

FEDERAL RESERVE SYSTEM

M&P Community Bancshares, Inc. 401(k) Employee Stock Ownership Plan
Newport, Arkansas

Order Approving the Formation of a Bank Holding Company and
Determination on a Financial Holding Company Election

M&P Community Bancshares, Inc. 401(k) Employee Stock Ownership Plan (“Applicant”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become a bank holding company by acquiring an additional 1.63 percent, for a total of 26.58 percent, of the voting shares of M&P Community Bancshares, Inc. (“M&P BHC”), Newport, a financial holding company within the meaning of the BHC Act, and to acquire control of Merchants & Planters Bank (“M&P Bank”), Newport, and Greers Ferry Lake State Bank (“GFLS Bank”), Heber Springs, all of Arkansas. Applicant also has filed an election to become a financial holding company pursuant to section 4(l) of the BHC Act and section 225.82 of the Board’s Regulation Y.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 Federal Register 933 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

¹ 12 U.S.C. § 1842.

² 12 U.S.C. § 1843(l); 12 CFR 225.82(f).

Applicant is an employee stock ownership plan (“ESOP”) organized under section 4975(e)(7) of the Internal Revenue Service Code.³ Applicant has an underlying trust that is organized on behalf of the employees of M&P BHC, M&P Bank, and GFLS Bank and invests in the shares of M&P BHC.

M&P BHC, with total consolidated assets of approximately \$199 million, is the 50th largest depository organization in Arkansas, controlling deposits of approximately \$170 million.⁴ M&P BHC operates two subsidiary depository institutions with branches only in Arkansas, M&P Bank and GFLS Bank, and several nonbanking subsidiaries.⁵

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 an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a 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.⁶

³ 26 U.S.C. § 4975(e)(7).

⁴ State deposit data are as of June 30, 2005, and ranking data reflect mergers consummated before April 26, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁵ Applicant proposes to acquire indirectly the shares of the nonbanking subsidiaries of M&P BHC in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y. 12 U.S.C. § 1843(k); 12 CFR 225.87.

⁶ 12 U.S.C. § 1842(c)(1).

Applicant does not currently control any depository institution and the proposal would not result in an expansion of M&P BHC. 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 any 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 banking supervisors of the organizations involved, financial and other information provided by Applicant, and public comment on the proposal.⁷

⁷ One commenter, a minority shareholder of M&P BHC (“Commenter”), alleged that M&P BHC’s management has engaged in self-dealing and breached its fiduciary duties. In particular, Commenter questioned the valuation of M&P BHC stock in connection with certain stock transactions involving the company’s management officials and has filed a shareholder derivative suit involving these allegations in an Arkansas court against M&P BHC’s board of directors. Management has denied any wrongdoing or breach of fiduciary duty in the pending lawsuit, and the matter is currently under review in the appropriate legal forum. The Board does not have authority to resolve this dispute. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). Moreover, action on this proposal would not interfere with the court’s ability to resolve the pending litigation.

In evaluating financial factors in BHC Act proposals involving an ESOP, the Board reviews the financial condition of the ESOP as well as the related bank holding company and its subsidiaries. The Board considers a variety of measures in this evaluation, including the financial obligations and cash flow of the ESOP, and the capital adequacy, asset quality, and earnings performance of the banking organization. In assessing financial factors, the Board has considered capital adequacy to be especially important. The Board also evaluates the financial effects of the proposed transaction on the condition of the organization, including the organization's capital position, earnings prospects, and the impact of the proposed funding of the transaction. M&P BHC and each of its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Applicant has sufficient financial resources to effect the proposal and that the financial resources of M&P BHC and its subsidiaries would not be adversely affected by the proposal. The proposed transaction is structured as a cash purchase.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of M&P BHC and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. The Board notes that the three trustees of Applicant's underlying trust are outside directors of M&P BHC. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organization and its record of compliance with applicable banking law. M&P BHC and its subsidiary depository institutions 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 Applicant and the institutions involved are consistent with approval, as are the other supervisory factors under the BHC Act.⁸

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).⁹ M&P Bank, M&P BHC’s lead bank, received an overall “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of October 2002. GFLS Bank also received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of August 2002.

⁸ Commenter expressed concern about the managerial resources of M&P BHC. In addition to the stock valuation and fiduciary duty concerns discussed above, Commenter asserted that M&P BHC’s management may have acquired shares of the company through Applicant in a manner that would have required applications to the Board for prior approval under the BHC Act. The Board has considered this allegation in the context of all the facts of record regarding the management of M&P BHC, and it has reviewed information provided by both Commenter and Applicant, as well as confidential supervisory information about the ownership and transfer of M&P BHC shares. The record does not support a finding that Applicant previously acquired more than 24.9 percent of M&P BHC in violation of the BHC Act. Commenter also asserted that the organization’s management mishandled a relationship with a delinquent business-loan customer. The Board has reviewed confidential examination reports about this lending relationship. In addition, the Board forwarded these comments to, and consulted with, both the Federal Deposit Insurance Corporation (“FDIC”) and the Arkansas State Bank Department, the primary supervisors of M&P BHC’s subsidiary depository institutions, about Commenter’s allegations concerning the management of M&P BHC and its operation of the subsidiary depository institutions. As noted above, M&P BHC and its subsidiary depository institutions are considered to be well managed.

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

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved and confidential supervisory information. Based on all the facts of record, the Board concludes that the considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Financial Holding Company Declaration

As noted, Applicant has also filed with the Board an election to become a financial holding company pursuant to section 4(l) of the BHC Act and section 225.82 of Regulation Y. Applicant has certified that all depository institutions controlled by M&P BHC are well capitalized and well managed and will remain so on consummation of the proposal. Applicant has also provided all the information requested under Regulation Y.

The Board has reviewed the examination rating received by each insured depository institution controlled by M&P BHC under the CRA and other relevant examinations and information. Based on all the facts of record, the Board has determined that the election to become a financial holding company will become effective on Applicant's consummation of the proposed share acquisition.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicant with the conditions imposed in this order and the commitments made

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

The proposed transaction 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 St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁰ effective May 23, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁰ Voting for this action: Chairman Bernanke and Governors Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Governor Bies.