FEDERAL RESERVE SYSTEM

J.P. Morgan Chase & Co.
New York, New York

Bank One Corporation
Chicago, Illinois

Order Approving the Merger of Financial Holding Companies

J.P. Morgan Chase & Co. ("JP Morgan"), a financial 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 Bank One Corporation[1] and to acquire Bank One Corporation's subsidiary banks, including its lead subsidiary bank, Bank One, National Association, also in Chicago ("Bank One").[2]

JP Morgan, with total consolidated assets of approximately $771 billion, is the third largest insured depository organization in the United States,[3] controlling deposits of $197.2 billion, which represents approximately 3.8 percent of total deposits of insured depository institutions in the United States.[4] JP Morgan operates

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1 JP Morgan and Bank One Corporation also have requested the Board's approval to hold and exercise options to purchase up to 19.9 percent of each other's common stock. Both options would expire on consummation of the proposal.

2 Bank One Corporation also owns Bank One, National Association ("Bank One-Ohio") and Bank One Trust Company, both in Columbus, Ohio; Bank One, Dearborn, National Association, Dearborn, Michigan ("Bank One-Dearborn"); and Bank One, Delaware, National Association, Wilmington, Delaware.

3 Asset data for JP Morgan are as of December 31, 2003, and nationwide ranking data are as of September 30, 2003, and are adjusted to reflect mergers and acquisitions completed through May 2004.

4 Deposit data are as of December 31, 2003, and reflect the unadjusted total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income for December 31, 2003. In this

insured depository institutions in California, Connecticut, Delaware, Florida, New Jersey, New York, and Texas[5] and engages nationwide in numerous nonbanking activities that are permissible under the BHC Act.

Bank One Corporation, with total consolidated assets of approximately $327 billion, is the sixth largest depository organization in the United States, controlling deposits of approximately $147.4 billion, which represents approximately 2.8 percent of total deposits of insured depository institutions in the United States. Bank One Corporation operates depository institutions in Arizona, Colorado, Delaware, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. It also engages in a broad range of permissible nonbanking activities in the United States and abroad.[6]

On consummation of the proposal, JP Morgan would become the second largest insured depository organization in the United States, with total consolidated assets of approximately $1.1 trillion and total deposits of $344.6 billion,

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context, insured depository institutions include commercial banks, savings banks, and savings associations.

[5] JP Morgan owns JPMorgan Chase Bank, New York, New York ("JP Morgan Bank"); Chase Manhattan Bank USA, National Association, Newark, Delaware ("Chase USA"); and J.P. Morgan Trust Company, N.A., Los Angeles, California ("JP Morgan Trust"). On January 30, 2004, the Board approved JP Morgan's acquisition of Chase FSB, Newark, Delaware, a de novo federal savings bank that JP Morgan subsequently elected not to establish.

[6] JP Morgan proposes to acquire Bank One Corporation's domestic and foreign nonbanking subsidiaries, all of which are engaged in permissible activities listed in section 4(k)(4)(A)-(H) of the BHC Act, pursuant to section 4(k) and the post-transaction notice procedures of section 225.87 of Regulation Y. JP Morgan also proposes to acquire Bank One Corporation's Edge and Agreement corporations, which are organized under sections 25 and 25A of the Federal Reserve Act. (12 U.S.C. § 601 et seq.; 12 U.S.C. § 611 et seq.).

representing approximately 6.7 percent of total deposits of insured depository institutions in the United States.

Factors Governing Board Review of the Transaction

The BHC Act enumerates the factors the Board must consider when reviewing the merger of bank holding companies or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the transaction; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act. In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits nationwide and in certain individual states, as well as compliance with other provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act").[7]

Public Comment on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 7,748 and 17,664 (2004)), and the time for filing comments has expired. Because of the extensive public interest in the proposal, the Board held public meetings in New York and Chicago and provided an extended comment period of 81 days to allow interested persons an opportunity to present oral or written testimony on the factors that the Board must review under the BHC Act.[8] More than 150 people testified at the public meetings,

[7] Pub. L. No. 103-328, 108 Stat. 2338 (1994).

[8] The New York public meeting was held on April 15, 2004, and the Chicago public meeting was held on April 23.

many of whom also submitted written comments. Approximately 290 additional commenters submitted written comments.

A large number of commenters supported the proposal and commended JP Morgan and Bank One Corporation for their commitment to local communities and for their leadership in community development activities. These commenters praised both institutions' records of providing affordable mortgage loans, investments, grants and loans in support of economic and community revitalization projects, charitable contributions in local communities, and other community services. Many of the commenters also praised JP Morgan's nationwide $800 billion, ten-year community economic development plan ("Community Development Initiative") that was announced at the public meeting in New York.

Many commenters, however, expressed concern about the proposal or opposed the acquisition. Most of these comments alleged general or specific deficiencies in the record of performance of JP Morgan or Bank One Corporation in helping to meet the credit needs of their communities under the CRA. Several commenters believed that the merger would reduce competition for banking services, substantially increase concentration in the banking industry, and result in the loss of local control over lending and investment decisions. Many commenters were generally troubled by the size of the acquisition and alleged deficiencies in the Community Development Initiative. Some commenters expressing concerns had enjoyed positive experiences with either JP Morgan or Bank One Corporation and were concerned about the effect of the merger on their relationships in the future.

In evaluating the statutory factors under the BHC Act, the Board carefully considered the information and views presented by all commenters, including the testimony at the public meetings and the information and views submitted in writing. The Board also considered all the information presented in the applications, notices, and supplemental filings by JP Morgan and Bank One

Corporation, various reports filed by the relevant companies, publicly available information, and other reports. In addition, the Board reviewed confidential supervisory information, including examination reports of the bank holding companies and the depository institutions involved and information provided by other federal banking agencies, the Securities and Exchange Commission ("SEC"), and the Department of Justice ("DOJ"). After a careful review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act and other relevant banking statutes are consistent with approval of the proposal.

Interstate Analysis

The Board may not approve an interstate proposal under section 3(d) of the BHC Act if the applicant controls, or upon consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. On consummation of this proposal, JP Morgan would control approximately 6.7 percent of deposits nationwide. Accordingly, Board approval of this proposal is not barred by the nationwide deposit limitation in section 3(d).

Section 3(d) 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 JP Morgan is New York,[9] and Bank One Corporation's subsidiary banks are located in Arizona, Colorado, Delaware, Florida, Illinois,

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[9] See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin.[10]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[11] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

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 anticompetitive effects of the proposal are clearly outweighed in the public interest by

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[10] For purposes of the Riegle-Neal Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

[11] See 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). JP Morgan is adequately capitalized and adequately managed, as defined by applicable law. In addition, on consummation of the proposal, JP Morgan would control less than 30 percent of, or less than the applicable state deposit cap for, the total deposits of insured depository institutions in each of Arizona, Colorado, Delaware, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. Two commenters contended that, on consummation of this proposal, JP Morgan's deposits in Texas would exceed the state's deposit cap. The Texas Banking Commissioner has informed the Board that consummation of the proposal would comply with all the requirements of Texas law. All of Bank One Corporation's subsidiary banks have been in existence for more than five years, and all other requirements under section 3(d) of the BHC Act also would be met on consummation of this proposal.

the probable effect of the proposal in meeting the convenience and needs of the community to be served.[12]

JP Morgan and Bank One Corporation compete directly in seven local banking markets in Delaware, Florida, and Texas.[13] The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including public comments on the proposal.[14] In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by JP Morgan and Bank One Corporation,[15] the

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[12] See 12 U.S.C. § 1842(c)(1).

[13] These banking markets are described in Appendix A.

[14] Some commenters alleged that approval of this proposal would adversely affect competition among credit card issuers. The Board continues to believe that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products and services offered by banking institutions. This approach is based on Supreme Court precedent, which emphasizes that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963); accord, United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1969). Even if the approach advocated by the commenters were adopted, the Board notes that the increase in the Herfindahl-Hirschman Index ("HHI") and the resulting HHI would be within Department of Justice Merger Guidelines ("DOJ Merger Guidelines"), 49 Federal Register 26,823 (1984). Accordingly, the Board concludes that the proposal would not result in significantly adverse competitive effects on credit card issuance, because that activity is conducted on a national or global scale, with numerous other large financial organizations providing the service.

[15] Market share data are as of June 30, 2003, and are based on calculations in which the deposits of thrift institutions are included 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, 70 Federal

concentration level of market deposits and the increase in this level as measured by the HHI under the DOJ Merger Guidelines, and other characteristics of the markets.[16]

Consummation of the proposal would be consistent with DOJ Merger Guidelines and Board precedent in six of these banking markets. After consummation, one market would remain unconcentrated and four markets would be moderately concentrated.[17] The remaining market would be highly concentrated, but with only a modest increase in concentration.[18] In addition, numerous competitors would remain in each of these banking markets after consummation of the proposal.[19]

Houston Banking Market

The structural effects of the proposal in the Houston, Texas, banking market ("Houston banking market"), as measured by the HHI on the basis of deposits,

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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). Some thrifts meet the Board's criteria for increased weight in the calculation of market competition, and their deposits are weighted at 100 percent.

[16] Under the DOJ Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 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 DOJ 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 DOJ 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.

[17] The Fort Worth, Texas, banking market would remain unconcentrated and the Austin, Dallas, and San Antonio banking markets, all in Texas, and the West Palm Beach, Florida, banking market would be moderately concentrated.

[18] The HHI would increase by only 91 points in the highly concentrated Wilmington, Delaware, banking market.

[19] Market data for these banking markets are provided in Appendix B.

would substantially exceed the DOJ Guidelines. According to the Summary of Deposits ("SOD") for June 30, 2003, JP Morgan operates the largest depository institution in the Houston banking market, controlling deposits of $32.7 billion, which represents approximately 41.6 percent of market deposits. Bank One Corporation operates the fourth largest depository institution in the market, controlling deposits of $4.3 billion, which represents approximately 5.5 percent of market deposits. After the proposed merger, JP Morgan would continue to operate the largest depository institution in the market, controlling deposits of approximately $37 billion, which represents approximately 47.1 percent of market deposits. Based on market deposits, the HHI would increase by 459 points to 2421. As indicated in the DOJ Merger Guidelines and Board precedent, the Board conducts an in-depth review of the competitive effects of a merger in any highly concentrated market that experiences a significant change in the HHI for deposits. As the HHI increases or the change in the HHI resulting from a proposal becomes larger, increasingly stronger mitigating factors are required to support a determination that the competitive effects of the proposal are not significantly adverse.

JP Morgan has argued that, for purposes of evaluating the competitive effects of the proposal in the Houston banking market, the Board should exclude deposits from various JP Morgan business lines that are national or international in nature ("national business line deposits") and booked at JP Morgan's largest Houston branch ("Main Houston Branch").[20] Approximately $21.9 billion of the deposits in

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[20] JP Morgan also argues that the Board's market share calculations should include at 100 percent the deposits of Washington Mutual, Inc., Stockton, California, a large thrift that operates in the Houston banking market, and should include at 50 percent the deposits of several credit unions that also compete in this market. Based on a review of the commercial lending and other activities of Washington Mutual, Inc. in Texas, the Board has determined that the thrift's deposit weighting should remain at 50 percent. The Board also reviewed the credit unions identified by JP Morgan and

the Main Houston Branch are deposits of JP Morgan's Treasury and Securities Services ("TSS"), investment banking, and mortgage escrow businesses. These deposits previously were maintained at JP Morgan Bank's main office in New York and were assigned to the Main Houston Branch over a three-year period that began in 2001 for business reasons unrelated to JP Morgan's efforts to compete in the Houston banking market. Less than 5 percent of these deposits are held in the accounts of customers whose addresses are in the Houston banking market. Furthermore, JP Morgan contends that almost half of the national business line deposits are not, as a practical matter, available to fund lending by JP Morgan in the Houston banking market. JP Morgan asserts that inclusion of these deposits in calculations of market share indices for JP Morgan in the Houston banking market would distort the measures of its competitive position.

TSS has three business units: Institutional Trust Services, Investor Services, and Treasury Services. The TSS business units provide financial services, primarily to larger corporate customers located throughout the United States, Europe, and Asia. As of June 30, 2003, the TSS Treasury Services business unit accounted for $11.2 billion of the deposits booked to the Main Houston Branch. The TSS Investor Services and Institutional Trust Services business units accounted for $7.2 billion and $605 million, respectively, of the deposits maintained at the Main Houston branch. JP Morgan's investment banking business controls $718.5 million in deposits at the Main Houston Branch, and mortgage escrow deposits total $2.2 billion at the branch.

In conducting its competitive analysis in previous cases, the Board has adjusted the market deposits held by an applicant to exclude specified types of deposits only in rare situations in which evidence supported a finding that the excluded deposits were not, as a legal matter, available for use in that market, and data

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determined that they do not meet the criteria for increased weighting under Board precedent.

were available to make comparable adjustments to the market shares for all other market participants.[21] In light of the arguments and data provided by JP Morgan, the Board has conducted a more detailed analysis of its measures for predicting the likely competitive effects of the transaction in this case. As an initial step, the Board examined several alternative measures of concentration in the Houston banking market, together with other relevant data. These alternative concentration measures for the market include HHIs based on the number of branches, the dollar amount of small business loan originations, and the dollar amount of mortgage loan originations.[22] For each of these measures, the increase in the HHI is less than 100 points and the resulting HHI is well below 1000. All changes in the alternative measures are modest and are indicative of a significantly smaller effect on competition than suggested by indices based on deposits. Accordingly, these alternative HHI calculations support the proposition that the SOD data overstate the competitive effects of the proposal in the Houston banking market.

Moreover, although JP Morgan holds $32.7 billion in deposits in the Houston banking market based on SOD data, its offices there hold only $5.2 billion in loans, by far the lowest loan-to-deposit ratio for JP Morgan in any banking market in Texas. This unusually low loan-to-deposit ratio is also consistent with the proposition that SOD deposit data significantly overstate JP Morgan's presence in the Houston banking market.

In addition, data for the Houston banking market indicate that the decision by JP Morgan to maintain national business line deposits there did not affect deposit interest rates in the banking market. An analysis of the pricing of retail

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[21] See First Security Corp., 86 Federal Reserve Bulletin 122 (2000).

[22] The HHI for small business loans is based on loans to businesses originated in amounts of $1 million or less.

banking products in the Houston banking market and other banking markets in Texas (Austin, Dallas, and San Antonio) revealed that, from January 1, 2000, through December 31, 2003, the average interest rate on deposits in the Houston Metropolitan Statistical Area ("MSA") did not deviate significantly from the average rates offered in three other Texas MSAs. In addition, the movement of these deposits to the Houston banking market has not caused a significant change in JP Morgan's pricing behavior. From January 1, 2000, through December 31, 2003, JP Morgan's interest rates on deposits did not significantly deviate from those rates offered by its competitors in the Houston MSA.

As noted above, JP Morgan states that approximately half of its national business line deposits are subject to practical restrictions that constrain the organization's ability to use the deposits to support general banking activities. Some of these deposits are maintained in volatile investment accounts. Other national business line deposits are used to fund collateral requirements related to the deposits or are regularly extended by JP Morgan Bank to depositors as overdraft loans or other forms of credit. JP Morgan also states that the deposit balances held by TSS's Treasury Services unit are sufficient to fund only part of the credit demands of the unit's customers.

There also is no evidence in the record that the national business line deposits were moved to Houston or from another branch in an attempt to manipulate the SOD data used for competitive analyses by the appropriate federal supervisory agency. Rather, JP Morgan has provided evidence to demonstrate that the national business line deposits were placed in the Main Houston Branch for business reasons unrelated to JP Morgan's efforts to compete in Houston.

Based on this review, the Board concludes that the SOD data substantially overstate the effective presence of JP Morgan in the Houston banking market and thus overstate the competitive effect of this acquisition in the market.[23]

To account for this overstatement, the Board has considered the structural effects of the proposal after adjusting market deposits to exclude the portion of national business line deposits in the Main Houston Branch that are attributable to customers with mailing addresses outside the Houston banking market who also do not have a presence in the Houston banking market. The total amount of national business line deposits that are unrelated to Houston is approximately $17.2 billion.[24]

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[23] A commenter noted that JP Morgan instituted numerous changes in its SOD data immediately before submitting this proposal and maintained that the Board should prevent large banking organization from arbitrarily shifting deposits through amendments to SOD data. These changes are separate from the considerations discussed above. JP Morgan has provided information about the changes to support its contention that they were principally to correct errors in the SOD data as originally reported.

[24] Approximately $21.9 billion in deposits have been identified by JP Morgan as national business line deposits. If those deposits were excluded from the calculation of the competitive effect of this proposal, JP Morgan would have a pro forma market share of 26.6 percent and the banking market's HHI would increase by 290 points to 1104. Of the $21.9 billion in deposits, approximately $20.9 billion is attributable to customers with addresses outside the Houston banking market. If $20.9 billion in deposits were excluded from the calculations, JP Morgan would have a pro forma market share of 27.9 percent and the HHI would increase 306 points to 1159. Of this $20.9 billion, $3.7 billion in deposits is attributable to customers with addresses outside the Houston market, but who maintain a physical presence (e.g., retail establishment, manufacturing plant, or business office) in the Houston banking market. If the $17.2 billion in deposits associated with customers with non-Houston addresses and no physical presence in the Houston banking market were excluded from the calculation, the pro forma market share of JP Morgan would be 32.2 percent and the HHI would increase 356 points to 1375. All of these increases are within the DOJ Merger Guidelines.

To account for the possibility that other market competitors might maintain similar deposits in the Houston banking market, the Board has considered several methods for approximating the amount of their national business line deposits and has excluded those deposits in analyzing the competitive effects of the proposal. After making these adjustments, the structural effects of the proposal in the Houston banking market are either within or moderately exceed the DOJ Merger Guidelines, depending on which method is used to adjust the competitors' deposits.[25]

The Board also examined other aspects of the structure of the Houston banking market. After consummation of the proposal, 85 depository institutions would compete in the Houston banking market, including three insured depository institutions that each would control more than 6 percent of market deposits. The second and third largest competitors in the market currently rank among the five largest bank holding companies nationally by asset data as of December 31, 2003. Two of JP Morgan's bank competitors also operate similar branch networks in the market.

In addition, the Houston banking market is attractive for entry by out-of-market competitors. Seven de novo banks have been chartered since 1998, and five existing banking organizations have entered the market through branching since 2000.

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[25] The Board considered three methods for approximating comparable deposits held by competitors in the Houston banking market. The first method excluded deposits in the largest branch of every market competitor, including competitors headquartered in Texas and competitors controlled by out-of-state banking organizations. This method likely overstates the amount of out-of-market deposits held by competitors in the Houston banking market and, therefore, understates the competitive strength of those institutions. The second method excluded deposits in the largest branch of all out-of-state market competitors. The third method excluded from each out-of-state institution's Houston deposits the same percentage of deposits that were excluded from JP Morgan's Houston deposits (53 percent). Under these methods, the HHIs increased by 577 to 1985, by 432 to 1532, and by 492 to 1748, respectively.

Moreover, demographic data indicate that the Houston banking market will likely remain attractive for entry. The Houston MSA is the second most populous of 25 MSAs in Texas, and since 2000, its population growth has exceeded the average population growth in all other Texas MSAs.

Based on a careful review of these and other facts of record, the Board concludes that the SOD data overstate the competitive effect of the proposal in the Houston banking market and that the characteristics of the market further mitigate the transaction's potential anticompetitive effects. Although the analysis and data in this case are more complex than in previous cases, the Board believes that, together and under the particular circumstances of this case, they provide a more accurate picture of the likely competitive effects of the proposed transaction.

The Board also has consulted with and considered the views of the DOJ on the competitive effects of the proposal in the Houston banking market. The DOJ has advised the Board that consummation likely would not have a significantly adverse effect on competition in any relevant market. In addition, the Board has requested the views of the Comptroller of the Currency ("OCC") on the competitive effects of the proposal, and the OCC has not indicated that it raises competitive issues.

In this light, and based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in the Houston banking market or in any relevant banking market. Accordingly, competitive considerations are consistent with approval.

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 carefully considered the financial and managerial resources and future prospects of JP Morgan, Bank One

Corporation, and their respective subsidiary banks in light of all the facts of record. In reviewing the financial and managerial factors, the Board has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, the Federal Reserve System's confidential supervisory information, and public comments on the proposal. In addition, the Board has consulted with the relevant supervisory agencies, including the OCC, the primary supervisor for two of JP Morgan's banks and all of Bank One Corporation's banks. The Board also has considered publicly available financial and other information on the organizations and their subsidiaries and all information on the proposal's financial and managerial aspects submitted by JP Morgan and Bank One Corporation during the application process.

In addition, the Board has considered the public comments that relate to these factors. Commenters expressed concern about the size of the combined organization and questioned whether the Board and other federal agencies have the ability to supervise the combined organization and whether the combined organization presents special risks to the federal deposit insurance funds or the financial system in general.

In evaluating financial factors in expansionary proposals by banking organizations, the Board consistently has considered capital adequacy to be an especially important factor. JP Morgan, Bank One Corporation, and their subsidiary banks are well capitalized and would remain so on consummation of the proposal. The Board has considered that the proposed merger is structured as an exchange of shares and would not increase the debt service requirements of the combined company. In addition, the Board has carefully reviewed other indicators of the financial strength and resources of the companies involved, including the earnings performance and asset quality of the subsidiary depository institutions. The Board has also considered the ability of the organizations to absorb the costs of the merger and their proposed integration.

The Board has considered the managerial resources of the proposed combined organization. JP Morgan, Bank One Corporation, and their subsidiary depository institutions are considered well managed overall. The Board has considered its experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law.[26] The Board also has reviewed carefully the examination records of JP Morgan, Bank One Corporation, and their subsidiary depository institutions, including assessments of their risk management systems and other policies.

Senior management of the combined organization proposes to draw from the senior executives of JP Morgan and Bank One Corporation based on the individual management strengths of each company. In this case, senior executives of the two companies have formed a transition team to plan and manage the integration into the combined organization. Both companies have experience with large mergers and have indicated that they are devoting significant resources to address all aspects of the merger process.

The Board and other financial supervisory agencies have extensive experience supervising JP Morgan, Bank One Corporation, and their subsidiary depository institutions, as well as other banking organizations that operate across multiple states or regions. The Board already has instituted an enhanced supervisory

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[26] Some commenters criticized the management of JP Morgan and Bank One Corporation based on the existence of private litigation alleging infringement of patent rights related to digital capturing, processing, and archiving of checks and other improprieties. These are isolated private disputes that are within the jurisdiction of the courts to resolve.

program that will permit it to monitor and supervise the combined organization effectively on a consolidated basis. This program involves, among other things, continuous holding company supervision, including both on- and off-site reviews of the combined organization's material risks on a consolidated basis and across business lines; access to and analyses of the combined organization's internal reports for monitoring and controlling risks on a consolidated basis; and frequent contact with the combined organization's senior management. It also includes reviews of the policies and procedures in place at JP Morgan for ensuring compliance with applicable banking, consumer, and other laws.

Consistent with the provisions of section 5 of the BHC Act, as amended by the Gramm-Leach-Bliley Act,[27] the Board relies on the SEC and other appropriate functional regulators to provide examination and other supervisory information about functionally regulated subsidiaries in order for the Board to fulfill its responsibilities as holding company supervisor of the combined entity.[28] The Board has consulted with the SEC and the other relevant agencies on JP Morgan's management and compliance efforts. The Board also has taken account of publicly reported issues raised about the past practices of JP Morgan and Bank One Corporation and the efforts and successes of their management to address these matters when they were raised.[29]

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[27] Pub. L. No. 106-102, 113 Stat. 1338 (1999).

[28] For additional information about the Board's supervisory program for large, complex banking organizations, such as JP Morgan, see Supervision of Large Complex Banking Organizations, 87 Federal Reserve Bulletin 47 (2001).

[29] A commenter provided press reports of litigation involving the acquisition of a small number of mortgage loans from a mortgage broker by Chase Manhattan Mortgage Corporation ("CMMC"), a subsidiary of JP Morgan Bank. The commenter asserted that JP Morgan and CMMC lacked adequate policies and procedures for monitoring the acquisition of loans in the secondary market. The Board previously has considered similar comments in the context of recent

Based on these and all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of JP Morgan, Bank One Corporation, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.[30]

Convenience and Needs Considerations

Section 3 of the BHC Act requires the Board to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial 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 expansionary proposals. The Board has

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applications by JP Morgan Bank or JP Morgan, and hereby adopts its findings in those cases. See JPMorgan Chase Bank, 89 Federal Reserve Bulletin 511 (2003) ("JP Morgan/Bank One Corporation Order") and J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 212 (2004) ("JP Morgan/Chase FSB Order"). The commenter also raised concerns about an investigation by the Oregon Department of Justice ("Oregon DOJ") into the alleged use by borrowers of fraudulent Social Security numbers in three mortgage loans underwritten by CMMC. The Board previously addressed these concerns in the JP Morgan/Chase FSB Order. As the Board noted in that order, the Oregon DOJ closed its inquiry into this matter on June 10, 2003.

[30] Several commenters expressed concerns about the potential loss of jobs in New York or Chicago and about the degree of diversity in senior management positions in both organizations. These concerns are outside the 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).

carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of JP Morgan and Bank One Corporation, including public comments on the effect the proposal would have on the communities to be served by the resulting organization.

A. Summary of Public Comments on Convenience and Needs

In response to the Board's request for public comment on the proposal, more than 440 commenters submitted their views or testified at the public meetings on the proposal. Approximately 300 commenters commended JP Morgan or Bank One Corporation for the financial and technical support provided to their community development organizations or related their favorable experiences with specific programs or services offered by JP Morgan or Bank One Corporation. Many of these commenters also expressed their support for the proposal.

More than 140 commenters expressed concern about the lending records of JP Morgan or Bank One Corporation, recommended approval of the proposal only if subject to conditions suggested by the commenter, expressed concern about large bank mergers in general, or opposed the proposal. Some of these commenters alleged that community lending and philanthropy deteriorated at JP Morgan after the merger between JP Morgan and Chase Manhattan in 2001.[31] Approximately 40 commenters

[31] Some commenters alleged that mismanagement of accounts, service interruptions, mishandled transactions, and other irregularities occurred after acquisitions by JP Morgan and Bank One Corporation. The Board has reviewed these comments about individual accounts and transactions in light of the facts of record, including information provided by JP Morgan and Bank One Corporation. These letters have also been forwarded to the consumer complaint function at the OCC and the Board, the primary supervisors of the subsidiary banks of JP Morgan and Bank One Corporation.

opposed the proposal, criticizing the consumer and small business lending of JP Morgan or Bank One Corporation.[32] Commenters also criticized JP Morgan or Bank One Corporation for their activities related to subprime lending. Several commenters contended that data submitted under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA") demonstrated that JP Morgan and Bank One Corporation engaged in disparate treatment of minority individuals in home mortgage lending in certain markets. In addition, several commenters asserted that JP Morgan and Bank One Corporation are plaintiffs in an unusually large number of foreclosures in certain markets and expressed concern that these cases resulted from unscrupulous practices by both organizations.[33] Some commenters criticized Bank One Corporation's involvement in tax-refund-anticipation lending and urged the Board to condition approval of the proposal on a pledge to discontinue this activity.[34]

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[32] Several commenters asserted that JP Morgan has a poor record of CRA performance in California. The only banking presence that JP Morgan has in California is JP Morgan Trust, which offers private banking and trust services and is examined as a "wholesale" bank for CRA purposes. JP Morgan Trust's total deposits were $106.9 million as of its most recent CRA examination and only $17.8 million of that amount was on deposit at the bank's main office in Los Angeles, which is the bank's only California branch that accepts deposits.

[33] The Board notes that JP Morgan and Bank One Corporation act as loan servicers or trustees for a large number of mortgages. The legal capacity in which either institution is involved in a foreclosure may not be readily apparent from court records. Foreclosure actions in an institution's capacity as a loan servicer or trustee would not indicate safety and soundness issues or a failure to meet the convenience and needs of the communities served by the institution. The Board notes, however, that JP Morgan has implemented a program to assist borrowers facing foreclosure by providing counseling and refinancing. On consummation of this proposal, JP Morgan would be better able to assist in mitigating borrowers' losses through local branch staff in areas currently served by Bank One Corporation.

[34] Bank One-Ohio offers tax-refund-anticipation loans to customers through independent tax preparers. All underwriting credit decisions are made by Bank One-Ohio using credit criteria consistent with safe and sound banking practices and in

In addition, several commenters expressed concerns about possible branch closures resulting from the proposed merger.

B. CRA Performance Evaluations

As provided in the BHC Act, the Board has evaluated the convenience and needs factor in light of the appropriate federal supervisors' examinations of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[35]

JP Morgan's lead bank, JP Morgan Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of

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compliance with applicable laws. Bank One Corporation also provides financing to its customers engaged in the business of tax-refund-anticipation lending, but is not involved in the lending practices or credit decisions of these lenders. The credit documents executed in connection with the financing, however, require these lenders to comply with applicable laws. The Board expects all bank holding companies and their affiliates to conduct tax-refund-anticipation lending free from any abusive lending practices and in compliance with all applicable law, including fair lending laws. The Federal Trade Commission ("FTC"), Department of Housing and Urban Development ("HUD"), and DOJ are responsible for enforcing compliance by nondepository institutions with laws governing the activity.

[35] See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001). A commenter, however, suggested that JP Morgan Bank manipulates its CRA performance evaluations by significantly increasing its percentage of loans to LMI and minority individuals in the year preceding its CRA evaluation and that its performance diminishes in the years after an evaluation. CRA evaluations measure performance during the applicable period and do not give undue weight or consideration to a bank's increased performance within that time period. If a bank's CRA performance was uneven during the evaluation period, the Board expects that its CRA performance evaluation would reflect such an inconsistent performance.

New York, as of September 8, 2003. JP Morgan's other subsidiary banks also received "outstanding" ratings from the OCC at their most recent CRA evaluations: Chase USA, as of March 3, 2003, and J.P. Morgan Trust, as of November 4, 2002.

Bank One Corporation's lead bank, Bank One, which accounts for approximately 75 percent of the total consolidated assets of Bank One Corporation. It is the successor to Bank One, N.A., Illinois, Chicago, Illinois ("Bank One-Illinois"), which received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of March 31, 2000 ("Bank One Evaluation").[36] All of Bank One Corporation's other subsidiary banks received either "outstanding" or "satisfactory" ratings at the most recent evaluations of their CRA performance.[37]

C. CRA Performance of JP Morgan

1. JP Morgan Bank

Overview. As noted above, JP Morgan Bank received an overall "outstanding" rating for performance under the CRA during the evaluation period.[38] The bank also received an "outstanding" rating under the lending test. Examiners concluded that JP Morgan Bank's lending activity showed excellent responsiveness to retail credit needs in its assessment areas, as measured by the number and dollar amount of HMDA-reportable and small business loans originated and purchased in each area. In particular, examiners characterized lending activity in the bank's primary assessment area, which included New York City, Long Island, Northern New

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[36] After the Bank One Evaluation, Bank One Corporation merged 16 of its subsidiary banks into Bank One and Bank One-Ohio ("Merged Lead Banks"). Each of the banks that was merged into the Merged Lead Banks received a "satisfactory" or "outstanding" rating at its most recent CRA performance evaluation by the appropriate federal financial supervisory agency.

[37] The CRA performance ratings of all of Bank One Corporation's subsidiary depository institutions are provided in Appendix C.

[38] The evaluation period was from January 1, 2001, to December 31, 2002.

Jersey, and parts of Connecticut and Pennsylvania as excellent and lending activity in the Texas and upstate New York assessment areas as good.

During the evaluation period, the bank and its affiliates originated or purchased more than 266,000 HMDA-reportable and small business loans totaling approximately $32.8 billion.[39] Examiners also noted that overall loan volume had increased 44 percent since the bank's previous examination. Although a significant part of the growth was attributable to the volume of refinancings, small business lending increased 22 percent. Examiners also reported that the overall geographic distribution of HMDA-reportable and small business lending reflected good loan penetration in LMI geographies across all assessment areas reviewed.

Examiners noted that JP Morgan Bank's LMI Mortgage Subsidy Program helped increase the bank's mortgage loan penetration in LMI geographies. Under this program, borrowers purchasing properties in LMI geographies of the bank's assessment areas are eligible for a 2 percent subsidy, up to a maximum of $4,000, on loans of up to $200,000. More than 5,200 loans were made under this program during the examination period. Examiners also concluded that various innovative and flexible lending products enhanced lending to LMI borrowers and small businesses, noting that JP Morgan Bank's Residential Lending Group ("RLG") worked with local community organizations to develop new lending products and enhance existing products designed for LMI families. Many of RLG's flexible lending products provide lower down-payment requirements to first-time home buyers. During the examination period, more than 12,000 such loans were originated in the bank's assessment areas.

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[39] The Reserve Bank considered home purchase and refinance and small business loans by JP Morgan Bank and its affiliates, CMMC and Chase USA, for purposes of the CRA performance examination.

Examiners also concluded that JP Morgan Bank's performance record for community development lending was outstanding overall and in each assessment area; the bank made more than $1.3 billion in community development loans during the examination period. Examiners stated that this type of lending was responsive to the credit needs identified by the bank's community contacts and that affordable housing initiatives totaled $927 million or 70 percent of its community development lending. Overall, JP Morgan Bank's community development lending supported the financing of more than 11,500 units of affordable housing throughout its assessment areas.

JP Morgan Bank also was rated "outstanding" for its investment performance in light of its excellent record in the bank's assessment areas. Overall, JP Morgan Bank's significant portfolio of qualified investments and grants, totaling $1.1 billion, included $313 million in new investments since the previous examination. These investments focused on affordable housing, economic development, community services, and revitalization and stabilization projects. Examiners concluded that the bank's investments reflected excellent responsiveness to the most significant credit and community development needs in the bank's assessment areas.[40]

JP Morgan Bank received an "outstanding" rating on the service test in light of its performance in all assessment areas. In particular, examiners noted that its branches were readily accessible to all portions of the bank's assessment areas. Examiners reported that JP Morgan Bank opened and closed branches and automated teller machines ("ATMs") during the evaluation period, concluding that these changes did not adversely affect the overall accessibility of the bank's delivery network. In

[40] Several commenters contended that JP Morgan should be required to donate a specified percentage of its pretax income to charities. JP Morgan responded that it has a record of providing significant philanthropic donations in all the communities that it serves. The Board notes that neither the CRA nor the agencies' implementing rules require that institutions make charitable donations.

addition, examiners noted that extended morning, evening, and weekend hours were tailored to accommodate the convenience and needs of the assessment areas, particularly LMI areas. Examiners also noted that JP Morgan Bank offered multiple alternative delivery systems that enhanced the distribution of banking services, such as a network of 329 ATMs in which 28 percent were in LMI areas. Many of these ATMs feature instructions in Spanish, Korean, Chinese, French, Italian, Russian, or Portuguese. Examiners stated that JP Morgan Bank offered Chase Online Banking for Small Businesses, which allowed customers to view business and personal accounts together and pay employees electronically. In addition, they reported that JP Morgan Bank offered Ready Pay Electronic Transfer Accounts to provide people without bank accounts an opportunity to receive direct deposits of government payments.

New York. JP Morgan Bank received an "outstanding" rating under the lending test in its New York assessment area.[41] Examiners concluded that an analysis of the bank's lending activity, distribution of loans among borrowers of different income levels and businesses of different sizes, and community development loans demonstrated excellent performance with good geographic loan distribution. Specifically, examiners noted that the overall geographic distribution of HMDA-reportable and small business loans reflected good penetration in LMI geographies. Examiners also concluded that home purchase and refinance lending by JP Morgan Bank in LMI geographies generally exceeded the performance of the aggregate lenders[42] in low-income census tracts and moderate-income census tracts. In addition, examiners found that JP Morgan Bank's performance equaled or exceeded the

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[41] The New York assessment area consists of the consolidated metropolitan statistical area ("CMSA") (New York-Northern New Jersey-Long Island, New York-NJ-CT-PA).

[42] The lending data of lenders in the aggregate ("aggregate lenders") represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

performance of the aggregate lenders in home purchase and refinance lending to LMI borrowers.

Examiners also commented favorably on JP Morgan Bank's performance in small business lending, noting that the overall distribution of small business loans across different income-level geographies was good and that performance in LMI census tracts equaled or exceeded the aggregate lenders' performance. The distribution of loans to businesses of different sizes was considered excellent in light of the proportion of loans for $100,000 or less, the number of assessment area loans to businesses with gross annual revenues of $1 million or less, and JP Morgan Bank's performance relative to the aggregate lenders.

JP Morgan Bank's performance under the investment test was rated "outstanding" by examiners, who cited the bank's level of qualified community development investments and grants as indicating excellent responsiveness to credit and community development needs. Examiners noted that the bank's investments exhibited excellent responsiveness to the need for affordable housing (identified as a critical need in the New York assessment area), with investments of approximately $717 million in low-income-housing tax credits ("LIHTC") that benefited its assessment area for New York, New Jersey, and Connecticut.

JP Morgan Bank's performance under the service test was rated "outstanding" in light of its excellent branch distribution and volume of community development services in its assessment area. Of the 368 branches in the bank's assessment area, 73 or 20 percent were in LMI areas. Examiners reported that 44 percent of JP Morgan Bank's branches were in or adjacent to LMI census tracts (four branches were in census tracts with no designated income level). Examiners concluded that alternative delivery systems somewhat enhanced the bank's performance in the assessment area and noted that 31 percent of its off-site ATMs in the assessment area were in LMI areas. In addition, examiners noted that JP Morgan

Bank had 15 mortgage offices in the assessment area, including two in LMI census tracts. They also reported that JP Morgan Bank's products and services were tailored to accommodate the convenience and needs of the assessment area, including LMI areas.[43]

In addition, examiners reported that JP Morgan Bank was a leader in providing community development services in the assessment area. They noted that JP Morgan Bank officers served on 240 boards of qualifying community development organizations in the assessment area and that the bank participated in more than 480 seminars that promoted financial literacy.

Texas. JP Morgan Bank's rating for CRA performance in Texas was "outstanding." Examiners identified such factors as good responsiveness to assessment-area credit needs, good geographic distribution of loans in the bank's assessment areas, good distribution of loans among individuals of different income levels and businesses of different sizes, an excellent level of community development lending, an excellent level of qualified investments, and readily accessible delivery systems for banking services to geographies and individuals of different income levels to support the rating.[44]

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[43] Some commenters recommended that JP Morgan initiate certain changes to the electronic benefits transfer ("EBT") business that it purchased from Citigroup Inc., New York, New York. EBT in New York provides cash access for the Temporary Assistance for Needy Families program ("TANF"). In response to these suggestions, JP Morgan indicated that it plans to use its ATM network to provide recipients of TANF benefits with access to cash free of charge. JP Morgan also noted that several of the commenters' requests were matters to be addressed by the State of New York or the NYCE ATM Network.

[44] The examiners' conclusions on CRA performance in Texas were based predominantly on JP Morgan Bank's performance in the Dallas and Houston CMSAs and the El Paso MSA. Together, these areas had a majority of the bank's deposits, branches, and HMDA-reportable and small business loans and the assessment area's population, LMI census tracts, owner-occupied housing units, and business

JP Morgan Bank's performance on the lending test in Texas was rated "high satisfactory," based primarily on a good performance in the Dallas-Fort Worth and Houston-Galveston-Brazoria CMSAs, and an adequate performance in the El Paso MSA. Examiners concluded that JP Morgan Bank's responsiveness to retail credit needs in the Texas assessment area was good relative to the bank's capacity and performance, noting that the bank and its mortgage affiliate originated and purchased more than 95,000 loans totaling approximately $10.7 billion during the examination period. The overall geographic distribution of HMDA-reportable and small business loans reflected good penetration in LMI geographies.

Examiners also concluded that JP Morgan Bank's community development lending performance was outstanding during the examination period, with loan commitments in the Texas assessment area totaling $234 million. These loans financed 4,400 units of affordable housing.

JP Morgan Bank's performance on the investment test in Texas was rated "outstanding." Examiners noted that JP Morgan Bank had a high level of qualified investments that exhibited excellent responsiveness to community development needs.[45] At the examination, these investments totaled $161 million or 15 percent of the bank's qualified investments. A majority of the qualified investments were directed to affordable housing initiatives. JP Morgan Bank's performance on the investment test varied across its assessment area. Examiners reported that the bank made a significant number of investments in the Dallas-Fort Worth CMSA and fewer investments in the Houston-Galveston-Brazoria CMSA and El Paso MSA, but that all

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establishments in Texas. JP Morgan's assessment area encompassed the State of Texas.

[45] A qualified investment is any lawful investment, deposit, or grant that has as its primary purpose community development.

these areas benefited from the bank's affordable housing initiatives that were implemented statewide.

JP Morgan bank's overall performance in the Texas assessment area was rated "outstanding," in light of its performance in the Dallas-Forth Worth and Houston-Galveston-Brazoria CMSAs and the El Paso MSA. The bank's delivery systems were readily accessible to all geographies in the assessment area, including LMI areas. The percentage of branches in or adjacent to LMI areas exceeded 40 percent in the three largest areas in the Texas assessment area.

2003 Performance. JP Morgan Bank represented that its total home mortgage originations and purchase lending in its assessment areas in 2003, which includes a period of time after its most recent CRA performance evaluation, amounted to more than 157,000 loans totaling $32.6 billion. Of these loans, 11 percent were in LMI census tracts and 17 percent were to LMI borrowers. During 2003, JP Morgan Bank's small business lending originations in its assessment areas totaled more than 80,000 loans, for $4.1 billion dollars. Approximately 28 percent of these loans were in LMI census tracts. JP Morgan Bank also noted that in 2003, it originated more than 46,000 loans to businesses with revenues of $1 million or less, representing almost 60 percent of JP Morgan Bank's total small business loan originations.

JP Morgan Bank also stated that it continued in 2003 to provide financing for affordable housing and economic development projects in LMI communities by focusing on LMI housing development and rehabilitation through construction lending, interim financing, permanent financing, and letters of credit; commercial revitalization projects in LMI communities; technical assistance to intermediaries; community development loans; and bridge lending to facilitate LIHTC investments. The bank also made more than 300 loans totaling more than $1.2 billion for affordable housing and economic development projects in 2003. For example, it provided a $45 million revolving credit facility to be used as bridge financing for low-income housing investments in limited partnerships that qualify for LIHTCs. JP Morgan Bank will underwrite the entire facility, syndicate a portion to one or two banks, and retain a $20 million share. The facility will invest in low-income multifamily residential housing nationwide.

JP Morgan Bank also stated that it provided a five-year renewal of three lines of credit for the areas served by the Community Preservation Corporation ("CPC") in downstate New York ($31 million), upstate New York ($3.2 million), and New Jersey ($5 million). CPC has financed almost 85,000 housing units in approximately 2,000 separate projects in New York and New Jersey in the last 26 years.

As of December 2003, JP Morgan Bank's qualified community development investments totaled almost $1.4 billion. Approximately $1.2 billion of these investments were in the New York Tri-State area and $207 million were in Texas. New commitments in 2003 totaled $177 million, and the bank provided more than $25.7 million in grants eligible for consideration under the CRA. JP Morgan Bank also had $1.2 billion in outstanding LIHTC investments in its assessment areas, of which $175 million were new investments made in 2003.

2. Chase USA

Overview. Chase USA also received an "outstanding" rating at its most recent CRA performance examination by the OCC.[46] The bank primarily engages in credit card lending nationwide and does not operate any branches.[47] Examiners

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[46] The performance evaluation was as of March 3, 2003, and covered the period from January 1, 1999, through December 31, 2002. At the request of Chase USA, the CRA performance examination included the activities of JP Morgan Bank, CMMC, JP Morgan Chase Community Development Corporation, Chase Community Development Corporation, and JP Morgan Mortgage Capital.

[47] Chase USA focuses on nationwide retail lending and is the fifth largest credit card issuer in the country. It obtains deposits through the treasury desk of JP Morgan Bank

commended Chase USA for good lending activity in its assessment area, excellent borrower distribution of home mortgage loans, and good geographic distribution of home mortgage loans and awarded the bank "outstanding" ratings on the lending, investment, and service tests.[48] Examiners also concluded that community development lending and flexible loan programs had an overall positive impact on the lending test and that the bank exhibited excellent responsiveness to the credit and community development needs of its assessment area through high levels of qualified investments and grants.

Mortgage loans represented 87 percent of the loans originated by Chase USA in its New Castle County assessment area and loans to small businesses comprised approximately 13 percent. Approximately 62 percent of the home mortgage loans made by Chase USA in its assessment area were for home purchase, and the remaining loans were for home refinance. During the evaluation period, Chase USA's home mortgage loans originations almost doubled to approximately 2,570 loans and more than doubled in total dollar amount to $377 million. Chase USA ranked second in home purchase lending in the New Castle County assessment area and fourth in home refinance lending. Examiners reported that Chase USA's distribution of home mortgage loans was considered good in light of the demographics of the assessment area, where less than 16 percent of owner-occupied housing units were in LMI geographies.

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and through private banking deposits. A majority of these deposits are from outside its New Castle County, Delaware, assessment area.

[48] Commenters questioned the accuracy of the OCC's rating, noting that Chase USA closed its branch in Bellefonte, Delaware. That branch was originally opened in Bellefonte, a town with a population of less than 5,000 persons, to permit Chase USA to sell insurance products nationwide. After the Gramm-Leach-Bliley Act, Chase USA no longer required this branch. Chase USA's main office, which provided banking services primarily to employees, was closed during the performance evaluation period and relocated to Newark, Delaware.

Examiners considered the geographic distribution of Chase USA's loans to small business to be adequate. The bank's market share of loans to small businesses in the assessment area's two LMI geographies was substantially comparable with its overall market share in each geography.

In addition, examiners reported that Chase USA's community development lending adequately addressed the community development needs of the New Castle County assessment area. They noted that Chase USA and its affiliates originated 24 community development loans totaling almost $100 million in the assessment area or the broader regional area during the evaluation period. In addition, Chase USA issued six letters of credit for community development purposes totaling $30 million. For example, the Chase Community Development Corporation ("CCDC") provided a ten-month, $3 million credit facility that financed the construction of a charter school in a moderate-income geography of Wilmington, Delaware. Student from LMI families residing in LMI communities were expected to comprise most of the school's student body. CCDC also originated a $2.6 million construction loan to assist in rehabilitating a co-op building in the New Castle County assessment area into a 50-unit apartment complex for LMI senior citizens.

During the evaluation period, Chase USA and its affiliates made commitments of $23.4 million for qualified investments in the New Castle County assessment area, which increased its total outstanding commitments to $36.8 million. Examiners stated that Chase USA had taken a leadership role in several of the investments. Some investments were innovative or complex and accommodated the identified needs in the assessment area.

2003 Performance. In 2003, Chase USA's mortgage originations and purchases in its assessment area totaled more than 3,600 loans for approximately $562 million, of which 12 percent were to borrowers in LMI census tracts and 34 percent were to LMI borrowers. Chase USA originated approximately 290 loans for $3 million, of which 25.3 percent were to businesses in LMI census tracts. Chase USA increased its community development lending, making approximately $80 million in community development loans in 2003. For example, Chase USA provided a $5.6 million construction loan to finance the development of 96 units of family rental housing on a 15-acre site in Salisbury, Maryland. As of December 2003, Chase USA funded an additional $1.2 million in grants. Chase USA also made $2.7 million in new investments in LIHTCs in 2003.

D. <u>CRA Performance of Bank One Corporation</u>

As previously discussed, the most recent CRA performance evaluations of Bank One Corporation's subsidiary banks predate the current structure of the organization. Therefore, in addition to reviewing the relevant CRA performance evaluations, the Board also has evaluated extensive information submitted by Bank One Corporation about the CRA performance of its banks after their most recent CRA performance evaluations.

Overview. As noted above, the Merged Lead Banks all received "outstanding" or "satisfactory" ratings at their most recent CRA evaluations. Examiners determined that Bank One-Illinois demonstrated adequate responsiveness to the credit needs of its communities, including LMI borrowers and geographies. Examiners also reported that the Merged Lead Banks offered a variety of products and programs to assist in meeting the housing-related credit needs of LMI individuals and in LMI communities.

Bank One has continued to provide home mortgage loans to consumers throughout its assessment areas, including those assessment areas previously served by its predecessor institutions. Bank One Corporation has represented that, from 2000 through 2003, Bank One originated or purchased approximately $27.5 billion in home mortgage loans and that approximately 17.4 percent and 29.6 percent of these loans by number were originated in LMI geographies and to LMI borrowers, respectively. Bank One Corporation also has represented that Bank One continues to participate in a variety of programs designed to assist the housing-credit needs of LMI individuals. For example, Bank One participates in and funds a program to subsidize down-payment and closing costs in connection with home mortgage loans for LMI borrowers. Bank One Corporation has represented that home mortgage loans totaling more than $37 million were originated in connection with Bank One's participation in this subsidy program in 2003.

In general, examiners favorably commented on the small business lending records of the Merged Lead Banks. For example, the Bank One Evaluation reported that Bank One-Illinois was the largest local small business lender in its Chicago assessment area. In addition, examiners favorably noted the small business lending penetration of the Merged Lead Banks in LMI geographies in their Dallas, Detroit, Houston, Indianapolis, and Phoenix assessment areas.

Bank One Corporation reported that, from 2000 through 2003, the Merged Lead Banks have originated more than 250,000 loans to small businesses throughout its assessment areas, of which approximately 13.9 percent were to small businesses in LMI geographies. [49] Bank One Corporation also has initiated a Business

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[49] A commenter criticized Bank One Corporation's management of farm properties through Bank One Farm and Ranch Management ("BOFRM"), contending that its primary orientation is towards "cash rent" programs that require substantial initial payments from farmers who lease farmland from BOFRM. BOFRM manages farms for both trust and agency accounts. According to the commenter, these credit arrangements generally do not benefit small independent farming enterprises and negatively affect rural economies. JP Morgan stated that BOFRM rents approximately 95 percent of its farms to family farmers. JP Morgan also stated that Bank One Corporation's agricultural loan products are structured flexibly to meet the needs of the individual businesses, which generally require working capital to meet cash flow needs, and funding to purchase equipment and other large assets and to purchase or improve real estate. JP Morgan represented that, under Bank One's Agricultural Financing Policy, specialized agricultural lenders have the discretion to

Banker program through which certain Bank One employees are assigned to Bank One branches selected specifically for the convenience of small business customers. Bank One employees in the Business Banker program focus exclusively on small businesses requiring loans of less than $250,000. In addition, Bank One has represented that in 2003, it originated approximately $22 million in loans through its Community Express Loan program offered in partnership with the Small Business Administration ("SBA"). Bank One also launched in the same year an SBA-guaranteed revolving line of credit for small businesses, including firms that might not have otherwise qualify for credit without the SBA's guarantee.

Examiners noted the positive impact of Bank One-Illinois's community development lending on its overall lending activities and generally praised the community development lending activities of the Merged Lead Banks.[50] Examiners also reported that the Merged Lead Banks offered an array of consumer and business loan products, including products with flexible underwriting criteria that assisted LMI customers who might not have qualified for credit under traditional underwriting standards. Bank One has represented that it continues to provide community development loans throughout its assessment areas for projects that support affordable housing; economic development; and medical, employment, or other social services in LMI geographies.

Examiners reported that the qualified investment activities of Bank One and the Merged Lead Banks were responsive to the small business and affordable

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adjust the commercial lending products to the special credit needs of agricultural businesses.

[50] Examiners described as good or excellent the community development lending by Bank One, Arizona, National Association, Phoenix, Arizona; Bank One, Indiana, National Association, Indianapolis, Indiana; and Bank One, Texas, National Association, Dallas, Texas. In addition, examiners characterized Bank One-Dearborn as a leader in making community development loans in the Detroit MSA.

housing needs of their communities. Bank One has represented that it made community development investments totaling more than $859 million throughout its assessment areas since the Bank One Evaluation. These investments benefited a variety of organizations and projects, including programs that provide affordable housing, social services for at-risk children, credit and technical assistance for small businesses, and financial literacy education for low-income persons.

Examiners generally reported that the delivery systems of Bank One Corporation and the Merged Lead Banks for banking services were adequately accessible throughout their assessment areas. Bank One has represented that, as of December 31, 2003, approximately 27 percent of its branches and 26 percent of its ATMs were in LMI geographies. Moreover, Bank One has indicated that from 2000 to 2003, it has opened 21 new branches in LMI census tracts.

Chicago. Examiners most recently evaluated Bank One Corporation's CRA performance record in the Chicago MSA as part of the Bank One Evaluation and the evaluations of American National Bank and Trust Company of Chicago, Chicago, Illinois ("American National") ("American National Evaluation") and Bank One, Illinois, National Association, Springfield, Illinois ("Bank One-Springfield") ("Bank One-Springfield Evaluation").[51] Examiners determined that the lending records of Bank One-Illinois, American National, and Bank One-Springfield demonstrated adequate responsiveness to the credit needs of their communities, which included LMI borrowers and geographies. Moreover, examiners commended American National's lending record in the Chicago MSA and noted a good distribution of the bank's home mortgage loans among borrowers of all income levels.

Examiners commended Bank One-Illinois's home mortgage loan penetration in LMI census tracts. During the evaluation period, Bank One-Illinois

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[51] The assessment areas of Bank One and American National for their respective CRA evaluations included the entire Chicago MSA.

originated 16.4 percent of its total home mortgage loans to borrowers in LMI census tracts, which examiners noted exceeded the percentage of owner-occupied units in those areas. The Bank One Evaluation also reported that Bank One-Illinois's home improvement and refinance loan penetration among LMI borrowers was good and that its total home mortgage loan distribution among borrowers of all income levels was adequate. In addition, examiners determined that the overall distribution of home mortgage loans for American National and Bank One-Springfield among census tracts of various income levels, including LMI geographies, was good in the Chicago MSA. Bank One indicated that in 2003, it originated approximately 22.5 percent of its total home mortgage loans in the Chicago MSA to borrowers in LMI census tracts and approximately 30.1 percent to LMI borrowers.

Examiners reported that the geographic distribution of small loans to businesses by Bank One-Illinois and American National was adequate and that the distribution of such loans in moderate-income areas was good.[52] During their evaluation periods, Bank One-Illinois, American National, and Bank One-Springfield provided 13.3 percent, 12.9 percent, and 9.3 percent of their small loans to businesses, respectively, to firms in LMI geographies. In addition, examiners noted that all three banks provided a variety of SBA-sponsored loan products.

Bank One Corporation reported that from 2000 through 2003, Bank One provided more than 47,000 loans to small businesses in the Chicago MSA. In addition, Bank One Corporation represented that in 2003, approximately 13 percent of its loans to small businesses in the Chicago MSA were originated to firms in LMI census tracts.

[52] The Bank One-Illinois and American National CRA performance examinations reported that the volume of small loans to businesses was adequate.

The Bank One-Illinois, American National, and Bank One-Springfield Evaluations noted that community development lending primarily related to the development of affordable housing, which examiners identified as a significant credit need in the Chicago MSA. Examiners reported that Bank One-Illinois and American National engaged in an adequate volume of community development lending activities in the Chicago MSA. Community development lending by all three banks helped construct or renovate a total of 3,227 units of affordable housing during their evaluation periods.

Bank One has continued to engage actively in community development lending in the Chicago MSA. For example, Bank One states that it has provided more than $55 million in collateral trust notes from 2000 through 2003 to a community development financial institution that specializes in financing affordable multifamily housing.

Examiners commented favorably on the community development investments of Bank One-Illinois in its Chicago assessment area. The Bank One Evaluation also noted that the bank's investment activities demonstrated excellent responsiveness to the most significant credit needs of its Chicago assessment area. In addition, examiners noted that Bank One-Illinois and American National provided an adequate level of community development investments in the Chicago MSA. Bank One-Illinois, American National, and Bank One-Springfield maintained a total of approximately $132.1 million in qualified investments in their Chicago assessment areas during their evaluation periods. Examiners noted that the community development investments of all three banks included complex qualified investments. Bank One-Illinois, American National, and Bank One-Springfield made community development investments in a variety of programs, including projects related to the development of affordable housing and small businesses. The Bank One Evaluation noted that the bank's community development investments in Chicago had facilitated the development or preservation of more than 5,550 housing units.

Bank One has continued to make qualified community development investments in the Chicago MSA, such as an $8.9 million investment in a mixed-income senior housing complex in an LMI community. In addition, Bank One reported that it provided approximately $4.2 million in capital to a 107-unit multifamily housing project in Chicago by purchasing tax credits.

Examiners also determined that Bank One-Illinois, American National, and Bank One-Springfield each provided an adequate level of banking services in the Chicago MSA, including LMI communities, and that the banks' delivery systems for those services were adequately accessible to all portions of their assessment areas. Examiners reported that, during the evaluation period, Bank One-Illinois's record of opening and closing branches in the Chicago MSA resulted in more services in LMI areas and to LMI individuals. They also noted that all three banks offered alternative delivery systems, including ATMs, 24-hour telephone banking, and Internet banking.

In addition, examiners reported favorably on the community development services of Bank One-Illinois, American National, and Bank One-Springfield in their Chicago assessment areas. These services included offering low-cost checking accounts for individuals with no previous banking experience and providing technical assistance to organizations that provided affordable housing and small business loans.

Ohio. As previously noted, Bank One-Ohio received a "satisfactory" rating at its most recent CRA evaluation ("Bank One-Ohio Evaluation"). This evaluation indicated that the bank's lending record demonstrated a good responsiveness to the credit needs of its communities.[53] Examiners commended the

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[53] The review period was from March 1998 to March 2000. Bank One-Ohio's assessment areas for the evaluation included the Akron, Canton, Cleveland, Dayton,

distribution of Bank One-Ohio's home mortgage lending among geographies and borrowers of different income levels throughout its assessment areas, including the Cincinnati MMA and the Cleveland MSA. For example, in the Cincinnati MMA, Bank One-Ohio provided approximately 15 percent of its home mortgage loans in LMI census tracts, which exceeded the percentage of owner-occupied units in those areas. Bank One Corporation has represented that from 2000 to 2003, Bank One-Ohio originated more than 77,200 home mortgage loans in its Ohio assessment areas, of which approximately 17 percent were in LMI census tracts and approximately 33 percent were to LMI borrowers.

Examiners noted that the volume and geographic distribution of Bank One-Ohio's small loans to businesses was good. For example, in the Columbus MSA, Bank One-Ohio provided approximately 23 percent of its small loans to businesses to firms in LMI census tracts. In addition, examiners noted that Bank One-Ohio offered a variety of SBA-sponsored loan products. Bank One Corporation reported that from 2000 to 2003, Bank One-Ohio provided approximately 40,350 small loans to businesses in its Ohio assessment areas, of which almost 18 percent were originated to businesses in LMI census tracts.

The Bank One-Ohio Evaluation noted that the bank's overall community development lending was adequate; however, examiners characterized the bank as a leader in community development lending in the Cincinnati MMA. For example, Bank One-Ohio participated in the structuring and financing of a community development fund that renovated affordable housing and supported economic development projects in low-income areas in the Cincinnati MMA. Bank One

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Hamilton-Middletown, Lima, Mansfield, Parkersburg-Marietta, and Youngstown MSAs in Ohio; the Cincinnati multistate metropolitan area ("MMA") in Ohio and Kentucky; and the non-MSA communities of Athens, Portsmouth, Sidney, Ashland-Wooster, Findley-Marion, and Zanesville, all in Ohio.

Corporation represented that, since the Bank One-Ohio Evaluation, the bank has provided more than $9.6 million in community development loans to support affordable housing, economic development, and educational and vocational training in its Ohio assessment areas.

Examiners reported that Bank One-Ohio adequately responded to community needs in Ohio through its community development investments. In addition, examiners commended Bank One-Ohio's community development investment activities in the Cincinnati MMA and praised the bank's use of complex qualifying investments. During the evaluation period, Bank One-Ohio made community development investments totaling $44.2 million throughout its assessments areas, including investments in projects that provided housing, job-training services, and adult education for LMI individuals. Moreover, examiners noted that Bank One-Ohio's community development investments facilitated the development or renovation of more than 2,100 units of affordable housing. Bank One Corporation states that the bank has made more than $155 million in qualified community development investments and donations since the Bank One-Ohio Evaluation.

E. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of JP Morgan and Bank One Corporation in light of comments on the HMDA data reported by their subsidiaries.[54] Based on 2002 HMDA data, several commenters alleged that JP Morgan Bank, Chase Mortgage, Chase USA, and Bank One disproportionately excluded or denied African-American and Hispanic applicants for

[54] The Board analyzed 2001 and 2002 HMDA data for JP Morgan Bank and Bank One and reviewed HMDA-reportable loan originations in various MSAs and states. The data for each state consisted of total mortgage originations in metropolitan areas included in the assessment areas of both banks.

home mortgage loans in various MSAs in several states and did not adequately serve LMI geographies and individuals and small businesses.[55] These commenters asserted that JP Morgan's denial rates for minority applicants were higher than the rates for nonminority applicants and that JP Morgan's denial disparity ratios compared unfavorably with those ratios for the aggregate lenders in certain MSAs. In the JP Morgan/Bank One Corporation Order and the JP Morgan/ChaseFSB Order, the Board considered substantially similar comments about JP Morgan's HMDA data for MSAs in several of these states, and the Board's HMDA analysis in those orders is incorporated by reference.[56]

The 2002 data indicate that JP Morgan's denial disparity ratios[57] for African-American and Hispanic applicants for HMDA-reportable loans overall were comparable with or more favorable than those ratios for the aggregate lenders in all

[55] Several commenters criticized the lending performance of JP Morgan or Bank One in markets where they had no branches and, therefore, no obligations under the CRA.

[56] The Board reviewed the following MSAs in the JP Morgan/Bank One Corporation Order: Benton Harbor and Detroit, both in Michigan; Boston, Massachusetts; Dallas, Texas; Memphis, Tennessee; Raleigh, North Carolina; Richmond, Virginia; San Francisco, California; St. Louis, Missouri; and Washington, D.C. In the JP Morgan/Chase FSB Order, the Board reviewed the following MSAs: Denver, Colorado; Jackson, Mississippi; Portland, Oregon; and Seattle, Washington. Commenters on this proposal cited these MSAs again. The only MSAs identified by commenters that were not discussed in the two previous JP Morgan orders were Little Rock, Arkansas; Tucson, Arizona; and Milwaukee, Wisconsin. HMDA data for these additional MSAs indicate that the percentage of JP Morgan's loan originations to African Americans and Hispanics equaled or exceeded those percentages for the aggregate lenders.

[57] The denial disparity ratio equals the denial rate of a particular racial category (e.g., African Americans) divided by the denial rate for whites.

markets reviewed, with the exception of Florida.[58] JP Morgan's percentages of total HMDA-reportable loans to African-Americans and Hispanic borrowers generally were comparable with or exceeded the total percentages for aggregate lenders in most of the areas reviewed. Moreover, JP Morgan's percentage of total HMDA-reportable loans to borrowers in minority census tracts generally was comparable with or exceeded the total percentage for aggregate lenders in the areas reviewed.[59]

The 2002 data indicate that Bank One's denial disparity ratios for African-American and Hispanic applicants for HMDA-reportable loans overall in the areas reviewed generally were comparable with or more favorable than those ratios for the aggregate lenders.[60] These data also indicate that Bank One's percentage of total HMDA-reportable loans to borrowers in minority census tracts generally was comparable with or exceeded the total percentage for the aggregate lenders.[61] Moreover, Bank One Corporation's percentage of total HMDA-reportable loans to African-American and Hispanic borrowers generally was comparable with or exceeded the total percentage for the aggregate lenders in the markets reviewed.

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[58] JP Morgan operates in a portion of Florida through branches of JP Morgan Trust. As previously noted, the bank is a wholesale institution that does not engage in retail bank activities.

[59] For purposes of this HMDA analysis, a minority census tract means a census tract with a minority population of 80 percent or more.

[60] One commenter alleged disparities in Bank One's mortgage lending record in the New Orleans, Louisiana, and Phoenix, Arizona, MSAs. The OCC reviewed and rejected this allegation in connection with its approval of JP Morgan's acquisition of Bank One's corporate trust business in November 2003. The Board also notes that Bank One's HMDA-related lending in the Phoenix MSA equals or exceeds such lending by the aggregate lenders, including loans to all applicant groups that are frequently underserved.

[61] Delaware was the only assessment area where Bank One's lending in minority census tracts was less favorable than the aggregate lenders. Bank One does not operate a retail branch in the state.

Although the HMDA data may reflect certain disparities in the rates of loan application, originations, and denials among members of different racial groups and persons with different income levels in certain local areas, the HMDA data generally do not indicate that JP Morgan and Bank One Corporation are excluding any race, income segment of the population, or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate 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. The Board recognizes, 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.[62] 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, including examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of JP Morgan and Bank One Corporation with fair lending laws. Examiners noted no fair lending law issues or concerns in the CRA performance evaluations of the depository institutions controlled by JP Morgan or Bank One Corporation.

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[62] The data, for example, 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.

The record also indicates that JP Morgan and Bank One Corporation have taken steps to ensure compliance with fair lending laws. Both organizations have instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. These programs include file reviews for compliance with federal and state fair lending and other consumer protection rules and regulations, fair lending policies, and testing the integrity of HMDA data. JP Morgan and Bank One Corporation also conduct regular compliance and fair lending training for their employees. JP Morgan has stated that it is reviewing the compliance programs of Bank One Corporation and that, on consummation of the transaction, the combined organization will adopt the best practices of both JP Morgan and Bank One Corporation.

The Board also has considered the HMDA data in light of the programs described above and the overall performance records of the subsidiary banks of JP Morgan and Bank One Corporation under the CRA. These established efforts demonstrate that the banks are actively helping to meet the credit needs of their entire communities.

F. Subprime Lending and Abusive Lending Practices

As previously noted, a number of commenters cited concerns about the subprime mortgage lending and related activities of JP Morgan and Bank One Corporation. These commenters expressed concern that both organizations originate subprime loans and other alternative loan products and criticized the role of JP Morgan in purchasing subprime loans from other lenders, securitizing packages of subprime loans, purchasing securitized packages of subprime loans, and servicing or acting as trustee of record for subprime loan pools. Commenters generally argued that JP Morgan purchased subprime loans and securitized packages of subprime loans without performing adequate due diligence to screen for "predatory" loans. Other commenters expressed concern that JP Morgan and Bank One Corporation were financing unaffiliated lenders who provided subprime mortgage loans and alternative products such as payday loans.

JP Morgan Bank, Chase USA, and CMMC originate subprime mortgage loans. Bank One Corporation and its subsidiaries, however, do not engage in this activity.[63] CMMC services subprime mortgage loans and purchases subprime loans in the secondary market. J. P. Morgan Securities, Inc. ("JPMSI"), a subsidiary of JP Morgan, securitizes subprime mortgage loans originated by CMMC, its affiliates, and third parties. As an underwriter of mortgage-related asset-backed securities, JPMSI does not control the selection criteria for the loans and receivables in the loan pools that it securitizes and plays no role in the lending practices or credit review processes of the lenders involved.[64] JP Morgan Bank is a warehouse lender providing temporary financing to mortgage lenders, including non-affiliated subprime mortgage lenders. The bank also serves as a trustee for securities backed by mortgages or other assets, including subprime mortgage loans. Bank One also participates in the securitization of mortgage loans as an underwriter of mortgage-backed securities and provides warehouse lines of credit to some mortgage lenders engaged in subprime lending. In addition, JP Morgan and Bank One Corporation lend to companies that make payday or tax-anticipation-refund loans.

The Board has previously noted that subprime lending is a permissible activity and can provide needed credit to consumers who have difficulty meeting

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[63] Bank One does not originate subprime mortgage loans through brokers or purchase loans from correspondent lenders. It also does not originate or purchase "high cost" mortgage loans, as defined in the Home Ownership and Equity Protection Act ("HOEPA"), and originates prime mortgage loans only for sale in the secondary market.

[64] JPMSI does not underwrite HOEPA mortgages or other "high cost" mortgages as defined under state law.

conventional underwriting criteria.[65] The Board continues to expect all bank holding companies and their affiliates to conduct their operations related to subprime lending free of any abusive lending practices and in compliance with all applicable law, including fair lending laws.[66]

JP Morgan has a number of policies and procedures in place to ensure that its activities are conducted in compliance with applicable fair lending laws and are not abusive. JP Morgan's subsidiary, CMMC, has developed lending practices that are used by all of the subsidiary's mortgage lending affiliates. CMMC's mortgage-underwriting procedures assess the borrower's ability to repay the mortgage debt as well as the borrower's total debt. Applications are also reviewed for loan-to-value ratios and credit bureau scores to determine if the applicant is eligible for a prime mortgage loan from a JP Morgan subsidiary. Qualified applicants are offered the opportunity to have their applications processed as prime mortgage loans. CMMC's lending procedures also prohibit HOEPA loans, mandatory prepayment penalties, short-term subprime loans with balloon payments, loan-to-value ratios in excess of 100 percent, and mandatory arbitration. As discussed above, JP Morgan has implemented corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws. In addition, CMMC's procedures require reappraisal of any real estate if questions are raised about its value. This process uses software programs that review recent sales and foreclosures in the area to identify real estate that might be overvalued.

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[65] See, e.g., Bank of America Corporation, 90 Federal Reserve Bulletin 217 (2004) ("Bank of America Order"); Royal Bank of Canada, 88 Federal Reserve Bulletin 385 (2002).

[66] The Board notes that the OCC has responsibility for enforcing compliance with fair lending laws by national banks and that the FTC, HUD, and DOJ have primary responsibility for enforcing such compliance by nondepository institutions.

JP Morgan has implemented a system of due diligence to help ensure that it does not purchase or otherwise invest in “predatory” subprime loans. These practices include requiring originating lenders to meet specific criteria established by CMMC, conducting on-site due diligence of the lender and its operations before purchasing their loans, and obtaining representation and warranties in the purchase agreements that the loans are not “high cost,” “predatory,” or abusive under federal, state, or local laws and ordinances and that the lender uses procedures to ensure that no such loans are sold.[67]

In addition, JP Morgan follows policies and procedures, including sampling loans in the pool, to help ensure that the subprime loans it purchases and securitizes are in compliance with applicable state and federal consumer protection laws. The loan sampling process includes obtaining a secondary value on the mortgaged property, performing cost tests before purchase, and performing targeted reviews of purchased loans. The review also seeks to identify any instances of “equity stripping.” Moreover, JP Morgan conducts a due diligence review of firms selling subprime loans and the firms selected to service loans in each securitization to help prevent the purchase and securitization of loans that are not in compliance with applicable federal and state consumer protection laws. [68]

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[67] Several commenters discussed a well-publicized series of foreclosures involving mortgages originated by JP Morgan on homes purchased in the Poconos during the last decade. The Board previously has considered comments about these mortgages in the context of recent applications by JP Morgan or JP Morgan Bank and hereby adopts the findings in those cases. The Board notes, moreover, that JP Morgan has implemented a plan to stabilize the community by reducing mortgage interest rates and the outstanding principal balances to reflect the current value of the properties. More than 200 affected borrowers have accepted loan modification.

[68] One commenter also stated that Fairbanks Capital Corporation, a loan servicer used by JP Morgan and Bank One Corporation, engaged in illegal practices in servicing subprime loans. The commenter’s allegations were addressed in a settlement with the

JP Morgan and Bank One Corporation consider the reputation of potential customers engaged in subprime lending that apply for warehouse lines of credit and have other protections in place to limit transactions with lenders that might originate loans with abusive terms. These practices include accepting only conforming mortgages as collateral for a warehouse line of credit and obtaining representations and warranties in loan agreements that confirm the borrower's compliance with all applicable laws. When providing warehouse lines of credit to lenders making tax-refund-anticipation and payday loans, JP Morgan and Bank One Corporation state that their credit evaluations of these types of lenders include, as applicable, the customer's reputation and other character-related issues, as well as any issues peculiar to the borrower's business or operations that might affect credit risk. These policies and procedures are designed to reduce the likelihood that either organization will be involved in "predatory" or abusive lending practices. Moreover, neither JP Morgan nor Bank One Corporation plays any role in the lending practices or credit review processes of these lenders.

G. Branch Closings

Several commenters expressed concerns that the proposed merger would result in possible branch closings and the Board has carefully considered these comments in light of all the facts of record. JP Morgan has represented that any merger-related branch closings, relocations, or consolidations would be determined after the proposed merger of JP Morgan Bank and Merged Lead Banks later this year. The Board notes that there is little geographic overlap between the branches of the

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FTC and HUD dated November 12, 2003, by Fairbanks Capital Holding Corporation, which included its wholly owned subsidiary, Fairbanks Capital Corporation, and the founder of both entities. Neither JP Morgan nor Bank One Corporation was implicated in the complaint filed jointly by the FTC and HUD. The settlements resolved the complaint's allegations, enjoined the defendants from future law violations, and imposed restrictions on their business practices.

subsidiary banks of JP Morgan and Bank One Corporation. JP Morgan also represents that no decision has been made on which organization's branch closure policy would be in effect after consummation of the proposed merger. Both policies require review of a number of factors before closing or consolidating a branch, including an assessment of the branch, the demographics of the market, a profile of the community where the branch is located, and the effect of the proposed action on customers. The most recent CRA evaluations of JP Morgan Bank[69] and Bank One-Illinois[70] noted favorably the banks' records of opening and closing branches.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[71] Federal law requires an

[69] Examiners stated that JP Morgan Bank's record of opening and closing branches did not adversely affect the accessibility of the bank's delivery systems. JP Morgan Bank sold, relocated, or consolidated 23 branches during its most recent CRA evaluation period. Ten branches were consolidated into other branches of the bank, twelve branches were relocated, and one branch was sold. One branch was relocated from a middle-income to a moderate-income census tract, and the remaining relocations involved census tracts with the same income levels. Of the ten consolidations, only two changed from LMI census tracts to non-LMI census tracts. The remaining consolidations involved census tracts with the same income levels.

JP Morgan reported that in 2003, JP Morgan Bank closed one LMI branch in Austin, Texas; consolidated one non-LMI branch into a nearby non-LMI branch in Mount Kisco, New York; and relocated one branch in Brooklyn, New York, and Bridgeport and Ridgefield, both in Connecticut. The relocations did not change the census-tract-income designation of the branches. JP Morgan Bank also opened a non-LMI branch in Pearland, Texas.

[70] Bank One currently is expanding its branch network and has opened 58 branches in 2003. It recently announced plans to open 100 branches each year for the next three years.

[71] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30-days notice and the appropriate federal supervisory agency with at least 90-days notice before the date of the proposed branch closing. The bank also is required to

insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Board and the OCC, as the appropriate federal supervisors of JP Morgan Bank and Bank One Corporation's subsidiary banks will continue to review the banks' branch closing record in the course of conducting CRA performance evaluations.

H. Other Matters

Many commenters discussed JP Morgan's Community Development Initiative. A number of commenters praised the Initiative as indicative of JP Morgan's commitment to the communities it serves. Other commenters, however, expressed concerns about the Community Development Initiative. Some criticized it for providing insufficient funding for loans, investments, and grants or for lacking specific lending and investment commitments by locality, product, or program. Others urged the Board to require JP Morgan to enter into or renew agreements with certain community organizations.

As the Board previously has explained, in order to approve a proposal to acquire an insured depository institution, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.[72] Moreover, the Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.[73] In this case, as in past cases, the Board

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provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

[72] See Bank of America Order; NationsBank, 84 Federal Reserve Bulletin 858 (1998).

[73] See, e.g., Bank of America Order at 52; Citigroup Inc., 88 Federal Reserve Bulletin 485, 488 (2002).

instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas at the time the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by JP Morgan under this factor, the Board similarly will review JP Morgan's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at the time of such review.

I. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a significant expansion of JP Morgan and its scope of operations. Accordingly, an important component of the Board's review has been its consideration of the effects of the proposal on the convenience and needs of all the communities served by JP Morgan and Bank One Corporation.

In conducting its review, the Board has weighed the concerns expressed by commenters in light of all the facts of record, including the overall CRA records of the depository institutions of JP Morgan and Bank One Corporation. A significant number of commenters have expressed support for the proposal based on the records of both organizations in helping to serve the banking needs and, in particular, the lending needs of their entire communities, including LMI areas. Other commenters have expressed concern about specific aspects of JP Morgan's or Bank One Corporation's record of performance under the CRA in their assessment areas and have expressed reservations about whether the resulting organization would be as responsive to the banking and credit needs of its community as the two organizations are now. The Board has carefully considered these concerns in the context of the overall CRA records of JP Morgan and Bank One Corporation, reports of examinations of CRA performance, and information provided by JP Morgan, including its responses to comments. The Board also has considered information submitted by JP Morgan concerning its performance under the CRA since its last CRA performance evaluation.

As discussed in this order, the record of this proposal demonstrates that the subsidiary depository institutions of JP Morgan and Bank One Corporation have strong records of meeting the credit needs of their communities. The Board expects the resulting organization to continue to help serve the banking and credit needs of all its communities, including LMI neighborhoods. 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.

Requests for Additional Public Meetings

As noted above, the Board held public meetings on the proposal in New York and Chicago. A number of commenters requested that the Board hold additional public meetings or hearings, including at locations in Florida, Texas, and California. The Board has carefully considered these requests in light of the BHC Act, the Board's Rules of Procedure, and the substantial record developed in this case.[74] As previously discussed, more than 150 interested persons appeared and provided oral testimony at the two public meetings held by the Board. Attendees included various elected officials, members of community groups, and representatives of businesses and business groups from cities and towns nationwide. In addition, the Board provided a period of more than 80 days for interested persons to submit written comments on the proposal. More than 260 interested persons who did not testify at the public meetings provided written comments.

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[74] Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authority for a bank to be acquired makes a timely written recommendation of denial. 12 U.S.C. § 1842(b). In this case, the Board has not received such a recommendation from any state or federal supervisory authority.

In the Board's view, interested persons have had ample opportunity to submit their views on this proposal. Numerous commenters, in fact, submitted substantial materials that have been considered carefully by the Board in acting on the proposal. Commenters requesting additional public meetings have failed to demonstrate why their written comments do not adequately present their views, evidence, and allegations. They also have not shown why the public meetings in New York and Chicago and the extended comment period did not provide an adequate opportunity for all interested persons to present their views and concerns. For these reasons, and based on all the facts of record, the Board has determined that additional public meetings or hearings are not required and are not necessary or warranted to clarify the factual record on the proposal. Accordingly, the requests for additional public meetings or hearings are hereby denied.[75]

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[75] A number of commenters requested that the Board delay action on the proposal or extend the comment period until JP Morgan (i) provides more detail about its Community Development Initiative, (ii) enters into a written, detailed, and publicly verifiable CRA agreement negotiated with community groups, or (iii) enters into new CRA agreements with local community groups.

The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the application process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and considerable public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's regulations establish time periods for consideration and action on proposals such as the current proposal. Moreover, as discussed more fully above, the CRA requires the Board to consider the existing record of performance of an organization and does not require that the organization enter into contracts or agreements with others to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided substantial written submissions and oral testimony that have been considered carefully by the Board in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting another

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching this conclusion, the Board has carefully considered all oral testimony and the written comments regarding the proposal in light of the factors it is required to consider under the BHC Act and other applicable statutes.

Approval of the applications is specifically conditioned on compliance by JP Morgan with all the commitments made to the Board in connection with the proposal and with the conditions stated or referenced in this order. For purposes of this transaction, 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 merger of JP Morgan and Bank One Corporation and the acquisition of Bank One Corporation's subsidiary banks shall not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal shall be consummated later than three months after the effective date of this Order,

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extension of the comment period, or denying the proposal on the grounds discussed above, including informational insufficiency, is not warranted.

unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,[76] effective June 14, 2004.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

[76] Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Bernanke. Absent and not voting: Governor Kohn.

APPENDIX A
Banking Markets in which JP Morgan and Bank One Corporation Compete Directly

<u>Delaware Banking Market</u>

Wilmington
New Castle County, Delaware, and Cecil County, Maryland.

<u>Florida Banking Market</u>

West Palm Beach
The portion of Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound.

<u>Texas Banking Markets</u>

Austin
Austin MSA.

Dallas
Dallas and Rockwall Counties; the southeastern portion of Denton County, including the towns of Denton and Lewisville; the southwestern portion of Collin County, including the towns of McKinney and Plano; and the towns of Arlington, Ferris, Forney, Grapevine, Midlothian, Terrell, and Waxahachie.

Fort Worth
Johnson and Parker Counties; Tarrant County, excluding the towns of Grapevine and Arlington; and the southwestern portion of Denton County, including the towns of Roanoke and Justin; and the towns of Boyd, Newark, and Rhome.

Houston
Houston Ranally Metropolitan Area and Montgomery County.

San Antonio
San Antonio MSA and Kendall County.

APPENDIX B
Banking Market Data

Unconcentrated Banking Market

Fort Worth, Texas
JP Morgan operates the seventh largest depository institution in the market, controlling deposits of $512.3 million, representing approximately 4 percent of market deposits. Bank One Corporation operates the largest depository institution in the market, controlling deposits of $2.1 billion, representing approximately 16.1 percent of market deposits. After the proposed merger, JP Morgan would operate the largest depository institution in the market, controlling deposits of approximately $2.6 billion, representing approximately 20.2 percent of market deposits. The HHI would increase by 130 points to 991, and 59 depository institutions would remain in the banking market.

Moderately Concentrated Banking Markets

Austin, Texas
JP Morgan operates the fourth largest depository institution in the market, controlling deposits of $933.3 million, representing approximately 7.7 percent of market deposits. Bank One Corporation operates the third largest depository institution in the market, controlling deposits of $1.5 billion, representing approximately 12.2 percent of market deposits. After the proposed merger, JP Morgan would operate the largest depository institution in the market, controlling deposits of approximately $2.4 billion, representing approximately 19.9 percent of market deposits. The HHI would increase by 188 points to 1097, and 58 depository institutions would remain in the banking market.

Dallas, Texas
JP Morgan operates the fourth largest depository institution in the market, controlling deposits of $7.4 billion, representing approximately 11.6 percent of market deposits. Bank One Corporation operates the second largest depository institution in the market, controlling deposits of $8.1 billion, representing approximately 12.6 percent of market deposits. After the proposed merger, JP Morgan would operate the largest depository institution in the market, controlling deposits of $15.5 billion, representing approximately 24.2 percent of market deposits. The HHI would increase by 292 points to 1321, and 113 depository institutions would remain in the banking market.

San Antonio, Texas
JP Morgan operates the ninth largest depository institution in the market, controlling deposits of $448.8 million, representing approximately 2.3 percent of market deposits. Bank One Corporation operates the sixth largest depository institution in the market, controlling deposits of $569 million, representing approximately 3 percent of market deposits. After the proposed merger, JP Morgan would operate the sixth largest depository institution in the market, controlling deposits of approximately $1 billion, representing approximately 5.3 percent of market deposits. The HHI would increase by 14 points to 1530, and 50 depository institutions would remain in the banking market.

West Palm Beach, Florida
JP Morgan operates the 31st largest depository institution in the market, controlling deposits of $65.8 million, representing less than 1 percent of market deposits. Bank One Corporation operates the 27th largest depository institution in the market, controlling deposits of $94.4 million, representing less than 1 percent of market deposits. After the proposed merger, JP Morgan would operate the 18th largest depository institution in the market, controlling deposits of $160.2 million, representing less than 1 percent of market deposits. The HHI would increase by less than 1 point to 1325, and 55 depository institutions would remain in the banking market.

<u>Highly Concentrated Banking Market</u>

Wilmington, Delaware
JP Morgan operates the second largest depository institution in the market, controlling deposits of $6.6 billion, representing 10.7 percent of market deposits. Bank One Corporation operates the sixth largest depository institution in the market, controlling deposits of $2.6 billion, representing 4.3 percent of market deposits. After the proposed merger, JP Morgan would remain the second largest depository institution in the market, controlling deposits of approximately $9.3 billion, representing approximately 14.9 percent of market deposits. The HHI would increase by 91 points to 3060, and 33 depository institutions would remain in the banking market.

APPENDIX C
CRA Performance Evaluations of Bank One Corporation's Subsidiary Depository Institutions

1. Subsidiary Depository Institutions in Operation[77]

Subsidiary Depository Institution	CRA Performance Rating	Date	Agency
Bank One-Dearborn	Outstanding	March 2001	OCC
Bank One-Ohio	Satisfactory	March 2000	OCC
First USA Bank N.A. *Wilmington, Delaware*[78]	Outstanding	March 2002	OCC

2. Entities Merged into Bank One

Subsidiary Depository Institution	CRA Performance Rating	Date	Agency
American National	Satisfactory	December 1999	OCC
Bank One, Arizona, National Association *Phoenix, Arizona*	Satisfactory	June 1999	OCC
Bank One, Colorado, National Association *Denver, Colorado*	Outstanding	March 2000	OCC
Bank One, Florida *Venice, Florida*	Satisfactory	September 1999	FDIC

[77] Bank One Trust Company, National Association, Columbus, Ohio, is not examined for CRA performance because it is a special-purpose entity that is exempt from CRA requirements.

[78] First USA Bank N.A. now does business as Bank One, Delaware, National Association.

Bank One-Illinois	Satisfactory	March 31, 2000	OCC
Bank One, Indiana, National Association *Indianapolis, Indiana*	Satisfactory	June 1999	OCC
Bank One, Kentucky, National Association *Louisville, Kentucky*	Satisfactory	March 2000	OCC
Bank One, Louisiana, National Association *Baton Rouge, Louisiana*	Satisfactory	June 1999	OCC
Bank One, Michigan, National Association *Detroit, Michigan*	Outstanding	December 2000	OCC
Bank One, Oklahoma, National Association *Oklahoma City, Oklahoma*	Satisfactory	June 1999	OCC
Bank One-Springfield	Satisfactory	December 1999	OCC
Bank One, Texas, National Association *Dallas, Texas*	Satisfactory	March 2000	OCC
Bank One, Utah, National Association *Salt Lake City, Utah*	Outstanding	March 2000	OCC
Bank One, Wisconsin *Milwaukee, Wisconsin*	Outstanding	February 2000	FDIC

3. Entities Merged into Bank One-Ohio

Subsidiary Depository Institution	CRA Performance Rating	Date	Agency
Bank One, West Virginia, Huntington, National Association *Huntington, West Virginia*	Satisfactory	March 2000	OCC
Bank One, West Virginia, Wheeling, National Association *Wheeling, West Virginia*	Satisfactory	March 2000	OCC