

FEDERAL RESERVE SYSTEM

First Niagara Financial Group, Inc.
Buffalo, New York

Order Approving Formation of a Bank Holding Company and Notice to Engage in Nonbanking Activities

First Niagara Financial Group, Inc. ("FNF Group"), a savings and loan holding company that owns First Niagara Bank ("FN Bank"), both of Buffalo, a federal savings bank, and its subsidiary, First Niagara Commercial Bank ("FNC Bank"),¹ Lockport, all of New York, has requested the Board's approval to become a bank holding company by acquiring another bank holding company. FNF Group also has requested approval to operate FN Bank as a subsidiary savings association until it becomes a subsidiary bank on its conversion to a national bank.

Specifically, FNF Group has requested approval under section 3 of the BHC Act² to merge with Harleysville National Corporation ("Harleysville") and thereby acquire Harleysville National Bank and Trust Company ("Harleysville Bank"), both of Harleysville, Pennsylvania. After the merger, FNF Group would convert FN Bank to a national bank and would merge FNC Bank and Harleysville

¹ FNC Bank is a state-chartered bank that accepts only municipal deposits. Although FNC Bank is a "bank" for purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"), FNF Group is not treated as a bank holding company. FNF Group controls FNC Bank pursuant to section 2(a)(5)(E) of the BHC Act, 12 U.S.C. § 1841(a)(5)(E), which exempts a company from treatment as a bank holding company if the state-chartered bank or trust company is owned by a thrift institution and only accepts deposits of public money.

² 12 U.S.C. § 1842.

Bank into FN Bank, with FN Bank as the survivor.³ Accordingly, FNF Group has requested approval under section 3 for FN Bank to become a subsidiary bank on the proposed conversion and to hold FNC Bank as a subsidiary of FN Bank until such conversion and merger.⁴ In addition, FNF Group has requested the Board's approval pursuant to sections 4(c)(8) and 4(j) of the BHC Act⁵ to retain FN Bank and thereby operate FN Bank as a savings association until its conversion to a national bank. Operating a savings association is an activity permissible for bank holding companies under the Board's Regulation Y.⁶ FNF Group also has requested the Board's approval under section 3 of the BHC Act to acquire Harleysville's minority ownership interest in Berkshire Bancorp, Inc.

³ FN Bank has filed applications that are pending with the Office of the Comptroller of the Currency ("OCC") to convert FN Bank to a national bank and to merge Harleysville Bank with and into FN Bank. All the nonbanking subsidiaries of FN Bank will remain subsidiaries of FN Bank after the conversion and merger. After its charter conversion, FN Bank will do business as First Niagara Bank, N.A.

⁴ The Board received comments from the Office of Thrift Supervision ("OTS"), FN Bank's primary federal supervisor, concerning FN Bank's proposed charter conversion as contemplated under the July 1, 2009, Statement on Regulatory Conversions ("Policy Statement") issued by the Federal Financial Institutions Examination Council. The Board has considered carefully the comments made by OTS in light of the information provided by FNF Group. After consultation with other appropriate federal supervisors, and based on all the facts of record, the Board believes the transaction is consistent with the Policy Statement.

⁵ 12 U.S.C. §§ 1843(c)(8) and 1843(j).

⁶ 12 CFR 225.28(b)(4). FNF Group also has applied to retain or acquire subsidiaries that engage in lending and other credit-related activities, leasing, and the sale of credit-related insurance. These nonbanking subsidiaries are listed in Appendix A.

("Berkshire") and to own up to 19.9 percent of the voting shares of Berkshire and its subsidiary bank, Berkshire Bank, both of Wyomissing, Pennsylvania.⁷

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (75 Federal Register 2544 and 4395 (2010)). 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 sections 3 and 4 of the BHC Act.

FNF Group, with total consolidated assets of approximately \$14.6 billion, controls FN Bank and FNC Bank, which operate in Pennsylvania and New York. FN Bank is the 18th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$3.7 billion, which represent 1 percent of the total amount of deposits of insured depository institutions in that state ("state deposits").⁸

Harleysville, with total consolidated assets of approximately \$5.2 billion, controls Harleysville Bank, which operates only in Pennsylvania. Harleysville Bank is the 17th largest insured depository institution in Pennsylvania, controlling deposits of \$4 billion.

On consummation of the proposal, FNF Group would become the ninth largest depository organization in Pennsylvania, controlling deposits of

⁷ As a result of the merger, FNF Group will acquire Harleysville's ownership of 17.5 percent of Berkshire's voting shares. FNF Group also has requested approval to own up to 19.9 percent of Berkshire's voting shares.

⁸ Asset and deposit data are as of June 30, 2009, with the exception of data for FNF Group, which are as of September 30, 2009. Deposit data include the deposits of FNC Bank. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

approximately \$7.6 billion, which represent approximately 2.5 percent of state deposits.

Berkshire Bank, with total assets of \$145 million, is the 182nd largest insured depository institution in Pennsylvania. The bank operates only in Pennsylvania and controls deposits of approximately \$108 million. If FNF Group were deemed to control Berkshire on consummation of the proposal, FNF Group would remain the ninth largest banking organization in Pennsylvania, controlling approximately \$7.7 billion in deposits, which would represent 2.6 percent of state deposits.

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 bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of FNF Group will be Pennsylvania,⁹ and FN Bank, after the conversion, will be located in Pennsylvania and New York.¹⁰ Based on a review of all the facts of record, including relevant

⁹ A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). FNF Group plans to acquire Harleysville before it converts FN Bank to a national bank. Accordingly, the state where the total deposits of all of FNF Group's banking subsidiaries will be the largest is Pennsylvania on the date of consummation.

¹⁰ For purposes of section 3(d) of the BHC Act, 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), 1842(d)(1)(A), and 1842(d)(2)(B).

state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.¹¹

Competitive Considerations

The Board has considered carefully the competitive effects of FNF Group's acquisition of Harleysville. Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹² In addition, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.

FNF Group and Harleysville do not compete in any relevant banking market. Harleysville Bank and Berkshire Bank, however, compete in the Reading, Pennsylvania banking market ("Reading market").¹³ Although the Board has

¹¹ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). FNF Group is adequately capitalized and adequately managed, as defined by applicable law. FN Bank has been in existence and operated for the minimum period of time required by New York law and for more than five years. See 12 U.S.C. §1842(d)(1)(B)(i)-(ii). On consummation of the proposal, FNF Group would control less than 10 percent of the total amounts of deposits of insured depository institutions in the United States. 12 U.S.C. §1842(d)(2)(A). FNF Group also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant states. 12 U.S.C. §§ 1842(d)(2)(B)-(D). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

¹² 12 U.S.C. § 1842(c)(1).

¹³ The Reading market is defined as Berks County, Pennsylvania.

determined that FNF Group would not control Berkshire Bank, the Board previously has found that one company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In each case, the Board analyzes the specific facts to determine whether the minority investment in a competitor would result in significant adverse competitive effects in a banking market.¹⁴ In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by FN Bank and Berkshire Bank;¹⁵ the concentration level of market deposits and the increase in the level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines

¹⁴ See, e.g., The Bank of Nova Scotia, 93 Federal Reserve Bulletin C136 (2007); Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); BOK Financial Corp., 81 Federal Reserve Bulletin 1052, 1053-54 (1995); Sun Banks, Inc., 71 Federal Reserve Bulletin 243 (1985).

¹⁵ Deposit and market share data are as of June 30, 2009, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, except as noted. 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, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (1984). 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, 55 (1991) In this case, FNF Group’s deposits are weighted at 50 percent pre-merger and 100 percent post-merger to reflect the resulting ownership by a commercial banking organization.

("DOJ Guidelines");¹⁶ other characteristics of the market; and the commitments made by FNF Group to the Board not to control Berkshire and Berkshire Bank.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Reading market. On consummation of the proposal, the Reading market would remain moderately concentrated. The change in the HHI would be small, and numerous competitors would remain in the market.¹⁷

The Board also has carefully considered the competitive effects of FNF Group's proposed acquisition of Harleysville's other nonbanking subsidiaries and activities in light of all the facts of record. FNF Group and Harleysville do not engage in the same nonbanking activities. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for these services.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have any significantly adverse effects on

¹⁶ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

¹⁷ If FNF Group were deemed to control Berkshire, FNF Group would be the ninth largest depository organization in the market, controlling \$19.8 million in deposits, which would represent 2.6 percent of market deposits. The HHI would increase by 3 points to 1354.

competition or on the concentration of banking resources in the Reading market or in any other relevant banking or nonbanking market and that the competitive factors are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

Sections 3 and 4 of the BHC Act require 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.¹⁸ The Board has carefully considered these factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by FNF Group.

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 the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, 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.

The Board has carefully considered the proposal under the financial factors. FNF Group, Harleysville, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based

¹⁸ 12 U.S.C. § 1842(c)(2) and (3).

on its review of the record, the Board also finds that FNF Group has sufficient financial resources to effect the proposal.¹⁹ The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of FNF Group, Harleysville, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant bank and thrift supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws. FNF Group and its subsidiary depository institutions are considered to be well managed. The Board also has considered FNF Group's plans for implementing the proposal, including the proposed management after consummation of the proposal.

Based on all the facts of record, the Board has concluded 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.²⁰

¹⁹ FNF Group has issued nearly \$1 billion in common equity since late 2008.

²⁰ A comment from the public expressed concern that FNF Group acquired control over Harleysville before obtaining Board approval of the application because of an extension of credit FNF Group made to Harleysville. In December 2009, and after FNF Group filed its application with the Board to acquire Harleysville, FNF Group loaned Harleysville \$50 million, secured by the shares of Harleysville Bank. Harleysville invested the loan proceeds in Harleysville Bank to increase the bank's capital.

The Board is concerned when a banking organization seeking to acquire another banking organization makes a loan to the acquiree in advance of the Board's approval of the acquisition. Those types of loans raise concern that the

Convenience and Needs and CRA Performance 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 to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").²¹ The Board must also review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.²²

The Board has carefully considered the convenience and needs factor and the CRA performance records of FN Bank and Harleysville Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important

transaction would be, in substance, the acquisition of a controlling interest or would provide the acquirer with the ability to exercise a controlling influence over the management and policies of the bank holding company before receiving Board approval. The Board has reviewed carefully the loan to Harleysville, including the circumstances and terms of the loan, the merger agreements, the purpose of the loan, and the relationships of the organizations after the loan transaction. Based on all the facts of record, the Board does not believe that the loan resulted in FNF Group acquiring voting securities of, or a controlling equity interest in, Harleysville, or in FNF Group exercising, or having the ability to exercise, a controlling influence over Harleysville in this case. The Board continues to believe that loans made by an acquirer to a target organization before agency approval of its acquisition proposal raise important issues, and it will review these arrangements critically and carefully.

²¹ 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

²² See, e.g., North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767 (2000).

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

FN Bank received a "satisfactory" rating under the CRA at its most recent performance evaluation by the OTS, as of March 12, 2007. The OCC rated Harleystville Bank "satisfactory" after its most recent CRA evaluation, as of September 18, 2007. FNF Group has represented that after the acquisition of Harleystville Bank, the combined organization will offer the same or substantially similar products and services as are currently offered by the respective organizations.

The Board also has considered the fair lending records of, and the 2008 lending data reported under the Home Mortgage Disclosure Act ("HMDA")²⁴ by, FN Bank and Harleystville Bank in light of a comment from the public received on the proposal. The commenter alleged, based on 2008 HMDA data, that FN Bank had denied applications for conventional home purchase loans and refinancings by minority applicants more frequently than those applications by nonminority applicants in the Buffalo MSA. The commenter also alleged that in the Philadelphia MSA in 2008, Harleystville Bank denied applications for conventional home purchase loans by minority applicants more frequently than those applications by nonminority applicants.

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 74 Federal Register 11642 at 11665 (2009).

²⁴ 12 U.S.C. § 2801 et seq. The Board reviewed HMDA data reported by FN Bank and by Harleystville Bank in each bank's combined assessment areas, as well as in each bank's headquarters assessment area of the Buffalo, New York, Metropolitan Statistical Area ("Buffalo MSA") and the Philadelphia, Pennsylvania, MSA ("Philadelphia MSA"), respectively.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not FN Bank or Harleysville Bank is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.²⁵ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Accordingly, the Board has taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by FNF Group and its subsidiaries. The Board also has consulted with the OTS and OCC about FN Bank's and Harleysville Bank's records of fair lending compliance. In addition, the Board has considered information provided by FNF Group about its compliance-risk management systems.

The record of this application, including confidential supervisory information, indicates that FNF Group has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. FNF Group represents that it has policies and procedures to help ensure compliance with all

²⁵ 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. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

fair lending and consumer protection laws applicable to its lending activities and that its policies and procedures will apply to the combined institution on consummation of the proposal. FNF Group's compliance program includes annual training of lending personnel, regular fair lending analyses, and oversight and monitoring of consumer lending functions. Under the compliance program, FN Bank has used a third party to analyze its HMDA data for evidence of discriminatory lending patterns or practices and has provided the analysis to FN Bank's board of directors and to the OTS. FNF Group also represents that it performs quarterly loan file compliance assessments to monitor compliance with lending laws and regulations. In addition, mortgage loan applications slated for denial undergo a second review to ensure complete and careful treatment of loan applicants and to prevent discriminatory lending practices. FN Bank also has implemented a formal complaint-resolution process managed by the bank's vice president for customer relations.

Based on a review of the entire record and for the reasons discussed above, including the consultations with the OTS and OCC, the Board has concluded that considerations relating to convenience and needs and the CRA performance records of FN Bank and Harleysville Bank are consistent with approval of the proposal.

Nonbanking Activities

FNF Group also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to retain its ownership interest in FN Bank and thereby operate a savings association and to engage in activities that are permissible for bank holding companies through its nonbanking subsidiaries, including lending, loan servicing

and related activities, leasing, and the sale of credit-related insurance.²⁶ The Board previously has determined by regulation that the operation of a savings association by a bank holding company, and the other nonbanking activities for which FNF Group has requested approval, are closely related to banking for purposes of section 4(c)(8) of the BHC Act.²⁷ As part of its evaluation of the public interest factors under section 4(j) of the BHC Act, the Board also must determine that the operation of FN Bank by FNF Group “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”²⁸

The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would provide the current and future customers of Harleysville Bank with expanded financial products and services. For the reasons discussed above, and based on the entire record, the Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Moreover, based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board

²⁶ 12 U.S.C. §§ 1843(c)(8) and 1843(j); see 12 U.S.C. § 1843(i).

²⁷ 12 CFR 225.28(b)(1), (2), (3), (4), (8), and (11).

²⁸ 12 U.S.C. § 1843(j)((2)(A).

has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

FNF Group engages in certain activities that are not permissible for a bank holding company. Section 4 of the BHC Act by its terms provides a company that becomes a bank holding company two years within which to conform (including by divestiture if necessary) its existing nonbanking investments and activities to the section's requirements, with the possibility of three one-year extensions.²⁹ FNF Group must conform any impermissible activities and investments that it currently conducts or holds, directly or indirectly, to the requirements of the BHC Act within the time periods provided by the act.

Noncontrolling Investment

As noted, FNF Group proposes to acquire 17.5 percent of Berkshire's voting shares that Harleysville currently owns and to increase up to 19.9 percent its total ownership interest of Berkshire's voting shares. Harleysville's investment in Berkshire is a passive investment, and Harleysville has complied with certain commitments previously relied on by the Board in determining that an investing bank holding company would not exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments").³⁰ FNF Group has stated that it does not propose to control or

²⁹ See 12 U.S.C. § 1843(a)(2).

³⁰ Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank

exercise a controlling influence over Berkshire and that its indirect investment in Berkshire Bank also would be a passive investment. In this light, FNF Group has provided the Passivity Commitments to the Board.³¹ For example, among other things, FNF Group has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Berkshire or any of its subsidiaries; not to have or seek to have any employee or representative of FNF Group or its affiliates serve as an officer, agent, or employee of Berkshire or any of its subsidiaries; and not to seek or accept representation on the board of directors of Berkshire or any of its subsidiaries. FNF Group also has committed not to attempt to influence the dividend policies, loan decisions, or operations of Berkshire Bank or any of its subsidiaries.

Based on these considerations and all the other facts of record, the Board has concluded that FNF Group would not acquire control of, or have the ability to exercise a controlling influence over, Berkshire or Berkshire Bank through the proposed acquisition of Berkshire's voting shares. The Board also notes that the BHC Act would require FNF Group to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of Berkshire or attempt to exercise a controlling influence over Berkshire or Berkshire Bank.³²

or bank holding company. See, e.g., Penn Bancshares, Inc., 92 Federal Reserve Bulletin C37 (2006) (acquisition of up to 24.89 percent of the voting shares of a bank holding company); S&T Bancorp Inc., 91 Federal Reserve Bulletin 74 (2005) (acquisition of up to 24.9 percent of the voting shares of a bank holding company); Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

³¹ The commitments made by FNF Group are set forth in Appendix B.

³² See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996); First Community Bancshares, Inc., 77 Federal Reserve Bulletin 50 (1991).

Conclusion

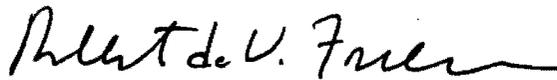
Based on the foregoing and all the facts of record, the Board has determined that the applications under section 3 and the notice under section 4 of the BHC Act should be, and hereby are, approved.³³ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by FNF Group with all the conditions imposed in this order and all the commitments made to the Board in connection with the applications and notice and on the receipt of all other required regulatory approvals for the proposal. The Board's approval of the proposed nonbanking activities is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and

³³ The commenter also requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). 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 262.3(e) and 262.25(d). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request 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 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.

225.25(c),³⁴ and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. 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 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 New York, acting pursuant to delegated authority.

By order of the Board of Governors,³⁵ effective March 25, 2010.



Robert deV. Frierson
Deputy Secretary of the Board

³⁴ 12 CFR 225.7 and 225.25(c).

³⁵ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

APPENDIX A

FNF Group's Nonbanking Subsidiaries

Nonbanking Subsidiaries Retained by FNF Group

- (1) Homestead Funding Corporation and thereby engage in activities related to extending credit, in accordance with section 225.28(b)(2) of Regulation Y (12 CFR 225.28(b)(2))

Nonbanking Subsidiaries Acquired from Harleystown by FNF Group

- (2) Harleystown Financial Company (in dissolution) and thereby engage in investment transactions as principal, in accordance with section 225.28(b)(8) of Regulation Y (12 CFR 225.28(b)(8))
- (3) Harleystown Reinsurance Company and thereby engage in insurance activities, in accordance with section 225.28(b)(11) of Regulation Y (12 CFR 225.28(b)(11))

APPENDIX B

FNF Group's Passivity Commitments

FNF Group will not, without the prior approval of the Board of Governors of the Federal Reserve System ("Board") or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Berkshire Bancorp, Inc. ("Berkshire"), Wyoming, Pennsylvania, or any of its subsidiaries;
2. Have or seek to have a representative of FNF Group serve on the board of directors of Berkshire or any of its subsidiaries;
3. Have or seek to have any employee or representative of FNF Group serve as an officer, agent, or employee of Berkshire or any of its subsidiaries;
4. Take any action that would cause Berkshire or any of its subsidiaries to become a subsidiary of FNF Group;
5. Acquire or retain shares that would cause the combined interests of FNF Group and its officers, directors, and affiliates to equal or exceed 19.9 percent of the outstanding voting shares of Berkshire or any of its subsidiaries;
6. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Berkshire or any of its subsidiaries;
7. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Berkshire or any of its subsidiaries;
8. Attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities, including the location of any offices or branches or their hours of operation, etc.; or any similar activities or decisions of Berkshire or any of its subsidiaries;
9. Dispose or threaten to dispose (explicitly or implicitly) of shares of Berkshire in any manner as a condition or inducement of specific action or non-action by Berkshire or any of its subsidiaries;
10. Enter into any other banking or nonbanking transactions with Berkshire or any of its subsidiaries, except that FNF Group may establish and maintain deposit

accounts with Berkshire, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Berkshire.

11. Acquire or seek to acquire any nonpublic financial information of Berkshire or any of its subsidiaries, beyond the information already available to it as a shareholder of Berkshire. FNF Group also confirms that there are no legal, contractual, or statutory provisions that would allow it or its subsidiaries to have any access to financial information of Berkshire or its subsidiaries beyond the information available to shareholders.

The terms used in these commitments have the same meanings as set forth in the BHC Act and the Board's Regulation Y.