

FEDERAL RESERVE SYSTEM

BNP Paribas
Paris, France

BancWest Corporation
Honolulu, Hawaii

Order Approving the Acquisition of a Bank Holding Company

BNP Paribas (“BNP”) and its subsidiary, BancWest Corporation (“BancWest”) (collectively, “Applicants”), financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the BHC Act to acquire Community First Bankshares, Inc. (“CFB”) and its subsidiary bank, Community First National Bank (“CFB Bank”), both in Fargo, North Dakota.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 21,535 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

¹ 12 U.S.C. § 1842. Applicants propose to acquire the nonbanking subsidiaries of CFB in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y. 12 U.S.C. § 1843(k); 12 C.F.R. 225.87. BancWest’s wholly owned subsidiary bank, Bank of the West, San Francisco, California, has requested the approval of the Federal Deposit Insurance Corporation (“FDIC”) under section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c), to merge with CFB Bank, with Bank of the West as the surviving institution. Today, the Board approved the separate application filed by Applicants to acquire USDB Bancorp (“USDB”) and its subsidiary bank, Union Safe Deposit Bank, both in Stockton, California (“the USDB transaction”), under section 3 of the BHC Act. See BNP Paribas, 90 Federal Reserve Bulletin __ (2004) (Order dated October 15, 2004).

BNP, with total consolidated assets of approximately \$1.2 trillion, is the tenth largest banking organization in the world.² BNP operates branches in Chicago, New York City, and San Francisco; agencies in Houston and Miami; and representative offices in Atlanta, Dallas, and Los Angeles.

BancWest, with total consolidated assets of \$40 billion, is the 29th largest depository organization in the United States, controlling deposits of \$24 billion.³ In California, BancWest is the eighth largest depository organization, controlling deposits of \$16 billion. BancWest also operates subsidiary insured depository institutions in Hawaii, Idaho, Nevada, New Mexico, Oregon, Washington, Guam, and the Northern Mariana Islands. CFB, with total consolidated assets of approximately \$5.6 billion, is the 133rd largest depository organization in California and controls deposits of \$242 million.

On consummation of this proposal and the USDB transaction, BancWest would become the 27th largest depository organization in the United States, with total consolidated assets of \$46 billion, and would control deposits of \$30 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BancWest would remain the eighth largest insured depository organization in California, controlling deposits of approximately \$17 billion, which represent approximately 3 percent of the total amount of deposits of insured depository institutions in the state.

² Asset data are as of March 31, 2004. International ranking data are as of December 31, 2003, and are based on the exchange rate then available.

³ Asset data are as of June 30, 2004; national deposit and ranking data are as of March 31, 2004; and statewide deposit and ranking data are as of June 30, 2003. Data reflect subsequent consolidations through August 1, 2004.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.⁴ For purposes of the BHC Act, the home state of BNP is California, and CFB's subsidiary bank is located in Arizona, California, Colorado, Iowa, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wisconsin, and Wyoming.⁵

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case. Applicants currently are adequately capitalized and adequately managed, as defined by applicable law, and would remain so on consummation of this proposal.⁶ CFB Bank has existed and operated for at least the minimum age requirements established by applicable state law.⁷ On consummation of the proposal, Applicants and their affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent, or the appropriate percentage established by applicable state law, of the total amount of deposits of insured depository institutions in each state in which both institutions currently are

⁴ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C).

⁵ For purposes of section 3(d), 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). California is the home state of BNP for purposes of the International Banking Act and Regulation K. 12 U.S.C. § 3101 et seq.; 12 C.F.R. 211.22.

⁶ See 12 U.S.C. § 1842(d)(1)(A).

⁷ See 12 U.S.C. § 1842(d)(1)(B).

located.⁸ All other requirements of section 3(d) are met in this case. Accordingly, based on 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. It 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 clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁹

BancWest and CFB compete directly in the San Diego, California and the Las Cruces, New Mexico banking markets.¹⁰ The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. 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

⁸ See 12 U.S.C. § 1842(d)(2)(A) and (B). Ariz. Rev. Stat. § 6-328 (30 percent); Colo. Rev. Stat. § 11-104-202(4) (25 percent); Iowa Code § 524.1802(2)(b) (15 percent).

⁹ 12 U.S.C. § 1842(c)(1).

¹⁰ The San Diego banking market is defined as the San Diego Ranally Metro Area (“RMA”), Camp Pendleton, and Pine Valley. The Las Cruces banking market is defined as Dona Ana County, New Mexico, excluding those communities in the El Paso, Texas-New Mexico RMA.

BancWest and CFB,¹¹ the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets.¹³ Both the San Diego and the Las Cruces banking markets would remain moderately concentrated as measured by the HHI. In both markets the increases in concentration would be small and numerous competitors would remain.

¹¹ Market share data are based on Summary of Deposits reports filed as of June 30, 2003, adjusted for transactions through April 14, 2004, 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 Reserve Board 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).

¹² 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 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹³ The effects of the proposal on the concentration of banking resources in these markets are described in the Appendix.

The Department of Justice also has conducted a detailed review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in these markets or in any other relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other 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 any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

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 these factors in light of all the facts of record, including confidential supervisory and examination information from the various banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and comments received on the proposal.¹⁴ The Board also has consulted with the French Banking Commission

¹⁴ A commenter cited press reports of litigation concerning alleged gender-based employment discrimination brought by two current or former employees of BNP in London, and a press report of an alleged wrongful termination of a BNP employee in New York. The Board notes that the laws of the relevant jurisdictions provide causes of action and remedies with respect to individual complaints of gender-based employment discrimination and wrongful termination occurring in those jurisdictions and that such matters are not within the Board's jurisdiction to adjudicate. See, e.g., Norwest Corporation, 82 Federal Reserve Bulletin 580 (1996); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973) ("Western Bancshares").

("FBC"), which is responsible for the supervision and regulation of French financial institutions.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. BNP and its U.S. subsidiary depository institutions are considered to be well capitalized and would remain so on consummation of the proposal. BNP's capital levels exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. The proposed transaction is structured as a share purchase, and the consideration to be received by CFB shareholders would be funded from BNP's available resources. The Board finds that the Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of BNP, BancWest, CFB, and their subsidiary banks, particularly the supervisory experience of the various bank supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments of the organizations' management and risk-management systems by the relevant federal and state banking supervisory agencies. Domestic banking organizations and foreign banks operating in the United States are required to

The commenter also expressed concern that BNP's involvement in financing certain foreign projects or its business relationships with energy companies doing business in a foreign country damaged the environment, caused additional social harm, or raised other unspecified concerns. These contentions contain no allegation of illegality or action that would affect the safety and soundness of the institutions involved in the proposal and are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See, e.g., The Royal Bank of Scotland Group plc, 90 Federal Bulletin 87, 88 n.16 (2004); Western Bancshares.

implement and operate effective anti-money laundering programs. Accordingly, the Board has also considered the existing anti-money laundering programs at BNP and the assessment of these programs by the relevant federal supervisory agencies, state banking agencies, and the FBC. Furthermore, the Board has considered additional information provided by BNP on enhancements it has made and is currently making to its systems as the organization expands its operations. The Board expects that BNP will take all necessary steps to ensure that sufficient resources, training, and managerial efforts are dedicated to maintaining a fully effective anti-money laundering program. The Board also has considered BancWest's plans to implement the proposal, including its proposed management after consummation and the company's record of successfully integrating acquired institutions into its existing operations. Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.¹⁵

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate

¹⁵ The commenter, citing press reports, also expressed concerns about BNP's role in handling payments for the United Nations' Oil-for-Food program with Iraq. As part of its review and assessment of the managerial resources of BNP, the Board reviewed records of BNP's New York branch concerning this program in conjunction with state regulators. The Board notes that BNP's role in this program was to act as the exclusive bank to facilitate payments under an agreement with the United Nations, which currently is conducting its own review of this program. The Board will continue to monitor the progress and results of investigations of the Oil-for-Food program by the Congress and by the United Nations.

authorities in the bank's home country.¹⁶ The home country supervisor of BNP is the FBC.

In approving applications under the BHC Act and the International Banking Act (“IBA”),¹⁷ the Board previously has determined that various French banks, including BNP, were subject to home country supervision on a consolidated basis by the FBC.¹⁸ In this case, the Board has determined that the FBC continues to supervise BNP in substantially the same manner as it supervised French banks at the time of those determinations. Based on this finding and all the facts of record, the Board has concluded that BNP continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁹ The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which BNP operates and has communicated with relevant

¹⁶ 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. See 12 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank’s overall financial condition and its compliance with laws and regulations. See 12 C.F.R. 211.24(c)(1).

¹⁷ 12 U.S.C. § 3101 et seq.

¹⁸ See, e.g., BNP Paribas, 88 Federal Reserve Bulletin 221 (2002); Caisse Nationale de Credit Agricole, 86 Federal Reserve Bulletin 412 (2000).

¹⁹ See 12 U.S.C. § 1842(c)(3)(A).

government authorities concerning access to information. In addition, BNP previously has committed to make available to the Board such information on the operations of BNP and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. BNP also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable BNP and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that BNP has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).²⁰ 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 credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of Banc West’s subsidiary banks and CFB Bank

²⁰ 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

in light of all the facts of record, including public comment on the proposal. One commenter opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act (“HMDA”),²¹ that BancWest and CFB Bank engaged in disparate treatment of minority individuals in home mortgage lending in the banks’ assessment areas.²² The commenter also expressed concern about possible branch closures.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors 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.²³

²¹ 12 U.S.C. § 2801 et seq.

²² The commenter also expressed concern about lending by Bank of the West and CFB Bank to unaffiliated retail check cashers and pawn shops. Applicants responded that Bank of the West and CFB Bank provide credit to pawn shops and retail check cashers but that neither bank plays any role in the lending practices or the credit review processes of those borrowers. These businesses are licensed by the states where they operate and are subject to applicable state law.

In addition, the commenter expressed concern about instances in which BNP may have underwritten the securitizations of subprime loans. BNP acknowledged that its U.S. broker-dealer subsidiary may from time to time underwrite securitization of assets that include subprime loans but stated that the subsidiary plays no role in the lending practices or credit review processes of any lender involved in the transaction. BNP has indicated that the due diligence implemented by its broker-dealer subsidiary would include consideration of whether the lender is known to have experienced legal or regulatory compliance problems.

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

Bank of the West, BancWest's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 3, 2003 ("February 2003 Evaluation"). First Hawaiian Bank, Honolulu, BancWest's other subsidiary bank, received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of August 19, 2003. CFB Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of December 31, 2002 ("December 2002 Evaluation").

Applicants have indicated that after the merger of Bank of the West and CFB Bank, the CRA activities of the resulting bank would conform to Bank of the West's current CRA program.

B. CRA Performance of Bank of the West

Bank of the West received an overall rating of "high satisfactory" under the lending test in the February 2003 Evaluation.²⁴ Examiners reported that the bank originated more than 15,800 residential mortgage loans totaling \$2.3 billion in its assessment areas during the evaluation period. They found that the Bank of the West's lending levels in LMI census tracts were good and noted favorably that the bank offered several loan programs to meet the needs of low-income and first-time homebuyers. Such programs included the First Time Home Buyer Program, which offers low down payments and waivers of most origination costs when certain income or geographic requirements are met, and

²⁴ The evaluation periods were from January 1, 2000, through September 30, 2002, for lending and extended through December 31, 2002, for community development loans and qualified investments. Examiners conducted full-scope reviews for the Los Angeles and San Francisco Consolidated Metropolitan Statistical Areas ("CMSAs"), which together accounted for more than 60 percent of the bank's small business loans and nearly 70 percent of the bank's mortgages reportable under HMDA.

Fannie Mae's 97% Program and Flex 97% Product, under which closing costs or down payments could be funded from gifts, grants, loans from a nonprofit organization, or other sources. During the evaluation period, the bank extended 405 loans totaling \$64.5 million through these three programs.

Bank of the West originated more than 20,600 small business loans totaling approximately \$2.9 billion in its assessment areas during the review period.²⁵ Examiners stated that the bank's lending to small businesses with gross annual revenues of \$1 million or less was good and was responsive to small business credit needs. They noted favorably that the bank was a certified Small Business Administration ("SBA") "Preferred Lender" and extended more than 1,250 SBA loans totaling approximately \$739 million during the evaluation period. In addition, examiners noted the bank's partnerships with the Export-Import Bank of the United States and the California State World Trade Commission's Export Finance Office to finance exports by small and medium-size businesses.

Examiners reported that the bank extended a high level of community development loans during the evaluation period, with 234 of such loans totaling more than \$1.02 billion. They found that many of these loans were complex and represented credits not routinely extended by banks. The majority of the bank's community development loans by number financed affordable housing and community development services for LMI individuals and were made in partnership with community development organizations, government-sponsored affordable housing agencies, bank consortia, and multifamily housing developers.

Bank of the West received an "outstanding" rating overall under the investment test in the February 2003 Evaluation, and examiners reported that the

²⁵ In this context, a "small business loan" is a loan in an original amount of \$1 million or less that either is secured by nonfarm, nonresidential properties or is classified as a commercial and industrial loan.

bank had taken a leadership role by making investments not routinely provided by the private sector. The bank made 824 qualified community development investments totaling more than \$51.8 million during the review period. Examiners particularly noted the bank's investment in a California environmental cleanup and redevelopment fund and the bank's \$10.7 million of investments in six housing projects that created more than 370 units of affordable housing in LMI areas.

The bank received a "high satisfactory" rating overall under the service test in the February 2003 Evaluation. Examiners reported that the bank's distribution of its branches generally mirrored community demographics across all its assessment areas. They also reported that the bank provided a relatively high level of community development services in its combined assessment areas that focused on affordable housing for LMI individuals. The evaluation made particular note of the bank's affiliation with the Affordable Housing Program administered by the Federal Home Loan Bank of San Francisco, which makes awards to develop and rehabilitate single-family and multifamily housing for very low- and low-income individuals.

C. CRA Performance of CFB Bank

As noted, CFB Bank received an overall "satisfactory" rating in the December 2002 evaluation. Under the lending test, CFB Bank received an overall rating of "high satisfactory." During the evaluation period,²⁶ CFB Bank originated or purchased more than 4,500 HMDA-reportable loans totaling \$386 million in three states that together accounted for 61 percent of the bank's deposits ("Representative States").²⁷ Examiners reported that the bank's distribution of

²⁶ The evaluation period was from January 1, 2000, through December 31, 2002.

²⁷ The Representative States are Colorado, Wyoming, and Minnesota, which respectively accounted for 27 percent, 19 percent, and 15 percent of CFB Bank's deposit base at the time of the December 2002 Evaluation.

loans across geographies of different income levels was generally good and that the bank had an excellent distribution of loans to borrowers of different income levels.

CFB Bank originated or purchased more than 12,400 small loans to businesses totaling more than \$1.15 billion in the Representative States during the evaluation period.²⁸ In addition, the bank originated or purchased more than 6,500 small loans to farms totaling \$326 million in the Representative States.²⁹ Examiners reported that the bank's distribution of loans to businesses of varying sizes generally was excellent.

During the evaluation period, CFB Bank also made 11 community development loans totaling almost \$2.6 million in the Representative States. These community development loans helped provide affordable housing and social services to LMI families and financing for start-up and existing small businesses.

CFB Bank received an overall rating of "high satisfactory" under the investment test in the December 2002 Evaluation. During the evaluation period, CFB made more than 190 qualified investments totaling \$5.3 million in the Representative States. Examiners noted that almost all these investments assisted in providing affordable housing for LMI families.

Under the service test, CFB Bank received an overall rating of "high satisfactory." Examiners reported that the percentage of the bank's branches in LMI census tracts often exceeded the percentage of the population residing in these areas. In addition, examiners noted that the bank provided relatively high levels of

²⁸ In this context, "small loans to businesses" are loans with original amounts of \$1 million or less that either are secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

²⁹ In this context, "small loans to farms" are loans with original amounts of \$500,000 or less that either are secured by farmland or are classified as loans to finance agricultural and other loans to farmers.

community development services in nonmetropolitan assessment areas in each of the Representative States.

D. HMDA Data and Fair Lending Records

The Board has carefully considered the lending records of Applicants and CFB in light of comments on the HMDA data reported by their subsidiary banks. Based on 2002 HMDA data, the commenter alleged that Bank of the West and CFB Bank disproportionately excluded or denied African-American or Hispanic applicants for home mortgage loans in various MSAs.³⁰ The Board reviewed HMDA data for 2002 and 2003 reported by Bank of the West and CFB Bank for the major markets they each serve and the MSAs identified by the commenter.³¹

The 2002 and 2003 HMDA data reported by Bank of the West indicate that the bank's denial disparity ratios³² for African-American and Hispanic applicants for total HMDA-reportable loans were comparable with or more favorable than those ratios for the aggregate of lenders ("aggregate lenders") in the San Francisco MSA, and comparable or less favorable than those ratios for the aggregate lenders in the Los Angeles CMSA.³³ From 2002 to 2003, Bank of the

³⁰ Specifically, the commenter cited HMDA data on Bank of the West's lending to African Americans or Hispanics in the following MSAs: Albuquerque, Los Angeles, Las Vegas, Modesto, Stockton-Lodi, and Portland. The commenter cited HMDA data for CFB Bank's lending to Hispanics in the Boulder, Colorado and Las Cruces, New Mexico MSAs.

³¹ The Board also reviewed HMDA data for Bank of the West in the San Francisco MSA, which is the bank's home market, and for CFB Bank in the Fargo, North Dakota MSA, which is that bank's home market.

³² The denial disparity ratio equals the denial rate of a particular racial category (e.g., African-American) divided by the denial rate for whites.

³³ The bank's denial disparity ratios were comparable or less favorable than those ratios for aggregate lenders in the other MSAs reviewed. In 2003, the Los Angeles

West's percentages of total HMDA-reportable loans to African Americans and Hispanics increased in most of the areas reviewed, including in the San Francisco MSA and the Los Angeles CMSA.³⁴ In addition, Bank of the West's percentages of total HMDA-reportable loans to borrowers in predominantly minority census tracts in the San Francisco MSA and Los Angeles CMSA in 2003 exceeded the percentages for the aggregate lenders in those areas.

The 2003 data reported by CFB Bank indicate that the bank's denial disparity ratios for Hispanic applicants for HMDA-reportable loans in the MSAs cited by the commenter were more favorable than those ratios for the aggregate lenders. In addition, the bank's percentages of total HMDA-reportable loans to Hispanic borrowers in these areas were higher than the percentages for the aggregate lenders.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups, the HMDA data generally do not indicate that Bank of the West or CFB Bank are excluding any racial groups or geographic areas 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

CMSA and San Francisco MSA together accounted for 31 percent of all of Bank of the West's HMDA-reportable loans. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market.

³⁴ From 2002 to 2003, Bank of the West's percentage of total HMDA-reportable loans to Hispanics declined in the Las Vegas and Portland MSAs, and its percentage of total HMDA-reportable loans to African Americans declined in the Modesto MSA. African Americans accounted for only 2.6 percent of the population of the Modesto MSA.

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 and provide only limited information about covered loans.³⁵ 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 BancWest and CFB with fair lending laws. Examiners noted no fair lending law issues or concerns in either the February 2003 or the December 2002 Evaluations. The Board also consulted with the FDIC and the OCC, which have responsibility for enforcing compliance with fair lending laws by Bank of West and CFB Bank, respectively, about this proposal and the record of performance of Bank of the West since the last examination.

The record also indicates that Bank of the West and CFB Bank have taken steps to ensure compliance with fair lending laws. Bank of the West has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, including a second-review process, regular internal fair lending examinations, risk-based regulatory audits,

³⁵ 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.

and compliance self-assessments. CFB Bank's compliance program includes a second-review process, along with regular internal fair lending audits and examinations. Applicants have represented that, on consummation of the proposed bank merger, CFB Bank's compliance function will be integrated into Bank of the West's compliance management system.

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

E. Branch Closings

The Board has considered the commenter's concern about possible branch closings in light of all the facts of record. Applicants have indicated that they have no plans as a result of the transaction to close any branches of Bank of the West or CFB Bank in the banking markets where the banks overlap.³⁶ The Board has considered Bank of the West's branch banking policy and its record of opening and closing branches. In the February 2003 Evaluation, examiners concluded that Bank of the West's record of opening and closing branches had not adversely affected the bank's delivery of services in LMI areas and to LMI individuals and that the bank's branch closing policy met all regulatory requirements.

³⁶ Applicants have stated that CFB Bank is in the process of relocating one of its branches in Las Cruces, New Mexico, and that the bank initiated this relocation process before CFB's execution of its purchase and sales agreement with Applicants. This branch is not in an LMI census tract.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.³⁷ Federal law requires an 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 FDIC, as the appropriate federal supervisor of Bank of the West, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, public comments on the proposal, and confidential supervisory information. Applicants have stated that the proposal would provide CFB customers with expanded products and services, including access to BNP's international banking and financial services network. 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.

³⁷ 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 and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.³⁸ In 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.³⁹ The Board's approval is specifically conditioned on compliance by

³⁸ The commenter requested that the Board extend the comment period. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and 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 processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenter has had ample opportunity to submit its views, and in fact, commenter has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that granting an extension of the comment period is not warranted.

³⁹ The commenter 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 the appropriate supervisory authorities. 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 commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, commenter has submitted written comments that the Board has considered carefully in acting on the

Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the application, including compliance with state law. The commitments made to the Board in the applications process are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,⁴⁰ effective October 15, 2004.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately. The request also fails to identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public meeting or hearing. 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 request for a public meeting or hearing on the proposal is denied.

⁴⁰ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

APPENDIX

Banking Market Data

San Diego, California

BancWest operates the 39th largest depository institution in the San Diego banking market, controlling \$55 million in deposits, which represents less than 1 percent of market deposits. CFB operates the 16th largest depository institution in the market, controlling \$242 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancWest would operate the 16th largest depository institution in the market, controlling deposits of \$297 million, which represent less than 1 percent of market deposits. The HHI would remain at 1105. Seventy bank and thrift competitors would remain in the market.

Las Cruces, New Mexico

BancWest operates the 12th largest depository institution in the Las Cruces banking market, controlling \$15 million in deposits, which represents 1.6 percent of market deposits. CFB operates the third largest depository institution in the market, controlling \$92 million in deposits, which represents 9.8 percent of market deposits. On consummation of the proposal, BancWest would operate the third largest depository institution in the market, controlling deposits of \$108 million, which represent approximately 11 percent of market deposits. The HHI would increase 32 points to 1435. Sixteen bank and thrift competitors would remain in the market.