FEDERAL RESERVE SYSTEM

Capital One Financial Corporation
McLean, Virginia

Order Approving the Merger of Bank Holding Companies

Capital One Financial Corporation ("Capital One"), 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[1] to acquire Hibernia Corporation ("Hibernia") and its subsidiary bank, Hibernia National Bank ("HNB"), both of New Orleans, Louisiana.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 Federal Register 24,796 (2005)). 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.

Capital One, with total consolidated assets of approximately $55.6 billion, is the 26th largest depository organization in the United States,[3]

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[1] 12 U.S.C. § 1842.

[2] Hibernia is a financial holding company that offers a range of financial products and services through its bank and nonbank subsidiaries, including two subsidiaries that engage in securities underwriting and brokerage activities and insurance agency activities under section 4(k)(4) of the BHC Act. Capital One proposes to acquire those nonbanking subsidiaries and engage only in 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. 12 U.S.C. § 1843(k)(4)(A)-(H); 12 CFR 225.87. After consummation of this proposal Capital One intends to operate HNB as a subsidiary bank.

[3] Asset and national ranking and deposit data are as of March 31, 2005. Asset and national ranking data are based on total assets reported by bank holding companies on Consolidated Financial Statements for Bank Holding Companies and by thrifts on

controlling deposits of approximately $25.9 billion. Capital One operates two subsidiary depository institutions in Virginia: Capital One Bank ("COB"), Glen Allen, and Capital One, F.S.B ("COFSB"), McLean.

Hibernia, with total consolidated assets of approximately $22.2 billion, is the 50th largest depository organization in the United States, controlling deposits of $17.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Louisiana, HNB is the largest depository institution, controlling deposits of $12.4 billion, which represent 22.4 percent of the total amount of deposits of insured depository institutions in the state.[4] HNB also operates branches in Texas and two mortgage loan production offices in Mississippi.

On consummation of the proposal, Capital One would become the 23rd largest depository organization in the United States, with total consolidated assets of approximately $80.1 billion (including pro forma accounting adjustments), and would control deposits of approximately $43.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

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. For

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Thrift Financial Reports. Deposit data reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports.

4 State ranking and deposit data are as of June 30, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

purposes of the BHC Act, the home state of Capital One is Virginia,[5] and HNB is located in Louisiana and Texas.[6]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[7] 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 Board finds that the anticompetitive effects of the proposal clearly are outweighed in

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

[6] 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. 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

[7] 12 U.S.C. §§ 1842(d)(1)(A)&(B), 1842(d)(2)(A)&(B). Capital One is adequately capitalized and adequately managed, as defined by applicable law. HNB has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Capital One 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 of the total amount of deposits of insured depository institutions in Texas and Louisiana. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[8]

Capital One and Hibernia do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act also requires the Board to consider the financial and managerial resources and future prospects of companies and depository institutions 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 reports of examination, other confidential supervisory information from the primary federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Capital One, and public comments received on the proposal.[9]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking

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[8] 12 U.S.C. § 1842(c)(1).

[9] The commenter reiterated its concern about Capital One's lobbying efforts in the Virginia legislature raised in a previous application by Capital One. See Capital One Financial Corporation, 90 Federal Reserve Bulletin 479 (2004). As the Board previously noted, such matters are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Capital One has sufficient financial resources to effect the proposal. Capital One currently is well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Capital One will use existing resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of Capital One and Hibernia and the managerial resources of the combined organization. The Board has reviewed the examination records of Capital One, Hibernia, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations.[10] In addition, the Board has considered its

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[10] The commenter criticized Capital One's and Hibernia's relationships with unaffiliated subprime lenders, payday lenders, car-title lending companies, and other nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. Capital One stated that its business relationships with such providers are limited to business credit-card loans or loans extended under Small Business Administration ("SBA") programs. Any such extensions of credit would be in the ordinary course of Capital One's small business credit-card lending activities or in accordance with SBA requirements. HNB's Small Business Lending Division extends a limited number of loans to businesses in these industries and HNB's commercial loan division extends credit to certain subprime lenders subject to certain limits. HNB requires an opinion letter from borrowers' counsel at the closing of each of these loans concluding that the borrowers' loans comply with the Truth in Lending Act

supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking law.[11] Capital One, Hibernia, and their subsidiary depository institutions are considered well managed. The Board also has considered Capital One's plans for implementing the proposal, including its proposed management after consummation.[12]

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and applicable state law. In addition, the agreement HNB typically uses to document loans to consumer finance companies includes a negative covenant that the borrower will not engage in activities that would violate applicable law or regulation, including laws or regulations related to predatory lending. HNB has represented that it monitors the borrower for compliance with this covenant by reviewing the borrower's annual compliance audit. Capital One has represented that neither it nor HNB plays any role in the lending practices or credit review processes of these firms.

[11] The commenter also opposed the proposal based on news reports of lawsuits and investigations undertaken by the Attorneys General of Minnesota and West Virginia in their respective states relating to Capital One's marketing of its credit cards. These investigations and lawsuits are pending and have not yet reached conclusion, and there has been no determination of liability, damage, or wrongdoing in these cases. The Board has consulted with the relevant state authorities about these matters and will continue to monitor these matters in the supervisory process. Board action under the BHC Act would not interfere with the ability of the courts to resolve any litigation pertaining to these matters.

[12] The commenter also expressed concern about newspaper reports of a civil complaint filed by the Securities and Exchange Commission ("SEC"). The Board has reviewed the complaint, which alleges that a former Capital One officer engaged in insider trading and failed to report to the SEC certain of his transactions in Capital One securities. This action relates to that former officer's actions with respect to the Capital One securities owned by him and does not make allegations against Capital One as a corporate entity or any current member of management. The SEC, rather than the Board, has jurisdiction to investigate and adjudicate any violations of federal securities laws. The Board has consulted with the SEC regarding this pending complaint.

Based on 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 the organizations involved in the proposal are consistent with approval, as are the other supervisory factors 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 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 Community Reinvestment Act ("CRA").[13] 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 and mortgage lending records of Capital One's subsidiary insured depository institutions and HNB in light of all of the facts of record, including public comment on the proposal. A commenter opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[14] that HNB engaged in discriminatory treatment of minority individuals in its home mortgage operations.

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[13] 12 U.S.C. § 2901 et seq.

[14] 12 U.S.C. § 2801 et seq.

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.[15]

Capital One's lead subsidiary depository institution, COB, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond ("Reserve Bank"), as of April 28, 2003. COFSB received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of April 28, 2003. HNB received a "satisfactory" rating from the Office of the Comptroller of the Currency, as of January 12, 2004.

In addition, Capital One has indicated that it intends to continue its level of support for community investment and development and expects that the proposed transaction would allow it to expand the services and products offered to customers in the communities served by Capital One and HNB. Capital One has also indicated that it does not expect the merger to result in the discontinuation of any products or services offered by HNB, except to the extent that Capital One offers a comparable product or service.

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

B. CRA Performance of Capital One

1. Capital One Bank. COB is engaged primarily in credit card operations and has been designated a limited purpose bank for purposes of evaluating its CRA performance. As such, it is evaluated under the community development test.[16] Because COB is designated as a limited purpose bank, in assigning a rating, examiners may consider the bank's community development investments, loans, and services nationwide rather than solely in the bank's assessment area. In rating COB "outstanding" at its April 2003 evaluation, Reserve Bank examiners noted that COB's nationwide qualified investments increased from $28.5 million to approximately $82 million during the evaluation period.[17] These investments included investments in low-income-housing tax credit projects, bonds issued by the Virginia Housing Development Authority, and entities that support microenterprise development.

During the evaluation period, COB contributed more than $5 million to a variety of organizations that primarily assist LMI individuals or areas or support microenterprise development. Examiners also noted that COB provided technical assistance and financial expertise to organizations dedicated to community development, including affordable housing, social services, and small business development.

2. Capital One, FSB. As noted above, COFSB received an overall "satisfactory" CRA performance rating at its April 2003 evaluation.[18] The

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[16] See 12 CFR 228.25(a). If COB engages in activities that cause the bank to lose this designation, its CRA performance will be evaluated under the appropriate tests and standards. See 12 CFR 228.25(b).

[17] The evaluation period was from May 7, 2001, to April 28, 2003.

[18] The evaluation period was from January 1, 2000, to March 31, 2003, except for the lending test, which was evaluated from January 1, 2000, to December 31, 2002.

institution received a "high satisfactory" rating under the lending and services tests and an "outstanding" rating under the investment test in this evaluation.

Examiners noted that COFSB's geographic distribution of consumer loans was reasonable in relation to demographic characteristics of its assessment area, and the geographic distribution of small loans to businesses was commensurate with both demographic and peer lending data. According to examiners, the percentage of consumer installment loans made to LMI borrowers in the institution's assessment area exceeded the percentage of LMI families residing in that area. COFSB's distribution of consumer credit cards, according to borrower income levels, was reasonable compared with the demographic data. Examiners also noted the institution's innovative special installment loan product that was primarily used by LMI borrowers.[19]

Examiners stated that COFSB's community development lending, totaling approximately $11 million for the evaluation period, was adequate and included innovative lending arrangements with community development fund initiatives, affordable housing organizations, and other nonprofit organizations that served LMI individuals.

During the evaluation period, COFSB's qualified investments totaled approximately $81.5 million and included purchases of qualified mortgage-backed securities and low-income-housing tax credits, investments in small business investment corporations, and deposits in community development fund initiatives.

COFSB is a nationwide provider of consumer and commercial lending and offers consumer deposit products.

[19] This product featured low minimum loan amounts of $500 to $1000 and had no minimum income requirements. Approximately 87 percent of these loans were made to LMI borrowers.

In addition, examiners noted that COFSB made approximately $7 million in financial grants during the assessment period.

Although COFSB has no public offices, examiners noted that it provided customer-service call centers with extended hours and had begun to issue ATM cards to allow customers to access their money market accounts. Examiners also noted COFSB's contributions in the form of technical assistance and financial expertise to a variety of nonprofit organizations in its assessment area and the communities in which COFSB operated.

C. CRA Performance of HNB

As noted, HNB received an overall "satisfactory" rating in its January 2004 evaluation.[20] The bank received a "high satisfactory" rating under the lending and investment tests and an "outstanding" rating on the service test in this evaluation.

Examiners commended HNB's responsiveness to the credit needs of its assessment areas, particularly in providing loan products to small businesses. Examiners also noted HNB's good overall distribution of loans to borrowers of different income levels and recognized HNB's use of innovative and flexible loan products designed to benefit LMI individuals and geographies. In addition, examiners characterized as significant HNB's community development lending, which consisted of approximately $140 million in loan originations in the areas receiving a full-scope review during the evaluation period.

Examiners reported that during the evaluation period, HNB had a good level of qualified community development investments in Louisiana and an adequate level in Texas in light of HNB's resources and capacity. In addition, they noted that

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[20] The evaluation period was from October 18, 1999, through January 12, 2004, except for the lending test, which was evaluated from January 1, 2000, through December 31, 2002.

the bank's service delivery systems were accessible to geographies and individuals of different income levels throughout its assessment areas. Examiners also reported that the bank's community development services were excellent.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending record of HNB in light of public comment received on the proposal. A commenter alleged, based on a review of 2003 HMDA data, that HNB's denial disparity ratios in certain markets in Louisiana indicated that it disproportionately denied African-American applicants for home mortgage loans.[21] The commenter also contended that HNB's denial disparity ratios in the Dallas Metropolitan Statistical Area ("MSA") indicated that it disproportionately denied African-American and Hispanic applicants for home mortgage loans.[22]

The Board reviewed 2003 HMDA data reported by HNB in various MSAs and the States of Louisiana and Texas.[23] The total HMDA-reportable lending data in Louisiana and Texas indicate that HNB's denial disparity ratios for African-

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

22 The commenter also alleged that HNB and Capital One engaged in discriminatory lending based on a review of the prices of loans extended to African-American and Hispanic borrowers as compared with white borrowers in 2004. The commenter based this allegation on 2004 HMDA data derived from loan application registers that it obtained from HNB and Capital One. These data are preliminary and 2004 data for lenders in the aggregate are not yet publicly available. See Frequently Asked Questions About the New HMDA Data (March 31, 2005) available at http://www.federalreserve.gov/boarddocs/ press/bcreg/2005.

23 This review included analysis of HMDA data for HNB's combined lending activity in all the MSAs in which HNB had branches in Texas and Louisiana, and in the Beaumont, Dallas, Texarkana, New Orleans, Baton Rouge, and Shreveport MSAs. In 2003, a majority of HNB's total HMDA-reportable loans was originated to borrowers within MSAs in Louisiana.

American applicants were higher than, and for Hispanic applicants generally comparable with, those ratios for the aggregate of lenders ("aggregate lenders") in those states.[24] The 2003 data in Louisiana also indicate that the percentages of the bank's total HMDA-reportable loans originated to African Americans were somewhat lower than, and to Hispanics were generally comparable with, the percentages for the aggregate lenders. In the Beaumont and Texarkana MSAs, the percentages of HNB's HMDA-reportable loans to African Americans exceeded the percentages for the aggregate lenders in that year.[25]

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data do not demonstrate that HNB is excluding any racial group on a prohibited basis. The Board 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. The Board recognizes, however, that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[26] HMDA data, therefore, have

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[24] The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported data in a particular area.

[25] HNB's percentages of HMDA-reportable loans to African Americans were greater than the percentages for the aggregate lenders in the Beaumont and Texarkana MSAs. In those MSAs, HNB's percentage of loans to Hispanics was slightly lower than that for the aggregate lenders. In the Dallas MSA, HNB's percentages of loans to African Americans and Hispanics were smaller than the percentages for the aggregate lenders.

[26] 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

limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide an on-site evaluation of compliance by HNB and its subsidiaries with fair lending laws. Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of HNB.

The record also indicates that HNB has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. HNB has a fair lending compliance program that includes a second review of each loan marked for denial and an annual fair lending review of its mortgage portfolio to determine whether there are any race- or ethnicity-based disparities in loan underwriting.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Capital One and HNB under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities. Capital One has represented that it is in the process of developing a new and comprehensive enterprise-wide fair lending program and intends to implement a similar program at HNB after the merger. Capital One plans to incorporate the most effective policies and procedures of Capital One's and HNB's respective fair lending programs into its comprehensive program for the combined institution.

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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.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by the applicant, comments on the proposal, and confidential supervisory information. The Board notes that Capital One's national presence and financial and managerial resources will enhance HNB's ability to service its customers and broaden its geographic reach and that HNB's branch banking business will allow Capital One to offer a broader variety of products to its customers. 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 and 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 application should be, and hereby is, approved.[27] In reaching

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[27] 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 CFR 225.16(e). The Board has considered carefully the 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, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the

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 Capital One with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the commitments made to the Board in the application 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,[28] effective August 16, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

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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.

[28] Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Kohn.