

FEDERAL RESERVE SYSTEM

Marshall & Ilsley Corporation  
Milwaukee, Wisconsin

Order Approving the Merger of Bank Holding Companies

Marshall & Ilsley Corporation (“M&I”), a financial 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 Act<sup>1</sup> to acquire Gold Banc Corporation, Inc. (“Gold Banc”) and its subsidiary bank, Gold Bank, both of Leawood, Kansas.<sup>2</sup> M&I also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act<sup>3</sup> and sections 225.28(b)(5), (b)(6), (b)(7), and (b)(8) of the Board’s Regulation Y<sup>4</sup> to acquire the nonbanking subsidiaries of Gold Banc and thereby engage in permissible investment advisory, securities brokerage, underwriting, and trust activities. In addition, M&I’s subsidiary bank, M&I Marshall & Ilsley Bank (“M&I Bank”), Milwaukee, Wisconsin, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)<sup>5</sup> to merge with Gold Bank, with M&I Bank as the surviving entity. M&I Bank has also applied under section 9 of the Federal

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<sup>1</sup> 12 U.S.C. section 1842.

<sup>2</sup> The Board also approved today a separate application by M&I to acquire Trustcorp Financial, Inc., St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company, Clayton, both of Missouri, under section 3 of the BHC Act. See Marshall & Ilsley Corporation, 92 Federal Reserve Bulletin \_\_\_\_ (2006) (Order dated March 13, 2006).

<sup>3</sup> 12 U.S.C. sections 4(c)(8) and 4(j).

<sup>4</sup> 12 CFR 225.28 (b)(5)-(b)(8).

<sup>5</sup> 12 U.S.C. section 1828(c).

Reserve Act (“FRA”) to establish and operate branches at Gold Bank’s main office and branch locations.<sup>6</sup>

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the Federal Register (70 Federal Register 72,433 (2005)) and in local newspapers in accordance with relevant statutes and the Board’s Rules of Procedure.<sup>7</sup> As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the Board has considered the applications and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&I, with total consolidated assets of approximately \$46.3 billion, operates four subsidiary insured depository institutions in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. In Wisconsin, M&I is the largest depository organization, controlling deposits of approximately \$18.3 billion, which represent 18.1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).<sup>8</sup> In Florida, M&I is the 287<sup>th</sup> largest depository organization, controlling deposits of approximately \$37 million, which represent less than 1 percent of state deposits. In Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately \$1.6 billion, which represent 1.7 percent of state deposits.

Gold Banc, with total consolidated assets of approximately \$4.2 billion, operates one depository institution, Gold Bank, which has branches in Florida,

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<sup>6</sup> 12 U.S.C. sections 321 and 1831u. These branches are listed in the appendix.

<sup>7</sup> 12 CFR 262.3(b).

<sup>8</sup> Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through January 23, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Kansas, Missouri, and Oklahoma. Gold Banc is the fifth largest depository organization in Kansas, controlling deposits of approximately \$1.5 billion, which represent 3.1 percent of state deposits. In Florida, Gold Banc is the 44th largest depository organization, controlling deposits of approximately \$829 million. In Missouri, Gold Banc is the 36th largest depository organization, controlling deposits of approximately \$394.4 million.

On consummation of the proposals, M&I would have consolidated assets of \$50.5 billion. In Florida, M&I would become the 42nd largest depository organization, controlling deposits of \$866 million, which represent less than 1 percent of state deposits. In Missouri, M&I would become the seventh largest depository organization, controlling deposits of \$2 billion, which represent 2.2 percent of state deposits.

#### 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.<sup>9</sup> For purposes of the BHC Act, the home state of M&I is Wisconsin,<sup>10</sup> and Gold Bank is located in Florida, Kansas, Missouri, and Oklahoma.<sup>11</sup>

Section 44 of the Federal Deposit Insurance Act (“FDI Act”) authorizes banks with different home states to merge under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted

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<sup>9</sup> 12 U.S.C. section 1842(d).

<sup>10</sup> Under section 3(d) of the BHC Act, 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. section 1841(o)(4)(C).

<sup>11</sup> For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in states in which the bank is headquartered or operates a branch. See 12 U.S.C. sections 1841(o)(4)-(7) and 1842(d)(1)(A)-(d)(2)(B).

a law expressly prohibiting merger transactions involving out-of-state-banks.<sup>12</sup> For purposes of section 44 of the FDI Act, the home state of M&I Bank is Wisconsin and the home state of Gold Bank is Kansas.<sup>13</sup> Neither Wisconsin nor Kansas has a law prohibiting merger transactions involving out-of-state banks applicable to the proposals.<sup>14</sup>

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.<sup>15</sup> In light of all the facts of record, the Board is permitted to approve the proposals under both statutes.

#### Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit 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

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<sup>12</sup> 12 U.S.C. section 1831u.

<sup>13</sup> Under section 44 of the FDI Act, a state member bank's home state is the state where it is chartered. 12 U.S.C. section 1831u(g)(4).

<sup>14</sup> In 1997, the Kansas State Bank Commissioner issued an order specifically authorizing Kansas banks to engage in interstate merger transactions. See State of Kan. State Bank Comm'r, Special Order 1997-2, (May 30, 1997).

<sup>15</sup> 12 U.S.C. sections 1842(d)(1)(A)-(B), 1842(d)(2)(A)-(B); 12 U.S.C. section 1831u(a)-(b). M&I and M&I Bank are adequately capitalized and adequately managed, as defined by applicable law. Gold Bank has been in existence and operated for the minimum period of time required by applicable state law. See Fla. Stat. section 628.295 (three years); Kan. Stat. Ann. section 9-541 (five years); and Mo. Rev. Statutes section 362.077 (five years). Oklahoma does not have a minimum age requirement applicable to the proposals. On consummation of the proposals, M&I and M&I Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. M&I and M&I Bank also would control less than 30 percent of the total amount of deposits of insured depository institutions in each relevant state. See Fla. Stat. section 628.295(8); Mo. Rev. Statutes section 362.915. All other requirements of sections 3(d) and 44 would be met on consummation of the proposals.

banking market. These acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposals are clearly outweighed in the public interest by the probable effect of the proposals in meeting the convenience and needs of the community to be served.<sup>16</sup>

M&I and Gold Banc do not compete in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

#### Financial and Managerial Resources and Future Prospects

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposals and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state banking supervisors of the organizations involved in the proposals, publicly reported and other financial information, information provided by M&I, and public comment on the proposals.<sup>17</sup>

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<sup>16</sup> 12 U.S.C. section 1842(c)(1); 12 U.S.C. section 1828(c)(5).

<sup>17</sup> A commenter expressed concern about relationships of M&I, Gold Banc, and their subsidiaries with unaffiliated alternative-financial-service providers. 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. M&I stated that one of the relationships referenced by the commenter no longer exists and that any current relationships with such providers of nontraditional financial services are limited to extensions of credit to those businesses. M&I also stated that loans to those businesses represent less than 1 percent of the loan portfolios of M&I and Gold Banc and would not have a material impact on the financial or managerial resources of the organization.

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. In this evaluation, the Board considers a variety of measures, 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 carefully considered the proposals under the financial factors. M&I and each of its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposals. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposals. The proposal to acquire Gold Banc is structured as a partial share exchange and partial cash purchase, and M&I will fund the cash portion by incurring long-term debt.

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 M&I, Gold Banc, and their subsidiary depository institutions, 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. M&I, Gold Banc, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposals, 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 proposals are consistent with approval, as are the other supervisory factors under the BHC Act.

### Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act and the Bank Merger Act, the Board also must consider the effects of the proposals 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”).<sup>18</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>19</sup>

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of M&I and Gold Banc, data reported by M&I and Gold Banc under the Home Mortgage Disclosure Act (“HMDA”),<sup>20</sup> other information provided by M&I and Gold Banc, confidential supervisory information, and public comment received on the proposals. The Board received two comments on the proposals. One commenter alleged, based primarily on 2004 HMDA data, that M&I, through its subsidiary depository institutions and nonbank lending subsidiary, and Gold Bank engaged in discriminatory treatment of minority individuals in their home mortgage lending. The other commenter contended that M&I Bank

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<sup>18</sup> 12 U.S.C. section 2901 et seq.; 12 U.S.C. section 1842(c)(2); 12 U.S.C. section 1828(c)(5).

<sup>19</sup> 12 U.S.C. section 2903.

<sup>20</sup> 12 U.S.C. section 2801 et seq.

provided a low number of home mortgage loans to African Americans in the Milwaukee-Waukesha Primary Metropolitan Statistical Area (“PMSA”) and that Gold Bank’s amount of home mortgage lending to LMI borrowers in Kansas City was insufficient.<sup>21</sup> This commenter also expressed concern that M&I Bank’s investments in LMI communities have been limited in nature and should be expanded.<sup>22</sup>

#### 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 detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.<sup>23</sup>

M&I Bank, M&I’s largest subsidiary depository institution as measured by total deposits, received an overall “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 11, 2003 (“2003 CRA Evaluation”). All M&I’s other subsidiary

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<sup>21</sup> The commenter also criticized M&I Bank’s home mortgage lending to LMI borrowers in Kansas City. The Board notes that no portion of the Kansas City Metropolitan Statistical Area (“MSA”) has been a part of M&I Bank’s assessment area.

<sup>22</sup> The commenter stated that some homeowner counselors had advised that M&I Bank’s policies include a “skip pay” feature for delinquent borrowers but that the bank rarely allowed that feature to be exercised. M&I responded that this “skip pay” feature is not an option in collecting a debt from a delinquent borrower. Rather, it is a promotional program for certain M&I Bank loans that allows delinquent borrowers to miss a payment. M&I stated, however, that the bank offers delinquent installment loan borrowers the option to defer a payment if necessary, with a corresponding extension of the loan term to account for the missed payment.

<sup>23</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 71 Federal Register 12,424 and 36,639 (2001).

depository institutions received "satisfactory" ratings at their most recent CRA performance evaluations.<sup>24</sup> Gold Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Kansas City, as of January 24, 2005 ("2005 Gold Bank CRA Evaluation").

M&I represented that it will implement its CRA policies, procedures, and programs throughout the combined organization. This implementation will be carried out by local and regional CRA committees with coordinated oversight from M&I's corporate CRA committee, which is the current model for M&I's CRA program.<sup>25</sup>

#### B. CRA Performance of M&I Bank

As noted, M&I Bank received an "outstanding" overall CRA performance rating in the 2003 CRA Evaluation.<sup>26</sup> Under the lending test, M&I Bank

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<sup>24</sup> Southwest Bank of St. Louis received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of August 11, 2003. M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

<sup>25</sup> M&I has stated that it will retain Gold Banc's Community Development Officer to maintain connections in the communities that Gold Banc currently serves.

<sup>26</sup> In the 2003 CRA Evaluation, examiners included the lending of M&I Mortgage Corp. ("M&I Mortgage"), M&I FSB's nationwide mortgage subsidiary, in its evaluation of M&I Bank's performance under the CRA lending test. Examiners also included the lending of M&I Community Development Corporation ("M&I CDC"), a subsidiary of M&I, in the evaluation of M&I Bank's community development lending activity under the CRA lending test. In addition, the investments of M&I CDC and Marshall & Ilsley Foundation ("M&I Foundation"), another subsidiary of M&I, were included in the evaluation of M&I Bank's performance under the investment test. M&I Bank, M&I CDC, and M&I Foundation are collectively referred to as "M&I Bank." The evaluation period for HMDA-reportable, small business, and small farm loans was January 1, 2001, through December 31, 2002. The evaluation period for community development lending

received an overall rating of “high satisfactory,” and examiners commended M&I Bank for having a generally strong distribution of loans among borrowers of different income levels and a high level of community development lending in both Wisconsin and Minnesota. Examiners also commended the bank’s extensive use of innovative or flexible lending practices in meeting the credit needs of its assessment areas. In M&I Bank’s Wisconsin assessment area, the bank also received a “high satisfactory” rating for the lending test, and examiners commended the bank’s strong responsiveness to community credit needs, particularly for its distribution of loans to borrowers of different income levels and to business and farms of different sizes.

In the Milwaukee-Waukesha PMSA, examiners considered the geographic distribution of M&I Bank’s HMDA-reportable, small business, and small farm lending to be adequate. Examiners noted that the percentage of the bank’s total number of home improvement loans in LMI geographies exceeded the percentages for lenders in the aggregate (“aggregate lenders”) during the evaluation period.<sup>27</sup> Although the percentages of the bank’s total number of home purchase and home refinance loans in LMI census tracts in the Milwaukee-Waukesha PMSA fell below the percentages for the aggregate lenders, examiners noted that the bank’s geographic distribution of such loans had significantly improved since 2001. They concluded that the bank’s lending levels in the Milwaukee-Waukesha PMSA were not unreasonable because owner-occupied housing units in such census tracts represented only 14.9 percent of total housing units and the bank faced strong competition from other lenders.<sup>28</sup>

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was August 1, 2001, through July 31, 2003. The evaluation period for the investment and services tests was August 1, 2001, through July 31, 2003.

<sup>27</sup> The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

<sup>28</sup> A commenter commended M&I Bank’s small business lending in the Milwaukee area in 2004, noting that the bank exceeded the performance of its peers in making small business loans and lending to small businesses in LMI census tracts.

In the 2003 CRA Evaluation, M&I Bank received “outstanding” ratings under the investment test overall and for its assessment areas in Wisconsin. Examiners reported that the bank made qualified investments totaling \$7.9 million and charitable donations totaling more than \$1.2 million during the evaluation period. Examiners commended the bank for focusing its investment efforts on areas that demonstrated the greatest need, such as the bank’s assessment areas in the Milwaukee-Waukesha PMSA and the Madison MSA.

M&I represented that, from August 2003 to July 2005, M&I Bank made approximately \$15.7 million in qualified investments and grants in the bank’s assessment areas, including investments of approximately \$5.3 million in the Milwaukee area, which represented a significant increase since the 2003 CRA Evaluation. In addition, as noted by a commenter, M&I CDC received the “Vision Award” from the Milwaukee Awards for Neighborhood Development Innovation and the Local Initiatives Support Corporation in 2004 for its investments in affordable housing.

In the 2003 CRA Evaluation, M&I Bank also received an “outstanding” rating for the service test, based on its distribution of branches and ATMs, accessibility of delivery systems, record of opening and closing branch offices, and innovativeness of products and services. Examiners noted that approximately 12 percent of M&I Bank’s branches and 16 percent of its ATMs were in LMI census tracts.<sup>29</sup> Examiners commended the bank for having an “excellent” level of community development services and for providing support to various organizations within its combined assessment area, including providing seminars and consulting services for first-time homebuyers, facilitating affordable

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<sup>29</sup> A commenter expressed appreciation for M&I Bank’s active presence in some of Milwaukee’s lowest-income communities and its participation in economic development organizations.

housing, and supporting organizations that assist LMI families, small business, and small farm owners.

### C. CRA Performance of Gold Bank

As noted previously, Gold Bank received an overall “satisfactory” rating in the 2005 Gold Bank CRA Evaluation.<sup>30</sup> Under the lending test, examiners gave Gold Bank a “high satisfactory” rating and commended the bank’s geographic loan distribution, noting that the overall geographic distribution of HMDA-reportable and small business loans reflected a favorable penetration in LMI census tracts across the bank’s assessment areas. They also found that the bank’s overall distribution of loans among borrowers of different income levels was good and consistently exceeded the performance of the aggregate lenders in the majority of the bank’s assessment areas. Examiners also found that Gold Bank’s community-development lending performance was adequate and generally responsive to assessment-area credit needs.

In the Kansas City MSA, Gold Bank received an “outstanding” rating on the lending test. Examiners commended the bank’s “excellent” responsiveness to assessment area credit needs, geographic distribution of loans, and distribution of loans among individuals of different income levels. Examiners reported that the percentage of the bank’s home purchase loans in LMI census tracts in 2003 significantly exceeded the percentage for the aggregate lenders.

Gold Bank received a “high satisfactory” rating on the investment test in the 2005 Gold Bank CRA Evaluation, with examiners particularly commending the bank’s performance in the Kansas City MSA. Examiners concluded that the bank exhibited adequate responsiveness to community development needs in the

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<sup>30</sup> The evaluation period for HMDA-reportable, small business, and small farm loans was from January 1, 2003, through September 30, 2004. The evaluation period for community development loans and the service and investment tests was from October 28, 2002, through January 24, 2005. Gold Bank’s performance in its Kansas City multistate MSA assessment area (“Kansas City MSA”) received significantly greater weight from examiners because a majority of the bank’s total deposits and loans were concentrated in that assessment area.

Kansas City MSA through its donation and grant activity. During the review period, the bank provided 39 qualified investments totaling \$8.1 million dollars, including 34 grants and donations.<sup>31</sup>

Gold Bank received a “low satisfactory” rating on the service test. Examiners reported that the bank’s offices were generally accessible to all portions of its assessment areas, including LMI geographies, although branches and ATMs were predominantly located in middle- and upper-income areas.

#### D. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Gold Banc in light of public comment received on the proposals. A commenter alleged, based primarily on 2004 HMDA data, that M&I Bank, M&I Mortgage, and M&I FSB denied the home mortgage and refinance applications of minority applicants more frequently than those of nonminority applicants and made higher-cost loans more frequently to minority borrowers than nonminority borrowers nationwide, in the Milwaukee and St. Louis MSAs, and statewide in Missouri, Ohio, and Wisconsin.<sup>32</sup> The same commenter also alleged that Gold Bank denied home

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<sup>31</sup> A commenter criticized Gold Bank's investment-performance record and investment rating because of credit Gold Bank received in its 2005 CRA Evaluation from the Kansas City Reserve Bank for making an investment in multifamily housing revenue bonds that were ultimately intended to benefit LMI residents. The Board has consulted with the Kansas City Reserve Bank on this matter. Through no fault of Gold Bank, the bonds were called and no multifamily housing was constructed. Gold Banc made various, timely public disclosures regarding the impairment of the bonds and also timely notified the Kansas City Reserve Bank. The Board notes that M&I represented that it would implement its CRA policies, procedures, and programs, including its CRA investment programs, throughout the areas served by Gold Bank after consummation of the proposals.

<sup>32</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 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.

mortgage applications of African-American and Latino borrowers more frequently than nonminority applicants in the Kansas City MSA. Another commenter expressed concern that the amount of mortgage lending by M&I Bank to African Americans in the Milwaukee MSA area lagged behind the performance of the aggregate lenders.

The Board has analyzed 2004 HMDA data reported by M&I Bank, M&I Mortgage, M&I FSB, and their affiliates nationwide and in their primary assessment areas, including their assessment areas in the Milwaukee-Waukesha PMSA; the MSAs of Appleton, Oshkosh-Neenah, Lake County-Kenosha County, Madison, and St. Louis; and statewide in Arizona, Illinois, Minnesota, Missouri, Nevada, Ohio, and Wisconsin. In addition, the Board has analyzed 2004 HMDA data reported by Gold Bank in its assessment areas in the Kansas City MSA and statewide in Kansas, Missouri, and Oklahoma.

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 M&I or Gold Banc is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.<sup>33</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.

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<sup>33</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.

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 M&I and Gold Banc with fair lending laws. The Board also consulted with the OTS, the primary regulator of M&I FSB, and considered the compliance examination records of M&I's and Gold Banc's subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by any of M&I's or Gold Banc's subsidiary depository institutions.

The record also indicates that M&I, Gold Banc, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure compliance with fair lending and other consumer protection laws. M&I represented that it has centralized programs in place to monitor and manage compliance that feature periodic reviews of all consumer lending programs, the tracking of applicable laws and regulations, ongoing compliance-risk analyses, the development of programs to train personnel involved in consumer lending, and oversight of the creation and use of consumer lending forms for its depository and lending institutions. M&I also represented that it has ongoing, comprehensive training programs to ensure that regulatory requirements and policies are updated to reflect changes in law and internal policies or procedures and are clearly communicated to personnel. In addition, M&I represented that its internal audit department periodically performs independent testing and validation of the compliance performance of M&I's various business units to ensure compliance with fair lending and other consumer protection laws and to measure the

effectiveness of internal controls. After consummation of the proposed transaction, M&I stated that it would implement its centralized compliance-related policies and procedures across the combined organization, thereby ensuring that all areas have the same compliance monitoring and independent testing processes. In addition, critical functions, such as underwriting of consumer and mortgage loans, also would be performed centrally to provide consistent application of policies and procedures across the organization.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs of M&I and Gold Banc and the overall CRA performance records of their subsidiary depository and lending institutions. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

#### E. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record,<sup>34</sup> including reports of examination of the CRA records of the institutions involved, information

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<sup>34</sup> One commenter requested that the Board condition its approval of the proposals on certain community reinvestment and other commitments by M&I. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently 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. See, e.g., JPMorgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005); The Toronto-Dominion Bank, 92 Federal Reserve Bulletin \_\_\_ (2006) (Order dated January 13, 2006). In this case, as in past cases, the Board has focused instead on the demonstrated CRA performance records of M&I's subsidiaries and the programs that they have in place to serve the credit needs of their assessment areas when the Board reviewed the proposals under the convenience and needs factor. In reviewing future applications by M&I under this factor, the Board similarly will review the actual CRA performance records of M&I's subsidiaries and the programs they have in place to meet the credit needs of their communities at that time.

provided by M&I and Gold Banc, comments received on the proposals, and confidential supervisory information. M&I represented that the proposals would provide customers of Gold Banc with access to a broader array of financial products and services. 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 depository institutions are consistent with approval.

### Nonbanking Activities

M&I also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Gold Banc's nonbanking subsidiaries, Gold Capital Management, Inc. ("Gold Capital") and Gold Trust Company ("Gold Trust").<sup>35</sup> Gold Capital engages in investment advisory, securities brokerage, and government securities underwriting activities. Gold Trust is a nondepository trust company engaged in trust services.

The Board has determined by regulation that financial and investment advisory services, securities brokerage services, underwriting government obligations, and trust company services are permissible for bank holding companies under Regulation Y.<sup>36</sup> M&I has committed to conduct these activities in accordance with the Board's regulations and orders for bank holding companies engaged in these activities.

To approve this notice, the Board must determine that M&I's acquisition of Gold Capital and Gold Trust and the performance of the proposed activities "can reasonably be expected to produce benefits to the public . . . that outweigh possible

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<sup>35</sup> M&I also would acquire Gold Banc's remaining nonbanking activities and businesses, such as Gold Capital's insurance agency services, broker-dealer activities, and distribution and management services for open-end investment companies, and Gold Merchant Banc, Inc., a subsidiary of Gold Banc that engages in merchant banking activities, under section 4(k) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y. 12 U.S.C. section 1843(k)(4)(H); 12 CFR 225.87; 12 CFR Subpart J.

<sup>36</sup> See 12 CFR 225.28(b)(5)-(b)(8).

adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”<sup>37</sup> As part of its evaluation of these factors, the Board has considered the financial and managerial resources of M&I, its subsidiaries, and the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that the financial and managerial considerations are consistent with approval of the notice.

The Board has considered the competitive effects of M&I’s proposed acquisition of Gold Capital and Gold Trust in light of all the facts of record. Gold Capital engages in nonbanking activities through its offices in Kansas and Gold Bank’s retail branches in Florida, Kansas, Missouri, and Oklahoma. M&I engages in similar nonbanking activities through the offices of its nonbanking subsidiary companies<sup>38</sup> and at the branches of its banking subsidiaries in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. Gold Trust also provides its trust services at Gold Bank’s branches and M&I provides trust services through Marshall & Ilsley Trust Company National Association at its offices in Indianapolis, Indiana, and at the branches and offices of M&I’s subsidiary banks. The record indicates that the markets for these activities, which include investment advisory, securities brokerage, government securities underwriting, and trust services, are regional or national in scope and that the markets are unconcentrated with numerous competitors. Accordingly, the Board concludes that M&I’s acquisition of Gold Capital and Gold Trust would have a de minimis effect on competition for these nonbanking activities in any relevant market.

In addition, the Board has reviewed carefully the public benefits of the proposed acquisition of Gold Banc. The proposals would allow M&I to provide

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<sup>37</sup> See 12 U.S.C. section 1843(j)(2)(A).

<sup>38</sup> M&I Brokerage Services, Inc., which provides securities brokerage and investment advisory services, has an office in Milwaukee.

an expanded range of trust and investment products and services to Gold Banc's customers, including trust and administrative services for retirement plans, secured working-capital lending, leasing, and data processing services. In addition, the proposals would enable M&I to offer an expanded physical presence to its own customers through Gold Banc's network.

Based on all of the facts of record, the Board has determined that consummation of the nonbanking proposal can reasonably be expected to produce public benefits that would outweigh possible adverse effects under the standard of review in section 4(j)(2) of the BHC Act.

#### Branches

As previously noted, M&I Bank has also applied under section 9 of the FRA to establish branches at the locations listed in the appendix. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and the Board's Regulation H and finds those factors to be consistent with approval.<sup>39</sup>

#### Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.<sup>40</sup> In reaching its

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<sup>39</sup> 12 U.S.C. section 322; 12 CFR 208.6(b).

<sup>40</sup> A commenter requested that the Board hold a public hearing or meeting on the proposals. 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. 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). The Bank Merger Act and the FRA do not require the Board to hold a public hearing or meeting. Under its rules, 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

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 Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&I with the conditions imposed in this order and the commitments made to the Board in connection with the applications and notice. The Board's approval of the nonbanking aspects of the proposals also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>41</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 the Board's regulations and orders issued thereunder. 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 banking acquisitions may not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of

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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 proposals and, in fact, submitted written comments that the Board has considered carefully in acting on the proposals. The request fails to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its 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 proposals is denied.

<sup>41</sup> 12 CFR 225.7 and 225.25(c).

this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>42</sup> effective March 13, 2006.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>42</sup> Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

APPENDIX

Main Office and Branches to be Acquired by M&I

Florida

*Charlotte County*

1777 Tamiami Trail, Murdock

*Hillsborough County*

301 North Tamiami Trail, Ruskin

601 North Ashley Drive, Tampa

*Manatee County*

2525 Manatee Avenue, West Bradenton

5503 Manatee Avenue, West Bradenton

4502 Cortez Road, West Bradenton

4115 U.S. Highway 301 East, Ellenton

1301 8th Avenue West, Palmetto

6821 15th Street East, Sarasota

*Sarasota County*

1201 South Beneva Road, Sarasota

240 South Pineapple Avenue, Sarasota

Kansas

*Crawford County*

417 North Broadway, Pittsburg

Fourth and Walnut Streets, Pittsburg

*Johnson County*

8840 State Line, Leawood

11301 Nall, Leawood

1511 West 101st Terrace, Lenexa

15203 West 119th Street, Olathe

9529 Antioch Road, Overland Park

12080 Blue Valley Parkway, Overland Park

6333 Long, Shawnee

7225 Renner Road, Shawnee

21900 Shawnee Mission Parkway, Shawnee

Missouri

*Buchanan County*

2211 North Belt Highway, Saint Joseph

4305 Frederick Boulevard, Saint Joseph

*Clay County*

105 North Stewart Court, Suite 100, Liberty

*Jackson County*

18800 East Highway 40, Independence

800 West 47th Street, Kansas City

1201 North West Briarcliff Parkway, Kansas City

Oklahoma

*Tulsa County*

2500 West Edison Street, Tulsa

11032 South Memorial, Tulsa

5120 South Garnett, Tulsa