

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 Act¹ to acquire Trustcorp Financial, Inc. (“Trustcorp”), St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company (“MSBTC”), Clayton, both of Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (71 Federal Register 4365 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

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 Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately \$1.6 billion, which

¹ 12 U.S.C. section 1842. The Board also approved today the separate applications and a notice by M&I to acquire Gold Banc Corporation, Inc. (“Gold Banc”) and its subsidiary bank Gold Bank, both of Leawood, Kansas, under sections 3 and 4 of the BHC Act and the application by M&I’s subsidiary bank, M&I Marshall & Ilsley Bank (“M&I Bank”), Milwaukee, Wisconsin, a state member bank, to merge with Gold Bank under section 18(c) of the Federal Deposit Insurance Act, with M&I Bank as the surviving entity (collectively, the “Gold Banc proposal”). See Marshall & Ilsley Corporation, 92 Federal Reserve Bulletin ____ (2006) (Order dated March 13, 2006) (“Gold Banc Order”).

represent 1.7 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).²

Trustcorp, with total consolidated assets of approximately \$748 million, operates one depository institution, MSBTC, which has branches only in Missouri. Trustcorp is the 17th largest depository organization in Missouri, controlling deposits of approximately \$606 million.

On consummation of this proposal, M&I would have total consolidated assets of approximately \$47 billion. In Missouri, M&I would become the sixth largest depository organization, controlling deposits of approximately \$2.2 billion, which represent 2.4 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. For purposes of the BHC Act, the home state of M&I is Wisconsin³ and MSBTC is located in Missouri.⁴

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

² Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of February 24, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

³ 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).

⁴ 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).

in section 3(d) of the BHC Act are met. Accordingly, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁵

M&I and Trustcorp compete directly in the St. Louis, Missouri banking market (“St. Louis market”).⁶ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market (“market deposits”)⁷ controlled by M&I and Trustcorp, the concentration level of

⁵ 12 U.S.C. section 1842(c)(1).

⁶ The St. Louis market consists of (1) the city of St. Louis; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington Counties; the eastern half of Gasconade County, including the cities of Hermann and Owensville; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; and (2) Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, and St. Clair Counties; the western part of Randolph County (bounded by Route 3 to the east and the Kaskaskia River to the south), including the cities of Red Bud, Ruma, and Evansville; and Washington County, excluding Ashley and DuBois townships, and the city of Centralia, all in Illinois.

⁷ Deposit and market share data are as of June 30, 2005, reflect merger and acquisition activity as of February 24, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors

market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁸ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the St. Louis market.⁹ The market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal

of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52, 55 (1991).

⁸ Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice 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 Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial institutions.

⁹ M&I is the sixth largest depository organization in the St. Louis market, controlling deposits of approximately \$1.7 billion, which represents 3.5 percent of market deposits. Trustcorp is the 14th largest depository organization in the market, controlling deposits of approximately \$606 million, which represents 1.3 percent of market deposits. On consummation, M&I would become the fifth largest depository organization in the market, controlling deposits of approximately \$2.3 billion, which represents 4.8 percent of market deposits. The HHI would increase 9 points to 735. One hundred and forty-two depository institutions would remain in the banking market after consummation of the proposal.

would likely not have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies also have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

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 various primary federal and state banking supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by M&I.

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 has carefully considered the proposal under the financial factors. M&I, its subsidiary depository institutions, and MSBTC are all well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposal. The proposed transaction 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, Trustcorp, 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, Trustcorp, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposal, including the proposed management after consummation.

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

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁰ The CRA requires the federal financial supervisory agencies to encourage insured

¹⁰ 12 U.S.C. section 2901 et seq.; 12 U.S.C. section 1842(c)(2).

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.¹¹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of M&I and Trustcorp, data reported by the subsidiary depository and lending institutions of M&I and Trustcorp under the Home Mortgage Disclosure Act ("HMDA"),¹² other information provided by M&I, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and repeated its allegations from the Gold Banc proposal that, based on 2004 data reported under HMDA, M&I's subsidiary depository institution, M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, made higher-cost loans more frequently to minority borrowers than to nonminority borrowers in certain states. The commenter also alleged that M&I FSB's nationwide mortgage subsidiary, M&I Mortgage Corp. ("M&I Mortgage), and MSBTC disproportionately denied minority applicants for certain home mortgage loans in the St. Louis Metropolitan Statistical Area ("MSA").¹³ In reviewing this proposal, the Board incorporates its findings in the Gold Banc proposal.

¹¹ 12 U.S.C. section 2903.

¹² 12 U.S.C. section 2801 et seq.

¹³ In addition, the commenter reiterated the assertions it raised in the Gold Banc proposal about an investment made by Gold Bank in multifamily housing revenue bonds, which is not an institution involved in this proposal. The Board considered that issue in connection with its approval of the Gold Banc proposal. See Gold Banc Order, at 14 n. 31.

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.¹⁴

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. M&I's other subsidiary depository institutions received "satisfactory" ratings at their most recent CRA performance evaluations.¹⁵ MSBTC received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of March 1, 2005.

M&I represented that it would implement its CRA policies, procedures, and programs throughout the combined organization. This implementation would be carried out by local and regional CRA committees with coordinated oversight from M&I's corporate CRA committee, in accordance with its CRA program.

¹⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁵ Southwest Bank of St. Louis ("Southwest Bank"), a subsidiary bank of M&I, 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 received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Trustcorp in light of public comment received on the proposal. As noted, the commenter reiterated the comments it submitted in the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans¹⁶ more frequently to minority borrowers than nonminority borrowers statewide in Wisconsin and Ohio.¹⁷ As noted in the Gold Banc Order, the Board reviewed HMDA data reported by M&I FSB in its assessment area in the Milwaukee-Waukesha Primary Metropolitan Statistical Area and in its assessment areas statewide in Wisconsin and Ohio.

The commenter also based its allegation that M&I Mortgage and MSBTC denied applications by minority borrowers for conventional home-purchase loans more frequently than nonminority applicants in the St. Louis MSA on 2004 HMDA data. The Board analyzed 2004 HMDA reported by M&I Bank, M&I FSB, M&I Mortgage and reported by Southwest Bank in Southwest Bank's assessment areas in the St. Louis MSA and statewide in Missouri.¹⁸ In addition, the Board analyzed 2004 HMDA data reported by MSBTC in its assessment area in the St. Louis MSA and in its assessment areas statewide in Missouri.

¹⁶ 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.

¹⁷ The commenter also repeated its allegation from the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans more frequently to Latinos than to nonminority borrowers in Missouri. M&I FSB has no assessment areas in Missouri.

¹⁸ M&I Bank, M&I FSB, and M&I Mortgage do not have an assessment area in the St. Louis MSA or in Missouri.

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 Trustcorp 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.¹⁹ 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. 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 Trustcorp with fair lending laws. The Board also consulted with the FDIC, the primary regulator of MSBTC, and considered the compliance examination records of M&I's and Trustcorp's subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by their subsidiary depository institutions.

The record also indicates that M&I, Trustcorp, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure

¹⁹ 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.

compliance with fair lending and other consumer protection laws. As noted in the Gold Banc Order, M&I represented that it has centralized programs in place to monitor and manage compliance that feature (1) ongoing comprehensive training programs to ensure that regulatory requirements and policies are clearly communicated to personnel and (2) an internal audit department that periodically performs independent testing and validation of the compliance performance of M&I's various business units to ensure compliance with fair lending and consumer protection laws and to measure the effectiveness of internal controls. The Board hereby reaffirms and adopts the facts and findings detailed in the Gold Banc Order with respect to M&I's lending compliance and auditing programs.²⁰ M&I also represented that it would implement its centralized compliance-related policies and procedures across its combined organization, thereby ensuring that all entities have the same compliance monitoring and independent testing processes and centralized performance of critical functions, such as underwriting for consumer and mortgage lending.

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

C. Conclusion on the Convenience and Needs Factor

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 M&I, the comment received on the proposal, and confidential supervisory information. M&I represented that the proposal would provide customers of Trustcorp 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 and in the Gold Banc Order,

²⁰ See Gold Banc Order, at 17.

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.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.²¹ 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 M&I 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 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

²¹ The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its 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 requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The 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 proposal is denied.

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,²² effective March 13, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²² Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.