FEDERAL RESERVE SYSTEM

First Union Corporation
Charlotte, North Carolina

Wachovia Corporation
Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies

First Union Corporation ("First Union"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act (12 U.S.C. § 1842) to merge with Wachovia Corporation ("Wachovia") and thereby acquire Wachovia's subsidiary banks,[1] including its lead subsidiary bank, Wachovia Bank, National Association, Winston-Salem, North Carolina ("Wachovia Bank").[2] First Union 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 to acquire Wachovia's subsidiary savings association, Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina ("Atlantic"). In

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[1] First Union also has requested the Board's approval to exercise an option to purchase up to 19.9 percent of Wachovia's common stock if certain events occur. Wachovia holds a substantially similar option to acquire up to 19.9 percent of First Union. Both options would expire on consummation of the proposed merger.

[2] Wachovia's other subsidiary banks are Republic Security Bank, West Palm Beach, Florida, and The First National Bank of Atlanta (d/b/a Wachovia Bank Card Services, Inc.), New Castle, Delaware. First Union also proposes to acquire Wachovia Acquisition Corporation 2001-01, Winston-Salem, North Carolina, which is an intermediate bank holding company that holds shares of Republic.

addition, First Union has filed notices under section 25A of the Federal Reserve Act (12 U.S.C. §§ 611-631), section 4(c)(13) of the BHC Act (12 U.S.C. § 1843(c)(13)), and subpart A of the Board's Regulation K (12 CFR 211, subpart A) to acquire an Edge corporation and certain foreign investments controlled by Wachovia.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 27,144, and 29,326 (2001)). The time for filing comments has expired, and the Board has considered the proposal and all comments received during the comment period in light of the factors set forth in sections 3 and 4 of the BHC Act.[4]

First Union, with total consolidated assets of $252.9 billion, is the sixth largest commercial banking organization in the United States, controlling approximately 4.1 percent of total banking assets of insured commercial banks in the United States ("total U.S. banking assets").[5] First Union operates subsidiary banks in Connecticut, Delaware, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South

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[3] First Union and Wachovia are financial holding companies within the meaning of the BHC Act. In addition to the proposed acquisitions described above for which First Union has sought the Board's approval or provided prior notice, First Union would acquire the remainder of Wachovia's nonbanking companies in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y.

[4] SunTrust Banks, Inc., Atlanta, Georgia, filed a number of comments on the proposal, all of which were withdrawn prior to the Board's consideration of the proposal.

[5] Asset data are as of March 31, 2001, and ranking data are as of December 31, 2000.

Carolina, Tennessee, Virginia, and Washington, D.C., which control $136.2 billion in total deposits, representing approximately 3.4 percent of total deposits in all insured depository institutions in the United States ("total U.S. insured deposits").[6]

Wachovia, with total consolidated assets of $75.6 billion, is the 15th largest commercial banking organization in the United States, controlling approximately 1.3 percent of total U.S. banking assets. Wachovia's subsidiary banks and savings association operate in six Southeastern states and in Delaware, and control $39.8 billion in deposits, representing approximately 1 percent of total U.S. insured deposits.

On consummation of the proposal and after accounting for the proposed divestitures discussed in this order, the combined organization would become the fourth largest commercial banking organization in the United States, with total consolidated assets of $328.5 billion, representing approximately 5.4 percent of total U.S. banking assets, and would control total deposits of $174.5 billion, representing approximately 4.4 percent of total U.S. insured deposits. The combined organization would be named Wachovia Corporation ("New Wachovia"), would be headquartered in Charlotte, and would have a significant presence throughout the Mid-Atlantic and Southeast regions of the United States.

The Board is required to review each proposal filed under the BHC Act using standards specified in the Act. These standards relate to the competitive impact of the proposal, the financial and managerial resources

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6 Deposit data are as of June 30, 2000. An "insured depository institution" is any bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation. 12 U.S.C. § 1813(c)(2).

and future prospects of the companies and banks concerned, the convenience and needs of the community to be served, and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.[7] In addition, the Board is permitted to approve an acquisition that involves banks in a state outside the acquiring bank holding company's home state only if certain specified conditions are met.

Based on this consideration and subject to First Union's commitments and the conditions established by the Board as described below, the Board has concluded that First Union's proposal satisfies the criteria set out in the BHC Act. Accordingly, the Board has determined to approve the applications and notices filed by First Union, subject to the fulfillment of First Union's commitments and the conditions established herein by the Board. The Board's review as discussed in this order is limited to applying the statutory factors set out in the BHC Act to the proposal as currently constituted and presented to the Board, and the Board expresses no view on any matter regarding this transaction other than those statutory factors.

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 bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of First

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7 See 12 U.S.C. § 1842(c). The BHC Act requires review of additional factors in cases involving the acquisition of a bank by a foreign bank.

Union is North Carolina,[8] and the subsidiary banks of Wachovia are located in Delaware, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.[9] The Board has reviewed the interstate banking laws of each state in which First Union would acquire banking operations and consulted with the appropriate banking regulator in each of those states about the permissibility of the proposed transaction under applicable state law.

All the conditions enumerated in section 3(d) for an interstate acquisition are met in this case. First Union is at least adequately capitalized and adequately managed, as defined by applicable law.[10] In addition, the subsidiary banks of Wachovia that First Union would acquire in an interstate transaction have been in existence for the minimum period of time required by applicable law.[11] On consummation of the proposal, and after accounting for the proposed divestitures, New Wachovia and its affiliates would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent, or the applicable percentage established by state law, of total deposits in each state in which the insured depository institutions of both First Union and Wachovia are

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[8] 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 the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(c).

[9] 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.

[10] See 12 U.S.C. §§ 1841(o)(1)(B), 1841(o)(9), and 1842(d)(1)(A).

[11] See 12 U.S.C. § 1842(d)(1)(B). Each of Wachovia's subsidiary depository institutions has been in existence for at least five years and, therefore, may be acquired without regard to any state age requirement.

located.[12] All other requirements of section 3(d) would be met on consummation of the proposal.[13] Accordingly, based on all the facts of record, section 3(d) of the BHC Act does not prohibit the Board from approving the proposed transaction.

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 banking market. 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 Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[14]

First Union and Wachovia have depository institutions that compete directly in sixty banking markets in six states.[15] To reduce the potential that the proposal would have adverse effects on competition, First Union has committed to divest 38 branches (the "divestiture branches"), with at least \$1.5 billion in deposits, in 13 banking markets (the "divestiture

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12 See 12 U.S.C. § 1842(d)(2).

13 The Board contacted the relevant state banking commissioners about, and considered First Union's compliance with, applicable state community reinvestment laws. See 12 U.S.C. § 1842(d)(3).

14 12 U.S.C. § 1842(c)(1).

15 These markets are described in Appendix A and include the market in which Wachovia's savings association, Atlantic, competes directly with First Union's lead subsidiary bank, First Union National Bank.

markets").[16] The Board has reviewed carefully the competitive effects of the proposal in each of the banking markets in which First Union and Wachovia compete directly in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions in the market ("market deposits") that New Wachovia would control,[17] the concentration level of market deposits

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[16] First Union has committed that prior to consummating the proposed merger it will execute an agreement consistent with this order to sell the divestiture branches in each divestiture market to either (a) an out-of-market banking organization, (b) an in-market banking organization in a transaction in which both the change in and resulting Herfindahl-Hirschman Index ("HHI") level are within the Department of Justice Guidelines ("DOJ Guidelines"), 49 Federal Register 26,823 (1984), or (c) in the case of Winston-Salem only, in a transaction that would cause the change in the market HHI to be 201 points or less. First Union also has committed to divest total deposits in each of the 13 divestiture markets of at least the amounts discussed in this order. First Union further has committed to sell the divestiture branches within 180 days of the consummation date of the proposed merger and to execute a trust agreement approved by the Board prior to consummation of the proposed merger. The trust agreement will provide that if the divestiture branches are not sold within 180 days of consummation of the proposed merger, New Wachovia would transfer the unsold branches to an independent trustee that has been instructed to sell such branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed suitable by the Board.

[17] Deposit and market share data are as of June 30, 2000, and have been adjusted to reflect mergers and acquisitions that occurred through June 27, 2001. The data are based on calculations in which the deposits of thrift institutions, which include savings banks and savings associations, are weighted at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation,

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and the increase in this level as measured by the HHI under the DOJ Guidelines,[18] the size and likely effect of the proposed divestiture in relevant banking markets, and other characteristics of the markets.[19]

As more fully discussed below, of the 60 banking markets in which First Union and Wachovia compete, after accounting for the proposed

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70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

18 Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, 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.

19 Two commenters expressed concern about the competitive effects of the proposal in a number of markets and encouraged the Board to scrutinize the competitive effects of the proposal in the relevant banking markets in light of numerous factors. These commenters provided market share data they had compiled for several banking markets and claimed that the proposal would have anticompetitive effects in those and other banking markets. These commenters asserted, based on the combined market shares of First Union and Wachovia in those markets, that the proposed transaction would exceed the DOJ Guidelines in many of the banking markets. After reviewing First Union's initial divestiture proposal, one of these commenters expressed concern that the proposal would still exceed the DOJ Guidelines and/or have anticompetitive effects in a number of banking markets identified by the commenters. As described above, the Board has considered the resulting market share in each market along with the other relevant indicators of the likely competitive effects of the proposal.

divestitures the proposal would be consistent with threshold levels established by the DOJ Guidelines in 54 banking markets. These 54 banking markets are discussed in the Appendices. Each of the six remaining markets is discussed in detail below.

A. Certain Banking Markets without Divestitures

Consummation of the proposal would be consistent with the DOJ Guidelines in 44 banking markets without any divestiture by First Union.[20] After consummation of the proposal, one of these banking markets would remain unconcentrated and thirty-one would be moderately concentrated as measured by the HHI.[21] The remaining 12 banking markets would be highly concentrated as measured by the HHI, but the increase in the HHI would be less than the 200-point threshold level, which would be consistent with the DOJ Guidelines.[22]

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[20] The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

[21] The unconcentrated market would be the Washington, D.C., banking market. The moderately concentrated banking markets would be Brevard, Fort Myers, Fort Pierce, Gainesville, Miami-Fort Lauderdale, Ocala, Orlando, Tampa Bay, and West Palm Beach, all in Florida; Atlanta and Dalton, both in Georgia; and Augusta in Georgia and South Carolina; Burlington, Greensboro-High Point, Raleigh, and Wilmington, all in North Carolina; Beaufort, Charleston, Columbia, Florence, Greenville, Greenwood, and Myrtle Beach-Conway, all in South Carolina; and Charlottesville, Fredericksburg, Harrisonburg, Martinsville, Newport News-Hampton, Norfolk-Portsmouth, Pulaski-Radford, and Winchester, all in Virginia.

[22] These markets are Wilmington, in Delaware and Maryland; Charlotte-Rock Hill, Dare, Fayetteville, Greenville, Monroe, Moore, Robeson, Rocky Mount, and Stanly, all in North Carolina; Georgetown, South Carolina; and Abingdon, Virginia.

B. Certain Banking Markets with Divestitures

After accounting for the divestitures, First Union has proposed to mitigate the potential for adverse competitive effects, consummation of the merger would be consistent with the DOJ Guidelines in 10 of the banking markets in which divestitures are proposed.[23] Three of these markets would remain moderately concentrated on consummation of the proposal. The Hickory, North Carolina, market would remain moderately concentrated and the HHI would increase less than 200 points. In the Savannah, Georgia-South Carolina, and Wilkes, North Carolina, banking markets, the change in the HHI would be slightly more than 200 points, but the resulting moderately concentrated level would remain below 1800. The remaining seven banking markets would be highly concentrated on consummation of the transaction, but the change in the HHI in each of these markets would be 200 points or less.[24]

C. Six Banking Markets in which Special Scrutiny is Appropriate

The proposal would exceed the DOJ Guidelines in three banking markets in which no divestitures are proposed. These markets are Durham-Chapel Hill and Statesville, both in North Carolina, and Richmond, Virginia. The proposal also would exceed the DOJ Guidelines in three markets in which divestitures are proposed: Asheville, Elizabeth City, and Winston-Salem, all in North Carolina. For each of these six markets, the

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[23] The structural characteristics of these markets are described in Appendix C.

[24] These markets are Haywood, Jackson, and Salisbury, all in North Carolina; York, South Carolina; and Bedford, Roanoke, and Smyth, all in Virginia.

Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the level and size of the increase in concentration in a banking market.[25] In each of these markets, the Board has identified a number of factors that indicate the proposal would not have a significantly adverse effect on competition despite the increase in and resulting level of the HHI or the resulting market share.

Asheville. First Union operates the largest depository institution in the Asheville banking market, controlling deposits of $1 billion, representing approximately 27.9 percent of market deposits.[26] Wachovia operates the second largest depository institution in the market, controlling deposits of $812.7 million, representing 22.7 percent of market deposits. To mitigate competitive effects, First Union proposes to divest 12 branches with at least $433,877,000 in deposits in the Asheville market to an out-of-market banking organization. On consummation of the proposal and after accounting for the proposed divestitures, New Wachovia would operate the largest depository institution in the banking market, controlling deposits of $1.4 billion, representing approximately 38.5 percent of market deposits. The HHI would increase by 334 points to 2014.[27]

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25 See, NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

26 Unless otherwise noted, deposit figures have been rounded to the nearest million dollars and market share percentages have been rounded to the nearest one-tenth of 1 percent.

27 In calculating the competitive effect of the proposed merger in the Asheville market, the Board has adjusted the June 30, 2000, Summary of

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A number of factors indicate that the proposal is not likely to have significantly adverse competitive effects in the Asheville banking market. Most important is the structure of the market after consummation of the proposal. In addition to New Wachovia, at least eleven banks and four savings associations would remain in the market, and an out-of-market purchaser of the divestiture branches would become the third largest competitor, controlling 12.1 percent of market deposits. The second largest competitor in the market would control 14.9 percent of market deposits and operates 19 branches in the market. The fourth and fifth largest competitors in the Asheville market control 8.7 percent and 5.7 percent of market deposits, respectively.

In addition, the Asheville banking market is attractive for entry. Four firms have entered the market de novo in the last five years. Deposits in the market increased by 30 percent from June 1997 to June 2000, which exceeded the nationwide increase in deposits during the same period. Moreover, in 2000, the average level of per capita income in the market

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Deposit ("SOD") data for First Union to account for two incorrectly reported branches. First Union has argued that further adjustments should be made. In particular, First Union has contended that certain deposits at its branches in the Asheville market should not be included in calculations of the competitive effect of the proposal in that market because, according to First Union, these deposits originate from outside the market. This deposit adjustment would be inconsistent with prior Board practice, which has been to rely to the extent possible on the most recent publicly reported SOD data when calculating deposit market shares in a particular market. In addition, for such an adjustment to produce a meaningful and balanced result, the deposits of all other depository institutions in the Asheville market would have to be reviewed and adjusted similarly, requiring data not available from the SOD.

exceeded the average per capita income levels for Metropolitan Statistical Areas ("MSAs") in North Carolina and for the United States as a whole.

Durham-Chapel Hill. First Union operates the sixth largest depository institution in the Durham-Chapel Hill banking market, controlling deposits of $280 million, representing 6.5 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $661 million, representing 15.4 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the banking market, controlling deposits of $942 million, representing 22 percent of market deposits. The HHI would increase by 201 points to 2186.

A number of factors indicate that the proposal would not have a significantly adverse effect on competition in the Durham-Chapel Hill banking market. Thirteen banks, including the bank that would be owned by New Wachovia, and two savings associations would remain in the market. One remaining competitor would be larger than New Wachovia, and the third, fourth, and fifth largest competitors each would control more than 9 percent of market deposits.

In addition to the favorable structure of the Durham-Chapel Hill market, several factors indicate that the market is attractive for entry. Since June 2000, one bank has entered the market through expansion of its branch network. Moreover, in 2000, the average per capita income in the Durham-Chapel Hill banking market exceeded the average per capita income in North Carolina's MSAs.

Elizabeth City. First Union operates the third largest depository institution in the Elizabeth City banking market, controlling deposits of $64 million, representing 12 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $120 million, representing 22.5 percent of market deposits. To mitigate competitive effects in the Elizabeth City market, First Union proposes to divest one branch with at least $17,420,000 in the market to an out-of-market banking organization. On consummation of the proposal and after accounting for the proposed divestitures, New Wachovia would operate the largest depository institution in the banking market, controlling deposits of $166 million, representing approximately 31.3 percent of market deposits. The HHI would increase by 336 points to 1889.

A number of factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Elizabeth City banking market. A divestiture to an out-of-market firm would not reduce the number of competitors in the market. In addition to New Wachovia, seven banks and two savings associations would remain in the banking market. The second, third, and fourth largest depository institutions in the market control approximately 23.4 percent, 11.6 percent, and 10.7 percent of market deposits, respectively. The Elizabeth City market also appears to be somewhat attractive for entry, as one competitor has entered the market since 1998. Moreover, the average rate of deposit growth in the market exceeded the average rate of deposit growth in the non-MSA portions of North Carolina and in the United States as a whole from June 1997 to June 2000.

<u>Statesville.</u> First Union operates the third largest depository institution in the Statesville banking market, controlling deposits of $129 million, representing approximately 16.7 percent of market deposits. Wachovia operates the sixth largest depository institution in the market, controlling deposits of $61 million, representing approximately 7.9 percent

of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the banking market, controlling deposits of $191 million, representing approximately 24.7 percent of market deposits. The HHI would increase by 265 points to 1850.

A number of factors demonstrate that the proposal is not likely to have a significantly adverse effect on competition in the Statesville banking market. Seven banks, including the bank that would be owned by New Wachovia, and one thrift organization would remain in the market. The largest and third largest competitors in the banking market control 26 percent and 18.2 percent of market deposits, respectively. Three other banking organizations in the market have market shares that exceed 7 percent.

In addition, several factors indicate that the Statesville market is attractive for entry. One competitor has entered the market de novo since September 1998. In addition, between 1996 and 1999, the population of the Statesville banking market increased at a rate almost three times greater than the average rate of increase for the non-MSA counties in North Carolina. Moreover, the average per capita income level in the market exceeded the average level of per capita income for North Carolina's non-MSA counties.

Winston-Salem. First Union operates the third largest depository institution in the Winston-Salem banking market, controlling deposits of $464 million, representing approximately 4.6 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $3.9 billion, representing approximately 38.1 percent of market deposits. To mitigate competitive effects in the Winston-Salem market, First Union proposes to divest six branches with at least \$204,597,000 in deposits in the market either to an in-market banking organization, provided that the change in the HHI is 201 points or less, or to an out-of-market banking organization. On consummation of the proposal, and after accounting for the proposed divestiture to a banking organization with existing operations in the Winston-Salem market, New Wachovia would operate the largest depository institution in the banking market, controlling deposits of \$4.1 billion, representing approximately 40.7 percent of market deposits. The HHI would increase by 201 points to 3268.[28]

Several factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Winston-Salem banking market. Fifteen banks, including New Wachovia's bank, and two savings associations would remain in the market. In addition, the Winston-Salem banking market is attractive for entry. Three banking organizations entered the market de novo in 1996 and 1997, and three additional firms have entered the market de novo since 1998. The market also is one of the largest banking markets in the state, and in 2000, the per capita income in the market exceeded the average per capita income level for all MSAs in North Carolina.

Richmond. First Union operates the fourth largest depository institution in the Richmond banking market, controlling deposits of \$1.8 billion, representing approximately 12.9 percent of market deposits.

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[28] If First Union sold the divestiture branches in the Winston-Salem banking market to an out-of-market banking organization, the HHI would increase by 183 points to 3250. In calculating the competitive effect of the proposed merger in the Winston-Salem market, the Board has adjusted the June 30, 2000, SOD data for First Union to account for one incorrectly reported branch.

Wachovia operates the second largest depository institution in the market, controlling deposits of $2.3 billion, representing approximately 16.8 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the banking market, controlling deposits of $4.1 billion, representing approximately 29.7 percent of market deposits. The HHI would increase by 435 points to 1864.

A number of factors, particularly the structure of the Richmond banking market, indicate that the proposal is not likely to have a significantly adverse effect on competition in the market. In addition to New Wachovia's bank, twenty-two banks and three savings associations would remain in the banking market. The second, third, and fourth largest depository institutions in the market control approximately 24.9 percent, 15.3 percent, and 8.7 percent of market deposits, respectively. The Richmond banking market also is attractive for entry, as evidenced by the de novo entry of eight depository institutions in the market since 1998.

D. Views of Other Agencies and Conclusion

The Department of Justice also has conducted a detailed review of the potential 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.

The Board has reviewed carefully all the facts of record, including public comments on the competitive effects of the proposal and, for the reasons discussed in this order, has concluded that consummation of the proposal would not have a significantly adverse affect on competition or on the concentration of banking resources in any of the 60 banking markets in which First Union and Wachovia compete directly 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 certain other supervisory factors. The Board has considered these factors carefully in light of all the facts of record, including reports of examination and other confidential supervisory information assessing the financial and managerial resources of the organizations and other information provided by First Union and Wachovia. The Board also has considered carefully public comments submitted regarding financial and managerial considerations.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important.[29] The Board notes that First Union, Wachovia, and all their subsidiary depository institutions are and on consummation of the proposal would remain well capitalized, as defined in the relevant regulations of the federal banking agencies. The proposed acquisition is structured as an exchange of shares of Wachovia for shares of

[29] See, e.g., Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1996).

First Union, and neither First Union nor Wachovia would incur any debt as a result of the transaction.

The Board also has considered the managerial resources of First Union and Wachovia and the examination reports of the federal banking agencies that supervise these organizations, including their subsidiary depository institutions.[30] First Union, Wachovia, and all their subsidiary depository institutions are well managed,[31] and New Wachovia would select its senior management from among the senior executives of First Union and Wachovia, thus providing the combined organization with officers that are experienced and knowledgeable in the operations and markets of both companies. In addition, First Union and its subsidiary depository institutions have remained well managed during and after integration with a number of acquired organizations. The appropriate federal banking agencies previously have found that First Union, Wachovia, and their subsidiaries each have appropriate risk management systems in place, and New Wachovia would retain these systems to identify and manage various types of financial risk. Moreover, First Union and Wachovia have indicated that

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30 One commenter alleged that First Union had not successfully integrated several recently acquired bank holding companies, and that First Union lost customers and did not realize projected levels of cost savings and earnings.

31 First Union has assigned a portion of its option to acquire shares of Wachovia to one of its subsidiary banks. First Union National Bank ("FUNB") holds only 1 percent of the option, which is not exercisable unless and until certain events occur and would expire on consummation of the proposed merger. Moreover, First Union has stated that if the option were exercised, at no time would FUNB own shares of Wachovia. Exercise of the option may be done only in accordance with the Glass-Steagall Act as well as the BHC Act and the Board's regulations issued thereunder.

they are devoting significant managerial resources to address all aspects of the merger process.

Based on the foregoing and all the facts of record, including confidential reports of examination and other supervisory information and the plans for integrating the two companies, the Board has concluded that considerations relating to the financial and managerial resources of First Union, Wachovia, and their respective banking subsidiaries are consistent with approval, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act, and on proposals to acquire a savings association, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[32] 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 First Union and Wachovia in light of all the facts of record,

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[32] 12 U.S.C. § 2901 et seq.

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 57 public comments on the proposal. Thirty-four supported the proposal or remarked favorably on First Union's or Wachovia's CRA-related activities.[33] Among these commenters, 16 members of Congress and several nonprofit organizations commended First Union and Wachovia for their CRA ratings and for a recently announced $35-billion community lending and investment initiative by New Wachovia (the "Community Initiative"). Several nonprofit organizations representing minority individuals asserted that one or both institutions have favorable records of promoting diversity among their workforce and their vendors. Commenters also related favorable experiences working in partnership with one or both institutions on programs to fund construction of affordable housing, to assist first-time homebuyers, or to support the development of microenterprises. Several nonprofit organizations also cited with approval the service of employees of one or both institutions as board members or volunteers with their organizations.

Fifteen commenters either opposed the proposal, requested that the Board approve the merger subject to conditions that the commenter suggested, or expressed concerns about the records of First Union, Wachovia, or both in meeting the convenience and needs of the communities

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[33] The Board also received a letter cosigned by 32 members of the Congressional Black Caucus and another cosigned by 21 members of the Committee on Financial Services of the U.S. House of Representatives. Both letters urged the Board to make CRA performance a critical factor in its consideration of the proposal.

they serve. Some of these commenters criticized the Community Initiative and expressed disappointment with the results of a similar initiative that First Union announced in 1998, in connection with its merger with CoreStates Financial Corp., Philadelphia, Pennsylvania ("CoreStates"). Commenters also expressed concern that the proposal would result in branch closings that would adversely affect LMI or predominantly minority communities.

Based on data submitted under the Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq. ("HMDA"), several commenters also alleged that First Union and Wachovia engaged in disparate treatment of minority individuals in home mortgage lending. Commenters also criticized the lending practices of First Union's subprime lending subsidiaries, particularly The Money Store, Inc., Union, New Jersey ("Money Store"), and raised objections to First Union's credit relationships with other subprime lenders.[34]

B. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the records of both First Union and Wachovia in serving the convenience and needs of their communities 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

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[34] Two commenters expressed concerns about the proposal based on unfavorable experiences with First Union or Wachovia or their subsidiaries in particular business dealings. The Board has reviewed these comments in light of the facts of record, including information provided by First Union. The Board has provided copies of these comments to the appropriate federal supervisors of the subsidiaries involved for their consideration.

important consideration in the applications process because it represents a detailed on-site evaluation of the institution's CRA performance by its primary federal supervisor.[35]

In recent years, First Union and Wachovia have acquired other banking organizations and consolidated their subsidiary banks.[36] The most recent CRA performance evaluations of their respective lead subsidiary banks predate the current structure of the organizations. Therefore, the

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35 Interagency Questions and Answers Regarding Community Reinvestment, 65 Federal Register 25,088 and 25,107 (2000) ("Interagency Questions and Answers").

36 In connection with the First Union-CoreStates transaction, First Union entered into agreements with a number of community organizations, including organizations representing specific Pennsylvania communities served by CoreStates and First Union banks. Two commenters on the current proposal have criticized provisions in certain of these agreements that they believe severely restrict the ability of community organizations and their members to protest applications by First Union. In the course of its review of the First Union-CoreStates proposal, the Board considered provisions of an agreement between First Union and a Pennsylvania community organization that First Union stated were representative of provisions governing protests by organizations with an agreement with First Union. First Union contended that such provisions do not limit the ability of a party to an agreement to comment to a federal banking agency in the examination process or as part of a CRA evaluation, or to include comments in First Union's public CRA file. In addition, First Union asserted that the provisions do not limit a party's ability to comment on applications involving the acquisition of a bank or branch in the party's home state, or restrict the party's ability to protest any application if First Union is not in substantial compliance with the agreement. The Board is not a party to such agreements, which are private matters between the parties to such agreements, and does not have the statutory authority to enforce or to dissolve agreements between private parties. Moreover, as noted above, the Board has received substantial comment from the public on this proposal.

Board has consulted with the appropriate supervisors of the subsidiary insured depository institutions, and has carefully evaluated information submitted by First Union and Wachovia about the CRA performance of these institutions since the dates of their most recent CRA performance evaluations.[37]

All of First Union's subsidiary banks received ratings of "satisfactory" or better at the most recent examinations of their CRA performance.[38] In particular, First Union's lead bank, First Union National Bank, Charlotte, North Carolina ("FUNB"), which now accounts for approximately 91 percent of the total consolidated assets of First Union, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of May 1997 ("1997 FUNB Evaluation").[39] First

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[37] Two commenters asserted that the CRA evaluations of the lead subsidiary banks of First Union and Wachovia are outdated because each was conducted in 1997. In keeping with the guidance in the Interagency Questions and Answers and the Board's precedent, and as explained more fully below, the Board has also considered extensive information submitted by First Union and Wachovia regarding the record of CRA performance of the subsidiary insured depository institutions of each since the previous CRA evaluations.

[38] First Union Direct Bank, N.A., Augusta, Georgia ("Direct Bank"), is a limited-purpose credit card bank that has not been examined for CRA performance since it opened for business in June 1997. First Union sold its credit card portfolio in the third quarter of 2000, and has indicated its expectation that Direct Bank will qualify for treatment as a special purpose bank for purposes of the CRA. See 12 C.F.R. 25.11(b)(3). First Union Trust Co., N.A., Wilmington, Delaware, is a trust company and, therefore, is currently treated as a special purpose bank for purposes of the CRA.

[39] At the time of the 1997 FUNB Evaluation, FUNB was named First Union National Bank of North Carolina and primarily served communities in North Carolina. After the 1997 FUNB Evaluation, but before First Union's merger

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Union Bank of Delaware, Wilmington, Delaware ("FUBDE"), received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 1998 ("1998 FUBDE Evaluation").[40]

All of Wachovia's insured depository subsidiaries also received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance.[41] Wachovia Bank, Winston-Salem, North

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with CoreStates, First Union merged almost all of its subsidiary banks with and into FUNB. As the Board has noted previously, before that consolidation, banks accounting for more than 88 percent of First Union's total banking assets had received "outstanding" ratings from their primary federal supervisors at their most recent CRA performance examinations, and First Union's other banks had received "satisfactory" ratings from their primary federal supervisors at their most recent CRA performance examinations. See First Union Corporation, 84 Federal Reserve Bulletin 489 (1998). In 1998, CoreStates Bank, N.A., Philadelphia, Pennsylvania, and CoreStates Bank of Delaware, N.A., Wilmington, Delaware, the subsidiary banks of CoreStates, were consolidated with and into FUNB. Before their consolidation into FUNB, CoreStates Bank, N.A., had received an "outstanding" CRA performance rating from the OCC, as of September 1997, and CoreStates Bank of Delaware, N.A. had received a "satisfactory" CRA performance rating from the OCC, as of August 1997.

[40] In June 2000, FUBDE was merged with and into First Union Home Equity Bank, N.A., Charlotte, North Carolina ("FUHEB"), and the resulting bank was renamed First Union National Bank of Delaware. FUHEB also had received a "satisfactory" CRA performance rating from the OCC, as of May 1997.

[41] Republic Security Bank ("Republic") received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta in February 1999. Wachovia acquired Republic in March 2001. First National Bank of Atlanta ("FNBA") received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC in June 1997. In addition, Atlantic received an "outstanding" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision in March 2001 ("2001 Atlantic Evaluation").

Carolina, which is Wachovia's lead bank and now represents approximately 93 percent of the total consolidated assets controlled by Wachovia, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of June 1997 ("1997 Wachovia Bank Evaluation").

Examiners noted no evidence of prohibited discrimination or other illegal credit practices at any of the insured depository institutions involved in this proposal and found no substantive violations of the fair lending laws. Examiners also reviewed the assessment areas delineated by the insured depository subsidiaries of First Union and Wachovia and did not report that these assessment areas were unreasonable or reflected an arbitrary exclusion of LMI areas.

C. First Union's CRA Performance Record

CRA Record of FUNB.

Lending. The 1997 FUNB Evaluation reported that FUNB and its affiliates originated $1.2 billion of HMDA-related loans in FUNB's assessment areas during the period covered by the evaluation.[42] Examiners stated that the geographic distribution of mortgage lending by FUNB and its affiliates reflected satisfactory penetration in each of FUNB's assessment areas. In 1995, FUNB and its affiliates originated 12 percent of their HMDA-related loans in LMI census tracts, which compared favorably with the 12.7 percent of originations for such loan products by all lenders in LMI census tracts. In the twelve-month period ending October 31, 1996, FUNB

[42] The evaluation covered the period from January 1, 1995 through October 31, 1996. In this context, "HMDA-related loans" includes home purchase mortgage loans, home improvement loans, and refinancings of such loans.

and its affiliates originated 16 percent of their HMDA-related loans in LMI census tracts.

First Union has further improved its performance since the 1997 FUNB Evaluation. The current geographic distribution of First Union's mortgage lending reflects a favorable degree of penetration in its assessment areas. In 2000, First Union originated more than 74,900 HMDA-related loans, of which 17.2 percent were in LMI census tracts, and 34.2 percent were made to LMI borrowers. By comparison, of all HMDA-related loans originated in 2000 in First Union's assessment areas by all lenders, 13.1 percent were originated in LMI areas and 31.9 percent were made to LMI borrowers.[43]

In the 1997 FUNB Evaluation, Examiners reported that FUNB offered several proprietary programs, including its Affordable Home Mortgage Loan and its Neighborhood Development Mortgage, which featured flexible mortgage terms for LMI borrowers. Examiners also cited FUNB's Community Partnership Mortgage, under which the bank offered affordable mortgage loans in conjunction with nonprofit organizations. Moreover, FUNB participated in government-sponsored affordable housing programs, and during the evaluation period made mortgage loans totaling $52.6 million through programs sponsored by the Federal Housing

[43] One commenter criticized First Union's level of mortgage lending in 1999 to Hispanics in the Charlotte MSA. Hispanics accounted for 0.8 percent of the population of the Charlotte MSA as of 1990. Data show that First Union originated 27 HMDA-related loans to Hispanics in the Charlotte MSA in 1999 and 33 such loans in 2000. These 60 loans accounted for 0.9 percent of all HMDA-related loans originated by First Union in the Charlotte MSA in 1999 and 2000.

Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FannieMae"), and the United States Department of Housing and Urban Development ("HUD").

First Union has represented that in 1999 and 2000, its mortgage loan originations through its five proprietary affordable home mortgage loan products totaled $1.6 billion.[44] These products included the Affordable Mortgage Loan, the Neighborhood Development Mortgage, and the Community Partnership Mortgage, all mentioned in the 1997 FUNB Evaluation. First Union's other two proprietary affordable mortgage products involved partnerships between First Union and three nonprofit organizations to originate home mortgages in economically underserved areas.[45] First Union also has stated that in its assessment area in 2000, it

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[44] Several commenters contended that in 1999, First Union focused on minority applicants for mortgage loan refininancings for subprime loans by FUHEB, rather than granting such applicants prime loans through other First Union subsidiaries. First Union has represented that in 1999, it originated nearly 4500 mortgage loan refinancings to African Americans, of which FUHEB originated slightly more that 3 percent. First Union has indicated that its prime lending subsidiaries, FUNB and First Union Mortgage Corporation, Charlotte, North Carolina, originated 97 percent of these refinancing loans. First Union has stated that this distribution of refinancing loans among First Union subsidiaries for African Americans corresponds to the distributions of loan refinancings among First Union subsidiaries for nonminorities and for Hispanics.

[45] One commenter objected to First Union's decision to curtail or discontinue its participation in certain specific affordable mortgage lending programs in First Union's assessment areas in the Northeast. Although the Board has recognized that banks help serve the banking needs of communities by making a variety of products and services available, the CRA does not require an institution to participate in any specific loan

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originated more than $395 million in FHA loans and more than $94 million in VA loans.

In connection with the 1997 Evaluation, examiners noted that FUNB engaged in lending to small businesses, including businesses in LMI census tracts.[46] As of October 1996, FUNB had originated 18 percent of its loans to small businesses, totaling $42 million, in LMI census tracts. From January 1995 through October 1996, the bank also made approximately $7 million in loans through programs sponsored by the Small Business Administration ("SBA").

In 2000, First Union originated more than 29,900 small business loans in its assessment area, and 17.8 percent of these loans were made to businesses in LMI census tracts.[47] By comparison, 15.9 percent of all small business loans originated in First Union's assessment areas by all lenders in 2000 were in LMI areas. First Union has stated that it also offers loans secured by residential property to small business owners otherwise lacking collateral, and that from 1998 through 2000, it originated almost 5,400 such loans, totaling more than $1.16 billion. First Union also has represented that it originated $245 million in SBA loans during the year 2000.

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programs or provide any specific types of products and services in its assessment area.

[46] In this context, "loans to small businesses" means loans to businesses with gross annual revenues of $1 million or less. A "small business loan" means a loan in an amount of $1 million or less.

[47] One commenter criticized First Union's record of originating small business loans in low-income areas in New York and Delaware.

Community development lending by FUNB during the period covered by the 1997 FUNB Evaluation totaled 78 projects, supporting affordable housing efforts, small business loan pools, and economic rehabilitation programs for depressed urban areas, that represented approximately $31 million in loans. These activities included a $2.6 million loan to the East Carolina Community Development Corporation to construct a 44-unit apartment complex for the elderly in Morehead, North Carolina, and a $5 million commitment to the Charlotte-Mecklenburg Housing Partnership for development of affordable housing for LMI households in the City of Charlotte and Mecklenburg County.

First Union has represented that its community development lending in 1998, 1999, and 2000 totaled more than $1.29 billion, more than 89 percent of which was in First Union's designated assessment areas. In 1998, this lending included a $10 million credit to the National Consumer Cooperative Bank for an affordable housing development loan pool and a $7.5 million construction loan for a library to be used primarily by LMI individuals in Nashville. In 1999, these loans included a $8.5 million credit for renovation of an office/warehouse building in an economically distressed area of the Washington, D.C., metropolitan area, and a $9.6 million loan to provide affordable housing in LMI neighborhoods in metropolitan Atlanta. First Union's community development loans in 2000 included a $7.6 million credit to a nonprofit organization in the Greensboro, North Carolina, area to provide community services to LMI families, and a $5 million loan to a provider of Head Start and Early Head Start services in the Allentown, Pennsylvania, area.

Investment. First Union has reported that its qualified community development investments for the period January 1, 1997, through September 30, 2000, totaled more than $1 billion. First Union has represented further that low-income housing tax credits accounted for almost $720 million of this total and led to the creation of more than 24,000 housing units. First Union also has stated that its direct investments during this period have totaled $144 million and include investments in minority-owned banks and institutions certified by the Department of the Treasury as Community Development Financial Institutions.

Service. Examiners reported that FUNB provided banking services to all segments of its assessment area, noting that approximately 25 percent of FUNB's 237 branches were in LMI census tracts.[48] During the evaluation period, FUNB closed twenty-five branches, including five in LMI census tracts, and examiners concluded that these closures had not adversely affected the level of services available in LMI areas.[49]

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48 One commenter contended that the level of physical appearance of, and services provided in, First Union branches in predominantly minority neighborhoods was not equivalent to that of First Union branches in predominantly nonminority neighborhoods. In the 1997 FUNB Evaluation, examiners concluded that FUNB provided banking services to all segments of its assessment areas.

49 Four commenters expressed concern about the effect of possible branch closings that might result from this proposal. One of these commenters asserted that the record of recent branch closures in North Carolina by First Union and Wachovia should cause the Board to carefully consider the likelihood of future branch closures. First Union has stated that it has not completed its analysis to determine which branches, if any, may be designated for closure or consolidation in connection with the acquisition of Wachovia, and that consolidation of the current branch networks of the insured subsidiary depository institutions of First Union and Wachovia would not begin before November 2002.

The Board has reviewed the branch closing policies of First Union and Wachovia. First Union's policy requires that the company

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Examiners also noted FUNB's involvement in programs to teach financial management skills to students in elementary, middle, and high schools. First Union has represented that its automated teller machines feature Spanish language instructions, and that it is in the process of developing a comprehensive Spanish language financial website.

First Union has stated that in 2000, it launched its eCommunities First initiative, which provides free computer training to individuals who might otherwise remain untrained, and offers computer equipment to community groups for use by low-income individuals and others. First Union also has represented that its employees provided more

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consider possible alternatives to financial center closings, including adjustment of hours, services, and facilities, and examine methods of minimizing adverse effects on the residents of communities affected by a closure. Wachovia's policy requires that, before a final decision is made to close a branch, management must conduct an impact study to assess a closure's likely effects on individuals living and working in the branch's community. The policy requires the impact study to consider customer patterns, the proximity of other Wachovia branches, and alternative methods for delivery of banking services.

As noted, the most recent CRA performance evaluations of First Union's and Wachovia's insured subsidiary depository institutions have each concluded that the institutions' records of opening and closing offices have not adversely affected the level of services available in LMI neighborhoods in the institutions' local communities. The Board also has considered that federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. See 12 U.S.C. § 1831r-1. The Board notes that the appropriate federal supervisor for each of New Wachovia's subsidiary banks will, in the course of conducting CRA performance examinations, continue to review the branch closing record of these institutions.

than 33,000 hours of service on the boards of community organizations from 1998 through 2000.

CRA Record of FUBDE.

Lending. As part of the 1998 FUBDE Evaluation, examiners rated the lending activities of FUBDE "low satisfactory."[50] Examiners reported that FUBDE and its affiliates made $17.6 million in HMDA-related loans in FUBDE's assessment area during the evaluation period and found that the distribution of these loans reflected adequate geographic penetration in the assessment area.[51] Examiners noted that 8.8 percent of these loans were made to borrowers in LMI tracts, a percentage somewhat lower than the percentage of loans that all lenders made in the assessment area in 1996 and 1997.[52] Examiners also stated that from January 1996 through December 22, 1998, FUBDE originated $16.9 million in loans under First Union's proprietary affordable mortgage programs.

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[50] Although FUBDE received a rating of "low satisfactory" under the lending test in connection with the 1998 FUBDE Evaluation, examiners assigned it an overall CRA rating of "satisfactory." The CRA regulations of the federal banking agencies require that, in assigning a rating to the institution's overall performance under the CRA, examiners consider the institution's performance under each of the three component tests. See, e.g., 12 C.F.R. 25.28(a). As noted below, FUBDE received "high satisfactory" ratings on the other components of its CRA performance evaluation.

[51] The 1998 FUBDE Evaluation period was from January 1, 1996, through September 30, 1998.

[52] In the first nine months of 1998, FUBDE and its affiliates made 35.6 percent of their HMDA loans in FUBDE's assessment area to LMI borrowers, and this ratio compared favorably with the percentages of aggregate HMDA loans by all lenders to LMI borrowers in 1996 and 1997.

Data indicate that from 1998 through 2000, First Union originated more than 2,800 HMDA-related loans in its assessment area in Delaware, and of these, 43.4 percent were to LMI borrowers and 11.6 percent were made in LMI census tracts. By comparison, of the more than 71,200 HMDA-related loans made in First Union's assessment area in Delaware in 1998 through 2000, 39 percent were to LMI borrowers and 10.8 percent were in LMI census tracts.

In connection with the 1998 FUBDE Evaluation, examiners noted that the percentage of loans to small businesses had increased significantly during the evaluation period. Examiners found that 53.6 percent of FUBDE's business lending during the evaluation period was to small businesses. Examiners also reported that more than 68 percent of the small business loans that FUBDE extended during the evaluation period were in amounts of $100,000 or less. FUBDE also originated 49 SBA loans, totaling $8.2 million.

Data indicate that from 1998 through 2000, First Union originated almost 1,130 small business loans in its assessment area in Delaware, and of these, approximately 24 percent were to businesses in LMI census tracts. By comparison, of the more than 27,230 small business loans by all lenders in First Union's assessment area in Delaware in 1998 through 2000, approximately 14 percent were in LMI census tracts.

The 1998 FUBDE Evaluation also concluded that FUBDE sustained an adequate level of community development lending. FUBDE's qualified community development lending during the evaluation period totaled $3.96 million, which included a $1.5 million loan commitment to a community development financial institution, and a $1.2 million commitment to a community development corporation to finance construction of affordable multifamily housing in Delaware.

Investment. FUBDE received a rating of "high satisfactory" for its qualified investments during the evaluation period, which totaled slightly over $2 million. Examiners reported that FUBDE had made grants to community organizations that serve community development purposes and noted FUBDE's $1.95 million equity fund commitment with the Delaware Community Investment Corporation, an entity which had as of the date of the evaluation indirectly funded construction of 723 units of affordable rental housing in Delaware.

Service. Examiners rated FUBDE "high satisfactory" under the service test. The evaluation reported that 21 percent of FUBDE's 24 branches were in LMI census tracts, and that the closing of one branch and the consolidation of two other branches did not appear to have adversely affected accessibility in LMI areas or for LMI individuals. Examiners also noted that FUBDE provided financial seminars and counseling to first-time homebuyers in LMI areas, and that FUBDE employees served on the boards of four local nonprofit organizations involved in community development activities.

D. Wachovia's CRA Performance Record

CRA Record of Wachovia Bank.

Lending. The 1997 Wachovia Bank Evaluation stated that Wachovia maintained a good and increasing level of home purchase and home improvement lending in Wachovia Bank's assessment areas during the evaluation period.[53] Examiners described as "very good" or "excellent" the distribution of Wachovia's HMDA-related loans to borrowers in low-income census tracts during the evaluation period, and also reported that Wachovia's other HMDA-related lending statistics were reasonable.

Since that examination, Wachovia has represented that it originated almost 58,700 HMDA-related loans from 1998 through 2000, totaling more than $8.6 billion. Of these loans, 9.7 percent were secured by properties in LMI census tracts and 25.8 percent were extended to LMI borrowers.

The 1997 Wachovia Bank Evaluation noted that Wachovia offered special types of loans with terms modified to meet community credit needs. Wachovia made some of these loans under its Neighborhood Revitalization Program ("NRP"), which was open to applicants with 70 percent or less of HUD median family income, and required lower down payments and permitted higher debt-to-income ratios than conventional home mortgage loans.[54] During the evaluation period, Wachovia's NRP loans in North Carolina, South Carolina, and Georgia totaled $164 million.[55] In the 1997 evaluation, examiners also described Wachovia as an active participant in government loan programs, noting that Wachovia had

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[53] The 1997 Wachovia Bank Evaluation covered 1995 and 1996.

[54] HUD median family income refers to the median family income for states, metropolitan portions of states, and nonmetropolitan portions of states, as calculated by the HUD.

[55] One commenter criticized Wachovia's record of lending to minority applicants in coastal regions of South Carolina. Wachovia has represented that in 1998, 1999, and 2000, it originated a total of more than $35 million in home mortgage loans to minority borrowers in metropolitan areas on the South Carolina coast.

originated more than $97 million in FHA loans and more than $129 million in VA loans during the examination period. Examiners reported that Wachovia also participated in loan programs of Fannie Mae, the North Carolina Housing Finance Authority, and the Farmers Home Administration.

Information from Wachovia indicates that the institution originated $186 million in NRP loans from January 1999 through March 22, 2001. Wachovia has represented that it continues to participate in Fannie Mae, FHA, and VA lending programs and that from 1998 through 2000, it originated more than $125 million in FHA loans and more than $90 million in VA loans in its combined assessment area.

Examiners stated that Wachovia Bank was an active small business lender in 1996, making more than 17,000 business loans in amounts of $100,000 or less, and making more than 7,000 loans to small businesses. Wachovia has represented that from 1998 through 2000, it originated more than 67,400 in small business loans, totaling more than $6.1 billion.[56] Approximately 18.2 percent of these loans by number were to

[56] One commenter asserted that First Union and Wachovia have not adequately addressed the needs of disadvantaged rural areas for agricultural credit. Data show that in 2000, First Union originated 353 farm loans of $500,000 or less ("small loans to farms") in its assessment area, of which 4.2 percent were in LMI census tracts. In 2000, Wachovia originated 347 small loans to farms in its assessment area, of which 19 percent were in LMI census tracts. First Union and Wachovia represent that they participate in the U.S. Department of Agriculture's Farm Services Agency programs, which provide extensions of credit to small farmers otherwise unable to qualify for conventional loans. First Union and Wachovia also state that they currently provide funds in conjunction with a U.S. Department of Agriculture grant to assist an organization of African-American farmers establish a cooperative that would facilitate processing of agricultural commodities into market-ready products.

businesses in LMI census tracts, and 63.4 percent by number were to small businesses.

The 1997 evaluation noted that Wachovia Bank offered flexible underwriting criteria through its proprietary Small Business Loan Program, and, in 1996, originated loans totaling more than $12 million through this program in North Carolina, South Carolina, and Georgia. Examiners also reported that Wachovia Bank originated 164 SBA loans totaling more than $29.5 million during the evaluation period. Wachovia has represented that in 2000, it originated $21.2 million of SBA loans, and was the largest SBA lender in North Carolina and South Carolina, the second largest SBA lender in Virginia, and the fourth largest SBA lender in Georgia.

Examiners described Wachovia's level of participation in community development activities as exceptional. Wachovia's community development lending during the evaluation period in North Carolina, South Carolina, and Georgia totaled $308 million. Examiners cited Wachovia's role as a leader of a consortium of Atlanta banks that formed a $20 million loan pool to finance multifamily housing for LMI individuals in the greater Atlanta area. Wachovia also provided more than $50 million in financing for affordable multifamily housing units in Georgia (Atlanta), and in North Carolina (Greensboro, Charlotte, Carrboro, and Asheville), and funded $22.5 million in redevelopment projects in Georgia (Cartersville and Atlanta) and in seven South Carolina municipalities.

Wachovia has represented that its community development lending for a three-year period ending in December 2000 totaled a little more than $2 billion.[57] In 1997, Wachovia established a proprietary community development corporation that has provided more than $230 million in financing to community development projects.

Investment. Wachovia's community development investments during the evaluation period totaled $168 million, and included investments of $8.5 million in low-income housing tax credits for affordable housing initiatives in North Carolina and South Carolina. Wachovia has stated that its community development investments from 1998 through June 2001 total $197 million.

Service. At the time of the 1997 evaluation, Wachovia Bank maintained 462 branches in North Carolina, South Carolina, and Georgia, and 22 percent of these branches were in LMI census tracts. Examiners stated that Wachovia Bank's record of opening and closing banking offices had not adversely affected the level of services in LMI neighborhoods. Examiners reported that Wachovia closed 35 branches from January 1, 1996, through March 31, 1997, including 12 in LMI census tracts. Management stated in the course of the evaluation that some of the closures were attributable to consolidations that had resulted from acquisitions. Examiners found that Wachovia Bank personnel were properly following Wachovia's bank closure policy, and that the branch closure analyses required by the policy had resulted in the installation of automated teller machines near the

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[57] One commenter criticized the level of Wachovia's community development efforts in the Horry County area of South Carolina. Wachovia has represented that it provides technical assistance and funding to several community development corporations, housing authorities, and nonprofit organizations in this area.

sites of several closed branches and the decision to continue to operate a branch in South Carolina.

CRA Record of FNBA.

FNBA engages primarily in issuing credit cards for Wachovia and has been designated as a limited purpose bank by the OCC for purposes of assessing its CRA performance.[58] The performance test for limited purpose banks evaluates an institution's record of community development lending, investments, and services in its designated assessment area.[59]

Examiners characterized the level of FNBA's complex community development loans and investments as very good. During the evaluation period of March 1995 through June 1997, FNBA made or committed to make community development loans and investments totaling approximately $3.1 million, which examiners noted was equivalent to 33 percent of FNBA's total net income for 1995 and 1996. FNBA made a number of these community development investments through the Delaware Community Investment Corporation ("DCIC"), a multibank community development corporation initiating affordable housing projects in FNBA's assessment area. Examiners noted that FNBA's financial commitment to DCIC compared favorably with financial commitments by other limited purpose banks participating in DCIC.

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[58] A "limited purpose bank" is a bank that (i) offers only a narrow product line, such as credit card loans, to a regional or broader market and (ii) has been designated as a limited purpose bank by the appropriate federal banking agency. 12 C.F.R. 25.12(o). In June 1996, the OCC designated FNBA as a limited purpose bank.

[59] 12 C.F.R. 25.25(a) & (e).

FNBA’s community development lending during the evaluation period totaled more than $1.3 million, which included $629,000 in loans and loan commitments to a DCIC loan pool to develop more than 1000 units of affordable housing. Examiners also noted a $350,000 commitment by FNBA to a DCIC loan pool to rehabilitate commercial properties in economically distressed areas targeted for revitalization.

FNBA’s community development investments during the evaluation period totaled more than $1.7 million. Examiners noted that FNBA committed to invest $450,000 in a DCIC low-income housing tax credit investment fund to create 289 affordable housing units. FNBA also maintained a $100,000 deposit in a credit union primarily serving LMI individuals and purchased $935,000 in Delaware mortgage revenue bonds that funded 400 mortgages to LMI first-time homebuyers. In addition, FNBA provided $259,000 to various community development organizations.

Examiners reported that FNBA employees served on committees and boards of directors of a number of organizations involved in community development efforts. FNBA also was a founding contributor to a University of Delaware training program for individuals involved in community development and provided funding and technical assistance to a foundation developing prototype rehabilitation plans for homes in FBNA’s assessment area.

Wachovia has represented that FBNA funded a total of more than $943,000 in community development loans and investments through DCIC from 1998 through 2000. Wachovia has stated that in 1998, FBNA committed to lend or invest $500,000 in a DCIC-sponsored urban renewal loan fund intended to provide short-term financing for property acquisition and site control for urban renewal and revitalization projects in Delaware.

Wachovia also has represented that in 2000, FBNA committed to invest $500,000 in a low-income housing tax credit equity fund sponsored by DCIC.

Wachovia has noted that FBNA maintained a $100,000 deposit in a Wilmington community development credit union from 1998 through 2000. In addition, Wachovia has stated FBNA made qualified community development grants totaling more than $371,000 during 1998, 1999, and 2000. Wachovia also has indicated that FBNA employees continue to serve on committees and boards of directors of several organizations involved in community development.

CRA Record of Atlantic.

Lending. Atlantic reported assets of $496.9 million as of March 31, 2001. In the 2001 Atlantic Evaluation, examiners rated the lending activities of Atlantic “high satisfactory.” Examiners noted that 1-4 unit residential mortgages represented 75 percent of Atlantic’s total assets as of December 31, 2000, compared with 47.3 percent of assets for Atlantic’s peer group. In 2000, Atlantic originated 13.2 percent of its HMDA-related loans in its assessment area to moderate-income borrowers, although moderate-income families accounted for an estimated 12.8 percent of all families in this area.

Examiners stated that Atlantic offered a number of credit products designed to meet the credit needs of LMI individuals. During the evaluation period of January 1999 through March 2001, Atlantic originated 56 mortgage loans totaling more than $4.8 million through its Atlantic

Advantage program.[60] Atlantic also participated in the First-Time Homebuyer's Program of the Federal Home Loan Bank of Atlanta, and from January 2000 through April 12, 2001 originated or committed to originate 14 loans totaling more than $1 million through this program. In addition, examiners noted Atlantic's participation in loan guarantee programs through a rural housing program, which featured flexible debt-to-income ratios and did not require downpayments.

Examiners reported that Atlantic originated six community development loans during the evaluation period, totaling more than $2.9 million. Five of the loans financed the purchase or construction of 25 units of rental housing affordable to LMI individuals. The remaining loan financed the renovation of an office building which was in an economically underserved portion of Atlantic's assessment area, to house several minority-owned enterprises and the Community Development Corporation of Hilton Head, South Carolina ("Hilton Head CDC").

Investment. Examiners rated Atlantic "outstanding" under the investment test and described its level of qualified investments as highly responsive to the community development needs of LMI individuals. In December 1999, Atlantic purchased a $1 million housing revenue bond from a South Carolina state agency. Atlantic also made more than $73,000 in financial contributions in 1999 and 2000 to community organizations that provided affordable housing initiatives and social services to LMI

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[60] The Atlantic Advantage product features a minimum downpayment of 3 percent and a flexible total debt-to-income ratio of 43 percent, and permits the borrower to borrow half of a downpayment and closing costs from a relative or government housing assistance program.

individuals. More than $38,000 of these contributions were made pursuant to Atlantic's Awards for Community Excellence program, an initiative examiners described as innovative.

Service. Atlantic received a rating of "outstanding" under the service test based on what examiners considered to be a very high level of community development services. Since its previous evaluation, Atlantic had hired a special affordable housing loan officer, who provides credit management and individual budgeting counseling to LMI applicants to assist them in the mortgage application process. Employees of Atlantic participated in first-time homebuyer seminars offered in conjunction with the Hilton Head CDC and offered financial education and small business education classes. Examiners also noted the service of Atlantic executives on the boards of a number of community organizations, including several dealing with affordable housing or community development matters.

E. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of First Union and Wachovia in light of comments on 1999 HMDA data reported by the organizations' subsidiaries.[61] Data indicate that the number

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[61] Commenters criticized First Union's record of home mortgage lending to minority applicants in 28 MSAs in First Union's assessment area and in five other MSAs. Commenters also criticized Wachovia's record of home mortgage lending to minorities in five MSAs in Wachovia's assessment area. A commenter criticized First Union's loan denial rate for LMI borrowers in four MSAs in First Union's assessment area and in one MSA outside the assessment area. In addition to considering the analysis provided by commenters, the Board performed a comprehensive analysis of First Union's HMDA data for the years 1998, 1999, and 2000 in each of the states in which it operates as well as the home MSAs of First Union, Wachovia, and the former CoreStates. Specifically, the Board analyzed HMDA data for

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of applications for HMDA-related loans has decreased from 1998 to 2000 for First Union and Wachovia, as it has for lenders in the aggregate.[62]

Data indicate that in 2000, in 11 of the 13 states in its assessment area, First Union originated a higher percentage of HMDA-related loans in LMI areas and to LMI borrowers than did lenders in the aggregate. However, the percentages of First Union's HMDA-related loans to African Americans in 2000 were lower than the percentages for lenders in the aggregate in 10 of the 13 states in First Union's assessment area, and the percentages to Hispanics were lower than the percentages for lenders in the aggregate in 8 of the 13 states. First Union's denial disparity ratios for African Americans in 2000 were lower than the denial disparity ratios of

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First Union's assessment areas in each of the 13 states in which it maintains branches, including the District of Columbia, and in the Charlotte, Philadelphia, and Winston-Salem MSAs. The Board also analyzed Wachovia's HMDA data for 1998, 1999, and 2000 on a state-by-state basis for Wachovia's assessment areas in five of the seven states in which it maintains branches and in the Charlotte and Winston-Salem MSAs.

[62] Several commenters asserted that FUHEB did not adequately collect or report data on the race of applicants for HMDA-related loans. First Union has represented that in 2000, FUHEB received more than 80,000 applications in 2000 for HMDA-related loans, and that 75 percent of these applications were received by mail, telephone, or the Internet. The Board notes that HMDA regulations do not require lenders to inquire about the race of individuals making mortgage loan applications by telephone, nor are lenders required to report the race of applicants who apply for a mortgage loan by mail and do not provide race information. See 12 C.F.R. Pt. 202, App. B. The Board also notes that the OCC has reviewed FUHEB's compliance with data collection and reporting requirements under HMDA as part of the agency's periodic consumer compliance examinations of FUHEB, and will continue to do so in the future for First Union National Bank of Delaware, which was formed by the June 2000 merger of FUBDE with and into FUHEB.

lenders in the aggregate in 7 of the 13 states, and were almost identical in two others.[63] First Union's denial disparity ratios for Hispanics in 2000 were equal to or lower than the denial disparity ratios of lenders in the aggregates in 5 of the 13 states.

Year 2000 HMDA data indicate that the percentage of Wachovia's HMDA-related loans to LMI borrowers was lower than the percentage for lenders in the aggregate in each of the five states examined. The percentage of Wachovia's HMDA-related loans to African Americans in 2000 exceeded the percentages for lenders in the aggregate only for Virginia, and the percentage to Hispanics was lower than the percentages for lenders in the aggregate in all five states. Wachovia's denial disparity ratios in 2000 for African Americans and for Hispanics were higher than the denial disparity ratios of lenders in the aggregate in all five states.

The Board is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to 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.[64] The Board recognizes,

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[63] The denial disparity ratio compares the denial rate for minority loan applicants with the denial rate for nonminority applicants.

[64] Two commenters alleged that First Union has indirectly supported predatory lending through its business relationships with three subprime lenders that the commenters characterized as predatory lenders. First Union has stated that it provides warehouse lending facilitates and other financing arrangements to subprime lenders, and that it underwrites securitizations of mortgage loans, including subprime loans. First Union has represented that its due diligence before providing financing or underwriting a securitization includes investigation of the lender's underwriting guidelines, loan

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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.[65] 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 discussed, examiners found the insured depository institutions involved in this transaction to be in compliance with fair lending laws at the most recent examinations of these institutions and discovered no evidence of prohibited

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processing procedures, and compliance programs to check that the lender's policies conform to consumer lending regulations. First Union has stated that it also typically conducts an on-site sampling of loans to verify repayment ability and appraisal accuracy, and to check for indicators of fraud. First Union has represented that neither it nor its subsidiaries or affiliates have a role, formal or otherwise, in the lending practices or credit review processes of any unaffiliated lender.

[65] For example, the data 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.

discrimination or other illegal credit practices.[66] In conjunction with the 1997 FUNB Evaluation, examiners reviewed a sample of more than 1000 HMDA-related applications received by First Union's mortgage company and subsidiary banks in 1995 and did not detect any instances of racial discrimination. Examiners also sampled 350 of First Union's automobile loan applications and did not detect any instances of gender discrimination. In conjunction with the 1997 Wachovia Bank Evaluation, examiners reviewed a sample of approximately 250 HMDA-related applications, and almost 400 applications for other types of loans, and detected no instances of disparate treatment or illegal credit practices based on race or gender.

The record also indicates that First Union and Wachovia have taken a number of affirmative steps to ensure compliance with fair lending laws. First Union has represented that its fair lending program includes the use of logistic regression analysis of lending data, review of policies and procedures, testing by mystery customers, and regular training of employees. First Union also has stated that it established a subprime fair lending program to address customer complaints, broker relationships and servicing issues associated with First Union's subprime lending. Wachovia has represented that its fair lending compliance program features reviews of underwriting criteria, second analyses of rejected applications, regression

[66] A Georgia State legislator commented that Wachovia actively opposed legislation intended to combat predatory lending. The contention contains no allegations of illegality or action that would affect the safety and soundness of the institutions involved in the proposal and is outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc., v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

modeling of portfolios, and ongoing training, among other strategies. The Board also has considered the HMDA data in light of First Union's and Wachovia's overall lending records, which demonstrate that the organizations' subsidiary banks significantly assist the communities that they serve in meeting their credit needs, including LMI areas in those communities.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all facts of record, including the public comments received, responses to comments, and reports of examinations of the CRA performance of the institutions involved, in reviewing the proposal's effect on the convenience and needs of the communities to be served by the combined organization.[67] Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.[68]

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[67] Several commenters criticized the subprime lending practices of Money Store and contended, among other things, that Money Store charged excessive interest rates and fees, particularly when lending to low-income, minority, and elderly borrowers. Commenters also asserted that a number of Money Store loans were originated in connection with builders who failed to provide home improvement services as contracted. HUD, the Department of Justice, and the Federal Trade Commission have responsibility for reviewing compliance with the fair lending laws of nondepository institutions like Money Store, and the Board has forwarded copies of commenters' assertions to those agencies. First Union has stated that Money Store stopped originating loans as of June 2000.

[68] Two commenters criticized the New Wachovia Community Initiative and several commenters contended that First Union has not made adequate

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Nonbanking Activities

First Union also has filed notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Atlantic and thereby engage in the activity of operating a savings association.[69] New Wachovia would engage through Atlantic in accepting deposits and offering a full line of banking products, including home mortgage loans.[70] The Board has determined by regulation that the activity of owning, controlling, or operating a savings association is permissible for a bank holding company, provided that the savings association engages only in taking deposits, making loans, and engaging in other activities that are permissible for a bank holding company to conduct under section 4(c)(8) of the BHC Act. First Union has committed to operate Atlantic in accordance with the Board's rules.

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progress in fulfilling a pledge made in connection with the First Union-CoreStates transaction. The Board notes that the CRA requires that, in considering an acquisition proposal, the Board carefully review the actual performance records of the relevant depository institutions in helping to meet the credit needs of their communities. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges concerning future performance under the CRA. The Board also notes that future activities of New Wachovia's subsidiary banks will be reviewed by the appropriate federal supervisors in future performance examinations, and that their CRA performance records will be considered by the Board in any subsequent applications by New Wachovia to acquire a depository institution.

[69] As discussed above, First Union intends to use the post-transaction notice provisions of Regulation Y that apply to financial holding companies to acquire the remaining nonbanking companies Wachovia controls under sections 4(c)(8) and 4(k) of Regulation Y.

[70] Atlantic controls one subsidiary, Atlantic Mortgage Company of South Carolina, Inc., which is inactive.

In order to approve First Union's notice to acquire Atlantic, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition "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."[71]

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. In addition, as noted above, Atlantic received a "satisfactory" performance rating from the OTS at its most recent CRA examination, as of January 1, 1999.

The Board also has considered the competitive effects of the proposed acquisition of Atlantic by First Union. Atlantic has its headquarters and two branches in the Beaufort banking market, where it directly competes with First Union. Atlantic also has a loan production office in Charleston, where FUNB operates branches. The Board considered this presence in its analysis of the competitive effects of the transaction discussed above.[72]

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[71] 12 U.S.C. § 1843(j)(2)(A).

[72] For purposes of analyzing the competitive effects of the proposal, the deposits of Atlantic were weighted at 100 percent in all relevant markets

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For the reasons discussed above, the Board has concluded that the proposal, including First Union's acquisition of Atlantic, would not have any significantly adverse competitive effects in the Beaufort or Charleston markets, or in any other relevant banking market. Based on all the facts of record, the Board, therefore, concludes that it is unlikely that significantly adverse competitive effects would result from First Union's acquisition of Atlantic.

First Union has indicated that the combined strengths of First Union and Wachovia would create a stronger and more geographically diversified organization that could offer customers of both organizations a wider range of products through a stronger and more efficient operational network.

The Board has concluded that the ownership of Atlantic 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 the Board must consider under section 4(j) of the BHC Act is favorable and consistent with approval of the notice.

First Union also has provided notice under section 25A of the Federal Reserve Act and section 211.4 of the Board's Regulation K (12 C.F.R. 211.4) of its intention to acquire Wachovia International Banking

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because it is a depository institution controlled by a commercial banking organization.

Corporation, an inactive Edge corporation controlled by Wachovia. In addition, First Union has given notice under section 4(c)(13) of the BHC Act and section 211.5 of Regulation K (12 C.F.R. 211.5) to acquire certain foreign investments held by Wachovia.[73] The Board concludes that all the factors it is required to consider under the Federal Reserve Act, the BHC Act, and the Board's Regulation K in connection with this proposal are consistent with approval.

Conclusion

Based on the foregoing and after considering all the facts of record, the Board has determined that the application and notices should be, and hereby are, approved.[74] In reaching its conclusion, the Board has

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[73] These investments are in WSH Holdings, Ltd., Grand Cayman Islands, Cayman Islands; and in Banco Wachovia, S.A., and Wachovia International Servicos Ltd., both in Sao Paolo, Brazil. First Union intends to rely on the post-transaction notice procedures of Regulation Y that apply to financial holding companies to acquire Wachovia International Securities, Limited, London, England, which Wachovia currently holds under Regulation K. See 12 C.F.R. 225.86 and 225.87.

[74] 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, in its discretion, also may hold a public meeting or hearing on a section 3 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 a nonbanking company if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C.

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considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[75] The Board's approval specifically is conditioned on compliance by First Union with all the commitments made in connection with the application and notices,

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§ 1843(c)(8); 12 C.F.R. § 225.25(a). The Board has considered carefully the commenters' requests in light of all the facts of record.

The Board extended the comment period in this case to allow commenters additional time to submit comments. In the Board's view, commenters have had ample opportunity to submit their views, and numerous commenters have 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 views adequately. 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 or hearing on the proposal are denied.

[75] Numerous commenters requested that the Board delay action or extend the comment period on the proposal, and the Board extended the comment period for those commenters who requested extensions. 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 previously, 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. As noted above, the Board extended the comment period in this case to allow commenters to provide additional comments. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. 12 U.S.C. §§ 1842(b) and 1843(j)(1); 12 C.F.R. 225.15(d) and 225.24(d). 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, an additional extension of the comment period, or a denial of the proposal on the grounds discussed above or for informational insufficiency is not warranted.

including the branch divestiture 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 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 Wachovia 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,[76] effective August 13, 2001.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

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

APPENDIX A

Banking Markets in which First Union and Wachovia Compete Directly

A. Delaware

Wilmington (DE-MD)	New Castle County in Delaware and Cecil County in Maryland.

B. The District of Columbia

Washington (DC-MD-(VA-WV)	The Washington, D.C. Ranally Metro Area ("RMA"); the non-Ranally Metro Area ("non-RMA") portions of Fauquier and Loudon Counties in Virginia; Calvert, Charles, and St. Mary's Counties in Maryland; and the independent cities of Alexandria, Fairfax, Falls Church, and Manassas, all in Virginia; and Jefferson County, in West Virginia.

C. Florida

Brevard	Brevard County.
Fort Myers	Lee County, excluding the towns on Gasparilla Island; and the town of Immokalee in Collier County.
Fort Pierce	St. Lucie and Martin Counties, excluding the towns of Indiantown and Hobe Sound in Martin County.
Gainesville	Alachua, Gilchrist, and Levy Counties.
Miami-Ft. Lauderdale	Broward and Dade Counties.

Ocala	Marion County and the town of Citrus Springs in Citrus County.
Orlando	Orange, Osceola, and Seminole Counties; the western half of Volusia County; and the towns of Clermont and Groveland in Lake County.
Tampa Bay	Hernando, Hillsborough, Pasco, and Pinellas Counties.
West Palm Beach	Palm Beach County east of Loxahatchee and the towns of Indiantown, and Hobe Sound in Martin County.

D. <u>Georgia</u>

Atlanta	Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties; Hall County, excluding the town of Clermont; and the towns of Auburn and Winder in Barrow County.
Augusta (GA-SC)	Columbia, McDuffie, and Richmond Counties in Georgia; and Aiken and Edgefield Counties in South Carolina.
Dalton	Murray and Whitfield Counties.
Savannah	Bryan, Chatham, and Effingham Counties.

E. <u>North Carolina</u>

Asheville	The Asheville RMA and the non-RMA portions of Buncombe and Henderson Counties.
Burlington	The Burlington RMA and the non-RMA portion of Alamance County.

Charlotte-Rock Hill (NC-SC)	The Charlotte RMA and the non-RMA portion of Carbarrus County in North Carolina.
Dare	Dare County.
Durham-Chapel Hill	The Durham RMA and the non-RMA portions of Chatham, Durham, and Orange Counties.
Elizabeth City	Camden, Pasquotank, and Perquimans Counties.
Fayetteville	The Fayetteville RMA and the non-RMA portion of Cumberland County.
Greensboro-High Point	The Greensboro-High Point RMA and the non-RMA portions of the counties of Davidson, excluding the portion in the Winston-Salem RMA, and Randolph.
Greenville	The Greenville RMA and the non-RMA portion of Pitt County.
Haywood	Haywood County, excluding the portion in the Asheville RMA.
Hickory	The Hickory RMA and the non-RMA portion of Alexander, Burke, and Caldwell Counties.
Jackson	Jackson County.
Martinsville (NC-VA)	The Martinsville RMA; and the non-RMA portion of Henry County and the independent city of Martinsville, both in Virginia.
Monroe	Anson County and Union County, excluding the portion of Union County located in the Charlotte RMA.
Moore	Moore County.

Raleigh	The Raleigh RMA and the non-RMA portions of Franklin, Johnston, and Wake Counties; and Harnett County, excluding the portion in the Fayetteville RMA.
Robeson	Robeson County, excluding the portion in the Fayetteville RMA.
Rocky Mount	The Rocky Mount RMA and the non-RMA portions of Edgecombe, Nash and Wilson Counties.
Salisbury	The Salisbury RMA and the non-RMA portion of Rowan County, excluding the portion in the Charlotte RMA.
Stanly	Stanly County.
Statesville	Iredell County, excluding the portions in the Charlotte and Hickory RMAs.
Wilkes	Wilkes County.
Wilmington	The Wilmington RMA; Pender County; Brunswick County, excluding the portion in the Myrtle Beach-Conway RMA.
Winston-Salem	The Winston-Salem RMA and the non-RMA portions of Davie and Stokes Counties.

F. South Carolina

Beaufort	Beaufort County.
Charleston	The Charleston RMA and the non-RMA portions of Berkeley and Charleston Counties.
Columbia	The Columbia RMA and the non-RMA portion of Lexington and Richland Counties.

Florence	The Florence RMA and the non-RMA portion of Florence Counties.
Georgetown	Georgetown County, excluding the portion in the Myrtle Beach-Conway RMA.
Greenville	The Greenville RMA and the non-RMA portion of Greenville and Pickens Counties.
Greenwood	The Greenwood RMA and the non-RMA portion of Greenwood County.
Myrtle Beach-Conway	The Myrtle Beach-Conway RMA and the non-RMA portion of Horry County.
York	York County, excluding portion in the Charlotte RMA.

G. Virginia

Abingdon	Washington County, excluding the portion in the Johnson City-Kingsport-Bristol RMA.
Bedford	Bedford County, excluding the portions in the Lynchburg and Roanoke RMAs; and the independent city of Bedford.
Charlottesville	The Charlottesville RMA; the independent city of Charlottesville; the non-RMA portion of Albemarle County; and Fluvanna, Greene, and Nelson Counties.
Fredericksburg	Caroline, King George, Spotsylvania, and Stafford Counties, excluding the portion of Stafford County in the Washington, D.C. RMA; the independent city of Fredericksburg; and the towns of Colonial

	Beach, Leedstown, Oak Grove, and Potomac Beach in Westmoreland County.
Harrisonburg	The independent city of Harrisonburg and Rockingham County.
Newport News-Hampton	The Newport News-Hampton RMA; the non-RMA portions of James City and Matthews Counties; and the independent cities of Hampton, Newport News, Poquoson, and Williamsburg.
Norfolk-Portsmouth (VA-NC)	The Norfolk-Portsmouth RMA, the independent cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, all in Virginia; and Currituck County in North Carolina.
Pulaski-Radford	Montgomery and Pulaski Counties and the independent city of Radford.
Richmond	The Richmond RMA, the non-RMA portions of Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Powhatan and Prince George Counties; the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond; and Charles City, King and Queen, King William, and New Kent Counties.
Roanoke	The Roanoke RMA; the non-RMA portions Botetourt and Roanoke Counties; the independent cities of Roanoke and Salem; and the town of Boones Mill in Franklin County.
Smyth	Smyth County.
Winchester (VA-WV)	The independent city of Winchester, Clarke and Frederick Counties, and the town of Strasburg in Shenandoah County, all in Virginia; and Hampshire County in West Virginia.

APPENDIX B

Certain Banking Markets without Divestitures

Delaware

Wilmington	First Union operates the eighth largest depository institution in the market, controlling deposits of approximately $1 billion, representing 2.3 percent of market deposits.[77] Wachovia operates the thirtieth largest depository institution in the market, controlling deposits of approximately $477,000, representing less than 1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the eighth largest depository institution in the market, controlling deposits of approximately $1 billion, representing 2.3 percent of market deposits. The HHI would remain unchanged at 2390.

Florida

Brevard	First Union operates the second largest depository institution in the market, controlling deposits of $910 million representing 22.3 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of $249 million, representing 6. 1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $1.2 billion, representing 28.4 percent of market deposits. The HHI would increase by 272 points to 1752.

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[77] All deposit figures in the millions have been rounded to the nearest million, and all deposit figures in the billions have been rounded to the nearest hundred million. All percentages have been rounded to the nearest one-tenth of 1 percent.

Fort Myers	First Union operates the second largest depository institution in the market, controlling deposits of $963 million, representing 16.8 percent of market deposits. Wachovia operates the eighteenth largest depository institution in the market, controlling deposits of $26 million, representing less than 1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $988 million, representing 17.2 percent of market deposits. The HHI would increase by 15 points to 1476.
Fort Pierce	First Union operates the fourth largest depository institution in the market, controlling deposits of $404 million, representing 12.2 percent of market deposits. Wachovia operates the tenth largest depository institution in the market, controlling deposits of $62 million, representing 1.9 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fourth largest depository institution in the market, controlling deposits of $466 million, representing 14 percent of market deposits. The HHI would increase by 46 points to 1405.
Gainesville	First Union operates the largest depository institution in the market, controlling deposits of $470 million, representing 23.3 percent of market deposits. Wachovia operates the sixteenth largest depository institution in the market, controlling deposits of $22 million, representing 1.1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $491 million, representing 24.4 percent of market deposits. The HHI would increase by 50 points to 1321.
Miami-Fort Lauderdale	First Union operates the second largest depository institution in the market, controlling deposits of $9.1 billion, representing 15.9 percent of market deposits.

	Wachovia operates the fourteenth largest depository institution in the market, controlling deposits of $940 million, representing 1.6 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $10 billion, representing 17.5 percent of market deposits. The HHI would increase by 52 points to 1096.
Ocala	First Union operates the fourth largest depository institution in the market, controlling deposits of $230 million, representing 8.8 percent of market deposits. Wachovia operates the fifteenth largest depository institution in the market, controlling deposits of $17 million, representing less than 1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fourth largest depository institution in the market, controlling deposits of $246 million, representing 9.5 percent of market deposits. The HHI would increase by 12 points to 1398.
Orlando	First Union operates the third largest depository institution in the market, controlling deposits of $2.1 billion, representing 14.4 percent of market deposits. Wachovia operates the twelfth largest depository institution in the market, controlling deposits of $171 million, representing 1.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $2.3 billion, representing 15.6 percent of market deposits. The HHI would increase by 35 points to 1672.
Tampa Bay	First Union operates the second largest depository institution in the market, controlling deposits of $4 billion, representing 13.3 percent of market deposits. Wachovia operates the thirty-first largest depository institution in the market, controlling deposits of $88 million, representing less than 1 percent of market deposits. On consummation of the proposal, New

Wachovia would operate the second largest depository institution in the market, controlling deposits of $4 billion, representing 13.6 percent of market deposits. The HHI would increase by 8 points to 1347.

West Palm Beach	First Union operates the second largest depository institution in the market, controlling deposits of $3.2 billion, representing 18.1 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $1.7 billion, representing 9.6 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $4.9 billion, representing 27.6 percent of market deposits. The HHI would increase by 346 points to 1381.

<u>Georgia</u>

Atlanta	First Union operates the fourth largest depository institution in the market, controlling deposits of $6.8 billion, representing 12.7 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $8.3 billion, representing 15.6 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $15.1 billion, representing 28.3 percent of market deposits. The HHI would increase by 396 points to 1472.
Augusta	First Union operates the largest depository institution in the market, controlling deposits of $779 million, representing 19.7 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of $367 million, representing 9.3 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits

of $1.1 billion, representing 29 percent of market deposits. The HHI would increase by 367 points to 1652.

Dalton — First Union operates the eighth largest depository institution in the market, controlling deposits of $79 million, representing 5.8 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $268 million, representing 19.6 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $347 million, representing 25.4 percent of market deposits. The HHI would increase by 227 points to 1583.

North Carolina

Burlington — First Union operates the seventh largest depository institution in the market, controlling deposits of $101 million, representing 6.1 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $235 million, representing 14.1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $335 million, representing 20.2 percent of market deposits. The HHI would increase by 171 points to 1335.

Charlotte-Rock Hill — First Union operates the second largest depository institution in the market, controlling deposits of $7.4 billion, representing 18.3 percent of market deposits. Wachovia operates the fourth largest depository institution in the market, controlling deposits of $1.6 billion, representing 4 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $9.1 billion, representing

22.3 percent of market deposits. The HHI would increase by 147 points to 4002.

Dare — First Union operates the fifth largest depository institution in the market, controlling deposits of $23 million, representing 4.1 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $111 million, representing 19.5 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $134 million, representing 23.7 percent of market deposits. The HHI would increase by 161 points to 2984.

Fayetteville — First Union operates the sixth largest depository institution in the market, controlling deposits of $95 million, representing 5.8 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of $131 million, representing 8 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fourth largest depository institution in the market, controlling deposits of $226 million, representing 13.8 percent of market deposits. The HHI would increase by 93 points to 2041.

Greensboro-High Point — First Union operates the fifth largest depository institution in the market, controlling deposits of $714 million, representing 9 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $1.4 billion, representing 17.1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $2.1 billion, representing 26.1 percent of market deposits. The HHI would increase by 307 points to 1407.

Greenville	First Union operates the ninth largest depository institution in the market, controlling deposits of $24 million, representing 2.2 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $269 million, representing 24.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $293 million, representing 26.3 percent of market deposits. The HHI would increase by 104 points to 1897.
Monroe	First Union operates the ninth largest depository institution in the market, controlling deposits of $28 million, representing 2.9 percent of market deposits. Wachovia operates the eighth largest depository institution in the market, controlling deposits of $50 million, representing 5.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fourth largest depository institution in the market, controlling deposits of $77 million, representing 8.1 percent of market deposits. The HHI would increase by 30 points to 1898.
Moore	First Union operates the fifth largest depository institution in the market, controlling deposits of $65 million, representing 6 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $85 million, representing 7.9 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $150 million, representing 13.8 percent of market deposits. The HHI would increase by 94 points to 2145.
Raleigh	First Union operates the sixth largest depository institution in the market, controlling deposits of $746 million, representing 8.8 percent of market deposits. Wachovia operates the largest depository

	institution in the market, controlling deposits of $1.6 billion, representing 18.5 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $2.3 billion, representing 27.2 percent of market deposits. The HHI would increase by 324 points to 1547.
Robeson	First Union operates the ninth largest depository institution in the market, controlling deposits of approximately $371,000, representing less than 1 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of $38 million, representing 5.9 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fifth largest depository institution in the market, controlling deposits of $39 million, representing 5.9 percent of market deposits. The HHI would increase by 1 point to 2418.
Rocky Mount	First Union operates the fourth largest depository institution in the market, controlling deposits of $191 million, representing 9.2 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $194 million, representing 9.4 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $385 million, representing 18.6 percent of market deposits. The HHI would increase by 173 points to 2006.
Stanly	First Union operates the third largest depository institution in the market, controlling deposits of $106 million, representing 15.7 percent of market deposits. Wachovia operates the seventh largest depository institution in the market, controlling deposits of $32 million, representing 4.8 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository

institution in the market, controlling deposits of $138 million, representing 20.6 percent of market deposits. The HHI would increase by 152 points to 1811.

Wilmington — First Union operates the sixth largest depository institution in the market, controlling deposits of $149 million, representing 5.6 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $405 million, representing 15.1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $554 million, representing 20.7 percent of market deposits. The HHI would increase by 169 points to 1603.

South Carolina

Beaufort — First Union operates the ninth largest depository institution in the market, controlling deposits of $63 million, representing 3.9 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $485 million, representing 29.6 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $548 million, representing 33.4 percent of market deposits. The HHI would increase by 228 points to 1749.

Charleston — First Union operates the ninth largest depository institution in the market, controlling deposits of $138 million, representing 3.7 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $847 million, representing 22.5 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of

$985 million, representing 26.2 percent of market deposits. The HHI would increase by 165 points to 1389.

Columbia	First Union operates the seventh largest depository institution in the market, controlling deposits of $320 million, representing 5.6 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $1.3 billion, representing 23.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $1.6 billion, representing 28.8 percent of market deposits. The HHI would increase by 260 points to 1769.
Florence	First Union operates the sixth largest depository institution in the market, controlling deposits of $88 million, representing 6.7 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $283 million, representing 21.4 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $371 million, representing 28.1 percent of market deposits. The HHI would increase by 285 points to 1339.
Georgetown	First Union operates the eighth largest depository institution in the market, controlling deposits of $2 million, representing less than 1 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $69 million, representing 16.5 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $71 million, representing 16.9 percent of market deposits. The HHI would increase by 14 points to 2160.

Greenville	First Union operates the third largest depository institution in the market, controlling deposits of $834 million, representing 12.6 percent of market deposits. Wachovia operates the fourth largest depository institution in the market, controlling deposits of $744 million, representing 11.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $1.6 billion, representing 23.8 percent of market deposits. The HHI would increase by 282 points to 1400.
Greenwood	First Union operates the second largest depository institution in the market, controlling deposits of $115 million, representing 14.4 percent of market deposits. Wachovia operates the sixth largest depository institution in the market, controlling deposits of $80 million, representing 10.1 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $195 million, representing 24.5 percent of market deposits. The HHI would increase by 290 points to 1439.
Myrtle Beach-Conway	First Union operates the twelfth largest depository institution in the market, controlling deposits of $37 million, representing 1.4 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $334 million, representing 12.4 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $371 million, representing 13.8 percent of market deposits. The HHI would increase by 34 points to 1162.

<u>Virginia</u>

Abingdon	First Union operates the sixth largest depository institution in the market, controlling deposits of $31 million, representing 5.3 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $96 million, representing 16.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $127 million, representing 21.5 percent of market deposits. The HHI would increase by 172 points to 2032.
Charlottesville	First Union operates the tenth largest depository institution in the market, controlling deposits of $29 million, representing 1.4 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $476 million, representing 23.7 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $505 million, representing 25.1 percent of market deposits. The HHI would increase by 67 points to 1642.
Fredericksburg	First Union operates the ninth largest depository institution in the market, controlling deposits of $46 million, representing 2.8 percent of market deposits. Wachovia operates the seventh largest depository institution in the market, controlling deposits of $79 million, representing 4.7 percent of market deposits. On consummation of the proposal, New Wachovia would operate the sixth largest depository institution in the market, controlling deposits of $124 million, representing 7.5 percent of market deposits. The HHI would increase by 26 points to 1447.
Harrisonburg	First Union operates the third largest depository institution in the market, controlling deposits of $191 million, representing 15.3 percent of market deposits. Wachovia operates the eighth largest

depository institution in the market, controlling deposits of $79 million, representing 6.3 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $270 million, representing 21.7 percent of market deposits. The HHI would increase by 194 points to 1416.

Martinsville — First Union operates the sixth largest depository institution in the market, controlling deposits of $55 million, representing 4.7 percent of market deposits. Wachovia operates the ninth largest depository institution in the market, controlling deposits of $33 million, representing 2.8 percent of market deposits. On consummation of the proposal, New Wachovia would operate the fourth largest depository institution in the market, controlling deposits of $88 million, representing 7.5 percent of market deposits. The HHI would increase by 26 points to 1783.

Newport News-Hampton — First Union operates the sixth largest depository institution in the market, controlling deposits of $251 million, representing 7.4 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $364 million, representing 10.8 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $615 million, representing 18.2 percent of market deposits. The HHI would increase by 159 points to 1485.

Norfolk-Portsmouth — First Union operates the fifth largest depository institution in the market, controlling deposits of $542 million, representing 7.2 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $1.1 billion, representing 15 percent of market deposits. On consummation of the proposal, New Wachovia would operate the largest depository institution in the market, controlling deposits of $1.7 billion, representing 22.2 percent of market deposits. The HHI would increase by 216 points to 1349.

Pulaski-Radford — First Union operates the third largest depository institution in the market, controlling deposits of $108 million, representing 8.2 percent of market deposits. Wachovia operates the eighth largest depository institution in the market, controlling deposits of $88 million, representing 6.7 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $195 million, representing 14.9 percent of market deposits. The HHI would increase by 110 points to 1716.

Washington, D.C. — First Union operates the third largest depository institution in the market, controlling deposits of $5.8 billion, representing 9.9 percent of market deposits. Wachovia operates the fourteenth largest depository institution in the market, controlling deposits of $1.3 billion, representing 2.2 percent of market deposits. On consummation of the proposal, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $7.1 billion, representing 12.1 percent of market deposits. The HHI would increase by 44 points to 894.

Winchester — First Union operates the fifth largest depository institution in the market, controlling deposits of $109 million, representing 7.9 percent of market deposits. Wachovia operates the sixth largest depository institution in the market, controlling deposits of $100 million, representing 7.3 percent of market deposits. On consummation of the proposal, New Wachovia would operate the second largest depository institution in the market, controlling deposits of

$209 million, representing 15.2 percent of market deposits. The HHI would increase by 115 points to 1640.

APPENDIX C

Certain Markets with Divestitures

Georgia

Savannah	First Union operates the fourth largest depository institution in the market, controlling deposits of $363 million, representing 12.5 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $555 million, representing 19.1 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor three branches in the market, with deposits of $148 million, representing 5.1 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market, controlling deposits of $770 million, representing 26.5 percent of market deposits. The HHI would increase by no more than 207 points to no more than 1795.

North Carolina

Haywood	First Union operates the second largest depository institution in the market, controlling deposits of $110 million, representing 28.4 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of $41 million, representing 10.5 percent of market deposits. First Union proposes to divest to a suitable out-of-market competitor one branch in the market, with deposits of $41 million, representing 10.5 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $110 million, representing 28.4 percent of market deposits. The HHI would remain unchanged at 2116.

Hickory	First Union operates the second largest depository institution in the market, controlling deposits of $532 million, representing 15.7 percent of market deposits. Wachovia operates the sixth largest depository institution in the market, controlling deposits of $229 million, representing 6.8 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor 2 branches in the market, with deposits of $86 million, representing 2.5 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market, controlling deposits of $677 million, representing 20 percent of market deposits. The HHI would increase by no more than 186 points to no more than 1443.
Jackson	First Union operates the third largest depository institution in the market, controlling deposits of $42 million, representing 15.8 percent of market deposits. Wachovia operates the largest depository institution in the market, controlling deposits of $94 million, representing 35.7 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $36 million, representing 13.6 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market, controlling deposits of $100 million, representing 37.8 percent of market deposits. The HHI would increase by no more than 194 points to 2234.

Salisbury	First Union operates the fourth largest depository institution in the market, controlling deposits of $82 million, representing 8.1 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $167 million, representing 16.6 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $37 million, representing 3.7 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $212 million, representing 21 percent of market deposits. The HHI would increase by no more than 173 point to no more than 1863.
Wilkes	First Union operates the largest depository institution in the market, controlling deposits of $153 million, representing 25 percent of market deposits. Wachovia operates the second largest depository institution in the market, controlling deposits of $105 million, representing 17.2 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $60 million, representing 9.8 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market, controlling deposits of $199 million, representing 32.5 percent of market deposits. The HHI would increase by no more than 227 points to no more than 1787.

South Carolina

York	First Union operates the second largest depository institution in the market, controlling deposits of $52 million, representing 20.1 percent of market deposits. Wachovia operates the fifth largest depository institution in the market, controlling deposits of

$24 million, representing 9.2 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $28 million, representing 10.7 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the second largest depository institution in the market, controlling deposits of $48 million, representing 18.5 percent of market deposits. The HHI would increase by no more than 34 points to no more than 2499.

Virginia

Bedford First Union operates the largest depository institution in the market, controlling deposits of $95 million, representing 29.8 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $50 million, representing 15.5 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $50 million, representing 15.5 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market, controlling deposits of $95 million, representing 29.8 percent of market deposits. The HHI would increase by no more than 82 points to no more than 1927.

Roanoke First Union operates the largest depository institution in the market, controlling deposits of $2.6 billion, representing 51.5 percent of market deposits. Wachovia operates the third largest depository institution in the market, controlling deposits of $326 million, representing 6.4 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor 7 branches in the market, with deposits of $326 million, representing 6.4 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the largest depository institution in the market,

	controlling deposits of $2.6 billion, representing 51.5 percent of market deposits. The HHI would increase by no more than 89 points to no more than 2963.
Smyth	First Union operates the third largest depository institution in the market, controlling deposits of $75 million, representing 18.7 percent of market deposits. Wachovia operates the fourth largest depository institution in the market, controlling deposits of $45 million, representing 11.2 percent of market deposits. First Union proposes to divest to a suitable in-market or out-of-market competitor one branch in the market, with deposits of $45 million, representing 11.2 percent of market deposits. After the proposed merger and divestiture, New Wachovia would operate the third largest depository institution in the market, controlling deposits of $75 million, representing 18.7 percent of market deposits. The HHI would increase by no more than 162 points to no more than 2618.