

FEDERAL RESERVE SYSTEM

CIT Group Inc.  
New York, New York

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

CIT Group Inc. (“CIT Group”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to become a bank holding company on conversion of CIT Bank, Salt Lake City, Utah, to a state bank. CIT Bank currently operates as an industrial loan company that is exempt from the definition of “bank” under the BHC Act.<sup>2</sup> CIT Group has also requested the Board’s approval pursuant to sections 4(c)(8) and 4(j) of the BHC Act<sup>3</sup> to retain nonbanking subsidiaries that engage in certain activities that are permissible for bank holding companies under the Board’s Regulation Y, including credit extension, loan servicing, and related activities; leasing; financial and investment advisory services; private placement services; certain investment transactions as principal; and credit-related insurance agency and underwriting activities.<sup>4</sup> In addition, CIT Group has provided notice of its proposal to retain its foreign subsidiaries under section 4(c)(13) of the BHC Act.<sup>5</sup>

Section 3(b)(1) of the BHC Act requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the bank to be acquired and provide the supervisor a period of time (normally 30 days) within which to submit views and recommendations on the proposal.<sup>6</sup> The BHC Act also

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 U.S.C. § 1841(c)(2)(H).

<sup>3</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j).

<sup>4</sup> See 12 CFR 225.28(b)(1)-(3), (6), (8), and (11).

<sup>5</sup> 12 U.S.C. § 1843(c)(13).

<sup>6</sup> 12 U.S.C. § 1842(b)(1); 12 CFR 225.15(b).

authorizes the Board to reduce or eliminate this notice period under certain circumstances.<sup>7</sup>

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal in accordance with the provisions of the BHC Act and the Board's regulations.<sup>8</sup> The Board has provided notice to the primary federal and state supervisors of CIT Bank, the Federal Deposit Insurance Corporation ("FDIC") and Commissioner of the Utah Department of Financial Institutions and to the Department of Justice ("DOJ"). Those agencies have indicated that they have no objection to the approval of the proposal. For the same reasons, and in light of the fact that this transaction represents the conversion of an existing subsidiary of the CIT Group from one form of a depository institution to another, the Board has also waived public notice of this proposal.<sup>9</sup>

CIT, with total consolidated assets of approximately \$80.8 billion, provides a variety of commercial financing and leasing products and services.<sup>10</sup> CIT Bank has total consolidated assets of approximately \$3.1 billion and controls deposits of approximately \$2.3 billion. CIT Bank engages primarily in financing and lending activities and in taking deposits of the type that are permissible for an industrial loan company under the exception in section 2(c)(2)(H) of the BHC Act.

#### Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of a bank. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks

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<sup>7</sup> 12 U.S.C. § 1842(b)(1).

<sup>8</sup> 12 U.S.C. § 1842(b)(1); 12 CFR 225.16(b)(3), 225.16(g)(2), and 262.3(l).

<sup>9</sup> Id.

<sup>10</sup> Asset data for CIT Group and asset and deposit data for CIT Bank are as of September 30, 2008.

involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act<sup>11</sup> (“CRA”) of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.<sup>12</sup>

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>13</sup>

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of CIT Group into a bank with no resulting change in the ownership of CIT Group or CIT Bank. In addition, CIT Group does not propose to acquire any additional depository institution as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors are consistent with approval of the proposal.

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<sup>11</sup> 12 U.S.C. § 2901 et seq.

<sup>12</sup> In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

<sup>13</sup> 12 U.S.C. § 1842(c)(1).

### Financial, Managerial, and Other 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.<sup>14</sup> The Board has carefully considered these factors in light of all facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by CIT Group. In addition, the Board has consulted with the primary federal and state supervisors of CIT Group and CIT Bank.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors. CIT Group has converted debt and raised a material amount of capital from third parties. CIT Group is adequately capitalized and as a result of its successful efforts to raise additional capital, will be well capitalized prior to consummation. In addition, CIT Bank is currently well capitalized under applicable federal guidelines, and it will remain well capitalized on a pro forma basis on consummation of the proposal. Other financial factors are consistent with approval.

In addition, the Board has carefully considered the managerial resources of CIT Group and CIT Bank in light of all the facts of record, including confidential supervisory and examination information and information provided by CIT Group. The Board has considered the supervisory experience of the relevant federal and state supervisory agencies of CIT Group and its insured depository institution with the organization and institution and their records of compliance with applicable banking law and anti-money laundering laws. The Board has engaged in discussions with the FDIC regarding its views on management processes and risk-management systems at both CIT Group and CIT Bank. In addition, the Board has carefully considered information from CIT Group about the organization's business strategy and the actions it is taking and proposing to take to strengthen the organization's risk-management systems, as well as

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<sup>14</sup> 12 U.S.C. § 1842(c)(2) and (3).

its business plans for the bank. The Board also has consulted with the FDIC about these plans and actions to strengthen CIT Group's risk-management systems.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval, as are the other supervisory factors under the BHC Act.

#### Convenience and Needs and CRA Performance Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant depository institutions under the CRA.<sup>15</sup>

The Board has carefully considered the convenience and needs factor and the CRA performance records of CIT Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>16</sup>

CIT Bank received a "satisfactory" rating under the CRA at its most recent performance evaluation by the FDIC, as of October 28, 2002. Consistent with the CRA regulations adopted by the federal banking agencies, CIT Bank was evaluated under the community development test as a limited purpose institution.<sup>17</sup> CIT Group has represented that the conversion of CIT Bank to a bank for purposes of the BHC Act will enhance the ability of the bank to meet the convenience and needs of its community and customers nationwide by permitting the bank to offer a wider array of deposit products.

The Board has engaged in discussions about CIT Bank's CRA and consumer compliance performance with the FDIC, which is the primary federal

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<sup>15</sup> 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

<sup>16</sup> The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 64 Federal Register 23,641 (1999).

<sup>17</sup> See, e.g., 12 CFR 228.21(a)(2).

supervisor for CIT Bank and examines the bank for its CRA performance. In particular, the Board has considered information collected by the FDIC since its last evaluation. In addition, the Board has reviewed information from CIT Bank about the actions it proposes to take with respect to its consumer lending activities and has consulted with the FDIC about these proposed actions. Importantly, the Board has also considered the FDIC's most current review of the CRA performance and compliance activities of the bank and the FDIC's views on this application.

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

#### Nonbanking Activities

As noted, CIT Group also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to engage in certain lending, leasing, advisory, securities, investment, and insurance activities that are permissible for bank holding companies through its nonbanking subsidiaries. The Board has determined by regulation that such activities are permissible for a bank holding company under Regulation Y,<sup>18</sup> and CIT Group has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.

To approve this notice, the Board must also determine that the performance of the proposed activities by CIT Group "can reasonably be expected to produce benefits to the public ... that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>19</sup> As part of its evaluation of these factors, the Board has considered the financial and managerial resources of CIT Group and its subsidiaries and the effect of the proposed transaction on their resources. For the reasons noted above, and based on all

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<sup>18</sup> 12 CFR 225.28(b)(1)- (3), (6), (8), and (11).

<sup>19</sup> See 12 U.S.C. § 1843(j)(2)(A).

the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

In addition, the Board must consider the competitive effects of a proposal to engage in nonbanking activities under the public benefits factor of section 4(j) of the BHC Act. The proposal involves the retention of CIT Group's existing nonbank subsidiaries, and CIT Group would not acquire any additional nonbank subsidiaries as part of this proposal. Accordingly, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition in any relevant market.

CIT Group is a leading provider of factoring services in the United States and a leading lender in the Small Business Administration's 7a programs. The proposal would benefit the public by strengthening CIT Group's ability to offer its nonbanking products and services to customers nationwide.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor under section 4(j)(2) of the BHC Act is consistent with approval.

CIT Group engages in a small amount of activities that may not conform to the requirements of the BHC Act. Section 4 of the BHC Act by its terms also provides any company that becomes a bank holding company two years within which to conform its existing nonbanking investments and activities to the section's requirements, with the possibility of three one-year extensions.<sup>20</sup> CIT Group must conform any impermissible nonfinancial activities and investments that it currently conducts or holds, directly or indirectly, to the requirements of the BHC Act within the time periods provided by the act.

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<sup>20</sup> See 12 U.S.C. § 1843(a)(2).

CIT Group also has provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application under section 3 and notices under section 4 of the BHC Act should be, and hereby are, approved.<sup>21</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by CIT Group with all the conditions imposed in this order and all the commitments made to the Board in connection with the application and notices. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>22</sup> and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and

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<sup>21</sup> A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

<sup>22</sup> 12 CFR 225.7 and 225.25(c).



the Board's regulations and orders issued thereunder. These conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposal does not involve the acquisition, merger, or consolidation of a bank. On this basis and after consultation with the DOJ, the Board has determined that the post-consummation period in section 11 of the BHC Act does not apply to consummation of the conversion of CIT Bank.<sup>23</sup> Accordingly, the transaction may be consummated immediately but not 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 December 22, 2008.

(SIGNED)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>23</sup> 12 U.S.C. § 1849(b)(1).

<sup>24</sup> Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Duke.