

FEDERAL RESERVE SYSTEM

First York Ban Corp.
York, Nebraska

Order Approving the Acquisition of a Bank Holding Company and Bank

First York Ban Corp. ("First York"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3(a)(3) of the BHC Act (12 U.S.C. § 1842(a)(3)) to acquire all the voting shares of K.L. & D.M., Inc. ("KLDM"), and thereby acquire 87 percent of the outstanding voting shares of Citizens State Bank, both in Polk, Nebraska ("Bank").¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (67 Federal Register 81 (2002)). The time for filing comments has expired, and the Board has considered the proposal and all the facts of record in light of the factors set forth in section 3 of the BHC Act.

First York, the tenth largest banking organization in Nebraska, controls four subsidiary banks with total deposits of \$406.1 million,² representing 1.4 percent of total deposits in depository institutions in the state ("state deposits").³ KLDM, the 242nd largest banking organization in Nebraska, controls one subsidiary bank with total deposits of \$8.9 million, representing less than 1 percent of state deposits. On consummation of the proposal, First York

¹ Under the proposal, First York's lead bank, Cornerstone Bank, National Association, also in York ("Cornerstone"), would acquire all the voting shares of KLDM and immediately thereafter merge with Bank. Cornerstone would be the surviving entity and KLDM would be dissolved.

² The subsidiary banks of First York are Cornerstone; City State Bank, Sutton; NebraskaLand National Bank, North Platte; and The Albion National Bank, Albion, all in Nebraska.

³ Deposit and ranking data are as of June 30, 2001. In this context, depository institutions include commercial banks, savings banks, and savings associations.

would remain the tenth largest banking organization in Nebraska, controlling deposits of \$415 million, representing 1.4 percent of state deposits.

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. Section 3 also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the community to be served.⁴

First York and Bank compete directly in the York, Nebraska, banking market ("York banking market").⁵ In evaluating the competitive issues raised by this proposal, the Board has considered the contention by First York that the definition of the York banking market should be expanded to include part of Polk County, including the towns of Polk and Stromsburg, all in Nebraska.

The Board believes that the relevant banking market must reflect commercial and banking realities and should consist of the local area where the banks involved offer their services and where local customers can practicably turn for alternatives. The key question to be considered in making this selection is "where, within the area of competitive overlap, the effect of the merger on competition will be direct or immediate."⁶ In determining the relevant geographic

⁴ 12 U.S.C. § 1842(c)(1).

⁵ The York banking market currently is defined as York and Fillmore Counties, Nebraska.

⁶ St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982) (quoting United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963)).

market, the Board reviews a number of factors that identify the geographic area in which competitive forces act to affect the pricing and availability of banking products and services. These include data on worker commuting patterns, as indicated by census data; population density; degree of economic integration; the availability and geographic reach of various modes of advertising; the presence of shopping, employment, health care, and other necessities; the availability of transportation systems and routes; branch banking patterns; deposit and loan activity; and other similar factors that indicate the geographic scope of competition.⁷

In this case, the Board considered that a significant number of Polk County residents commute to York County for employment. Local government officials in Polk and Stromsburg report that residents of southern Polk County travel to York at least once a week, due, in part, to the fact that a broader array of goods and services are available in York than in the smaller towns of Polk and Stromsburg.⁸ There are high subscription rates for the York daily newspaper among households in Polk and Stromsburg, and a weekly shopping circular published by the York daily newspaper is distributed to every household in Polk and Stromsburg. The circular includes advertisements by York banks and other businesses as well as employment listings. In addition, local roads provide direct and easy access to York for the residents of southern Polk County. The distance from Stromsburg to York is 15 miles and the travel time is approximately

⁷ See Crestar Bank, 81 Federal Reserve Bulletin 200, 201 n.5 (1995); Pennbancorp, 69 Federal Reserve Bulletin 548 (1983); St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982); and U.S. Bancorp, 67 Federal Reserve Bulletin 60, 61 n.2 (1981).

⁸ According to data provided by the 2002 Rand McNally Road Atlas, the population of Stromsburg, the largest city in Polk County, is 1,202; the population of Polk is 296; and the population of York is approximately 8,000.

20 minutes. Based on these and all the facts of record, the Board concludes that the York banking market should be defined as Fillmore and York Counties and the southern part of Polk County, including the towns of Polk and Stromsburg.

The Board has carefully reviewed the competitive effects of the proposal in the redefined York banking market in light of all the facts of record, including the characteristics of the market and the projected increase in the concentration of total deposits in depository institutions in the market ("market deposits"),⁹ as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹⁰ and other characteristics of the market. First York is the largest banking organization in the York banking market, controlling deposits of approximately \$222.5 million, representing 40.7 percent of market deposits. Bank is the ninth largest of eleven depository institutions in the market, controlling deposits of approximately

⁹ Unless otherwise noted, market share data are as of June 30, 2001, and 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 has previously 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, 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).

¹⁰ Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered 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.

\$8.9 million, representing 1.6 percent of market deposits. On consummation of the proposal, First York would remain the largest depository institution in the York banking market, controlling deposits of approximately \$231.4 million, representing 42.3 percent of market deposits. The HHI would increase 133 points to 2589. The transaction is consistent with the DOJ Guidelines and Board precedent in the York banking market. Moreover, ten depository institutions, including three that would each control more than 15 percent of market deposits, would compete in the market after consummation.

The Department of Justice has reviewed the proposal and advised the Board that consummation of the proposal is not likely to have a significantly adverse effect on competition in any relevant banking market. The other federal banking agencies also have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, and for the reasons discussed above, the Board concludes that consummation of the proposal is not likely to result in a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

Other Factors

The BHC Act requires that the Board, in acting on an application, consider the financial and managerial resources and future prospects of the companies and banks involved, the convenience and needs of the communities to be served, and certain other supervisory factors. The Board has reviewed these factors in light of all the facts of record, including supervisory reports of examination assessing the financial and managerial resources of the organizations, and financial information provided by First York. The subsidiary banks of First

York and KLDM are and would remain well capitalized. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of First York, KLDM, and their subsidiary banks are consistent with approval, as are the other supervisory factors the Board must consider under the BHC Act.

In considering the convenience and needs of the communities to be served, the Board has reviewed the records of performance of the subsidiary banks of First York and KLDM under the Community Reinvestment Act ("CRA").¹¹ Based on all the facts of record, the Board concludes that convenience and needs considerations, including the CRA performance records of the relevant institutions, are consistent with approval of the proposal.

Conclusion

Based on the foregoing and the facts of record, the Board has determined that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance by First York with all the commitments made in connection with the proposal. For purposes of this action, the commitments and conditions referred to in this order 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.

¹¹ 12 U.S.C. § 2901 *et seq.* First York's subsidiary banks received "satisfactory" or better ratings at their most recent examinations for CRA performance by their primary federal supervisor: Cornerstone received a "satisfactory" rating from the Office of the Comptroller of the Currency ("OCC"), as of January 24, 2000; City State Bank received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC"), as of June 1, 1997; NebraskaLand National Bank received a "satisfactory" rating from the OCC, as of May 10, 1999; and The Albion National Bank received a "satisfactory" rating from the OCC, as of March 9, 1998. Bank received a "satisfactory" rating from the FDIC, as of August 27, 2001.

The acquisition of Bank 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 the Federal Reserve Bank of Kansas City, acting pursuant to delegated authority.

By order of the Board of Governors,¹² effective March 11, 2002.

Robert deV. Frierson
Deputy Secretary of the Board

¹² Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich and Bies. Abstaining from this action: Governor Olson.