

FEDERAL RESERVE SYSTEM

Mitsubishi Tokyo Financial Group, Inc.
Tokyo, Japan

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

Mitsubishi Tokyo Financial Group, Inc. (In Formation)

(“MTFG”) 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 acquiring The Bank of Tokyo-Mitsubishi, Ltd. (“Tokyo Bank”), a registered bank holding company, and its subsidiary banks, and The Mitsubishi Trust and Banking Corporation (“Mitsubishi Trust”), both in Tokyo, Japan, a registered bank holding company, and its subsidiary bank.¹ MTFG also has requested the Board’s approval under section 4(c)(8) and (j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire the direct and indirect U.S. nonbanking subsidiaries of Tokyo Bank and Mitsubishi Trust and thereby engage in certain permissible nonbanking activities.² In addition, MTFG proposes to indirectly acquire Union Bank of California International, New

¹ Tokyo Bank’s banking subsidiaries are: Bank of Tokyo-Mitsubishi Trust Company (“Tokyo Bank-NY”), New York, New York; and UnionBanCal Corporation (“UnionBanCal”), a registered bank holding company, and its subsidiary bank, Union Bank of California, N.A. (“Union Bank”), both in San Francisco, California. Mitsubishi Trust’s subsidiary bank is Mitsubishi Trust & Banking Corporation (U.S.A.) (“Mitsubishi Trust-NY”), New York, New York.

² The nonbanking activities of Tokyo Bank and Mitsubishi Trust for which MTFG has sought Board approval under section 4(c)(8) and (j) of the BHC Act are listed in the Appendix.

York, New York (“UBCI”), an Edge corporation, and BTM North America International, Inc., New York, New York, (“BNAI”), an agreement corporation subsidiary of Tokyo Bank, pursuant to sections 25 and 25A of the Federal Reserve Act (12 U.S.C. § 601 et seq.) and Regulation K (12 C.F.R. 211).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 70,911 (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 and the Federal Reserve Act.

MTFG is a corporation that would be formed under the laws of Japan to acquire Tokyo Bank and Mitsubishi Trust.³ On consummation of the proposal, MTFG would become one of the largest banking organizations in the world, with total consolidated assets of approximately \$860 billion.⁴

Tokyo Bank, with total consolidated assets of \$698 billion, is the largest bank in Japan. In the United States, Tokyo Bank owns UnionBanCal, and indirectly owns Union Bank. Tokyo Bank operates branches in Los Angeles and San Francisco, California; Chicago, Illinois; New York, New York; Portland, Oregon; and Seattle, Washington; agencies in Atlanta, Georgia; and Houston, Texas; and representative offices in Washington, D.C.; Minneapolis, Minnesota; and Dallas, Texas.

³ The transaction would be effected through an exchange of shares. MTFG’s existence would begin on the date on which it consummates the exchange of shares. See Japanese Commercial Code, art. 370. On consummation, MTFG would also acquire Nippon Trust Bank Limited and The Tokyo Trust Bank, Ltd., both in Tokyo, Japan. Neither bank has operations in the United States.

⁴ Asset and ranking data are as of March 31, 2000, and are based on the exchange rate then applicable.

Mitsubishi Trust, with total consolidated assets of \$156 billion, is the 13th largest bank in Japan. In the United States, Mitsubishi Trust owns Mitsubishi Trust-NY. Mitsubishi Trust also operates branches in Chicago, Illinois, and New York, New York, and an agency in Los Angeles, California.

In addition, Tokyo Bank and Mitsubishi Trust engage in a broad range of permissible nonbanking activities in the United States through subsidiaries.

Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the communities 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. The Board also must consider interstate bank acquisitions in light of the concentration of deposits nationwide and in each relevant state, and compliance with other provisions of section 3(d) of the BHC Act.

The Board has considered these factors in light of a record that includes information provided by MTFG, Tokyo Bank, and Mitsubishi Trust; 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 Tokyo Bank and Mitsubishi Trust and from appropriate federal and state agencies.

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 MTFG is California,⁵ and MTFG's subsidiary banks would be located in California, New York, Oregon, and Washington.⁶ All 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 proposal under section 3(d) of the BHC Act.

⁵ A bank holding company's home state is that state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). MTFG would become a bank holding company on consummation of the proposal, and California would be the state in which the total deposits of its U.S. banking subsidiaries would be the largest.

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.

⁷ MTFG is adequately capitalized and adequately managed, as defined by applicable law. 12 U.S.C. § 1842(d)(1)(A). On consummation of the proposal, MTFG and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)), and would not exceed applicable deposit limitations in any state as calculated under state and federal law. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

Tokyo Bank and Mitsubishi Trust control banking operations that compete directly in the New York/New Jersey Metropolitan banking market (“New York banking market”).⁹ Consummation of the proposal would result in an increase of less than 1 point in the Herfindahl-Hirschman Index (“HHI”) in the New York banking market, which would remain unconcentrated with numerous competitors operating in the market.¹⁰ Based on these and all other

⁸ 12 U.S.C. § 1842(c)(1).

⁹ The New York banking market includes New York City; Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren, and a portion of Mercer Counties in New Jersey; Pike County in Pennsylvania; and portions of Fairfield and Litchfield Counties in Connecticut.

¹⁰ Market share data are as of June 30, 1999, and are based on calculations in which the uninsured deposits of the branches of Tokyo Bank and Mitsubishi Trust are included at 100 percent. Tokyo Bank controls deposits of \$3.1 billion in the New York banking market, representing less than 1 percent of total deposits in depository institutions in the market (“market deposits”). Mitsubishi Trust controls deposits of \$666 million in the market, representing less than 1 percent of total market deposits. After consummation of the proposal, MTFG would remain one of the smaller banking organizations in the New York banking market, with less than 1 percent of market deposits. 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 this market or any other relevant banking markets.

Financial and Managerial Considerations

The Board also has considered carefully the financial and managerial resources and future prospects of MTFG 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 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 Tokyo Bank, and Mitsubishi Tokyo would not incur any additional debt as part of the transaction. MTFG's 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 Tokyo Bank and

HHI for the New York banking market would remain unchanged at 931 after consummation of the proposal. Under the revised Department of Justice Merger Guideline, 49 Federal Register 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is less than 1000. 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.

Mitsubishi Trust concerning the proposal and condition of the parties, confidential financial information from Tokyo Bank and Mitsubishi Trust, and reports of examination from the appropriate federal and state supervisors of the affected organizations assessing the financial and managerial resources of the organization.¹¹ 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.

Convenience and Needs Considerations

The Board also has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record.

The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examination by the appropriate federal supervisors of the CRA performance records. 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.¹²

This proposal involves the proposed formation of a new bank holding company. Accordingly, the Board has reviewed in detail the CRA

¹¹ The Japanese Financial Services Agency ("FSA") has approved the formation of MTFG.

¹² The Interagency Questions and Answers Regarding Community Reinvestment provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 65 Federal Register 25,088 and 25,107 (2000).

performance records of the U.S. subsidiary insured depository institutions of the organizations involved in this transaction: Tokyo Bank-NY received an “outstanding” CRA performance rating from the Federal Deposit Insurance Corporation (“FDIC”) at its most recent examination, as of June 1999; Union Bank received a “satisfactory” CRA performance rating from the Office of the Comptroller of the Currency at its most recent examination, as of March 1998; and Mitsubishi Trust-NY received a “satisfactory” CRA performance rating from the FDIC at its most recent examination, as of October 1998.

Examiners found no evidence of prohibited discrimination or other illegal credit practices and found no violations of fair lending laws at any of the insured depository institutions involved in the proposal. Examiners also reviewed the assessment areas delineated by these insured depository institutions and found that the respective assessment areas were reasonable and did not arbitrarily exclude low- and moderate-income areas.

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.

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.”¹³ The Board has

¹³ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y (12 C.F.R. 225.13(a)(4)), the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. Regulation K provides that a foreign bank may be considered

determined previously that certain Japanese banks, including Tokyo Bank, are subject to comprehensive consolidated supervision by their home country supervisor.¹⁴ In this case, the Board has determined that Mitsubishi Trust is supervised on substantially the same terms and conditions as these other Japanese banks. In addition, the FSA has supervisory authority with respect to MTFG and its nonbanking subsidiaries. The FSA may conduct inspections of MTFG and its subsidiaries and require MTFG to submit reports about its operations on a consolidated basis. The FSA also may review transactions between MTFG and its subsidiaries and has authority to require MTFG to take measures necessary to ensure the safety and soundness of the MTFG organization. Based on all the facts of record, the Board has concluded that Tokyo Bank and Mitsubishi Trust 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 foreign banks 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 disclosure in jurisdictions where Tokyo Bank and Mitsubishi Trust have, and MTFG would have, material operations and has communicated with relevant

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).

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

Nonbanking Activities

MTFG also has filed notices under section 4(c)(8) and 4(j) of the BHC Act to acquire the U.S. nonbanking subsidiaries of Tokyo Bank and Mitsubishi Trust and to engage in the United States in various permissible nonbanking activities. Through these subsidiaries, MTFG would directly and indirectly engage in a number of nonbanking activities listed in the Appendix, including engaging in lending activities and activities related to extending credit, engaging in leasing activities, performing trust company functions, providing investment and financial advisory services, providing securities brokerage services,¹⁵ engaging in riskless principal transactions, providing

¹⁴ See The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996); The Chuo Mitsui Trust & Bank Co. Ltd. 86 Federal Reserve Bulletin 702 (2000).

¹⁵ Specifically, MTFG has requested the Board's authorization to retain certain securities-related, foreign exchange, brokerage, investment advisory,

private-placement services, acting as a futures commission merchant,¹⁶ engaging as principal in foreign exchange and forward contracts, options, futures, options on futures, swaps, and similar contracts based on any rate, price, or financial asset,¹⁷ providing to customers as agent transactional services with respect to swaps and similar transactions based on any rate, price, or financial asset, underwriting and dealing in government obligations and money market instruments, and engaging in data processing and transmission activities. The Board determined by regulation before November 12, 1999, that the types of activities for which notice has been provided are closely related to banking for purposes of section 4(c)(8) of the BHC Act.¹⁸ MTFG has committed that it will conduct these activities in accordance with the Board's regulations and in accordance with the orders approving these activities for bank holding companies.

leasing, and data processing activities and activities related to extending credit which Tokyo Bank currently conducts through BTM Capital Corporation, Boston, Massachusetts, and Tokyo-Mitsubishi Securities (U.S.A.), New York, New York. MTFG has committed to comply with commitments and limitations regarding this activity in accordance with the Board's orders approving Tokyo Bank's notice to engage in these activities. See The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996); The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990).

¹⁶ MTFG's authority to operate as a futures commission merchant is limited to the authority approved in The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996).

¹⁷ MTFG's authority to trade for its own account or to act as agent for others in transactions is limited to the authority approved in The Mitsubishi Bank, Limited, 77 Federal Reserve Bulletin 337 (1991), and The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990).

¹⁸ See 12 C.F.R. 225.28(b)(1), (2), (3), (5), (6), (7), (8), and (14).

In order to approve the notice, the Board also must determine that the acquisition of the U.S. nonbank subsidiaries of Tokyo Bank and Mitsubishi Trust and the performance of the proposed activities by MTFG 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.¹⁹

MTFG has indicated that the proposal would improve the financial position and future business prospects of the banking and nonbanking subsidiaries of Tokyo Bank and Mitsubishi Trust. The proposal would enable Tokyo Bank, through its indirect subsidiary bank, Union Bank, to provide Mitsubishi Trust's customers with access to a broader array of products and services, including commercial retail bank products which Mitsubishi Trust-NY does not offer as a wholesale bank. Furthermore, customers of Tokyo Bank and Mitsubishi Trust would have an expanded service area, with numerous branches, agencies, and representative offices nationwide, including a significant retail banking branch network in California. Based on all the facts of record, the Board has determined that consummation of this proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of section 4(j)(2) of the BHC Act.

The Board has carefully considered the competitive effects of the proposed transaction under section 4 of the BHC Act. To the extent that Tokyo Bank and Mitsubishi Trust offer different types of nonbanking products, the proposal would result in no loss of competition. Certain nonbanking subsidiaries of Tokyo Bank and Mitsubishi Trust compete, however, in the markets for lending, leasing, and trust company services. The

market for these nonbanking activities are regional or national and are unconcentrated. The record in this case also indicates that there are numerous providers of these services. For the reasons discussed, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition for the relevant nonbanking activities.

The Board also concludes that the conduct of the proposed nonbanking activities within the framework established in this order, prior orders, and Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would not be outweighed by the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that it must consider under the standard of section 4(j)(2) of the BHC Act is favorable and consistent with approval of the proposal.

MTFG also has provided notice under sections 25 and 25A of the Federal Reserve Act and section 211.4 of Regulation K (12 C.F.R. 211.4) to acquire UBCI and BNAI, companies organized under sections 25 and 25A of the Federal Reserve Act. The Board concludes that all the factors required to be considered under the Federal Reserve Act and Regulation K are consistent with approval of the proposal.

Conclusion

Based on the foregoing, the Board has determined that the transaction should be, and hereby is approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it Board is required to consider under the BHC Act and other applicable

¹⁹ See 12 U.S.C. § 1843(j)(2)(A).

statutes. The Board's approval is specifically conditioned on compliance by MTFG with all the commitments and conditions set forth in this order and the regulations and orders cited above, and on the Board's receiving access to information on the operations or activities of MTFG and any of its affiliates that the Board determines to be appropriate to determine and enforce compliance by MTFG 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 Tokyo Bank and Mitsubishi Trust 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 March 14, 2001.

(signed)

²⁰ Voting for this action: Chairman Greenspan and Governors Kelley, Meyer, and Gramlich. Absent and not voting: Vice Chairman Ferguson.

Robert deV. Frierson
Associate Secretary of the Board

APPENDIX

Nonbanking activities of Tokyo Bank and Mitsubishi Trust in which
MTFG proposes to engage:

- (1) Extending credit and servicing loans in accordance with section 225.28(b)(1) of 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 Regulation Y (12 C.F.R. 225.28(b)(2));
- (3) Providing leasing services in accordance with section 225.28(b)(3) of Regulation Y (12 C.F.R. 225.28(b)(3));
- (4) Performing trust company functions in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5));

- (5) Providing financial and investment advisory services in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6));
- (6) Providing securities brokerage, riskless principal, and private placement services in accordance with section 225.28(b)(7)(i)-(iii) of the Board's Regulation Y (12 C.F.R. 225.28(b)(7)(i)-(iii));
- (7) Acting as a futures commission merchant in accordance with section 225.28(b)(7)(iv) of Regulation Y (12 C.F.R. 225.28(b)(7)(iv)), and The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996);
- (8) Providing to customers as agent transactional services with respect to swaps and similar transactions based on any rate, price, or financial asset in accordance with section 225.28(b)(7)(v) of Regulation Y and The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996), and The Mitsubishi Bank, Limited, 77 Federal Reserve Bulletin 337 (1991);
- (9) Underwriting and dealing in government obligations and money market instruments in accordance with 225.28(b)(8)(i) of Regulation Y (12 C.F.R. 225.28(b)(8)(i));
- (10) Engaging as principal in foreign exchange and forward contracts, options, futures, options on futures, swaps, and similar contracts based on any rate, price, or financial asset in accordance with section 225.28(b)(8)(ii)(A) & (B) of Regulation Y (12 C.F.R. 225.28(b)(8)(ii)(A) & (B)) and The Mitsubishi Bank, Limited, 77 Federal Reserve Bulletin 337 (1991), and The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990); and
- (12) Data processing and transmission activities in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14)).