

FEDERAL RESERVE SYSTEM

Franklin Resources, Inc.
San Mateo, California

Order Approving Formation of a Bank Holding Company and Determination on a Financial Holding Company Election

Franklin Resources, Inc. (“Franklin”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842) to become a bank holding company by acquiring all the shares of Fiduciary Trust Company International, New York, New York (“Fiduciary”), a New York chartered trust company. As part of its proposal to become a bank holding company, Franklin has also filed with the Board an election to become a financial holding company pursuant to section 4(k) and (l) of the BHC Act (12 U.S.C. § 1843(k) & (l)) and section 225.82 of the Board’s Regulation Y (12 C.F.R. 225.82).

Franklin has also 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 retain its interest in Franklin Templeton Bank & Trust, F.S.B., Salt Lake City, Utah (“Franklin B&T”).¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 798 and 7490 (2001)). 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 Franklin also has requested the Board’s approval to hold and exercise an option to acquire up to 19.9 percent of the shares of Fiduciary’s common stock. The option would expire on consummation of the proposal.

Franklin, with total consolidated assets of \$4 billion, is an investment management firm engaged principally in providing investment advisory and related services to mutual funds and institutional and private investors. Through its ownership of Franklin B&T, Franklin is also the 37th largest depository organization in Utah, controlling deposits of \$56.8 million, representing less than 1 percent of total deposits in insured depository institutions in the state (“state deposits”).² Franklin also engages in a variety of other financial activities in the United States and overseas, including underwriting and distribution of mutual fund shares and providing transfer agency, mutual fund administration, custodial, trustee, and fiduciary services. Franklin also provides consumer lending and other banking services to the public through Franklin B&T.

Fiduciary, with total consolidated assets of \$642 million, is the 68th largest commercial banking organization in New York, controlling deposits of \$505 million, representing less than 1 percent of state deposits.³ Fiduciary and its subsidiaries engage primarily in providing investment management, custody and administration, trust, estate and tax planning, and private banking services to high-net-worth individuals and families and institutional customers in the United States and internationally. Fiduciary also engages through subsidiaries in securities brokerage and investment advisory activities in the United States.

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 a bank. These factors are the competitive effects of the proposal in the relevant geographic

² Asset data for Franklin are as of September 30, 2000. Deposit and ranking data for Franklin B&T are as of June 30, 2000.

³ Asset and deposit data for Fiduciary are as of June 30, 2000.

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; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.⁴

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.⁵

As part of its review of these factors, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.⁶ The proposal involves the acquisition of a bank by Franklin, which owns Franklin B&T and a variety of nonbanking companies. Franklin B&T and Fiduciary do not compete directly in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in a

⁴ In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits nationwide and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. As a result of this transaction, Franklin will become a bank holding company and its home state will be New York.

⁵ 12 U.S.C. § 1842(c)(1).

⁶ See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966 (1993).

monopoly or in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market.

Financial and Managerial Considerations

The Board has carefully considered the financial and managerial resources and future prospects of the companies and bank 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. In evaluating the financial and managerial factors, the Board has reviewed confidential examination information and other supervisory information assessing the financial and managerial strength of Franklin and its subsidiaries and of Fiduciary and its subsidiaries. In addition, the Board has reviewed public and confidential supervisory reports and information regarding the activities and financial position of the regulated subsidiaries of Franklin.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors.⁷ Fiduciary and all the subsidiaries of Fiduciary and Franklin that are subject to regulatory capital requirements currently exceed the relevant minimum regulatory requirements. In addition, Fiduciary and Franklin B&T are currently well capitalized under applicable federal guidelines. Franklin would also be well capitalized on a pro forma basis on consummation of the proposal. Moreover, the transaction is structured as a stock-for-stock combination and would not increase the debt service requirements of the combined company and is not expected to have a significantly adverse effect on the financial resources of Franklin. Other financial factors are consistent with approval.

⁷ See Chemical Banking Corporation, 82 Federal Reserve Bulletin 230 (1996).

The Board also has carefully considered the managerial resources of Franklin and Fiduciary in light of all the facts of record, including confidential examination and other supervisory information and information provided by Franklin on its existing and proposed risk management policies and processes. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval.

The Board notes further that a substantial proportion of Franklin's activities are conducted in subsidiaries that are subject to functional regulation by the Securities and Exchange Commission ("SEC"). The Board will, consistent with the provisions of section 5 of the BHC Act as amended by the Gramm-Leach-Bliley Act, rely heavily on the SEC for examination and other supervisory information in fulfilling the Board's responsibilities as holding company supervisor.

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, including the records of performance of the relevant institutions under the CRA. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site

evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.⁸

Neither Fiduciary nor its subsidiaries are currently subject to CRA.⁹ Franklin B&T, then known as Franklin Bank, San Mateo, California, received an overall rating of "satisfactory" from the Federal Deposit Insurance Corporation, which was Franklin Bank's primary federal supervisor, at its most recent evaluation for CRA performance, as of June 1997. Franklin Bank converted from a California State-chartered bank to a federal savings bank in May 2000, becoming Franklin B&T. The Office of Thrift Supervision, Franklin B&T's primary federal supervisor, has not reviewed it for CRA performance. Based on all the facts of record, the Board concludes that considerations related to the convenience and needs of the communities to be served are consistent with approval.

Nonbanking Activities

Franklin has also filed a notice under section 4(c)(8) and 4(j) of the BHC Act to retain its interest in Franklin B&T, and thereby engage in operating a savings association.¹⁰ The Board determined by regulation before November 12, 1999, that this activity is so closely related to banking as to be a proper incident

⁸ 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).

⁹ Fiduciary's primary federal supervisor, the Federal Deposit Insurance Corporation exempts from its CRA regulations "special purpose banks" like Fiduciary that do not grant credit to the public in the ordinary course of business, other than as incident to their specialized operations. 12 C.F.R. 345.11(c)(3); see also 12 C.F.R. 228.11(c)(3).

¹⁰ Franklin has indicated that its current activities are permissible under section 4(k) of the BHC Act.

thereto for purposes of section 4(c)(8) of the BHC Act.¹¹ Franklin has committed that it will conduct this activity in accordance with the Board's regulations and orders approving the activity for bank holding companies.

In order to approve Franklin's proposal to retain its interest in Franklin B&T, the Board is also required by section 4(j)(2)(A) of the BHC Act to determine that the retention of Franklin B&T by Franklin "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."¹²

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

The Board also has considered the competitive effects of Franklin's proposed retention of its nonbanking subsidiaries in light of all the facts of record. For the reasons already discussed, the Board has concluded that Franklin's proposed retention of Franklin B&T would not likely result in decreased or unfair competition or undue concentration of resources in any relevant banking market.

Franklin has indicated that the proposed transaction would diversify Franklin's business and could decrease the volatility in Franklin's earnings. In addition, the proposed transaction would make a greater range of financial products and services available to customers of Franklin and Fiduciary. Franklin

¹¹ See 12 C.F.R. 225.28(b)(4)(ii).

¹² 12 U.S.C. § 1843(j)(2)(A).

B&T's principal lines of business are providing credit cards and retail consumer loans and acting as nondiscretionary trustee or custodian for individual retirement accounts, business retirement plans, and 401(k) plans invested in mutual funds offered by Franklin affiliates ("Franklin Templeton funds"). Franklin B&T's credit products are marketed nationwide and are not limited to investors in Franklin Templeton funds. Fiduciary, by contrast, does not provide retail credit or other products, but engages principally in providing discretionary investment management, custody, trust, and related services to high-net-worth individuals and institutional customers.

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 proper incident to banking standard of section 4(j)(2) of the BHC Act.

Conclusion Regarding Bank Acquisition

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Franklin with all the commitments made in connection with the application. For the purpose of this action, the commitments relied on by the Board in reaching its decision are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The transaction shall not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such periods are extended for good cause by

the Board or the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

Financial Holding Company Declaration

Franklin also has filed with the Board an election to become a financial holding company pursuant to section 4(k) and (l) of the BHC Act and section 225.82 of Regulation Y. Franklin has certified that Fiduciary and Franklin B&T are well capitalized and well managed, and has provided all the information required under Regulation Y.

The Board has reviewed the examination ratings received by Franklin B&T under the CRA and other relevant examinations and information. Based on all the facts of record, the Board has determined that this election to become a financial holding company will become effective on consummation of the acquisition of Fiduciary by Franklin, as long as Fiduciary and Franklin B&T continue to be well capitalized, well managed, and Franklin B&T has at least a satisfactory CRA rating on that date.¹³

By order of the Board of Governors,¹⁴ effective March 26, 2001.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

¹³ As noted above, Fiduciary is not subject to CRA.

¹⁴ This action was taken pursuant to the Board's Rules Regarding Delegation of Authority (12 C.F.R. 265.4(b)(1)) by a committee of Board members. Voting for this action: Chairman Greenspan and Governors Kelley and Meyer. Absent and not voting: Vice Chairman Ferguson and Governor Gramlich.