

FEDERAL RESERVE SYSTEM

Trustmark Corporation
Jackson, Mississippi

Order Approving the Merger of Bank Holding Companies

Trustmark Corporation (“Trustmark”), a bank 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 Act¹ to merge with Republic Bancshares of Texas, Inc. (“Republic”) and acquire its subsidiary bank, Republic National Bank (“Republic Bank”), both of Houston, Texas.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (71 Federal Register 30,680 (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.

Trustmark, with total consolidated assets of approximately \$8.2 billion, is the 110th largest depository organization in the United States.³

¹ 12 U.S.C. § 1842.

² Trustmark’s lead subsidiary bank, Trustmark National Bank (“Trustmark Bank”), also of Jackson, has filed an application with the Office of the Comptroller of the Currency (“OCC”) to merge Republic Bank into Trustmark Bank pursuant to the Bank Merger Act (12 U.S.C. § 1828(c)).

³ Asset data are as of March 31, 2006, and nationwide ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through May 5, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Trustmark operates subsidiary insured depository institutions in Florida, Mississippi, Tennessee, and Texas. In Texas, Trustmark is the 195th largest depository organization, controlling deposits of approximately \$139 million.

Republic, with total consolidated assets of approximately \$654 million, operates one subsidiary insured depository institution in Texas. Republic is the 64th largest depository organization in the state, controlling deposits of approximately \$541 million.

On consummation of this proposal, Trustmark would become the 104th largest insured depository organization in the United States, with total consolidated assets of approximately \$8.9 billion. In Texas, Trustmark would become the 54th largest depository organization, controlling deposits of approximately \$680 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

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 purposes of the BHC Act, the home state of Trustmark is Mississippi,⁴ and Republic is located in Texas.⁵

⁴ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on 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).

⁵ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)-(7), 1842(d)(1)(A) and (d)(2)(B).

Based on a review of all the facts of record, including a review of relevant 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.⁶ 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 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.⁷

Trustmark and Republic compete directly in the Houston, Texas banking market (“Houston Market”).⁸ The Board has reviewed carefully

⁶ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). Trustmark is adequately capitalized and adequately managed, as defined by applicable law. Republic Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Trustmark 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. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

⁷ 12 U.S.C. § 1842(c)(1).

⁸ The Houston Market is defined as the Houston–Sugar Land–Baytown Metropolitan Statistical Area (“MSA”), which includes Austin, Brazoria,

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 market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Trustmark and Republic,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the market.

Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties, all in Texas.

⁹ Deposit and market share data are as of June 30, 2005, reflect merger activity through May 5, 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, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (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, 55 (1991).

¹⁰ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 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 and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines. After consummation, the Houston Market would remain highly concentrated as measured by the HHI, with no increase in concentration, and numerous competitors would remain in the market.¹¹

The DOJ also has conducted a detailed review of the potential 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.

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 Houston Market or in any other relevant banking market. Accordingly, 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

¹¹ In the Houston Market, Trustmark is the 50th largest depository organization, controlling deposits of \$139 million, which represent less than 1 percent of market deposits. Republic is the 22nd largest depository organization in the market, controlling deposits of \$541 million, which represent less than 1 percent of market deposits. On consummation of the proposed merger, Trustmark would become the 20th largest depository institution in the Houston Market, controlling deposits of approximately \$680 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2161, and 106 competitors would remain in the market.

Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Trustmark, and public comments received 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. The Board considers a variety of factors in this evaluation, 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 considered carefully the proposal under the financial factors. Trustmark, both of its subsidiary banks, and Republic Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of these factors, the Board finds that Trustmark has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase.

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 Trustmark, Republic, and their subsidiary banks, 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, including anti-money laundering laws. Trustmark, Republic, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Trustmark's plans for implementing the proposal, including the proposed management after consummation.

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 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").¹² The CRA requires the federal financial supervisory agencies to encourage insured depository 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 a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹³

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

¹³ 12 U.S.C. § 2903.

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Trustmark's and Republic's subsidiary banks, data reported by Trustmark under the Home Mortgage Disclosure Act ("HMDA"),¹⁴ other information provided by Trustmark, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data reported by Trustmark for its Jackson, Mississippi, and Memphis, Tennessee assessment areas, that Trustmark engaged in discriminatory treatment of minority individuals in its home mortgage lending.¹⁵

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

¹⁴ 12 U.S.C. § 2801 et seq.

¹⁵ The commenter expressed concern about Trustmark's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate when so required. Trustmark has stated that it makes loans to such nontraditional providers under the same terms, circumstances, and due diligence procedures as are applicable to Trustmark's other small business borrowers. Trustmark has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁶

Trustmark Bank, Trustmark's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating from the OCC at its most recent CRA performance evaluation, as of November 2, 1998.¹⁷ Trustmark's other subsidiary bank, Somerville Bank & Trust Company ("Somerville Bank"), Somerville, Tennessee, received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC") at its most recent CRA evaluation, as of September 23, 2002. In addition, Republic Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of November 4, 2005. Trustmark has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from Republic after the merger of Trustmark Bank and Republic Bank.

B. HMDA and Fair Lending Record

The Board has considered carefully the lending records of Trustmark's subsidiary banks in light of public comment about their records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Trustmark had disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants in the Memphis, Tennessee MSA and African-American applicants in the Jackson, Mississippi MSA. The commenter also asserted, based on 2004 HMDA data, that Trustmark made higher-

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

¹⁷ As of March 31, 2006, Trustmark Bank accounted for approximately 97.5 percent of the total domestic deposits of Trustmark's two subsidiary banks.

cost loans¹⁸ in the Jackson MSA more frequently to African Americans than to nonminorities.¹⁹

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 provide an insufficient basis by themselves on which to conclude whether or not Trustmark or its subsidiaries are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis.²⁰ The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.²¹ HMDA data, therefore, have limitations that make them an inadequate

¹⁸ Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate exceeds the yield for U.S. Treasury securities of comparable maturity by 3 or more percentage points for first-lien mortgages and by 5 or more percentage points for second-lien mortgages. 12 CFR 203.4.

¹⁹ The comments have been forwarded to the OCC, the primary federal supervisor of Trustmark Bank, for its consideration in the context of evaluating the bank for compliance with fair lending laws and regulations.

²⁰ The Board analyzed the 2004 and preliminary 2005 HMDA data reported by Trustmark Bank in the Jackson and Memphis MSAs and in its statewide assessment areas in Tennessee, Florida, Louisiana, Mississippi, and Texas.

²¹ 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.

basis, absent 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 lending institutions 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 Trustmark's subsidiary banks with fair lending laws.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of Trustmark's subsidiary banks. In addition, the record indicates that Trustmark has taken steps to ensure compliance with fair lending and other consumer protection laws. Trustmark employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, Trustmark monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets and by conducting a more extensive internal comparative file review when merited. Trustmark also provides annual fair lending training to all its lending personnel.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of Trustmark's subsidiary banks. Based on all the facts of record, the Board concludes that Trustmark's

established efforts and record demonstrate that Trustmark is active in helping to meet the credit needs of all of its communities.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Trustmark, comments received on the proposal, and confidential supervisory information. Trustmark has represented that the proposed transaction would provide Republic's customers with expanded products and services. Based on a review of the entire record and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.²²

²² The commenter 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 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 commenter's request in light of all the facts of record. In the Board's view, the commenter 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 commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing 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 request for a public hearing or meeting on the proposal is denied.

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. The Board's approval is specifically conditioned on compliance by Trustmark 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors,²³ effective August 3, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²³ Voting for this action: Chairman Bernanke and Governors Bies, Kohn, Kroszner, and Warsh.