 76 percent of the assets controlled by First Security, received an "outstanding" rating from the OCC, as of May 1999.[32]

Examiners found no evidence of prohibited discrimination or other illegal credit practices, and identified no violations of fair lending laws, at any subsidiary bank of Wells Fargo or First Security.[33] Examiners also reviewed the assessment areas delineated by the subsidiary banks of

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[32] First Security Bank New Mexico, National Association, Albuquerque, New Mexico, received an "outstanding" CRA performance rating from the OCC, as of December 1995; First Security Bank of Nevada, Las Vegas, Nevada, received a "satisfactory" CRA performance rating from the Federal Reserve Bank of San Francisco, as of January 1999. Although First Security Bank California, West Covina, California, has not been examined for CRA performance, its predecessor banks received "satisfactory" CRA performance ratings from their appropriate federal financial supervisory agencies: California State Bank, West Covina, California, received a "satisfactory" CRA performance rating from the FDIC, as of July 1996; and Marine National Bank, Irvine, California, received a "satisfactory" CRA performance rating from the OCC, as of September 1996.

[33] One commenter opposed to the proposal alleged that Wells Fargo discriminated against him in a loan transaction. A copy of the comment was provided to the OCC, the primary federal supervisor of the subsidiary bank engaged in the alleged discrimination. The Board also has reviewed this comment in light of all the facts of record, including examinations of the relevant bank under the CRA.

Wells Fargo and First Security and found that these assessment areas were reasonable and did not arbitrarily exclude LMI areas.[34]

C. Wells Fargo's CRA Performance Record

Overview.[35] Examiners of Wells Fargo Bank noted that the bank had adopted a business strategy that concentrated on small business lending and de-emphasized residential lending. As a result, the bank's small business lending in California increased by $2.7 billion compared with the period covered in its previous examination, while its residential lending decreased by $2.2 billion.[36] During the review period, which covered 1996, 1997, and the first quarter of 1998, Wells Fargo Bank made approximately

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[34] Wells Fargo Bank engages in subprime lending through two business units of WFHM, Wells Fargo Mortgage Resources (formerly Directors Acceptance) and Wells Fargo Equity Resources. In addition, Wells Fargo engages in subprime lending through Wells Fargo Financial, Inc. (formerly Norwest Financial, Inc.). Commenters alleged that these subprime lending units engage in predatory lending by targeting minority individuals for subprime loan products. The Board forwarded comments containing these allegations to the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, which have responsibility for enforcing fair lending laws for nondepository lending companies. Wells Fargo has stated that its subprime lending subsidiaries provide financing to customers who may not otherwise qualify for credit and has provided information about steps these subsidiaries take to ensure that individuals who qualify for conventional loans are informed about prime credit products.

[35] The Board recently reviewed in detail the record of Wells Fargo Bank under the CRA. See Wells Fargo & Company, 86 Federal Reserve Bulletin 602 (2000).

[36] Numerous commenters criticized Wells Fargo for its declining record of residential lending and expressed concern that this trend would continue after it acquired First Security.

239,000 small business loans, totaling approximately $9.3 billion.[37] Twenty-six percent of these loans were made to businesses located in LMI areas. Examiners concluded that Wells Fargo Bank's gains in small business lending more than offset the decline in its residential lending.[38] Moreover, of the residential loans made by the bank,
36 percent, totaling $240 million, were made to LMI borrowers. Examiners of Wells Fargo's other subsidiary banks observed that these banks were active in residential lending and, in general, that their residential lending was well distributed among borrowers and geographies of different income levels.

Examiners stated that Wells Fargo Bank exhibited a strong level of community development lending, particularly in California, Arizona, and Washington, where it originated 149 community development loans, totaling approximately $651 million. In addition, the bank made more than 2,000 qualified community development investments, totaling more than $227 million, to capitalize loan pools, community development corporations, and government-subsidized programs and to support nonprofit developers, social services, and support groups. Approximately $26 million

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[37] In this context, "small business loans" means loans to businesses in amounts less than $1 million. Wells Fargo Bank also made 33 percent of its small business loans to businesses with gross annual revenues less than $1 million ("loans to small businesses").

[38] Although the Board has recognized that banks help to serve the banking needs of communities by making a variety of products and services available, the CRA does not require an institution to provide any specific types of products or services, such as mortgage or small business loans, in their assessment areas.

was invested in regional and national organizations that helped to address affordable housing and small business credit needs.[39]

Examiners determined that Wells Fargo Bank's delivery systems were reasonably accessible to individuals and geographical areas of all income levels throughout the bank's 58 assessment areas. Examiners reported that Wells Fargo Bank offered a variety of loan and deposit products through its branch network, and that the bank offered several alternative delivery systems and products that improved the availability of these products to LMI individuals.[40]

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[39] One commenter criticized Wells Fargo's record of serving Native American communities and individuals. Examiners found that Wells Fargo Bank provided three loan facilities, totaling $32 million, to a Native American tribal organization to support construction of a shopping center and recreational facility in a low-income area of a reservation in Arizona and provided economic development loans, totaling $7 million, to Native American tribes in Oregon. Moreover, Wells Fargo represented that it has various programs and investments designed to meet the needs of Native American communities. Examples of such programs include the Native American Banking Services Program, which offers credit for reservation development and infrastructure improvements; a $300,000 contribution in 1999 to the First Nations Development Institute to support training and technical assistance for Native American communities to increase their ability to use working capital; and a commitment to invest more than $2 million in the formation of the Native American National Bank, which would be based in Denver and would serve Native American tribes nationwide.

[40] Wells Fargo provided additional information to the Board about the low-cost and basic deposit services its subsidiary banks offer and the methods Wells Fargo uses to promote these services to LMI individuals and communities. For example, Wells Fargo Bank represented that it offers free checking accounts throughout its retail banking territory and provides electronic benefits transfer services designed to assist low-income

(continued . . .)

California. Wells Fargo Bank's business and residential lending in California represented 77 percent of the bank's total lending activity. Examiners found that Wells Fargo Bank had a very strong lending record in California, the bank's primary geographic market, based on the bank's large volume of community development lending to support low-income and very-low-income housing development and the bank's large volume of small business loans in LMI areas.[41] Wells Fargo Bank also made approximately 7,000 residential loans in California, totaling approximately $700 million.

Examiners considered Wells Fargo Bank to be a leader in providing financing for affordable housing. During the review period, Wells Fargo Bank originated 99 community development loans, totaling $469 million. These loans included financing for 64 affordable housing projects to help construct more than 4,300 affordable housing units, which helped

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individuals who do not have a banking relationship or are otherwise underserved to receive federal benefits electronically. Wells Fargo also represented that almost one-half of its retail branches are within one mile of an LMI area and that it has an extensive supermarket retail network.

[41] Several commenters from California alleged that Wells Fargo had downgraded its CRA and community development functions. Wells Fargo responded that it had upgraded its community development structure in California to make the company more responsive to local credit needs and provided information about the company's current CRA structure in the state. Moreover, Wells Fargo stated that it extended more than $195 million in community development loans in 1999 and provided $205 million in community development loans in California communities during the first seven months of 2000. Wells Fargo indicated that a large portion of these loans were designed to help provide affordable housing. In addition, Wells Fargo indicated that it had recorded a total of $190 million in qualified community development investments in California, as of July 31, 2000.

meet an important housing-related lending need in California. The examination report observed that more than one-half of Wells Fargo Bank's financing for affordable housing projects was classified as highly complex under CRA regulations, including arrangements using low-income housing tax credits ("LIHTCs") and government-sponsored programs.

Examiners particularly commended the bank for its innovative approach to and overall level of small business lending in California, where the bank made approximately 191,000 small business loans, totaling more than $7 billion. Wells Fargo Bank was the leading small business lender in most of its assessment areas and in the state overall and was a leading small business lender in LMI areas in California. The bank originated one out of every three small business loans made by retail banks and savings associations in LMI areas in the state.

Examiners also found that the bank's delivery systems were accessible throughout the state, including LMI areas. Twenty-eight percent of California census tracts were designated as LMI areas, and 22 percent of Wells Fargo Bank's branches were in LMI areas. In addition, 7 percent of the bank's branches were on the border of LMI areas and an additional 20 percent of its branches were within one mile of LMI areas. Examiners concluded that the bank's geographic branch distribution compared favorably with the geographic distribution of residents by income level in the state. Branch hours were reasonable and convenient to LMI areas and individuals, and branch opening and closing activity during the review period did not adversely affect access to the bank's delivery systems by LMI individuals.

Idaho. Wells Fargo Bank originated 2,164 small business loans in Idaho, totaling $107 million. More than 50 percent of the bank's small business loans were made to businesses with gross annual revenues less than $1 million, and 90 percent of the bank's small business loans were in amounts less than $100,000. Examiners found that Wells Fargo Bank made 80 percent of its small business loans in LMI areas, compared with 17 percent for reporting lenders in the aggregate.

Examiners found that Wells Fargo Bank's distribution of residential lending reflected an adequate penetration among borrowers of all income levels and that the amount of the bank's residential loans to LMI borrowers, as a percentage of the bank's residential lending in Idaho compared favorably to the percentage of LMI households among all Idaho households. The bank generated 806 residential loans in Idaho, totaling $30 million.

Wells Fargo Bank made three community development loans in Idaho, totaling $7 million. Examiners noted that these loans helped to provide 180 units of low-income housing, which was a significant need in the assessment areas in which the loans were made. The bank also purchased $1 million in LIHTCs to provide affordable housing for LMI individuals and granted a nonprofit organization $150,000 to support micro- and startup-loans for small businesses and provide technical business assistance. Examiners commented that each of these statewide investments was either the largest or the only investment of its kind in Idaho by a commercial bank.

Montana. Examiners found that Norwest Bank Montana, N.A., Billings, Montana ("Norwest Bank Montana"), along with its mortgage lending affiliate, Norwest Mortgage, Inc. ("NMI"), was a leader in conventional residential lending in the Billings MSA and Great Falls MSA, extending more loans reported under the Home Mortgage Disclosure Act

("HMDA") ("HMDA-reported loans"),[42] measured by number and dollar amount, than any other lender in the market.[43] Norwest Bank Montana employed flexible underwriting terms for LMI applicants under its Community Home Ownership Program ("CHOP"), and made 384 home purchase loans, totaling approximately $18 million, under the program during the CRA review period. Examiners also reported that NMI had a strong record of originating government-sponsored real estate loans under programs sponsored by the Federal Housing Authority, the Department of Veteran's Affairs, and the Farmers Home Administration, and that Norwest Bank Montana and NMI made a significant volume of residential loans to LMI borrowers and in LMI areas.

Examiners found that Norwest Bank Montana demonstrated a strong commitment to supporting community development and redevelopment initiatives by providing financial support and technical assistance to various organizations and community groups. For example, the bank provided a construction loan of $956,000 for a 24-unit low-income senior citizen housing complex in Billings and $1.2 million in permanent financing for a 48-unit affordable housing complex in Great

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[42] 12 U.S.C. § 2801 et seq.

[43] In the Billings banking market, Wells Fargo (including Norwest Bank Montana, NMI, and Norwest Home Improvement) controlled approximately 16 percent of market deposits and made 17 percent of all HMDA-reported loans in the market in 1998 and controlled approximately 14 percent of market deposits and made 14 percent of HMDA-reported loans in 1999. In the Great Falls banking market, Wells Fargo controlled approximately 20 percent of market deposits and made 39 percent of all HMDA-reported loans in the market in 1998 and controlled approximately 19 percent of market deposits and made 40 percent of HMDA-reported loans in 1999.

Falls. Norwest Bank Montana also provided bridge loans that assisted nonprofit organizations in constructing housing for LMI individuals.

Norwest Bank Montana was a Small Business Administration ("SBA") designated preferred lender and originated 207 SBA loans in Montana, totaling $19.2 million, during the review period. Norwest also supported nonprofit organizations that benefited LMI families, small businesses, and farms by providing direct financial contributions and technical expertise.

Nevada. Wells Fargo Bank was a major small business lender in Nevada, making 2,694 small business loans in that state, totaling $111 million, during the review period. Examiners commented favorably on the bank's lending to small businesses, including small businesses in LMI census tracts. According to examiners, Norwest Bank Nevada, N.A., Las Vegas, Nevada ("Norwest Bank Nevada") also had a good geographic distribution of its small business loans. The bank was commended for its small business loans in LMI census tracts, particularly in the Las Vegas MSA, where the amount of small business loans in low-income census tracts, as a percentage of the bank's total small business lending in the MSA, exceeded both the percentage of small businesses in the state that were located in low-income areas and the bank's overall market share of small business lending. Examiners also noted that Norwest Bank Nevada had an excellent record of lending to businesses of different sizes, with 74 percent of its small business loans originated to businesses with gross annual revenues of $100,000 or less. Examiners stated that this percentage exceeded the percentage of businesses of this size in the state and was significantly higher than the level of lending to such borrowers by market lenders in the aggregate. Examiners also commented favorably on the bank's record of lending to small farms.[44]

Wells Fargo Bank made 459 residential loans in Nevada, totaling $15 million. Although the bank's volume of residential lending was relatively low, examiners found that Wells Fargo Bank's loan distribution among areas representing different income levels was good, and that the bank's market share of lending in LMI areas approximated its overall market share of residential loans. The examination report commended Wells Fargo Bank for the distribution of its residential loans to low-income borrowers.[45]

Norwest Bank Nevada, together with the home mortgage lending subsidiaries of Norwest Corporation, made more residential loans in

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[44] The examination report indicated that there were some low-income areas in which Norwest Bank Nevada made very few or no residential, small business, or small farm loans. However, examiners determined that these gaps resulted primarily from a lack of lending opportunities in these areas because of small population, few owner-occupied homes, or a small number of businesses. Furthermore, examiners concluded that there were no gaps in the bank's lending that were unexplained or that reflected poorly on its lending performance in any assessment area.

[45] In the Reno MSA, where low-income families represented 17 percent of all households, Wells Fargo Bank made 35 percent of its residential loans to low-income borrowers. In the Las Vegas Multistate MSA, which includes portions of Arizona, LMI families represented 37 percent of the population of the MSA and Wells Fargo Bank made 39 percent of its residential loans to LMI borrowers. In rural Nevada, where LMI families represented 37 percent of the population, Wells Fargo Bank made 37 percent of its residential loans to LMI borrowers, and its performance in providing residential credit to low-income borrowers exceeded that of lenders in the aggregate.

Nevada than Wells Fargo Bank.[46] Examiners of Norwest Bank Nevada found that the bank made 9,742 home purchase loans from January 1997 through December 1998 and that it ranked first in the Reno MSA, second in the bank's rural Nevada assessment area, and fourth in the Las Vegas Multistate MSA in the number of home purchase loans originated.[47] Examiners commended the bank for its distribution of home purchase loans to low-income census tracts in the Las Vegas Multistate MSA and found that the bank's market share of home purchase loans in low-income census tracts was significantly higher than its overall market share of home purchase loans.

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[46] Examiners stated that Norwest Bank Nevada had a high volume of loan originations in Nevada in 1997 compared with similarly situated commercial banks and noted particularly that the number and dollar volume of the bank's loans increased significantly during the period of 1997 to the end of 1998.

[47] One commenter argued that the most recent CRA examination for Norwest Bank Nevada demonstrated that the bank has a poor record of compliance with the CRA. Examiners noted that Norwest Bank Nevada had a poor record of home purchase lending in moderate-income areas of the Las Vegas Multistate MSA. However, the examination report also stated that the bank's distribution of home purchase loans in low-income areas of the Las Vegas Multistate MSA was excellent and that the bank's market share of home purchase loans in low-income areas was significantly higher than its market share of home purchase loans in all geographies. Similarly, although examiners noted that the bank had an uneven distribution of home improvement loans in the Reno MSA, they found that the bank's geographic distribution of home improvement loans was excellent in rural Nevada, adequate in the Las Vegas Multistate MSA, and adequate for the state overall. Examiners rated Norwest Bank Nevada's performance under the lending test component of its overall CRA rating as "high satisfactory."

In the Las Vegas Multistate MSA, Wells Fargo Bank made loans to two affordable housing projects, totaling $21 million, that helped to provide 456 affordable housing rental units for low-income families. The bank also made two investments in Nevada to support affordable housing and provided 35 grants, totaling more than $3 million, to organizations that developed affordable housing. Examiners considered this to be a significant volume of investment relative to the amount of the bank's deposits collected in the state. Examiners of Norwest Bank Nevada also determined that the bank made a significant number of qualified community development investments that all addressed identified needs in its assessment areas. For example, in the Reno MSA, Norwest Bank Nevada invested $9.6 million in multifamily Fannie Mae Delegated Underwriting and Service LIHTC bonds and $1.8 million in privately pooled mortgage-backed securities. In the Las Vegas Multistate MSA, the bank made grants to nonprofit organizations, affordable housing projects, small business lenders, and providers of educational and social services for at-risk youth.

<u>New Mexico</u>. During the period covered by its most recent CRA performance examination, Wells Fargo Bank made almost 1,000 small business loans, totaling $21 million, in New Mexico that were almost all in amounts of less than $100,000. Examiners found that the bank's percentage of small business loans made in LMI areas was comparable to the percentage of the state's small businesses located in these areas and slightly exceeded the percentage of small business loans made in LMI areas by market lenders in the aggregate. Similarly, examiners determined that Norwest Bank NM's distribution of small business loans was responsive to the credit needs of small businesses. The bank was an active SBA lender with preferred lender status and ranked first in SBA lending in the

Albuquerque MSA in 1996. The bank established a Business Solutions Center in Albuquerque to process credit requests of $250,000 or less from small businesses with gross annual revenues not exceeding $2 million.

Consistent with its strategic concentration on small business lending, Wells Fargo Bank originated only 34 residential loans in New Mexico, totaling $2 million, to borrowers in the Santa Fe MSA. Fifty percent of the loans were to low-income borrowers and 29 percent of the loans were in LMI census tracts.

Examiners in the most recent CRA performance examination of Norwest Bank New Mexico, N.A., Albuquerque, New Mexico ("Norwest Bank NM"), considered the bank, along with its affiliate NMI, to be a leading residential lender in its assessment areas. In 1995 and 1996, Norwest Bank NM made 107 CHOP loans, totaling $16.3 million, and examiners found that the bank's distribution of loans in its assessment area, including LMI areas, was reasonable.[48]

Wells Fargo Bank made one community development investment and 29 grants, totaling $366,000, in New Mexico during the review period. Examiners concluded that this level of investment was significant when compared to the amount of deposits the bank collected in the state. The bank was the largest provider of funds to an Hispanic community development organization that facilitated small business micro-

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[48] Wells Fargo (including Wells Fargo Bank, Wells Fargo Bank NM, NMI, and Norwest Home Improvement) made 22.6 percent of its HMDA-reported loans to LMI individuals in 1998 and 23.9 percent to LMI individuals in 1999. Wells Fargo's record of lending to LMI individuals, however, somewhat lagged the record of lenders in the aggregate for both 1998 and 1999.

lending to minorities in economically distressed areas of the state. Examiners also determined that Norwest Bank NM and NMI supported community development projects. The bank provided a $100,000 line of credit to a nonprofit micro-lender and a revolving line of credit to a nonprofit economic development organization that made guaranteed and direct loans and offered technical assistance to economically disadvantaged businesses. Norwest Bank NM also issued a $8.6 million letter of credit to support the expansion of two manufacturing plants in LMI areas, thereby significantly improving employment opportunities for LMI residents in the area.

Oregon. Examiners found that Wells Fargo Bank was a major small business lender in Oregon. The bank made approximately 5,000 small business loans, totaling approximately $180 million, and examiners considered it to be responsive to the credit needs of small businesses in the state. Wells Fargo Bank's distribution of lending to small businesses in LMI areas compared favorably to the percentage of small businesses located in these areas. The bank made 94 percent of its small business loans in amounts of less than $100,000 and 53 percent of all its small business loans to businesses with gross annual revenues of less than $1 million.

Wells Fargo Bank originated 1,618 residential loans in Oregon, totaling $69 million, during the examination period, and examiners found that the distribution of these loans reflected good penetration among borrowers of all income levels. The percentage of the bank's residential loans made in LMI areas equaled the percentage of all owner-occupied housing units in LMI areas that were in the bank's assessment area. Moreover, Wells Fargo Bank's market share of residential loans to LMI borrowers represented 88 percent of its overall market share of residential loans.

Wells Fargo Bank made seven affordable housing loans in Oregon, totaling $5 million. Examiners found that these loans helped to provide low-income housing units for senior citizens and families and addressed significant needs in the bank's assessment areas. Wells Fargo Bank also made two economic development loans to Native American tribes, totaling almost $7 million. In addition, the bank made $8 million of LIHTC investments that helped finance the acquisition, rehabilitation, and construction of affordable housing units for LMI individuals in Oregon. Wells Fargo Bank also made 76 grants, totaling $616,000, to support community development, affordable housing, and economic and small business development, and to provide food, shelter, health, and relief services to LMI individuals and families.

South Dakota.[49] Examiners found that Norwest Bank South Dakota, N.A., Sioux Falls, South Dakota ("Norwest Bank SD"), and NMI made more conventional HMDA-reported loans, measured by number and dollar amount, than any other conventional home mortgage lender in the

[49] Wells Fargo also controls a credit card bank, Wells Fargo Financial Bank, Sioux Falls, South Dakota (formerly Dial Bank). At its most recent CRA examination, examiners noted that Dial Bank had a high volume of community development loans, a very high volume of qualified community development investments, and had assumed a leadership role in many projects related to these qualified investments. Examiners concluded that the CRA performance of Dial Bank was commendable in light of "somewhat limited" community development lending and investment opportunities in the Sioux Falls area and intense competition from several other limited-purpose institutions in the area for these types of projects.

Sioux Falls and Rapid City MSAs. Moreover, Norwest Bank SD and NMI were the leading originators of HMDA-reported loans in moderate-income census tracts and to LMI borrowers in both MSAs.[50] Norwest Bank SD and NMI made 67 CHOP loans, totaling $2.6 million, and 926 Community Home Improvement Program ("CHIP") loans, which also used flexible underwriting criteria for LMI applicants, during the CRA examination review period.

According to examiners, Norwest Bank SD participated actively in community development and redevelopment initiatives and provided leadership, technical support, and financial support throughout its assessment area. For example, the bank assumed a leadership role in forming the Sioux Empire Housing Partnership ("SEHP"), a nonprofit corporation devoted to providing affordable housing to LMI individuals in Sioux Falls, and committed $1 million to SEHP projects and $500,000 to the SEHP equity fund for the purchase of tax credits. Norwest Bank SD

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[50] In 1998, Wells Fargo (including Norwest Bank SD, NMI, and Norwest Home Improvement) controlled approximately 34 percent of market deposits in the Rapid City banking market and made 29 percent of all HMDA-reported loans in the Rapid City MSA; in 1999 Wells Fargo controlled 32 percent of market deposits and made 25 percent of these loans. Wells Fargo controlled approximately 11 percent of market deposits in the Sioux Falls banking market in 1998 and made 33 percent of all HMDA-reported loans in the Sioux Falls MSA; in 1999 the organization controlled approximately 12 percent of market deposits and made 30 percent of these loans. Wells Fargo made 21.2 percent of all its HMDA-reported loans in the Sioux Falls MSA to LMI individuals in 1998. In 1999, the organization made 23.2 percent of its HMDA-reported loans to LMI individuals in the MSA. Lenders in the aggregate in the Rapid City and Sioux Falls MSAs slightly exceeded Wells Fargo in the percentage of loans made to LMI individuals and in LMI census tracts during this time period.

provided over $7.6 million to finance multifamily LMI housing projects in South Dakota and extended a $2.8 million loan to the Rapid City YMCA Center, which is in a moderate-income area, to build child care and health facilities and to support gymnastics programs.

Examiners concluded that Norwest Bank SD made a sizeable volume of loans to small businesses and small farms in South Dakota. As of June 30, 1996, Norwest Bank SD had outstanding 9,003 small business loans, totaling $294 million, and 5,616 small farm loans, totaling $203 million. Eighty-four percent of these loans were originated in amounts less than $100,000.

Utah. Wells Fargo Bank made more than 2,000 small business loans in Utah, totaling almost $138 million, of which 89 percent were in amounts of less than $100,000, and 46 percent were to businesses with gross annual revenue less than $1 million. Examiners found that the bank's small business lending in LMI census tracts was good, and that the amount of small business loans made in LMI census tracts, as a percentage of the bank's total small business lending in the state, exceeded the percentage of the state's small businesses located in these areas.

Wells Fargo Bank made 294 residential loans, totaling $29 million, in the state, and examiners found that the bank's lending was distributed reasonably among borrowers and geographic areas of all income levels. The amount of residential loans made in LMI areas, as a percentage of the bank's total residential lending in Utah, approximated the percentage of the state's owner-occupied housing units located in these areas. Similarly, the amount of residential loans made to LMI households, as a percentage of the bank's total residential lending in Utah, exceeded the percentage of all Utah households that were LMI.

Wells Fargo Bank made 10 community development loans in Utah, totaling $21 million, during the bank's review period that supported the development of 428 low-income housing units. The bank also made two community development investments in the Salt Lake City MSA, totaling $448,000. One investment assisted LMI individuals and families to maintain home ownership, and the other provided financing and management support to start-up and existing small businesses that did not qualify for conventional financing. Wells Fargo Bank also made 59 grants, totaling $259,000, that were used to provide assistance in the areas of affordable housing, small business development, and economic development and to provide a variety of other services to LMI families in Utah.

Washington. Wells Fargo Bank made more than 8,000 small business loans, totaling almost $394 million, in Washington, of which 92 percent were in amounts less than $100,000 and 47 percent went to businesses with gross annual revenue less than $1 million. Examiners found that these loans were dispersed throughout the state. The amount of the bank's loans to small businesses located in LMI areas, as a percentage of the bank's total business lending, approximated the percentage of the state's small businesses that were located in these areas.

Wells Fargo Bank made 2,118 residential loans in Washington, totaling $103 million, and examiners found that the amount of residential loans made in LMI census tracts, as a percentage of the bank's total residential lending, approximated the percentage of the state's owner-occupied housing units located in these areas. The bank's residential lending also was well distributed among borrowers of all income levels, and the percentage of the bank's residential loans made to LMI households exceeded the percentage of all Washington households that were LMI.[51]

Wells Fargo Bank made nine community development loans in Washington, including $31 million to support the development of 638 low-income housing units and other affordable housing initiatives and $6 million to provide community services for LMI individuals. Examiners commended Wells Fargo Bank for its community development investments, totaling almost $8 million. These investments helped to provide capital, loan financing, and technical assistance to low-income entrepreneurs and to support the rehabilitation of affordable housing. In addition, Wells Fargo Bank made 198 grants, totaling almost $2 million, primarily to nonprofit organizations engaged in providing affordable housing, supporting small businesses, and other community revitalization efforts.

Wisconsin.[52] Examiners generally found that each of the predecessor banks to Wells Fargo Bank Wisconsin had made good efforts to address housing, small business, small farm, and consumer credit needs in

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[51] Commenters from Washington alleged that Wells Fargo's subsidiaries generally experienced higher default rates on their mortgage loans compared with loan originators in the aggregate. Wells Fargo has indicated that WFHM had received the highest servicing performance rating from Freddie Mac, based on the company's default performance and the effectiveness of its loss mitigation efforts, and that Fannie Mae had recognized WFHM for good performance on defaults and loss mitigation.

[52] As of June 24, 2000, Norwest Bank Wisconsin, N.A., Milwaukee, Wisconsin ("Norwest Bank Wisconsin"), was renamed Well Fargo Bank Wisconsin, N.A. ("Wells Fargo Bank Wisconsin"), and consolidated with Norwest Bank La Crosse, N.A., La Crosse, Wisconsin ("Norwest Bank La Crosse"), and Midamerica Bank Hudson, Hudson, Wisconsin ("Midamerica").

its communities, that each bank actively invested in its community, and that each bank had a good record of originating loans to LMI individuals and in LMI areas.[53]

Examiners found, in an examination conducted as of November 1996, that Norwest Bank Wisconsin provided a comprehensive array of loan products to meet community credit needs. Between January 1994 and September 30, 1996, Norwest Bank Wisconsin originated 2,575 small business loans and small farm loans in amounts of less than $1 million, totaling $304 million. Examiners found that, in 1996, 72 percent of these loans were to businesses and farms with gross annual revenues of less than $1 million. As of June 30, 1996, Norwest Bank La Crosse had outstanding 1,150 small business loans, totaling $54.8 million, and 246 small farm loans, totaling $2.3 million, of which 83 percent were in amounts of less than $100,000. Examiners also determined that Midamerica

[53] One commenter criticized Wells Fargo's record of residential lending to LMI and minority borrowers in Wisconsin based on data available after the most recent CRA examinations of Wells Fargo's Wisconsin banks. Wells Fargo has represented that, in 1999, the percentage of conventional home mortgage loans made to minority individuals in Wisconsin by Wells Fargo's subsidiaries was comparable with the percentage of these loans to minority individuals in Wisconsin by lenders in the aggregate. Moreover, Wells Fargo has stated that, in 1999, the percentage of conventional home mortgage loans to LMI individuals in Wisconsin by Wells Fargo's subsidiaries approximated the percentage of these loans by lenders in the aggregate in all but the La Crosse and the Milwaukee-Waukesha MSAs. Wells Fargo further has represented that, based on 1998 market share data, the percentage of home purchase loans by Wells Fargo's subsidiaries in the La Crosse and Milwaukee-Waukesha MSAs was comparable with the percentage of loans by Wells Fargo to all borrowers in those MSAs, regardless of the borrower's income.

actively participated in economic development projects and made loans that facilitated the start-up, expansion, and relocation of businesses, including women-owned businesses.

Norwest Bank Wisconsin made 50 CHOP loans, totaling $1.9 million, from January 1995 to June 30, 1996. Similarly, Norwest Bank La Crosse made 17 CHOP loans, totaling approximately $600,000, in 1994 and 1995. Examiners found that each of the three former Norwest banks in Wisconsin, together with NMI, consistently originated loans through federal government-sponsored loan programs. Norwest Bank Wisconsin and Norwest Bank La Crosse also participated actively with the Wisconsin Housing and Economic Development Authority ("WHEDA") in its programs to assist LMI individuals to become homeowners.[54] Examiners also found that all three banks and NMI had a reasonable distribution of loans to LMI individuals and in LMI areas. For example, Norwest Bank Wisconsin and NMI generated 2,455 residential loans to LMI individuals and 1,165 residential loans in LMI areas from January 1994 to September 30, 1996.[55] Moreover, Norwest Bank Wisconsin's and NMI's market share of residential loans to LMI borrowers was equal to the organizations' overall market share.[56]

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[54] Wells Fargo has indicated that demand for WHEDA loans from Midamerica may have been limited by the relatively high income levels of the communities the bank serves.

[55] In the eight MSAs included in Wells Fargo's Wisconsin assessment area, Wells Fargo (including the three former Norwest banks, NMI, and Norwest Home Improvement) made 2,297 HMDA-reported loans to LMI individuals in 1998, which represented 19.9 percent of all HMDA-reported loans by Wells Fargo. In 1999, Wells Fargo made 2,140 HMDA-reported loans to LMI individuals in these assessment areas, which represented 27.2 percent

(continued . . .)

Examiners stated that Norwest Bank Wisconsin participated actively in community development initiatives, often assuming a leadership role. The bank provided $3 million in financing to help build 250 housing units for LMI individuals in Milwaukee and participated in a program to provide matching funds to assist LMI loan applicants with down payments. Norwest Bank Wisconsin also provided $10 million in funding to seven projects devoted to developing LMI multi-family housing in various communities in Wisconsin and provided capital to projects designed to expand job opportunities for LMI individuals. Examiners found that Norwest Bank La Crosse participated in projects to provide rental housing to students and in LMI communities and originated loans to support revitalization and job growth in the inner city area of La Crosse. Examiners reported that Midamerica had funded the expansion of community facilities, such as a hospital and a YMCA, and provided check cashing and other banking services at a retirement home to meet the special needs of elderly community members.

D. First Security's CRA Performance Record[57]

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of all HMDA-reported loans by the bank. The percentage of Wells Fargo's HMDA-reported loans to LMI individuals in these areas in 1998 and 1999 was slightly below that of lenders in the aggregate.

[56] One commenter questioned whether Wells Fargo's subsidiary banks in Wisconsin complied with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. § 1835a). The Board has been advised by the appropriate federal banking supervisors that all Wells Fargo's subsidiary banks satisfy the provision.

[57] The Board recently reviewed in detail the record of First Security's subsidiary banks under the CRA. See First Security Order at 131-132.

As noted above, First Security Bank received an overall rating of "outstanding" at its most recent examination for CRA performance. Examiners commented favorably on the bank's responsiveness to community lending needs and rated the institution's lending activities "outstanding" on the lending test component of its CRA performance rating.[58] At the state level, examiners rated First Security Bank's lending activities "outstanding" in Utah and "high satisfactory" in Idaho and Oregon. Examiners found that the bank had a good distribution of home mortgage loans to borrowers of all income levels. The bank's record of home purchase lending to low-income individuals in Idaho and Oregon was good and its record of home purchase lending to moderate-income individuals was excellent. First Security Bank also was responsive to the credit needs of small businesses in the bank's assessment areas and had a good record of lending to businesses of different sizes. In addition, examiners commended the bank for its responsiveness to the credit needs of small farms. Examiners noted that First Security Bank regularly used flexible underwriting practices to meet the credit needs of LMI homebuyers and small businesses in Idaho and Oregon.

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[58] A Nevada commenter particularly criticized First Security's record of making small business and residential loans to minority individuals and its record of making small business loans in LMI areas. First Security Bank of Nevada focuses on providing loans and services to businesses in its assessment areas. At the bank's most recent CRA performance evaluation, examiners reviewed its small business lending, which accounted for the largest portion of the bank's loan portfolio, and found that the distribution of lending in its assessment areas, including LMI areas, was good. The performance examination also stated that First Security Bank of Nevada had a good record of lending to businesses of all sizes. Moreover, examiners did not identify any violations of applicable antidiscrimination laws by the bank.

Examiners stated that First Security Bank had a high level of community development lending and investment activity, and rated the bank "high satisfactory" on the investment test component of its CRA performance evaluation. Of particular note was the bank's level of investment in affordable housing projects. In Idaho, First Security Bank made qualified loans totaling $12 million, which helped to develop 442 affordable housing units. The bank also made complex investments involving LIHTCs that generated an additional 58 units of affordable housing. In Oregon, the bank made three loans, totaling $2.2 million, to support the development of 156 affordable housing units, made a qualified loan of $130,000 to support other affordable housing initiatives, and provided $3.9 million to a project to develop government-subsidized affordable housing. In addition, First Security Bank made 20 community development investments, totaling $801,000, which examiners characterized as an adequate response to community needs in light of the investment opportunities available in the area.

First Security Bank received a rating of "outstanding" on the service test component of its CRA evaluation. Examiners commended the bank for the geographical distribution of its branches and ATMs throughout in its Idaho assessment areas, noting that the percentage of the bank's branches and ATMs located in LMI areas exceeded the percentage of all state geographies that were designated LMI areas. Examiners also determined that First Security Bank's business hours in Idaho were reasonable and accommodated customer needs, noting that 27 percent of the bank's branches, including several branches in LMI geographies, offered Saturday hours. Similarly, examiners concluded that First Security Bank's branches and ATMs in Oregon were well distributed, and that the bank's business hours accommodated customer needs.

HMDA Data

The Board also has considered Wells Fargo's and First Security's records in light of comments on data provided by the organizations' subsidiaries under HMDA.[59] HMDA data for 1998 and 1999 indicate that Wells Fargo generally lagged the aggregate of lenders in its assessment areas in the percentage of its housing-related loans that were made to LMI individuals and for properties in LMI census tracts. The data do not indicate, however, that Wells Fargo neglected home mortgage lending or systematically omitted any particular racial, economic, or geographic segment of its communities under its home mortgage lending programs. The 1998 and 1999 data also show generally that the percentage of Wells Fargo's housing-related loans to Native Americans, African Americans, and Hispanics approximated the percentage of such loans to minority individuals by lenders in the aggregate in Wells Fargo's assessment

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[59] Commenters criticized Wells Fargo's record of home mortgage lending to LMI and minority individuals in California, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Washington, and Wisconsin. Commenters also alleged that First Security made an inadequate number of home mortgage loans to LMI and minority individuals in Idaho, Oregon, and Washington in light of the percentage of the general population in these states that these individuals constituted.

areas. Typically, however, the percentages of housing-related loans to minority individuals by Wells Fargo and lenders in the aggregate were less than the percentage of these individuals in the total population of the assessment areas. Similarly, although denial disparity ratios vary widely among groups of applicants and by area, Wells Fargo's denial disparity ratios for minority individuals were generally higher than the denial disparity ratios for lenders in the aggregate in its assessment areas.

The 1998 and 1999 HMDA data for First Security in the MSAs cited by commenters indicate that the percentage of housing-related loans by the organization to LMI individuals and in LMI census tracts was comparable with or exceeded the lending activities by lenders in the aggregate to LMI individuals and in LMI areas. The percentage of First Security's housing-related loans to minority individuals was comparable with the percentage of these loans by lenders in the aggregate in the State of Utah and the percentage of First Security's housing-related loans to Hispanics approximated or exceeded the percentage of these loans by lenders in the aggregate in the other cited markets. With limited exceptions, however, there were too few Native Americans or African Americans in the other cited markets and First Security received too few housing-related loan applications from members of these groups to evaluate the organization's lending to members of these groups in these areas.[60]

The Board is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to

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[60] In the Boise MSA, First Security's housing-related lending to Native Americans exceeded the percentage of these loans by lenders in the aggregate.

ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[61] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information. As noted above, examiners found no evidence of prohibited discrimination or other illegal credit practices at the subsidiary banks of Wells Fargo and First Security at their most recent examinations. Examiners reviewed fair lending policies and procedures of the banks and found the policies and procedures to be comprehensive and appropriate for monitoring compliance with fair lending laws. The Board also has considered the HMDA data in light of Wells Fargo's and First Security's lending records, which show that the

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[61] 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. HMDA data also may be incomplete and may not identify all applicants with regard to income level, ethnicity, or other demographic factors.

organizations' subsidiary banks assist significantly in helping to meet the credit needs of their communities, including LMI areas.

E. Branch Closings

One commenter alleged that Wells Fargo had a poor record of retaining branches and several commenters expressed concern about the effect of possible branch closings that might result from this proposal. Wells Fargo has provided the Board with its branch closing policy, and Board has considered the public comments about potential branch closings in light of all the facts of record, including information provided by Wells Fargo.

The Board has carefully considered the branch closing policy of Wells Fargo and Wells Fargo's record of opening and closing branches. The Board notes that the branch closing policy provides that local bank management in the areas of proposed branch closings must review the impact that each branch closing would have on the community. Examiners have reviewed the performance of Wells Fargo's subsidiary banks under the branch closing policy on several occasions. In addition, the most recent CRA examination of Wells Fargo Bank indicated that the bank had a satisfactory record of opening and closing branches, noted generally that the branch closings did not affect LMI communities in a materially adverse manner, and concluded that Wells Fargo Bank's delivery systems were reasonably accessible to LMI individuals and areas. Examiners also concluded that First Security's subsidiary banks had a good record of opening and closing branches.

The Board expects that the subsidiary banks of the combined organization would continue to use a satisfactory branch closing policy for any branch closings that might result from the proposed transaction. The Board also notes that the appropriate federal supervisor for each of Wells

Fargo's subsidiary banks will, in the course of conducting CRA performance examinations, continue to review the branch closing record of these banks.

F. Conclusion on Convenience and Needs

In reviewing the effect of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered all the facts of records, including the public comments received, Wells Fargo's responses to the comments, and evaluations of the performance of each of Wells Fargo's and First Security's insured depository institution subsidiaries under the CRA.[62] In connection with the proposal, Wells Fargo has indicated that the combined organization generally would follow the CRA policies and procedures currently used by Wells Fargo's subsidiary banks and has provided the Board with detailed information about the proposed CRA policies, procedures, and programs it intends to use in the future. Moreover, Wells Fargo has informed the Board that the combined organization would honor the existing CRA lending and contribution commitments of First Security and retain various First Security products and

[62] One commenter alleged that Wells Fargo has indirectly supported predatory lending through the business relationships of Norwest Bank Minnesota, N.A., Minneapolis, Minnesota ("Norwest Bank Minnesota"), with Delta Funding Corporation and First Alliance Mortgage, which the commenter characterized as predatory lenders. Wells Fargo has stated that Norwest Bank Minnesota's only relationship with Delta Funding Corporation and First Alliance Mortgage is to serve as a trustee on bond issues secured by pools of mortgage loans originated by these two parties and that the bank's sole duty is to the bondholders. Wells Fargo has represented that Norwest Bank Minnesota has no role in the initial funding of the loans that are included in the mortgage loan pools and has no knowledge of the lending practices followed by the party originating the loans.

programs that are designed to help meet the credit needs of LMI individuals and areas.[63]

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 the subsidiary banks of Wells Fargo and First Security, are consistent with approval of the proposal.[64]

Nonbanking Activities

Wells Fargo also has filed notice under section 4(c)(8) of the BHC Act to acquire certain nonbanking subsidiaries of First Security. Wells Fargo would engage through these subsidiaries in a number of permissible nonbanking activities, including providing credit-related insurance, data processing services, and equipment leasing. The Board has determined by regulation that each activity conducted by a First Security subsidiary for

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[63] Wells Fargo has specifically identified certain affordable housing programs provided by First Security that the combined organization would continue to offer. These programs include Federal Home Loan Bank, state housing agency first-time homebuyer, and nonprofit LMI home mortgage loan programs.

[64] Certain commenters questioned whether Wells Fargo had fulfilled previous CRA pledges it had made in the past, and requested the Board to investigate Wells Fargo's performance. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into agreements with any organization. The Board, therefore, views such pledges and agreements and their enforceability as matters outside the CRA and focuses on the existing record of an applicant and the programs that the applicant has in place to serve the credit needs of its community. See Fleet Financial Group, Inc., 85 Federal Reserve Bulletin 747, 765 (1999); First Union Corporation, 84 Federal Reserve Bulletin 489, 500 (1998).

which Wells Fargo provided notice under section 4 of the BHC Act is closely related to banking for purposes of the BHC Act.

In order to approve the notice filed by Wells Fargo to acquire certain nonbanking subsidiaries of First Security, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of these subsidiaries "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."[65]

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

The Board also has considered the competitive effects of the proposed acquisition by Wells Fargo of the nonbanking subsidiaries of First Security. Each of the markets in which the nonbanking subsidiaries of Wells Fargo and First Security compete is unconcentrated, and there are numerous providers of each service. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for these services. 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 this transaction.

[65] 12 U.S.C. § 1843(j)(2)(A).

Wells Fargo has indicated that consummation of the proposal would provide customers of Wells Fargo and First Security with access to a wider range of products and services than Wells Fargo or First Security individually could provide. 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 the investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

The Board also has concluded that the conduct of the proposed activities within the framework of Regulation Y and Board precedent is not likely to result in any significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, 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 benefits that the Board must consider under section 4(j) of the BHC Act is favorable and consistent with approval of the notice.

As required by section 25 of the Federal Reserve Act and section 211.4(f) of the Board's Regulation K (12 C.F.R. 211.4(f)), Wells Fargo also has applied to acquire First Security Hong Kong Agreement Corporation, Salt Lake City, Utah, which is organized under section 25 of the Federal Reserve Act, and its subsidiary. The Board concludes that all the factors it is required to consider under the Federal Reserve Act and the

Board's Regulation K in connection with this application are consistent with approval of the proposal.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.[66] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the

[66] Several 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 they submitted 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 evidence 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 proposal are denied.

BHC Act and other applicable statutes.[67] The Board's approval is specifically conditioned on compliance by Wells Fargo with all the commitments made in connection with the applications 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 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.

[67] A number of commenters requested that the Board delay action or extend the comment period on 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 has concluded that the record in this case is sufficient to warrant Board action at this time, and that a further delay in considering the proposal, extension of the comment period, or a denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

The acquisition of the subsidiary banks of First Security 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 Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,[68] effective October 10, 2000.

Robert deV. Frierson
Associate Secretary of the Board

[68] Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

APPENDIX A

Nonbanking Activities of First Security
to Be Acquired under Section 4 of the BHC Act

First Security Mortgage Company and its wholly owned subsidiary, Asset Recovery, Inc., both of Salt Lake City, Utah, and thereby engage in extending credit and servicing loans, in accordance with section 225.28(b)(1) of Regulation Y (12 C.F.R. 225.28(b)(1));

First Security Leasing Company and its wholly owned subsidiary, First Security Leasing Company of Nevada, and Banker's Equipment Alliance, Inc., all of Salt Lake City, Utah, and thereby engage in personal property leasing, in accordance with section 225.28(b)(3) of Regulation Y (12 C.F.R. 225.28(b)(3));

First Security Investment Services, Inc. and its wholly owned subsidiary, First Security Investment Management, Inc., both of Salt Lake City, Utah, and thereby engage in providing investment management and investment advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R 225.28(b)(6));

First Security Specialized Services, Inc., Salt Lake City, Utah, and thereby engage in providing financial consulting services, in accordance with sections 225.28(b)(6) and (9) of Regulation Y (12 C.F.R. 225.28(b)(6) and (9));

First Security Life Insurance Company of Arizona, Salt Lake City, Utah, and thereby engage in credit life and disability insurance underwriting, in accordance with section 225.28(b)(11)(i) of Regulation Y (12 C.F.R. 225.28(b)(11)(i)); and

First Security Processing Services, Inc., Salt Lake City, Utah, and thereby engage in data processing and data transmission services, in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14)).

APPENDIX B

Banking Markets in which Wells Fargo and First Security Compete Directly

California

Hesperia-Apple Valley-Victorville	Hesperia-Apple Valley-Victorville RMA and the towns of Helendale, Lucerne Valley, Phelan, and Wrightwood.
Los Angeles	Los Angeles RMA and the towns of Rancho Santa Margarita and Rosamond.
Riverside-San Bernardino	Riverside-San Bernardino RMA and the towns of Banning, Beaumont, and Nuevo.
South Lake Tahoe	The towns of South Lake Tahoe in California and Stateline and Zephyr Cove in Nevada.
Truckee-Tahoe	The towns of Kings Beach, Tahoe City, and Truckee in California and Incline Village in Nevada.

Idaho

Boise	Boise RMA and the towns of Emmett, Homedale, Marsing, Parma, and Wilder.
Hailey	The towns of Bellevue, Hailey, Ketchum, and Sun Valley.
Idaho Falls	Idaho Falls RMA and the towns of Shelley and Ririe.
Pocatello	Pocatello RMA.
Sandpoint	The towns of Ponderay, Priest River, and Sandpoint in Idaho and Newport in Washington.

Twin Falls	The towns of Buhl, Filer, Gooding, Hagerman, Hazelton, Jerome, Kimberly, Richfield, Shoshone, Twin Falls, and Wendell.

Nevada

Carson City	The towns of Carson City, Dayton, Gardnerville, Minden, and Virginia City.
Las Vegas	Las Vegas RMA.
Reno	Reno RMA and the town of Fernley.

New Mexico

Albuquerque	Albuquerque MSA and Guadalupe and Torrance Counties.
Las Cruces	Las Cruces MSA, excluding the towns of Anthony, Santa Teresa, and Sunland Park in Dona Ana County.
Rio Arriba County	Rio Arriba County.
Roswell-Artesia	Chaves County and the northern half of Eddy County.
Santa Fe	Santa Fe RMA.

Oregon

Corvallis	Corvallis RMA.
Deschutes	The towns of Bend, La Pine, Redmond, Sisters, Sunriver, and Terrebonne.
Ontario	The towns of Nyssa, Ontario, and Vale in Oregon and Fruitland, New Plymouth, Payette, and Weiser in Idaho.
Portland	Portland RMA and the towns of Mount Angel,

	Scappoose, St. Helens, and Vernonia in Oregon and Yacolt in Washington.
Salem	Salem RMA and the town of Silverton.
Texas	
El Paso	El Paso MSA and the towns of Anthony, Santa Teresa, and Sunland Park in Dona Ana County, New Mexico.
Utah	
Box Elder	The towns of Brigham City and Tremonton.
Ogden	Ogden RMA.
Park City	The towns of Coalville, Heber City, Kamas, and Park City.
Provo-Orem	Provo-Orem RMA.
Salt Lake City	Salt Lake City RMA and the towns of Tooele and Grantsville.
Washington	
Spokane	Spokane RMA and the town of Medical Lake in Washington and the towns of Coeur d'Alene, Hayden, Hayden Lake, and Rathdrum in Idaho.

APPENDIX C

Certain Banking Markets without Divestitures

<u>California</u>

Hesperia-Apple Valley-Victorville	Wells Fargo operates the sixth largest depository institution in the market, controlling deposits of $71.3 million, representing approximately 6.6 percent of market deposits. First Security operates the 12th largest depository institution in the market, controlling deposits of $20.9 million, representing approximately 1.9 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the fifth largest depository institution in the market, controlling deposits of $92.2 million, representing approximately 8.5 percent of market deposits. The HHI would increase by 26 points to 1162.
Los Angeles	Wells Fargo operates the second largest depository institution in the market, controlling deposits of $14.2 billion, representing approximately 10.2 percent of market deposits. First Security operates the 27th largest depository institution in the market, controlling deposits of $962.6 million, representing less than 1 percent of market deposits. On consummation of the proposal, Wells Fargo would continue to operate the second largest depository institution in the market, controlling deposits of $15.2 billion, representing approximately 10.9 percent of market deposits. The HHI would increase by 14 points to 1032.
Riverside-San Bernardino	Wells Fargo operates the third largest depository institution in the market, controlling deposits of $547 million, representing approximately 10.1 percent of market deposits. First Security operates the 21st largest depository institution in the market, controlling deposits of $36.1 million, representing less than 1 percent of market deposits. On consummation of the proposal,

Wells Fargo would operate the second largest depository institution in the market, controlling deposits of $583.1 million, representing approximately 10.7 percent of market deposits. The HHI would increase by 13 points to 1622.

<u>Idaho</u>

Idaho Falls	Wells Fargo operates the sixth largest depository institution in the market, controlling deposits of $29.7 million, representing approximately 3.8 percent of market deposits. First Security operates the second largest depository institution in the market, controlling deposits of $198.7 million, representing approximately 25.3 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $228.4 million, representing approximately 29.1 percent of market deposits. The HHI would increase by 191 points to 2156.
Sandpoint	Wells Fargo operates the sixth largest depository institution in the market, controlling deposits of $18.5 million, representing approximately 5.4 percent of market deposits. First Security operates the fourth largest depository institution in the market, controlling deposits of $52.1 million, representing approximately 15.3 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the second largest depository institution in the market, controlling deposits of $70.6 million, representing approximately 20.7 percent of market deposits. The HHI would increase by 166 points to 2218.

<u>Nevada</u>

Reno	Wells Fargo operates the largest depository institution in the market, controlling deposits of $828.9 million, representing approximately 27 percent of market deposits. First Security operates the seventh largest depository institution in the market, controlling deposits of $106.1 million, representing approximately 3.5 percent of market deposits. On consummation of the proposal, Wells Fargo would continue to operate the largest depository institution in the market, controlling deposits of $935 million, representing approximately 30.5 percent of market deposits. The HHI would increase by 187 points to 2082.

<u>New Mexico</u>

Rio Arriba County	Wells Fargo operates the fifth largest depository institution in the market, controlling deposits of $2.9 million, representing approximately 1.1 percent of market deposits. First Security operates the fourth largest depository institution in the market, controlling deposits of $33.7 million, representing approximately 12.5 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the fourth largest depository institution in the market, controlling deposits of approximately $36.6 million, representing approximately 13.6 percent of market deposits. The HHI would increase by 26 points to 3349.
Roswell-Artesia	Wells Fargo operates the largest depository institution in the market, controlling deposits of $128.5 million, representing approximately 20.6 percent of market deposits. First Security operates the eighth largest depository institution in the market, controlling deposits of $25.5 million, representing approximately 4.1 percent of market deposits. On consummation of the proposal, Wells Fargo would continue to operate the largest depository institution in the market, controlling deposits of $154 million, representing approximately 24.7 percent

of market deposits. The HHI would increase by 169 points to 1583.

Santa Fe	Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $110.1 million, representing approximately 10.6 percent of market deposits. First Security operates the eighth largest depository institution in the market, controlling deposits of $41.2 million, representing approximately 4 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the third largest depository institution in the market, controlling deposits of approximately $151.3 million, representing approximately 14.6 percent of market deposits. The HHI would increase by 85 points to 1575.

<u>Oregon</u>

Corvallis	Wells Fargo operates the third largest depository institution in the market, controlling deposits of $99.3 million, representing approximately 13 percent of market deposits. First Security operates the fourth largest depository institution in the market, controlling deposits of $64.2 million, representing approximately 8.4 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the second largest depository institution in the market, controlling deposits of approximately $163.5 million, representing approximately 21.4 percent of market deposits. The HHI would increase by 220 points to 1623.
Deschutes	Wells Fargo operates the sixth largest depository institution in the market, controlling deposits of $61.6 million, representing approximately 6.9 percent of market deposits. First Security operates the fourth largest depository institution in the market, controlling deposits of $76.2 million, representing approximately 8.5 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the third largest depository

institution in the market, controlling deposits of approximately $137.8 million, representing approximately 15.4 percent of market deposits. The HHI would increase by 115 points to 2072.

Ontario	Wells Fargo operates the eighth largest depository institution in the market, controlling deposits of $25.3 million, representing approximately 4.5 percent of market deposits. First Security operates the third largest depository institution in the market, controlling deposits of $88.1 million, representing approximately 15.7 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the third largest depository institution in the market, controlling deposits of $113.4 million, representing approximately 20.2 percent of market deposits. The HHI would increase by 141 points to 1755.
Portland	Wells Fargo operates the third largest depository institution in the market, controlling deposits of $1.6 billion, representing approximately 11.6 percent of market deposits. First Security operates the 20th largest depository institution in the market, controlling deposits of $36.3 million, representing less than 1 percent of market deposits. On consummation of the proposal, Wells Fargo would continue to operate the third largest depository institution in the market, controlling deposits of $1.7 billion, representing approximately 11.9 percent of market deposits. The HHI would increase by 6 points to 2087.
Salem	Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $158 million, representing approximately 8.2 percent of market deposits. First Security operates the third largest depository institution in the market, controlling deposits of $271.3 million, representing approximately 14 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the second largest depository institution in the market, controlling deposits of $429.3

million, representing approximately 22.2 percent of market deposits. The HHI would increase by 230 points to 1585.

Texas

El Paso	Wells Fargo operates the second largest depository institution in the market, controlling deposits of $892.6 million, representing approximately 27 percent of market deposits. First Security operates the seventh largest depository institution in the market, controlling deposits of $72.8 million, representing approximately 2.2 percent of market deposits. On consummation of the proposal, Wells Fargo would continue to operate the second largest depository institution in the market, controlling deposits of $965.4 million, representing approximately 29.2 percent of market deposits. The HHI would increase by 119 points to 2286.

Utah

Ogden	Wells Fargo operates the tenth largest depository institution in the market, controlling deposits of $17.5 million, representing approximately 1.4 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $458 million, representing approximately 37.4 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of approximately $475.5 million, representing approximately 38.8 percent of market deposits. The HHI would increase by 107 points to 2134.
Provo-Orem	Wells Fargo operates the seventh largest depository institution in the market, controlling deposits of $39.1 million, representing approximately 2.1 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits

of $571.8 million, representing approximately 30.5 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $610.9 million, representing approximately 32.6 percent of market deposits. The HHI would increase by 127 points to 2157.

<u>Washington</u>

Spokane	Wells Fargo operates the fifth largest depository institution in the market, controlling deposits of $210.9 million, representing approximately 6 percent of market deposits. First Security operates the sixth largest depository institution in the market, controlling deposits of $195.8 million, representing approximately 5.6 percent of market deposits. On consummation of the proposal, Wells Fargo would operate the fourth largest depository institution in the market, controlling deposits of $406.7 million, representing approximately 11.6 percent of market deposits. The HHI would increase by 68 points to 1641.

APPENDIX D

Certain Banking Markets with Divestitures

California

South Lake Tahoe	Wells Fargo operates the second largest depository institution in the market, controlling deposits of $74.2 million, representing approximately 22.6 percent of market deposits. First Security operates the fifth largest depository institution in the market, controlling deposits of $31.9 million, representing approximately 9.7 percent of market deposits. Wells Fargo proposes to divest one branch in the market, with deposits of $31.9 million, representing approximately 9.7 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would continue to operate the second largest depository institution in the market, controlling deposits of $74.2 million, representing approximately 22.6 percent of market deposits. The HHI would remain unchanged at 2010.

Idaho

Boise	Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $205 million, representing approximately 6.1 percent of market deposits. First Security operates the second largest depository institution in the market, controlling deposits of $1.1 billion, representing approximately 31.8 percent of market deposits. Wells Fargo proposes to divest three branches in the market, with deposits of $94.1 million, representing approximately 2.8 percent of market deposits, to a suitable in-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $1.2 billion, representing

approximately 35.1 percent of market deposits. The HHI would increase by not more than 192 points to 2555.

Hailey — Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $24.9 million, representing approximately 10.9 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $87.4 million, representing approximately 38.3 percent of market deposits. Wells Fargo proposes to divest two branches in the market, with $24.9 million of deposits, representing approximately 10.9 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $87.4 million, representing approximately 38.3 percent of market deposits. The HHI would remain unchanged at 2562.

Nevada

Carson City — Wells Fargo operates the largest depository institution in the market, controlling deposits of $272.3 million, representing approximately 32.2 percent of market deposits. First Security operates the third largest depository institution in the market, controlling deposits of $106.4 million, representing approximately 12.6 percent of market deposits. Wells Fargo proposes to divest one branch in the market, with $74.8 million of deposits, representing approximately 8.9 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would continue to operate the largest depository institution in the market, controlling deposits of $303.9 million, representing approximately 36 percent of market deposits. The HHI would increase by 175 points to 2004.

New Mexico

Albuquerque

Wells Fargo operates the third largest depository institution in the market, controlling deposits of $1.2 billion, representing approximately 23.7 percent of market deposits. First Security operates the second largest depository institution in the market, controlling deposits of $1.3 billion, representing approximately 24.2 percent of market deposits. Wells Fargo proposes to divest 20 branches in the market, with $725 million of deposits, representing approximately 14 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $1.7 billion, representing approximately 33.8 percent of market deposits. The HHI would increase by 196 points to 2247.

Las Cruces

Wells Fargo operates the fifth largest depository institution in the market, controlling deposits of $79.3 million, representing approximately 7.4 percent of market deposits. First Security operates the second largest depository institution in the market, controlling deposits of $236.3 million, representing approximately 22 percent of market deposits. Wells Fargo proposes to divest one branch in the market, with $14.6 million of deposits, representing approximately 1.3 percent of market deposits, to a suitable out-of-market depository institution. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of approximately $301 million, representing approximately 27.1 percent of market deposits. The HHI would increase by 234 points to 1750.[69]

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[69] These market share calculations may overstate the competitive significance of one savings association in the market, based on the unique business focus of the institution. Based on all the facts of record, however, including the presence of two other savings associations as active

(continued . . .)

Utah

Box Elder	Wells Fargo operates the second largest depository institution in the market, controlling deposits of $34.7 million, representing approximately 14.6 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $128.4 million, representing approximately 53.9 percent of market deposits. Wells Fargo proposes to divest one branch in the market, with $34.7 million of deposits, representing approximately 14.6 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $128.4 million, representing approximately 53.9 percent of market deposits. The HHI would remain unchanged at 3361.
Park City	Wells Fargo operates the fourth largest depository institution in the market, controlling deposits of $30.2 million, representing approximately 6.9 percent of market deposits. First Security operates the largest depository institution in the market, controlling deposits of $167.3 million, representing approximately 38.2 percent of market deposits. Wells Fargo proposes to divest one branch in the market, with $30.2 million of deposits, representing approximately 6.9 percent of market deposits, to a suitable out-of-market competitor. After the proposed merger and divestiture, Wells Fargo would operate the largest depository institution in the market, controlling deposits of $167.3 million, representing approximately 38.2 percent of market deposits. The HHI would remain unchanged at 2668.

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commercial lenders in the market, the Board has determined that the increase in HHI in the market is consistent with approval of the proposal.