

FEDERAL RESERVE SYSTEM

LBT Bancshares, Inc.  
Litchfield, Illinois

Order Approving the Acquisition of Shares of a Bank Holding Company

LBT Bancshares (“LBT”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire approximately 54 percent of the voting shares of Security Bancshares, Inc. (“Security”) and thereby acquire control of Security’s subsidiary bank, Security National Bank (“Security Bank”), both in Witt, Illinois.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 5,957 (2004)). The time for filing comments has expired, and the Board has considered the proposal and the comments received in light of the factors set forth in section 3 of the BHC Act.

LBT and Security are under the common control of the Fleming family.<sup>1</sup> LBT controls Bank & Trust Company, Litchfield, Illinois (“LBT Bank”). LBT, with total consolidated assets of approximately \$194.2 million, is the 198th largest depository organization in Illinois, controlling deposits of \$168.5 million, which represents less than 1 percent of total deposits in insured depository

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<sup>1</sup> Mr. David W. Fleming and his two sons, Daniel and William, control more than 47 percent of the voting shares of LBT and more than 28 percent of the voting shares of Security. Under the proposal, LBT would acquire all the shares of Security held by the Fleming family and shares of Security held by certain shareholders.

institutions in the state (“state deposits”).<sup>2</sup> Security, with total consolidated assets of approximately \$49.7 million, is the 504th largest depository institution organization in Illinois, controlling deposits of \$41.9 million, which represents less than 1 percent of state deposits. On consummation of the proposal, LBT would become the 155th largest depository organization in Illinois, with total consolidated assets of approximately \$243.6 million and total deposits of \$210.4 million, representing less than 1 percent of state deposits.

LBT’s proposal to acquire Security and Security Bank is opposed by the management of Security, which submitted comments to the Board urging denial on several grounds. The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed by the management of the institutions to be acquired.<sup>3</sup> Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.<sup>4</sup> The Board has long held that, if the statutory criteria

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<sup>2</sup> Asset data are as of December 31, 2003. Statewide deposit and ranking data are as of June 30, 2003, and are derived from the Summary of Deposits data collected annually by the Federal Deposit Insurance Corporation.

<sup>3</sup> See Central Pacific Financial Corp., 90 Federal Reserve Bulletin 93, 93 (2004) (“Central Pacific”); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767, 768 (2000) (“North Fork”); The Bank of New York Company, 74 Federal Reserve Bulletin 257, 259 (1988) (“BONY”).

<sup>4</sup> In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. See 12 U.S.C. § 1842(c).

are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board's discretion under the BHC Act.<sup>5</sup>

The Board also has carefully considered all other information available, including information accumulated in the applications process, supervisory information of the Board and other agencies, relevant examination reports, and information provided by the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Illinois Office of Banks and Real Estate ("Illinois OBRE").

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>6</sup>

LBT and Security compete in the Hillsboro, Illinois, banking market ("Hillsboro banking market"), which is defined as Montgomery County, Illinois.<sup>7</sup>

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<sup>5</sup> See Central Pacific; FleetBoston Financial Corporation, 86 Federal Reserve Bulletin 751, 752 (2000); North Fork; BONY.

<sup>6</sup> 12 U.S.C. § 1842(c)(1).

<sup>7</sup> Management of Security contended, without providing material information, that the relevant geographic market for reviewing this transaction is the eastern portion of Montgomery County in which Security Bank maintains its banking offices and portions of the adjacent Christian County. In reviewing this contention, the Board has considered the geographic proximity of Montgomery County's population centers, the county's road network and average daily traffic volumes on those

The proposed transaction involves the combination of two bank holding companies that are affiliated with each other. These two organizations are also affiliated with a third banking organization in the Hillsboro banking market through common share ownership by Fleming family members.<sup>8</sup>

LBT proposes to acquire all the shares of Security currently held by the Fleming family, along with shares of Security held by other shareholders, in a reorganization that does not change the longstanding affiliation of these banking organizations.<sup>9</sup> Members of the Fleming family have owned a controlling interest in LBT and Security Bank since 1993 and have controlled Country since at least

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roads, and the location of its cities. The Board also has considered worker commuting data from the 2000 census, which indicate that 69 percent of commuters living in Montgomery County work at another location in the county, while only 4 percent of Montgomery County commuters work in Christian County and only 2 percent of Christian County commuters work in Montgomery County. In addition, the Board has considered evidence gathered from interviews with bankers indicating that banks in Montgomery County advertise regularly in local newspapers that circulate throughout Montgomery County, but not in newspapers in other counties. Based on these facts and other information, the Board concludes that the facts of record do not support modifying the Hillsboro banking market and that the appropriate geographic market for considering the competitive effects of the proposal is Montgomery County.

<sup>8</sup> David Fleming controls more than 53 percent of the voting shares of Country Bancorp, Inc. (“Country”), which controls National Bank, both in Hillsboro.

<sup>9</sup> In reviewing past proposals involving common share ownership of banking organizations, the Board has considered the competitive effects of a proposal at the time that the banking organizations came under such ownership. See F.S.B., Inc., 78 Federal Reserve Bulletin 550 (1992); Mid-Nebraska Bancshares, Inc., 64 Federal Reserve Bulletin 589 (1978), aff’d Mid-Nebraska Bancshares, Inc. v. Board of Governors of the Federal Reserve System, 627 F.2d 266 (D.C. Cir. 1980); Mahaska Investment Co., 63 Federal Reserve Bulletin 579 (1977). The Board has approved proposals involving commonly controlled banking organizations in the same banking market when no competitive issues were presented in that market at the time the banking organizations came under common control. See Texas East BanCorp, 69 Federal Reserve Bulletin 636 (1983); First Monco Bancshares, Inc., 69 Federal Reserve Bulletin 293 (1983).

1987.<sup>10</sup> The combination of LBT, Security Bank, and Country into a single banking organization in 1993 would have resulted in an increase of 509 points to 1761 in the Herfindahl-Hirschman Index (“HHI”) for the Hillsboro banking market. The Hillsboro banking market would have been moderately concentrated, and the affiliation at that time was consistent with Board precedent and Department of Justice Merger Guidelines (“DOJ Guidelines”).<sup>11</sup> LBT’s current proposal does not materially change this existing affiliation.

The Department of Justice also has conducted a detailed review of the probable competitive effects of the proposal and has advised the Board that consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. The OCC and the Illinois OBRE have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record and for the reasons discussed in this order, the Board concludes that consummation of the proposal would not be likely to result in a significantly adverse effect on competition or on

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<sup>10</sup> In 1993, David, Daniel, and William Fleming owned, respectively, 11.5 percent, 10.8 percent, and 10.8 percent of LBT and 9.8 percent, 9.0 percent, and 7.1 percent of Security Bank. They collectively have owned more than 25 percent of the shares of LBT and Security Bank since 1993 and, therefore, have controlled both institutions. When Country applied in 1987 to acquire Montgomery County National Bank, also in Hillsboro, and thereby enter the Hillsboro banking market, David Fleming owned 33.3 percent of Country and, therefore, controlled Country.

<sup>11</sup> Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department 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.

the concentration of banking resources in the Hillsboro market or in any other relevant banking market. Accordingly, the Board has determined that competitive factors are consistent with approval.

### Financial, Managerial, and 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.<sup>12</sup> LBT, LBT Bank, and Security Bank each are currently well capitalized and will remain well capitalized on consummation of the proposal.

The Board has carefully reviewed confidential and other information about the management and the principal owners of LBT.<sup>13</sup> The Board has also reviewed, among other things, the following information: confidential reports of examination, including assessments of the managerial resources of Security and the relevant depository institutions; other confidential supervisory information

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<sup>12</sup> Management of Security asserted that the sellers of the Security shares to LBT would not receive appropriate levels of consideration for the shares and, therefore, that information provided by LBT about the impact of the transaction on the financial resources of the institutions involved may be inaccurate. The fairness of the sales price received by shareholders is not, by itself, within the statutory factors the Board may consider. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10<sup>th</sup> Cir. 1973). The Board has reviewed confidential supervisory information and other information about the cost of the proposal, in addition to information provided by LBT, in considering the impact of the proposal on the financial resources and future prospects of LBT and the banks involved.

<sup>13</sup> Security's management contended that members of the Fleming family did not comply with the Change in Bank Control Act, 12 U.S.C. § 1817(j) ("CIBC Act"), in acquiring control of Security. The review and approval of Security's application under section 3 of the BHC Act to become a bank holding company included consideration of the Fleming family members as the principal shareholders of Security. Security Bancshares, Inc., 87 Federal Reserve Bulletin 279 (2001). No separate CIBC Act filing is required for a transaction that is subject to approval under section 3 of the BHC Act. See 12 U.S.C. § 1817(j)(17)(A).

received from the primary federal supervisors of each institution; and public comments.<sup>14</sup> In addition, the Board has considered LBT's representation that it does not currently anticipate any changes in the management of Security after consummation of the proposal. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of LBT and the institutions involved in the proposal are consistent with approval, as are the other supervisory considerations under the BHC Act.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider its effects 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 Community Reinvestment Act ("CRA").<sup>15</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the

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<sup>14</sup> Management also asserted that certain directors of Security have breached their fiduciary duties and have violated a resolution adopted by the board of directors that requires any Security director who becomes aware of the availability of the company's shares for purchase to notify Security. The resolution also gives Security a right of first refusal before a director may purchase its shares. LBT has filed suit to have this resolution declared null and void. The Board notes that these contentions are matters of general corporate law under applicable state law, which are currently under review in the appropriate legal forum, and that such matters are not within the Board's jurisdiction to adjudicate. Board action under the BHC Act would not interfere with the ability of the courts to resolve any litigation pertaining to these matters and does not authorize consummation of a proposal that a court determines to be a violation of applicable law. The Board has considered these allegations in the context of the other information about management, as noted above.

<sup>15</sup> 12 U.S.C. §§ 1842(c)(2) and 2903(a)(2).

credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.<sup>16</sup>

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of LBT and Security in light of all the facts of record, including public comments on the proposal. In particular, several commenters expressed general concern that the resulting banking organization would not meet the credit needs of communities in Montgomery County. Among other things, these commenters asserted, without offering supporting evidence, that the resulting banking reorganization would lead to disadvantageous changes in loan terms, increased fees, and fewer services. LBT stated that it does not expect to discontinue any of Security Bank’s products or services and that it expects to expand the bank’s products and services after consummation of the proposal.

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.<sup>17</sup> The subsidiary banks of LBT and Security each received “satisfactory” ratings at their most recent CRA performance evaluations. LBT’s subsidiary bank, Bank and Trust Company (“Trust Company”), received a “satisfactory” rating by the FDIC, as of July 16, 2003 (the “2003 Evaluation”), and Security Bank received a “satisfactory” rating by the OCC, as of February 2, 1998. Examiners did not identify any substantive violations of fair lending laws during these evaluations.

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<sup>16</sup> 12 U.S.C. § 2901 *et seq.*

<sup>17</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

In the 2003 Evaluation, examiners reported that Trust Company had demonstrated a satisfactory level of helping to meet the credit needs of its assessment areas<sup>18</sup> under the performance criteria for a small bank.<sup>19</sup> Examiners found that the bank had maintained a good record of lending since the previous CRA evaluation and had an average loan-to-deposit ratio of approximately 72 percent during the preceding 18 quarters. Examiners characterized as excellent the level of Trust Company's lending in its assessment areas, noting that 94 percent of its loans by number and 92 percent of its loans by dollar volume were made in the assessment areas.

Examiners concluded that Trust Company had a reasonable record of lending to borrowers of different income levels and to businesses of different sizes. In its Non-MSA Assessment Area, examiners considered Trust Company's level of LMI mortgage lending to be reasonable. Examiners characterized as excellent Trust Company's record of lending to small businesses in the Non-MSA Assessment Area.<sup>20</sup> During the evaluation period in this area, 92 percent of Trust Company's business loans by number and 51 percent of its business loans by dollar volume were in amounts of less than \$100,000.

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<sup>18</sup> Trust Company's assessment areas for the 2003 Evaluation included Sangamon County in the Springfield Metropolitan Statistical Area ("MSA") and a non-MSA assessment area that included Greene, Macoupin, and Montgomery Counties ("Non-MSA Assessment Area"), all in Illinois.

<sup>19</sup> Under the FDIC's CRA regulations, the performance of a bank with less than \$250 million in total assets is evaluated based on the following criteria: the bank's loan-to-deposit ratio; the bank's percentage of loans in its assessment areas; its lending to borrowers of different incomes, and to businesses and farms of different sizes; the geographic distribution of its loans by census tract or block numbering area; and the bank's response to any written complaints about its CRA performance. 12 C.F.R. 345.26.

<sup>20</sup> In this context, "lending to small business" means loans made to businesses with gross annual revenues of \$1 million or less.

Examiners also found that the overall geographic distribution of Trust Company's loans throughout its assessment areas was reasonable. They noted that, during the first six months of 2003, Trust Company increased the percentage of all its mortgage loans in moderate-income census tracts in the Non-MSA Assessment Area to a level that exceeded the percentage of owner-occupied housing units in such census tracts. In addition, the percentage of Trust Company's loans to businesses in moderate-income census tracts in the Non-MSA Assessment Area exceeded the percentage of total businesses in such census tracts.

The Board has carefully considered all the facts of record, including reports of examination of CRA performance of the institutions involved, information provided by LBT, all comments received and responses to those comments, and confidential supervisory information. Based on a review of the entire 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.

#### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposed transaction should be, and hereby is, approved.<sup>21</sup> In

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<sup>21</sup> Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). The Board has considered carefully commenters' requests in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal, and in fact, commenters have submitted written

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

The acquisition of Security Bank shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>22</sup> effective July 19, 2004.

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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comments that the Board has considered carefully in acting on the proposal. Commenters' requests fail to identify disputed issues of fact that are material to the Board's decisions that would be clarified by a public hearing or meeting. Moreover, commenters' requests fail to demonstrate why their written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

<sup>22</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.