

FEDERAL RESERVE SYSTEM

City Holding Company
Charleston, West Virginia

Order Approving the Acquisition of Additional Shares of a Bank Holding Company and Determination on a Financial Holding Company Election

City Holding Company (“City Holding”), 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 increase its ownership interest from 4.9 percent to 7.5 percent of the voting shares of First United Corporation (“First United”) and thereby increase its indirect interest in First United’s subsidiary bank, First United Bank & Trust (“First Bank”), both of Oakland, Maryland. City Holding also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of Regulation Y.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (74 Federal Register 69,109 (2009)). 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.

City Holding, with total banking assets of approximately \$2.6 billion, controls one depository institution, City National Bank of West Virginia (“City Bank”), Charleston, West Virginia, that operates in West Virginia, Ohio, and Kentucky. City Bank is the fifth largest insured depository institution in West Virginia, controlling deposits of approximately \$1.9 billion, which represent 6.7 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³

¹ 12 U.S.C. § 1842.

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

³ Asset data are as of June 30, 2009; statewide deposit and ranking data also are as of June 30, 2009, and reflect merger and acquisition activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

First United, with total assets of approximately \$1.7 billion, is the 17th largest insured depository institution in Maryland. First Bank operates in Maryland and West Virginia and controls deposits of approximately \$267 million in West Virginia. If City Holding were deemed to control First United on consummation of the proposal, City Holding would become the third largest banking organization in West Virginia, controlling approximately \$2.2 billion in deposits, which would represent 7.7 percent of state deposits.

City Holding has stated that it does not propose to control or exercise a controlling influence over First United and that its indirect investment in First Bank also would be a noncontrolling investment. In this light, City Holding has agreed to abide by certain commitments on which the Board has previously relied in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act (“Passivity Commitments”).⁴ For example, City Holding has committed not to exercise or attempt to exercise a controlling influence over the management or policies of First United or any of its subsidiaries; not to have or seek to have any employee or representative of City Holding or its affiliates serve as an officer, agent, or employee of First United or any of its subsidiaries; and not to seek or accept representation on the board of directors of First United or any of its subsidiaries. City Holding also has committed not to enter into any agreement with First United or any of its subsidiaries that substantially limits the discretion of First United’s management over major policies or decisions.

Based on these considerations and all the other facts of record, the Board has concluded that City Holding would not acquire control of, or have the ability to exercise a controlling influence over, First United or First Bank through the proposed acquisition of the First United’s voting shares. The Board notes that the BHC Act requires City Holding to file an application and receive the Board’s approval before the company could directly or

⁴ The commitments made by City Holding are set forth in the appendix.

indirectly acquire additional shares of First United or attempt to exercise a controlling influence over First United or First Bank.⁵

Competitive Considerations

The Board has considered carefully the competitive effects of the proposal in light of all the facts of record. 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

City Bank and First Bank compete directly in two banking markets: the greater Washington, D.C. area banking market (“Washington banking market”) and the Martinsburg, West Virginia banking market (“Martinsburg banking market”). The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by City Bank and First Bank;⁷ the concentration level of market deposits and the increase in the level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice

⁵ See e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996); First Community Bancshares, Inc., 77 Federal Reserve Bulletin 50 (1991).

⁶ 12 U.S.C. § 1842(c)(1).

⁷ Deposit and market share data are as of June 30, 2009, 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). 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).

Merger Guidelines (“DOJ Guidelines”);⁸ other characteristics of the market; and the Passivity Commitments that City Holding made to the Board with respect to First United and First Bank.

A. Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Washington banking market.⁹ On consummation of the proposal, the market would remain moderately concentrated as measured by the HHI. The change in the HHI in the market would be consistent with Board precedent and the thresholds in the DOJ Guidelines, and a number of competitors would remain.¹⁰

B. Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have on the Martinsburg banking market warrant a detailed review.¹¹ In this banking market, the concentration level on consummation of the proposal would exceed the threshold levels in

⁸ 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.

⁹ The Washington banking market is defined as the Washington, DC-MD-VA Rand McNally Area (RMA); the non-RMA portions of Calvert, Charles, Frederick, and St. Mary’s Counties in Maryland; the non-RMA portions of Fauquier and Loudoun Counties in Virginia; the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia; and Jefferson County, West Virginia.

¹⁰ If City Holding were deemed to control First United, City Holding would be the 45th largest depository institution in the market, controlling deposits of \$164 million, which would represent less than 1 percent of market deposits. The HHI would increase by less than 1 point to 1134.

¹¹ The Martinsburg banking market is defined as Berkeley County, West Virginia, excluding the portion of that county included in the Hagerstown RMA.

the DOJ Guidelines. City Bank is the fourth largest depository institution in the market, controlling \$113.98 million in deposits, which represents 11.1 percent of market deposits. First Bank is the third largest depository institution in the market, controlling \$113.99 million in deposits, which also represents 11.1 percent of market deposits. If considered a combined organization on consummation of the proposal, City Bank and First Bank would be the second largest depository organization in the Martinsburg banking market, controlling \$228 million in deposits, which would represent approximately 22.2 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Martinsburg banking market would increase 246 points to 2046. In this light, consummation of the proposal would raise competitive issues in the Martinsburg banking market for the combined organization.

After careful analysis of the record, however, the Board has concluded that no significant reduction in competition is likely to result from City Holding's proposed indirect investment in First Bank. Of particular significance in this case are the structure of the proposed investment and the Passivity Commitments that City Holding has provided to the Board, which are designed to limit the ability of City Holding to use its proposed investment to engage in any anticompetitive behavior. The structure of the Martinsburg banking market, the number of competitors in the market, and the market's record of recent entry also indicate that the market concentrations, as measured by the HHI, overstate the competitive effects of the proposal.

The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In each case, the Board analyzes the specific facts to determine whether the minority investment in a competitor would result in significant adverse competitive effects in a banking market.

The Board has concluded, after careful analysis of the entire record, that no significant reduction in competition will likely result from City Holding's proposed minority investment in First United. As noted, City Holding has committed not to exercise

a controlling influence over First United or First Bank and not to seek or accept representation on the board of directors of First United or First Bank. City Holding also has committed not to acquire or seek to acquire nonpublic financial information from First United or First Bank. These commitments are designed to prevent anticompetitive behavior that otherwise might occur through either influencing the behavior of First United or First Bank or the coordination of City Holding's activities with those of First United or First Bank. In addition, there are no legal, contractual, or statutory provisions that would otherwise allow City Holding to have any access to financial information of First United or First Bank beyond the information already available to it as a shareholder with less than a 10 percent interest. These limitations restrict City Holding's access to confidential information that could enable it to engage in anticompetitive behavior in the Martinsburg banking market with respect to First Bank.

The Board also has considered additional facts indicating that the proposal is not likely to have a significantly adverse effect on competition in the Martinsburg banking market. In addition to City Bank and First Bank, ten other bank competitors, including two competitors with market shares of at least 20 percent each, provide additional sources of banking services to the market. The Board also notes that the market includes two community credit unions with broad membership criteria that include most of the residents in the market, offer a wide range of consumer banking products, and operate at least one street-level branch.¹² The market also appears relatively attractive for entry. There has been substantial recent entry into the Martinsburg banking market, with four banks entering the market within the last five years.

¹² The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. See Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); Capital City Group, Inc., 91 Federal Reserve Bulletin 418 (2005); F.N.B. Corporation, 90 Federal Reserve Bulletin 481 (2004); Gateway Bank & Trust Co., 90 Federal Reserve Bulletin 547 (2004). If City Bank and First Bank were considered as a combined organization on consummation of the proposal, the HHI for the Martinsburg banking market would increase 236 points to 1966 if the deposits of the credit union are weighted at 50 percent.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Accordingly, in light of 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 and 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 supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by City Holding.

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 also evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered carefully the financial factors of the proposal. City Holding and City Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction would be funded from City Holding's existing cash reserves. Based on its review of the record, the Board finds that City Holding has sufficient

financial resources to effect the proposal and that the financial resources of City Holding and its subsidiaries would not be adversely affected by the proposal.

The Board also has considered the managerial resources of City Holding, First United, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws.

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 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 take into account the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).¹³ The Board has carefully considered the convenience and needs factor and the CRA performance records of City Bank and First 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.¹⁴ City Bank and First Bank received “satisfactory” ratings at their most recent examinations for CRA performance by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, as of November 2, 2009, and July 6, 2009, respectively. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and

¹³ 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

¹⁴ 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 75 Federal Register 11642 at 11665 (2009).

needs considerations and the CRA performance records of City Bank and First Bank are consistent with approval of the proposal.

Financial Holding Company Election

As noted, City Holding has elected to become a financial holding company in connection with the proposal. City Holding has certified that City Bank is well capitalized and well managed and has provided all the information required under the Board's Regulation Y.¹⁵ Based on all the facts of record, the Board has determined that City Holding's election is effective as of the date of this order.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application under section 3 of the BHC Act 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 City Holding 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁶ effective June 9, 2010.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁵ See 12 CFR 225.82(b).

¹⁶ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

Appendix

Passivity Commitments

City Holding Company (“City Holding”), Charleston, West Virginia, will not, without the prior approval of the Board of Governors of the Federal Reserve System (“Board”) or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of First United Corporation (“First United”), Oakland, Maryland, or any of its subsidiaries;
2. Have or seek to have a representative of City Holding serve on the board of directors of First United or any of its subsidiaries;
3. Have or seek to have any employee or representative of City Holding serve as an officer, agent, or employee of First United or any of its subsidiaries;
4. Take any action that would cause First United or any of its subsidiaries to become a subsidiary of City Holding;
5. Acquire or retain shares that would cause the combined interests of City Holding and its officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of First United or any of its subsidiaries;¹
6. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of First United or any of its subsidiaries;
7. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of First United or any of its subsidiaries;
8. Attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities, including the location of any offices or branches or their hours of operation, etc; or any similar activities or decisions of First United or any of its subsidiaries;

¹ City Holding is required to file an application and receive the Board’s approval pursuant to section 3(a)(3) of the BHC Act before increasing its ownership interest in First United above 7.5 percent.

9. Dispose or threaten to dispose (explicitly or implicitly) of shares of First United in any manner as a condition of or inducement to specific action or non-action by First United or any of its subsidiaries;
10. Enter into any other banking or nonbanking transactions with First United or any of its subsidiaries, except that City Holding may establish and maintain deposit accounts with First United, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with First United; and
11. Acquire or seek to acquire any nonpublic financial information of First United or any of its subsidiaries, beyond the information already available to it as a shareholder of First United. City Holding also confirms that there are no legal, contractual, or statutory provisions that would allow it or its subsidiaries to have any access to financial information of First United or its subsidiaries beyond the information available to shareholders.

The terms used in these commitments have the same meanings as the terms set forth in the BHC Act and the Board's Regulation Y.