

FEDERAL RESERVE SYSTEM

UFJ Holdings, Inc. (In Formation)
Osaka, Japan

Order Approving Formation of a Bank Holding Company
and Acquisition of Nonbanking Companies

UFJ Holdings, Inc. (in formation) (“UFJ”), has requested the Board’s approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) (“BHC Act”) to become a bank holding company by indirectly acquiring the U.S. subsidiary banks of The Sanwa Bank, Limited, Osaka, Japan (“Sanwa”), and The Tokai Bank, Limited, Nagoya, Japan (“Tokai”).¹ UFJ 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 4(j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire the U.S. nonbanking subsidiaries of Sanwa and The Toyo Trust and Banking Company, Limited, Tokyo, Japan (“Toyo”), and thereby engage in certain permissible nonbanking activities.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 64,445 (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.

¹ The U.S. subsidiary banks are Sanwa Bank California, San Francisco, California (“Sanwa Bank”), and Tokai Bank of California, Los Angeles, California (“Tokai Bank”).

² The nonbanking activities of Sanwa and Toyo for which UFJ has sought Board approval under sections 4(c)(8) and 4(j) of the BHC Act are listed in the Appendix.

UFJ is a corporation that would be formed under the laws of Japan to acquire Sanwa, Tokai, and Toyo.³ On consummation of the proposal, UFJ would become the second largest banking organization in Japan, with total consolidated assets of \$783 billion.⁴

Sanwa, with total consolidated assets of \$429 billion, is the fifth largest bank in Japan. In the United States, Sanwa owns Sanwa Bank and operates branches in Los Angeles and San Francisco, California; Chicago, Illinois; and New York, New York; and representative offices in Houston, Texas, and New York, New York.

Tokai, with total consolidated assets of \$278 billion, is the eighth largest bank in Japan. In the United States, Tokai owns Tokai Bank and operates branches in Chicago, Illinois, and New York, New York; an agency in Los Angeles, California; and representative offices in Florence, Kentucky, and New York, New York.

Toyo, with total consolidated assets of \$76 billion, is the 17th largest bank in Japan. In the United States, Toyo operates a representative office in New York, New York.

In addition, Sanwa, Tokai, and Toyo engage in a broad range of permissible nonbanking activities in the United States through subsidiaries.

Factors Governing Board Review of the Proposal

³ The transaction would be effected through the exchange of shares. UFJ's corporate existence would begin on its commercial registration after consummation of the exchange of shares. See Japanese Commercial Code, art. 370.

⁴ All asset and ranking data are as of March 31, 2000, and are based on exchange rates then applicable.

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) (“CRA”) of the insured depository institutions involved in the transaction; the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking law; and, in the case of applications involving foreign banks, whether the foreign banks involved are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor.⁵

The Board has considered these factors in light of a record that includes information provided by UFJ, Sanwa, Tokai, and Toyo; confidential supervisory and examination information; and publicly reported financial and other information. The Board also has considered information collected from the primary home country supervisor of Sanwa, Tokai, and Toyo, and from various federal and state agencies, including the California Department of Banking and other relevant agencies.

Competitive Considerations

⁵ In cases, unlike this proposal, involving interstate bank acquisitions, the Board also must consider the concentration of deposits in the United States and relevant individual states, and compliance with other provisions of section 3(d) of the BHC Act.

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁶

Sanwa and Tokai control banking operations that compete directly in the Los Angeles, Sacramento, San Diego, and San Francisco-Oakland-San Jose banking markets, all in California.⁷ In each of these markets, the Herfindahl-Hirschman Index (“HHI”) would increase by 5 points or less,⁸ UFJ would control less than 5 percent of total deposits in insured depository institutions in the market

⁶ 12 U.S.C. § 1842(c)(1).

⁷ The Los Angeles banking market includes the Los Angeles Ranally Metropolitan Area (“RMA”) and the towns of Rancho Santa Margarita and Rosamond. The Sacramento banking market includes the Sacramento RMA and the town of Cool. The San Diego banking market includes the San Diego RMA and the town of Pine Valley. The San Francisco-Oakland-San Jose banking market includes the San Francisco-Oakland-San Jose RMA and the towns of Hollister, Pescadero, Point Reyes Station, and San Juan Bautista.

⁸ Under the Revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is less than 1000 and moderately concentrated if the post-merger HHI is between 1000 and 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 entities.

“market deposits”), and the banking market would remain unconcentrated or moderately concentrated with numerous competitors remaining in the market.⁹ Based on these and all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in these or any other relevant banking markets.

Certain Supervisory Considerations

Under section 3 of the BHC Act, the Board may not approve an application involving a foreign bank unless the bank is “subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank’s home country.”¹⁰ The Board has determined previously, in applications under the BHC Act, that certain Japanese commercial banks, including Sanwa,

⁹ Market share data are as of June 30, 1999. In the Los Angeles banking market, the HHI would increase by 5 points to 979 and UFJ would control 3.6 percent of market deposits. In the Sacramento banking market, the HHI would increase by 1 point to 1197 and UFJ would control 1.7 percent of market deposits. In the San Diego banking market, the HHI would remain unchanged at 1207 and UFJ would control less than 1 percent of market deposits. In the San Francisco-Oakland-San Jose banking market, the HHI would remain unchanged at 1495 and UFJ would control 1.3 percent of market deposits.

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

were subject to comprehensive consolidated supervision by their home country supervisor.¹¹ In this case, the Board has determined that Tokai and Toyo are supervised on substantially the same terms and conditions as other Japanese banks reviewed by the Board. In addition, Japan's Financial Services Agency ("FSA") has supervisory authority with respect to UFJ and its nonbanking subsidiaries. The FSA may conduct inspections of UFJ and its subsidiaries and require UFJ to submit reports about its operations on a consolidated basis. The FSA also may review transactions between UFJ and its subsidiaries and has authority to require UFJ to take measures necessary to ensure the safety and soundness of the UFJ organization. Based on all the facts of record, the Board has concluded that Sanwa, Tokai, and Toyo are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor.

The BHC Act also requires the Board to determine that the applicants have provided adequate assurances that they will make available to the Board such information on their operations and activities and those of their affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. The Board has reviewed the restrictions on disclosures in jurisdictions where Sanwa, Tokai, and Toyo have and UFJ would have material operations and has communicated with relevant government authorities concerning access to information. UFJ has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of UFJ and any of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. UFJ also has

¹¹ See Mizuho Holdings, Inc., 86 Federal Reserve Bulletin 776 (2000); The Sanwa Bank, Limited, 86 Federal Reserve Bulletin 54 (2000); The Fuji Bank, Limited, 85 Federal Reserve Bulletin 338 (1999).

committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary in order to enable UFJ to make any such information available to the Board. In light of these commitments and other facts of record, the Board has concluded that UFJ has provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3 of the BHC Act are consistent with approval.

Financial, Managerial, and Convenience and Needs Considerations

The Board also has considered carefully the financial and managerial resources and future prospects of UFJ and the banks involved in the proposal, the effect the proposed transaction would have on such resources, and other supervisory factors in light of all the facts of record. The Board has consulted with and considered the views regarding this transaction of the home country supervisor for the banking organizations involved. The Board notes that the proposal is intended to enhance the overall financial strength and future prospects of the combined organization. The transaction would occur through an exchange of shares, and Sanwa, Tokai, and Toyo would issue no debt as part of the transaction. UFJ's stated pro forma capital levels would exceed the minimum levels that would be required under the Basle Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization under similar circumstances.

In addition, the Board has reviewed supervisory information from the home country authorities responsible for supervising Sanwa, Tokai, and Toyo concerning the proposal and the condition of the parties; confidential financial information from Sanwa, Tokai, and Toyo; and reports of examination from the appropriate federal and state supervisors of the affected organizations assessing the

financial and managerial resources of the organizations. Based on all the facts of record, the Board has concluded that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.

Sanwa Bank received an “outstanding” CRA performance rating from the Federal Deposit Insurance Corporation (“FDIC”) at its most recent examination, as of August 1998. Tokai Bank also received an “outstanding” CRA performance rating from the FDIC at its most recent examination, as of June 2000. Toyo has no operation in the United States that is subject to examination under the CRA.¹² In light of all the facts of record, the Board has concluded that considerations relating to the convenience and needs of the communities to be served, including the records of performance of the relevant depository institutions under the CRA, are consistent with approval.

Nonbanking Activities

UFJ also has filed notices under section 4(c)(8) and 4(j) of the BHC Act to acquire the U.S. nonbanking subsidiaries of Sanwa and Toyo and to engage in the United States in various permissible nonbanking activities. Sanwa engages in bank-ineligible securities activities in the United States through its section 20 subsidiary, Sanwa Universal Securities Co, L.L.C., New York, New York (“Sanwa Universal”). Sanwa Universal is and would continue to be registered as a broker-dealer with the Securities and Exchange Commission (“SEC”) under the Securities

¹² Until recently, Toyo Trust Company of New York, New York, New York (“Toyo Trust”), which performs trust company functions, was an insured depository institution. Toyo Trust received an “outstanding” CRA performance rating from the FDIC at its last examination, as of September 1998.

Exchange Act of 1934 (“1934 Act”).¹³ Accordingly, Sanwa Universal is and would continue to be subject to the recordkeeping and reporting obligations, fiduciary standards, and other requirements of the SEC and the 1934 Act.

Underwriting and Dealing in Bank-Ineligible Securities

The Board determined by order before November 12, 1999, that, subject to the prudential framework of limitations established in previous decisions to address the potential for conflicts of interests, unsound banking practices, or other adverse effects, underwriting and dealing in bank-ineligible securities are so closely related to banking as to be a proper incident thereto within the meaning of section 4(c)(8) of the BHC Act.¹⁴ The Board has permitted such securities activities on the condition that the company engaged in the activities derives no more than 25 percent of its gross revenues from underwriting and dealing in bank-ineligible securities over a two-year period.¹⁵ UFJ has committed that it will

¹³ 15 U.S.C. § 78a et seq.

¹⁴ See Canadian Imperial Bank of Commerce, et al., 76 Federal Reserve Bulletin 158 (1990); J.P. Morgan & Co., Incorporated, et al., 75 Federal Reserve Bulletin 192 (1989), aff’d sub nom. Securities Industry Ass’n v. Board of Governors of the Federal Reserve System, 900 F.2d 360 (D.C. Cir. 1990); Citicorp, et al., 73 Federal Reserve Bulletin 473 (1987), aff’d sub nom. Securities Industry Ass’n v. Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir. 1988), cert. denied, 486 U.S. 1059 (1988) (collectively, “Section 20 Orders”).

¹⁵ See Section 20 Orders. Compliance with the revenue limitation shall be calculated in accordance with the method stated in the Section 20 Orders, as modified by the Order Approving Modifications to the Section 20 Orders, 75 Federal Reserve Bulletin 751 (1989), and 10 Percent Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities, 61 Federal Register 48,953 (1996); and Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding

(continued . . .)

conduct its bank-ineligible securities underwriting and dealing activities subject to the 25-percent revenue limitation and the limitations previously established by the Board. As a condition of this order, UFJ and Sanwa Universal are required to conduct their bank-ineligible securities activities subject to the Operating Standards established for section 20 subsidiaries (“Operating Standards”).¹⁶

Other Activities Approved by Regulation or Order

The Board determined by regulation before November 12, 1999, that extending credit and engaging in activities related to extending credit; leasing activities; trust company functions; providing financial and investment advisory services; providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services; and engaging in investment transactions as a principal are closely related to banking for purposes of section 4(c)(8) of the BHC Act.¹⁷ UFJ has committed that it will conduct these activities in accordance with the Board’s regulations and prior Board decisions relating to the activities.

In order to approve the notice, the Board also must determine that the acquisition of the U.S. nonbanking subsidiaries of Sanwa, Tokai, and Toyo and the performance of the proposed activities by UFJ can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as

Companies Engaged in Underwriting and Dealing in Securities, 61 Federal Register 68,750 (1996) (collectively, “Modification Orders”).

¹⁶ 12 C.F.R. 225.200. Sanwa Universal may provide services that are necessary incidents to the proposed underwriting and dealing activities. Unless Sanwa Universal receives specific approval under section 4(c)(8) of the BHC Act to conduct the incidental activities independently, any revenues from such activities must be treated as ineligible revenues subject to the Board’s revenue limitation.

¹⁷ See 12 C.F.R. 225.28(b)(1), (2), (3), (5), (6), (7), and (8).

undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.¹⁸

UFJ has indicated that the proposal would improve the financial position and future business prospects of the current banking and nonbanking subsidiaries of Sanwa, Tokai, and Toyo. In addition, the proposal would make available a broader range of services to customers of Sanwa, Tokai, and Toyo.

The Board has carefully considered the competitive effects of the proposed transaction under section 4 of the BHC Act.¹⁹ To the extent that Sanwa, Tokai, and Toyo offer different types of nonbanking products, the proposal would result in no loss of competition. Certain nonbanking subsidiaries of Sanwa, Tokai, and Toyo compete, however, in the market for providing trust company functions. The market for this nonbanking activity is regional or national. The record in this case also indicates that there are numerous providers of trust services and that the market for trust services is unconcentrated. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition.

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

¹⁸ See 12 U.S.C. § 1843(j)(2)(A).

¹⁹ The Board approved previously the acquisition by Sanwa of up to 32 percent of the voting shares of Toyo. See The Sanwa Bank, Limited, 86 Federal Reserve Bulletin 54 (2000).

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

Conclusion

Based on the foregoing, the Board has determined that the transaction should be, and hereby is, approved, subject to all the terms and conditions in this order and the Section 20 Orders, as modified by the Modification Orders. The Board's approval of the proposal extends only to activities conducted within the limitations of those orders and this order, including the Board's reservation of authority to establish additional limitations to ensure that the activities of UFJ are consistent with safety and soundness, avoidance of conflicts of interests, and other relevant considerations under the BHC Act. Underwriting and dealing in any manner other than as approved in this order and the Section 20 Orders (as modified by the Modification Orders) is not within the scope of the Board's approval and is not authorized for UFJ or Sanwa Universal.

In reaching its conclusion, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act and other applicable federal statutes. The Board's approval is specifically conditioned on compliance by UFJ with all the commitments made in connection with this application and notice, including the commitments discussed in this order, and the conditions set forth in the order and the above-noted Board regulations and orders, and on the Board's receiving access to information on the operations or activities of UFJ and any of its affiliates that the Board determines to be appropriate to determine and enforce compliance by UFJ and its affiliates with applicable federal statutes. 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.

The acquisition of the subsidiary banks of Sanwa and Tokai 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,²⁰ effective February 5, 2001.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

²⁰ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

APPENDIX

Nonbanking Activities of Sanwa, Tokai, and Toyo
in which UFJ Proposes to Engage

- (1) Extending credit and servicing loans, in accordance with section 225.28(b)(1) of the Board's Regulation Y (12 C.F.R. 225.28(b)(1));
- (2) Activities related to extending credit, in accordance with section 225.28(b)(2) of the Board's Regulation Y (12 C.F.R. 225.28(b)(2));
- (3) Providing leasing services, in accordance with section 225.28(b)(3) of the Board's Regulation Y (12 C.F.R. 225.28(b)(3));
- (4) Performing trust company functions, in accordance with section 225.28(b)(5) of the Board's Regulation Y (12 C.F.R. 225.28(b)(5));
- (5) Providing financial and investment advisory services, in accordance with section 225.28(b)(6) of the Board's Regulation Y (12 C.F.R. 225.28(b)(6));
- (6) Providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, in accordance with section 225.28(b)(7)(i)-(v) of Regulation Y (12 C.F.R. 225.28(b)(7)(i)-(v));
- (7) Engaging in investment transactions as principal, in accordance with section 225.28(b)(8) of Regulation Y (12 C.F.R. 225.28(b)(8)); and
- (8) Engaging in underwriting and dealing to a limited extent in municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper, and consumer receivable-related securities, as approved by the Board in The Sanwa Bank, Limited, 76 Federal Reserve Bulletin 568 (1990).