

FEDERAL RESERVE SYSTEM

New York Community Bancorp, Inc.  
Westbury, New York

New York Community Newco, Inc.  
Westbury, New York

Order Approving the Acquisition of a Bank

New York Community Bancorp, Inc. (“NYCB”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), and New York Community Newco, Inc. (“Newco”), have requested the Board’s approval pursuant to section 3 of the BHC Act<sup>1</sup> to acquire Atlantic Bank of New York (“Atlantic Bank”), New York, New York.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (71 Federal Register 119 (2006)). The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act.<sup>3</sup>

NYCB, with total consolidated assets of approximately \$26.3 billion, operates two depository institutions, New York Community

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> NYCB would acquire Atlantic Bank from National Bank of Greece, S.A., Athens, Greece. NYCB has also requested the Board’s approval pursuant to section 3 for its subsidiary bank, New York Commercial Bank (“NY Commercial Bank”), Islandia, New York, to purchase all the assets and assume all the liabilities of Atlantic Bank in exchange for the subsidiary bank’s stock, which Atlantic Bank would immediately dividend back to NYCB. The proposed purchase-and-assumption transaction also is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) and the State of New York.

<sup>3</sup> Twenty commenters expressed concerns on various aspects of the proposal.

Bank (“NY Community Bank”), Flushing, New York, with branches in New Jersey and New York, and NY Commercial Bank,<sup>4</sup> with branches in New York.<sup>5</sup> NYCB is the eighth largest depository organization in New York, controlling deposits of approximately \$11.7 billion, which represent approximately 2 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

Atlantic Bank, with total consolidated assets of approximately \$2.7 billion, has branches only in New York. Atlantic Bank is the 30<sup>th</sup> largest insured depository institution in New York, controlling deposits of approximately \$1.8 billion.

On consummation of the proposal, NYCB would have consolidated assets of approximately \$29 billion. NYCB would remain the eighth largest depository organization in New York, controlling deposits of approximately \$13.5 billion, which represent approximately 2 percent of state deposits.

#### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant

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<sup>4</sup> On December 31, 2005, NYCB acquired Long Island Financial Corporation (“LIFC”) and thereby acquired its subsidiary bank, Long Island Commercial Bank (“LICB”), both of Islandia, New York. See New York Community Bancorp, Inc., 92 Federal Reserve Bulletin C33 (2006) (“NYCB/LIFC Order”). In connection with the acquisition, NYCB (1) changed the name of New York Commercial Bank, a limited-purpose bank wholly owned by NY Community Bank, to New York Municipal Bank (“NYMB”), Flushing, New York, and (2) renamed LICB as NY Commercial Bank. NYCB has represented that it intends to dissolve NYMB.

<sup>5</sup> Asset data are as of December 31, 2005, and statewide deposit and ranking data are as of June 30, 2005. Data reflect subsequent merger activity through March 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

banking market. In addition, section 3 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 its probable effect in meeting the convenience and needs of the community to be served.<sup>6</sup>

NYCB and Atlantic Bank compete directly in the Metro New York banking market (“New York banking market”).<sup>7</sup> The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. 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 NYCB and Atlantic Bank,<sup>8</sup> the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the

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<sup>6</sup> 12 U.S.C. § 1842(c)(1).

<sup>7</sup> The New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

<sup>8</sup> Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through March 6, 2006), 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 Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

Department of Justice Merger Guidelines (“DOJ Guidelines”),<sup>9</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation of the proposal, the market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.<sup>10</sup>

The DOJ also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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<sup>9</sup> 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.

<sup>10</sup> After the proposed acquisition, the HHI would increase 1 point to 1054. NYCB operates the tenth largest depository organization in the market, controlling deposits of approximately \$12.2 billion, which represent less than 2 percent of market deposits. Atlantic Bank is the 35<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$1.8 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, NYCB would operate the ninth largest depository institution in the market, controlling deposits of approximately \$14 billion, which represent less than 2 percent of market deposits. Two hundred and ninety depository institutions would remain in the banking market.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the New York banking market or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined 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 depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by NYCB, and public comment on the proposal.

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 banks and significant nonbanking 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.

The Board carefully considered the proposals under the financial factors. NYCB, Newco, their subsidiary depository institutions, and Atlantic Bank

are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash purchase. Based on its review of the record in this case, the Board believes that NYCB, Newco, and Atlantic Bank have sufficient financial resources to effect the proposal.

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 NYCB and its subsidiary depository institutions and Atlantic Bank, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Moreover, the Board has consulted with the FDIC, the primary federal banking supervisor of NYCB's subsidiary banks and Atlantic Bank.<sup>11</sup>

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<sup>11</sup> Commenters alleged that NY Community Bank holds mortgages on a significant number of deteriorated multifamily buildings in New York City and that it has failed to conduct adequate due diligence on the buildings before extending credit to the owners of these buildings. A commenter alleged that many of NY Community Bank's multifamily borrowers are overleveraged, thereby preventing them from maintaining their buildings in good condition. NYCB stated that it conducts inspections before closing mortgage transactions on multifamily residential properties and periodically reinspects the properties during the term of the loan. In its reinspection program for residential buildings, NYCB represented that its inspectors notify borrowers in writing of any deferred maintenance found during routine reinspections and that, when appropriate, follow-up actions are taken by NYCB. NYCB further represented that NY Community Bank has never incurred a loss on a multifamily loan in more than 25 years. The Board consulted with the FDIC, the primary federal regulator of NY Community Bank and NY Commercial Bank, about the adequacy of NY Community Bank's management of its multifamily loan programs. The Board notes that the supervisory guidance proposed by the banking agencies for institutions with concentrations in commercial real estate lending, including lending activities involving multifamily residential buildings, urges lenders to remain informed about any credit deterioration or value impairment affecting the collateral. See proposed Concentrations in Commercial Real Estate

The Board also has considered NYCB's plans for implementing the proposal, including the proposed management after consummation. NYCB, Newco, and their subsidiary depository institutions and Atlantic Bank are considered to be well managed.

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.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a 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").<sup>12</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating depository institutions' expansionary proposals.<sup>13</sup>

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of NYCB's subsidiary depository institutions and Atlantic Bank, data reported by NYCB under the

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Lending, Sound Risk Management Practices,

<http://www.federalreserve.gov/boarddocs/press/bcreg/2006/20060110/>.

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

<sup>13</sup> 12 U.S.C. § 2903.

Home Mortgage Disclosure Act (“HMDA”),<sup>14</sup> other information provided by NYCB, confidential supervisory information, and public comments received on the proposal.<sup>15</sup>

#### 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 insured depository institutions of both organizations. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.<sup>16</sup>

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<sup>14</sup> 12 U.S.C. § 2801 et seq.

<sup>15</sup> As discussed above in footnote 11, a number of commenters alleged that some of NY Community Bank’s multifamily loan borrowers do not maintain their properties appropriately, and some commenters identified specific landlords and buildings with alleged housing code violations. Most commenters asserted that NY Community Bank’s alleged failure to ensure good property maintenance by its mortgagor/residential landlords is a disservice to the tenants and the communities where the bank lends. They argued that the Board should deny the proposal or approve it only on the condition that NYCB address property maintenance concerns. NYCB represented that NY Community Bank contributes positively to the communities it serves by providing approximately \$14 billion in loans to building and apartment owners in the New York City area in the last five years. As noted above, NYCB has provided information about its preclosing-inspection and postclosing-reinspection programs for its multifamily loans, and the Board has consulted with the FDIC about the adequacy of NY Community Bank’s management of its multifamily lending program. The Board has also considered the weight given to those loans by the FDIC in its evaluation of the CRA performance record of NY Community Bank. In addition, the Board has previously considered these allegations in the context of NYCB’s application to acquire LIFC. See NYCB/LIFC Order.

<sup>16</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620, 36,640 (2001).

NY Community Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 25, 2002.<sup>17</sup> NY Commercial Bank, formerly LICB, received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 15, 2004. Atlantic Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 7, 2005. NYCB has represented that it intends to implement Atlantic Bank’s CRA program at NY Commercial Bank.

#### B. HMDA Data and Fair Lending Record

The Board has carefully considered NY Community Bank’s lending record and HMDA data in light of public comment about the bank’s record of lending to minorities. Two commenters expressed concern, based on 2004 HMDA data in certain Metropolitan Statistical Areas (“MSAs”) in New York and New Jersey, that NY Community Bank has (1) denied or excluded the home mortgage and refinance applications of African-American and Latino borrowers more frequently than those of nonminority applicants and (2) lagged its competitors in conventional home mortgage lending in minority geographies.<sup>18</sup> In its

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<sup>17</sup> A commenter alleged that NY Community Bank maintains few full-service branches in low-income, minority neighborhoods. FDIC examiners reported in the most recent CRA performance evaluation of NY Community Bank that the bank had a limited branch presence in the low-income census tracts of its assessment area. Examiners noted, however, that new branch openings and relocations during the evaluation period improved the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Overall, NY Community Bank’s performance was rated “low satisfactory” for the service test. Atlantic Bank and LICB each received a “high satisfactory” rating for the service test at its most recent CRA performance evaluation, and examiners noted that the retail banking services of each bank were reasonably available to all segments of its assessment area, including LMI geographies.

<sup>18</sup> One commenter complained that NYCB provided the 2004 HMDA data of NY Community Bank on paper rather than electronically in the CD ROM format requested by the commenter. The Board notes that neither HMDA nor the CRA

consideration of NYCB's proposal to acquire LIFC, the Board reviewed essentially these same allegations in light of the HMDA data for 2004 reported by NY Community Bank in its assessment area.<sup>19</sup>

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to support a conclusion on whether or not NY Community Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups 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.<sup>20</sup> HMDA data, therefore, have limitations that make them an inadequate basis, absent

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require financial institutions to provide HMDA data in an electronic format on written request. See 12 CFR 203.5. Another commenter expressed concern that NY Community Bank did not consistently report the ethnicity, race, and gender of denied applicants. The Board has consulted with the FDIC about the bank's compliance with HMDA reporting requirements. The Board and the other banking agencies make HMDA data available to the public through the Federal Financial Institutions Examination Council, which provides HMDA data through its website and in CD ROM format on request.

<sup>19</sup> The Board reviewed 2004 HMDA data reported by NY Community Bank in portions of the following Metropolitan Divisions that comprise the bank's assessment area: (1) Nassau-Suffolk, New York; (2) New York-White Plains-Wayne, New York-New Jersey ("New York City MD"); and (3) Newark-Union, New Jersey-Pennsylvania. See NYCB/LIFC Order.

<sup>20</sup> 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.

other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless 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. 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 on-site evaluations of compliance by NY Community Bank with fair lending laws. In the fair lending review conducted in conjunction with the bank's CRA evaluation in 2002, examiners noted no violations of the substantive provisions of applicable fair lending laws. In addition, the Board has consulted with the FDIC, the primary federal supervisor of NY Community Bank, about the bank's record of compliance with fair lending laws and other consumer protection laws.

As noted in the NYCB/LIFC Order, the record also indicates that NYCB has taken steps designed to ensure compliance with fair lending laws and other consumer protection laws. NYCB represented that it has implemented fair lending policies, procedures, and training programs at NY Community Bank and that all lending department personnel at the bank are required to take annual compliance training. NYCB further represented that the bank's fair lending policies and procedures are designed to help ensure that loan officers price loans uniformly, illegally discriminatory loan products are avoided, and current and proposed lending activities and customer complaints are reviewed. NY Community Bank conducts independent audits of its lending activities, and audit results are provided to its Audit Committee of the Board of Directors, Compliance Department, and

Legal Department. The bank also analyzes HMDA Loan Application Register data to help assess its lending activities for compliance with the CRA.

NYCB has represented that NY Commercial Bank maintains similar policies and programs designed to ensure compliance with applicable fair lending and consumer protection laws. NYCB intends to combine the compliance programs of NY Commercial Bank and NY Community Bank into one comprehensive compliance program managed through NYCB.

The Board also has considered the HMDA data in light of other information, including NY Community Bank's CRA lending programs and the overall performance records of NY Community Bank and Atlantic Bank under the CRA.<sup>21</sup> These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

#### C. Conclusion on Convenience and Needs and CRA Performance Records

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 NYCB, comments received on the proposal, and confidential supervisory information.<sup>22</sup> The Board notes that the proposal would expand

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<sup>21</sup> A commenter also expressed concern, based on 2004 HMDA data, that the percentage of NY Community Bank's total number of conventional home mortgage loans and refinancings in LMI census tracts in the New York City MD lagged the percentages for the aggregate of lenders ("aggregate lenders"). The Board notes that the percentage of NY Community Bank's total HMDA-reportable loans in LMI census tracts and to LMI individuals in the New York City MD exceeded the percentages for the aggregate lenders.

<sup>22</sup> A commenter expressed concern about planned branch closures at NY Community Bank. NYCB has represented that it does not plan to close any branches in connection with this proposal or the planned merger of Atlantic Bank into NY Commercial Bank. The Board notes that federal law will require NYCB or its subsidiary banks to provide notice before the date of any proposed branch closing, including a 30-day advance notice to the public and a 90-day

the availability and array of banking products and services to Atlantic Bank's customers, including access to expanded branch and ATM networks. 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 in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.<sup>23</sup> The Board's approval is specifically conditioned on compliance by

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advance notice to the FDIC and customers of the branch. 12 U.S.C. § 1831r-1, as implemented by Joint Policy Statement Regarding Branch Closings, 64 Federal Register 34,844 (1999). The bank also must provide reasons and other supporting data for the proposed closure, consistent with the institution's written policy for branch closings. The Board notes that the FDIC, as the appropriate federal supervisor of NY Community Bank and NY Commercial Bank, will continue to review each depository institution's branch closing record during CRA performance evaluations.

<sup>23</sup> Several commenters requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing or meeting on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if 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 commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written

NYCB with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction shall 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 by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>24</sup> effective March 30, 2006.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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comments do not present their views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

<sup>24</sup> Voting for this action: Chairman Bernanke and Governors Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson and Governor Bies.