

FEDERAL RESERVE SYSTEM

Fifth Third Bancorp  
Cincinnati, Ohio

Fifth Third Financial Corporation  
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies

Fifth Third Bancorp (“Fifth Third”) and its wholly owned subsidiary, Fifth Third Financial Corporation (collectively “Applicants”), both financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the BHC Act<sup>1</sup> to acquire First Charter Corporation (“First Charter”) and its subsidiary bank, First Charter Bank (“FC Bank”), both of Charlotte, North Carolina.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 Federal Register 54,446 (2007)). 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 the BHC Act.<sup>2</sup>

Fifth Third, with total consolidated assets of approximately \$111 billion, is the 18<sup>th</sup> largest depository organization in the United States.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Thirty-five commenters supported the proposal and ninety-eight commenters expressed concerns about various aspects of the proposal.

<sup>3</sup> Asset, national ranking, and national deposit data are as of December 31, 2007. Statewide deposit data are as of June 30, 2007, adjusted to reflect mergers through March 26, 2008.

Fifth Third operates three subsidiary banks in eleven states and controls \$70.3 billion in deposits.<sup>4</sup>

First Charter has total consolidated assets of approximately \$4.9 billion and controls \$3.2 billion in deposits. Its only subsidiary bank, FC Bank, operates in North Carolina and Georgia. First Charter is the seventh largest depository organization in North Carolina, controlling \$3.1 billion in deposits, which represent 1.5 percent of the total amount of deposits of insured depository institutions in the state.<sup>5</sup>

On consummation of the proposal, Fifth Third would remain the 18<sup>th</sup> largest depository organization in the United States, with total consolidated assets of approximately \$115.8 billion. Fifth Third would control deposits of approximately \$73.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

#### Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Fifth Third is Ohio,<sup>6</sup>

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<sup>4</sup> Applicants' subsidiary banks are Fifth Third Bank ("Ohio Bank"), Cincinnati, Ohio; Fifth Third Bank ("Michigan Bank"), Grand Rapids, Michigan; and Fifth Third Bank, N.A. ("Tennessee Bank"), Nashville, Tennessee. Through those banks, Applicants operate branches in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, and West Virginia.

<sup>5</sup> In this order, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>6</sup> See 12 U.S.C. § 1842(d). 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.

and First Charter is located in Georgia and North Carolina.<sup>7</sup>

Based on a review of all the facts of record, including 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.<sup>8</sup> In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the 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>9</sup>

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<sup>7</sup> 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. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and 1842(d)(2)(B).

<sup>8</sup> 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). Applicants are adequately capitalized and adequately managed, as defined by applicable law. FC Bank has been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1842(d)(2)(A). Applicants would control less than 30 percent of the state deposits in Georgia, and the proposal is not subject to any other deposit caps under state law. 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.

<sup>9</sup> 12 U.S.C. § 1842(c)(1).

Applicants and First Charter do not compete directly in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors 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 banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information received from the relevant federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Applicants, and public comment received on the proposal.<sup>10</sup>

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<sup>10</sup> Many of the commenters expressed concern over Applicants' employment practices, particularly in light of (1) Michigan Bank's settlement agreement in July 2004 in a suit brought by the United States Equal Employment Opportunity Commission ("EEOC") alleging employment discrimination on the basis of gender in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"); and (2) Ohio Bank's March 2000 settlement agreement with the United States Department of Labor ("DOL") to resolve allegations that the bank had engaged in race and gender discrimination at the bank's Cincinnati headquarters in violation of equal employment opportunity requirements for federal contractors. Both settlement agreements involve issues entrusted to other federal agencies as a matter of law and were resolved by those agencies. Under Title VII, the EEOC has primary federal responsibility for investigating and taking legal action against allegations of employment discrimination, and by Executive Order, DOL is responsible for ensuring that federal contractors comply with equal employment opportunity requirements.

In evaluating the financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, 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, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial resources of the organizations involved in the proposal. Applicants, First Charter, and their subsidiary banks are well capitalized and would remain so on consummation of this proposal. Based on its review of the record, the Board finds that Applicants have sufficient resources to effect the proposed transaction, which is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of the organizations involved in the proposed transaction. The Board has reviewed the examination records of Applicants, First Charter, 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 other relevant banking supervisory agencies, including the Office of the Comptroller of the Currency (“OCC”), with the organizations and their records of compliance with applicable banking law and with anti-money

laundrying laws. Applicants, First Charter, and their subsidiary depository institutions are considered to be well managed. The Board also has considered plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>11</sup> 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.<sup>12</sup>

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of Applicants and First Charter, data reported by Applicants and

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<sup>11</sup> 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

<sup>12</sup> 12 U.S.C. § 2903.

First Charter under the Home Mortgage Disclosure Act (“HMDA”),<sup>13</sup> other information provided by Applicants, confidential supervisory information, and public comment received on the proposal.<sup>14</sup> Several commenters criticized the amounts and types of community development investments made by the subsidiary banks of Applicants and First Charter. Some commenters asserted that Applicants and First Charter operate too few branches in LMI or predominantly minority census tracts.<sup>15</sup> In addition, a number of commenters contended, based on HMDA data, that Applicants and First Charter had engaged in disparate treatment of minority individuals in home mortgage lending.

#### A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site

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<sup>13</sup> 12 U.S.C. § 2801 et seq.

<sup>14</sup> Several commenters urged the Board to require Applicants to provide specific CRA pledges or plans or to require them to take certain actions in the future. The Board consistently has stated that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization and that the enforceability of any such third-party pledges, initiatives, or agreements are matters outside the CRA. See, e.g., Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

<sup>15</sup> For purposes of this analysis, a predominantly minority census tracts is a census tract with a minority population of 80 percent or more.

evaluation of the institution's overall record of performance under the CRA by the institution's appropriate federal supervisor.<sup>16</sup>

Ohio Bank, Applicants' largest subsidiary bank as measured by assets and deposits, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland, as of July 5, 2005 ("2005 Evaluation").<sup>17</sup> Applicants' two other subsidiary banks received ratings of "outstanding" or "satisfactory" at their most recent CRA performance evaluations.<sup>18</sup>

FC Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond, as of March 6, 2006 ("2006 Evaluation").<sup>19</sup> Fifth Third has represented that it will implement Fifth Third Bank's CRA program at the combined organization on consummation of the proposal.

*CRA Performance of Ohio Bank.* In addition to the overall "outstanding" rating that Ohio Bank received in the 2005 Evaluation,<sup>20</sup> the

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<sup>16</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

<sup>17</sup> The evaluation period was January 1, 2003, through December 31, 2004.

<sup>18</sup> Michigan Bank received an "outstanding" rating by the Federal Reserve Bank of Chicago, as of July 5, 2005, and Tennessee Bank received a "satisfactory" rating by the OCC, as of May 16, 2005.

<sup>19</sup> The evaluation period for HMDA-reportable loans and small loans to businesses was January 1, 2004, through December 31, 2005. "Small loans to businesses" are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. The evaluation period for the bank's community development loans, investments, and services was February 2, 2004, through December 31, 2005.

<sup>20</sup> Examiners considered the performance of certain subsidiaries of Applicants in the 2005 Evaluation. References to Ohio Bank in the convenience and needs analysis in this order incorporate these entities. The 2005 Evaluation focused on

bank received separate overall “outstanding” or “satisfactory” ratings in all the states and multistate metropolitan areas reviewed.<sup>21</sup> Examiners reported that Fifth Third Bank’s overall level of lending activity was excellent and that the geographic distribution of loans was good.<sup>22</sup> They also stated that the bank’s distribution of loans to borrowers reflected a good penetration among customers of different income levels and to businesses of different revenue sizes.

In the 2005 Evaluation, examiners characterized Ohio Bank as a leader in making community development loans in its assessment areas, reporting that the bank made more than 190 community development loans totaling more

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Ohio Bank’s CRA performance in its assessment areas in Ohio, which together accounted for more than 95 percent of the bank’s lending activity during the evaluation period. In Ohio, examiners conducted full-scope reviews of the bank’s performance in the Cincinnati and Columbus metropolitan statistical areas (“MSAs”) and in nonmetropolitan areas in Northwestern Ohio and in the Ohio Valley, which together accounted for approximately 58 percent of the bank’s lending activity during the evaluation period. Examiners also conducted limited-scope reviews of the bank’s performance in six other MSAs in Ohio. In addition, the 2005 Evaluation reviewed Ohio Bank’s CRA performance in Michigan, Pennsylvania, and West Virginia and in the Huntington-Ashland multistate metropolitan area in Kentucky, Ohio, and West Virginia.

<sup>21</sup> One commenter expressed concern that Ohio Bank received “low satisfactory” or lower ratings under some of the component tests for Michigan, Pennsylvania, and the Huntington-Ashland multistate metropolitan area. Examiners noted that Ohio Bank entered Pennsylvania by establishing de novo branches in December 2004, which was the end of the evaluation period. The bank received higher ratings under the lending and other tests in other areas, and examiners concluded that the bank’s record of CRA performance during the review period, when viewed as a whole, warranted a rating of “outstanding.”

<sup>22</sup> A commenter criticized the level of higher-cost loans made by Ohio Bank in LMI census tracts in the Cincinnati MSA. The Board notes that during 2005 and 2006 in that MSA, 6.4 percent of Applicants’ HMDA-reportable loans in LMI census tracts were higher-cost loans, compared with 37 percent for lenders in the aggregate.

than \$220 million during 2003 and 2004. Examiners noted that this dollar volume represented an increase of more than 46 percent from the volume of its community development lending during the previous evaluation period.

Since the 2005 Evaluation, Ohio Bank has continued to make a substantial volume of loans. For example, the bank's HMDA-reportable loans throughout its assessment areas totaled more than \$6.2 billion in 2005 and 2006. In addition, Applicants represented that the bank made approximately \$243 million in total qualified community development loans throughout its assessment areas in 2005 and 2006.

In the 2005 Evaluation, examiners rated Ohio Bank's overall performance under the investment test as "outstanding." Qualifying community development investments totaled more than \$49 million during the evaluation period. Applicants represented that Ohio Bank has increased its community development investment activity since the 2005 Evaluation and noted that the bank had made qualified investments totaling more than \$101 million during 2005 and 2006.

In the 2005 Evaluation, examiners concluded that the bank's performance under the service test was "outstanding." Examiners found that the bank's retail delivery systems were accessible to all segments of the bank's assessment areas. They reported that the geographic distribution of the bank's Ohio branches was reasonable, with 18 percent of its branches in the state in LMI areas, as of year-end 2004. In addition, examiners noted that bank's directors, officers, and employees participated in numerous organizations and activities that promoted or facilitated affordable housing and services for LMI individuals and revitalization of LMI areas. Applicants have represented that since the 2005 Evaluation, Ohio Bank has continued to provide community

development services, including financial literacy training for individuals and technical assistance to nonprofits and small businesses.

*CRA Performance of FC Bank.* As noted, FC Bank received an overall “satisfactory” rating in the 2006 Evaluation. Under the lending test, FC Bank received a “high satisfactory” rating, and examiners reported that the bank’s distribution of lending in its assessment areas reflected a good penetration among retail customers of different income levels and business customers of varying sizes. Examiners concluded that the bank’s community development lending was adequate, noting that such lending included more than \$5 million in loans to a consortium providing long-term permanent financing for LMI multifamily housing developments throughout North Carolina.<sup>23</sup>

The bank received a “low satisfactory” rating under the investment test in the 2006 Evaluation. Examiners reported that the bank’s level of qualified community development investments was considered adequate relative to available opportunities. The bank had qualified community development investments totaling approximately \$4 million and commitments to fund an additional \$2.2 million. These investments facilitated housing for LMI residents of North Carolina and provided for microenterprise development in the state.

In the 2006 Evaluation, FC Bank received a “low satisfactory” rating on the service test. Examiners concluded that FC Bank’s branch locations were reasonably accessible to all segments of the bank’s assessment areas.<sup>24</sup>

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<sup>23</sup> Several commenters asserted that the bank should have made more community development loans to, and more investments in, community development corporations. The CRA does not require banks to provide any particular type of qualified community development loans or investments to meet the credit needs of their communities.

<sup>24</sup> Three commenters alleged that a disproportionately small number of the bank’s branches were in LMI census tracts. As noted above, examiners

Examiners reported that the bank provided a good level of community development services.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Applicants and First Charter in light of public comments received on the proposal. Two commenters alleged that Applicants had made a disproportionately small number of prime loans in predominantly minority census tracts in the Cincinnati MSA.<sup>25</sup> Several commenters contended that from 2004 through 2006, First Charter's record of HMDA-reportable loans to minority borrowers and communities indicated disproportionately low loan application rates, high denial rates, and low lending volume.<sup>26</sup> Two commenters also stated that First Charter made a disproportionately small number of prime loans to African Americans in the Charlotte MSA. The Board has focused its analysis on the 2005 and 2006 HMDA data reported by Applicants and First Charter.<sup>27</sup>

Many commenters expressed concern about Applicants' record of compliance with fair lending laws in light of an agreement between Applicants and the United States Department of Justice ("DOJ") in 2004 ("2004 Agreement").

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concluded that FC Bank's branch locations were reasonably accessible. After consummation of the proposal, examiners will continue to evaluate the branch network of the resulting bank's CRA performance under the service test.

<sup>25</sup> One commenter asserted that Applicants did not make an adequate number of small business loans in predominantly minority communities or to minority borrowers generally.

<sup>26</sup> In addition, one commenter asserted that FC Bank deliberately located a branch in Landis, North Carolina, rather than in a nearby town with a larger population of African Americans. The Board notes that FC Bank acquired this branch in 1987 as part of the bank's merger with Merchants & Farmers Bank, Landis.

The 2004 Agreement settled allegations by DOJ that a banking corporation acquired by Fifth Third, Old Kent Financial Corporation (“Old Kent”), Grand Rapids, Michigan, had violated federal fair lending laws between 1996 and 2000. The alleged violations included operating more than 50 branches in the Detroit MSA but none in the City of Detroit and making only 335 small business, home improvement, and home refinance loans in predominantly minority census tracts in the MSA. Applicants acquired Old Kent in 2001, and the matters addressed in the 2004 Agreement occurred before that acquisition.

The 2004 Agreement required Applicants to open at least three branches and to spend at least \$3 million on interest-rate subsidies, down-payment or closing-cost grants, or other financial assistance to small business and home mortgage borrowers in the City of Detroit during a three-year period. Michigan Bank currently operates four branches in the City of Detroit, and in 2005 and 2006, Fifth Third originated 425 small business, home refinance, and home improvement loans totaling more than \$85 million in predominantly minority census tracts in the Detroit MSA. The 2004 Agreement expired in February 2008.

The Board and other federal banking agencies review fair lending compliance in connection with their regular consumer compliance examinations of banks. Depending on the risk factors presented, those examinations might include transactional analysis, analysis of potential evidence of “steering” and “redlining,” and review of marketing practices, among other matters.<sup>28</sup> If during an examination the reviewing agency concludes that a bank has engaged in a

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<sup>27</sup> The Board analyzed HMDA data for Applicants’ assessment areas nationwide and in Ohio and Cincinnati and for First Charter’s assessment areas in North Carolina and the Asheville, Charlotte, and Raleigh MSAs.

<sup>28</sup> See Interagency Fair Lending Examination Procedures, an attachment to the Board’s Consumer Affairs Letter No. CA 04-8, dated October 24, 2004.

pattern or practice of lending discrimination, that agency must refer the evidence to DOJ<sup>29</sup> and must take the evidence into account when rating the bank's CRA performance.<sup>30</sup> In connection with their ongoing supervisory responsibilities, the Board and Reserve Banks will continue to periodically review the compliance of Ohio Bank and Michigan Bank with fair lending laws,<sup>31</sup> and the OCC will perform similar reviews of Tennessee Bank.<sup>32</sup>

As part of its compliance reviews, the Board carefully assesses HMDA data reported by the banking organizations it supervises. As noted, the Board also has carefully reviewed the HMDA data reported by Applicant and First Charter in reviewing this proposal. 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 Applicants or First Charter exclude any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information,<sup>33</sup> provide

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<sup>29</sup> 15 U.S.C. § 1691e(g).

<sup>30</sup> See, e.g., 12 CFR 25.28(c); 12 CFR 228.28(c).

<sup>31</sup> Many commenters also expressed concern about an agreement in June 2006 between Ohio Bank and the United States Department of Housing and Urban Development to settle allegations that the bank had denied an individual a home purchase loan based on race. As part of the agreement, the bank paid the individual \$125,000 and committed to increase its community development lending in the Northern Kentucky and Cincinnati areas, among other measures. In connection with its ongoing supervisory responsibilities for Ohio Bank, the Board has reviewed the allegations and will continue to review the bank's community development activities in the Northern Kentucky and Cincinnati regions and in the bank's other assessment areas.

<sup>32</sup> The OCC has approved the proposed merger of FC Bank and Tennessee Bank.

<sup>33</sup> 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

only limited information about the covered loans.<sup>34</sup> 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.

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 or ethnicity. 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 with fair lending laws by Applicants, First Charter, and their subsidiaries. The Board also has reviewed its experience as the primary federal supervisor of Ohio Bank, Michigan Bank, and FC Bank<sup>35</sup> and has consulted with the OCC, the primary federal supervisor of Tennessee Bank.

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percentage rate (APR) 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.

<sup>34</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.

<sup>35</sup> Several commenters contended that FC Bank does not maintain an appropriate number of branches in predominantly minority census tracts in North Carolina, and other commenters asserted that Applicants do not maintain an appropriate number of branches in predominantly minority census tracts in the Cincinnati area. The Board notes that the correlation between a bank's branch network and the racial demographics of the geographies it serves, if any, can be a factor

The record of this proposal, including confidential supervisory information, indicates that Applicants and First Charter have taken steps to ensure compliance with fair lending and other consumer protection laws. Applicants have stated that they conduct regular internal reviews of compliance with fair lending laws, using regression analysis, matched-pair loan evaluations, and reviews of overages, broker pricing, rate spreads, and other data. In addition, Applicants require all employees involved in the lending process to complete fair lending training annually. Moreover, Applicants have complied with the settlement agreement with DOJ regarding Old Kent and its behavior before being acquired by Applicants, and that agreement has expired.

First Charter's consumer credit loans are centrally underwritten and any overrides or exceptions are reviewed by credit-risk management to ensure compliance with fair lending laws. First Charter requires new employees with lending responsibilities to attend training covering prescreening and other matters that raise fair lending issues. Applicants have stated that Fifth Third's fair lending and consumer compliance policies and procedures will be implemented at the combined organization after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Applicants and First Charter under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

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in determining the level of scrutiny and the matters covered in fair lending examinations of the bank.

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

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comments received on the proposal, and confidential supervisory information. Applicants stated that the proposal would result in the availability of expanded products and services on a more cost-effective basis for customers of Applicants and First Charter. 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 insured depository institutions are consistent with approval of the proposal.

#### Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>36</sup>

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<sup>36</sup> Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. 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), 262.25(d). 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 their views 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 comments do not present their 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 meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

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 Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these 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 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 by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>37</sup> effective April 15, 2008.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>37</sup> Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.