FEDERAL RESERVE SYSTEM

The Bank of Nova Scotia
Toronto, Canada

Order Approving the Acquisition of Shares of a Bank and a Savings Association

The Bank of Nova Scotia ("BNS"), a foreign bank that is a financial holding company for purposes of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire 10 percent of the outstanding voting shares of First BanCorp ("FBC"), San Juan, and, indirectly, its subsidiary bank, FirstBank of Puerto Rico, Santurce, both of Puerto Rico. In addition, BNS has requested approval under section 4 of the BHC Act to acquire indirectly FBC's subsidiary savings association, FirstBank Florida, Miami, Florida.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (72 Federal Register 18,250 (2007)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

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[1] 12 U.S.C. § 1842. See 12 CFR 225.15.

[2] 12 U.S.C. § 1843. See 12 CFR 225.24. BNS's indirect investments in the nonbank subsidiaries of FBC and FirstBank Florida, all in Puerto Rico and the U.S. Virgin Islands, are made in accordance with section 4(c)(9) of the BHC Act and 225.23(f)(1) of Regulation K, because these locations are outside the United States for purposes of the International Banking Act ("IBA") and Regulation K. 12 U.S.C § 3101(7); 12 U.S.C. § 1843(c)(9); 12 CFR 211.23(f)(1) and 211.2(i).

BNS, with total consolidated assets of $373 billion, is the third largest commercial bank in Canada[3] and provides a variety of banking services to retail and corporate customers through more than 950 branches in Canada. It also provides stock brokerage, insurance brokerage, fund management, and financial advisory services through subsidiaries. In the United States, BNS operates branches in Houston, Texas; Portland, Oregon; and New York, New York; and agencies in Atlanta, Georgia; and San Francisco, California. BNS also has branches in the U.S. Virgin Islands and Puerto Rico. Scotia Bank de Puerto Rico ("Scotia Bank"), San Juan, BNS's subsidiary bank, operates only in Puerto Rico. BNS also provides custody and trust services through The Bank of Nova Scotia Trust Company of New York, New York, New York, a nondepository trust company.

FBC, with total consolidated assets of approximately $17.3 billion, is the 45th largest depository organization in the United States, controlling deposits of approximately $10.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] If BNS were deemed to control FBC, BNS would become the 42nd largest depository organization in the United States, with total consolidated assets of approximately $18.9 billion, controlling deposits of approximately $12.4 billion.

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[3] Canadian asset and ranking data are as of April 30, 2007. Both are based on the exchange rate then in effect.

[4] Domestic asset data are as of March 31, 2007; deposit and ranking data are as of June 30, 2006, and reflect subsequent mergers and acquisitions through April 6, 2007. In this context, the "United States" includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands. In this context, depository institutions include commercial banks, savings banks, and savings associations.

Noncontrolling Investment

Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act to obtain the Board's approval before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated acquisitions by bank holding companies of between 5 and 25 percent of the voting shares of banks.[5] On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[6]

BNS has stated that it does not propose to control or exercise a controlling influence over FBC and that its indirect investment in FBC's subsidiary depository institutions would also be a passive investment. BNS has agreed to abide by certain commitments ("Passivity Commitments") that are substantially similar to commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company for purposes of the BHC Act.[7] For example, BNS has committed not to exercise or attempt to exercise a controlling influence over the management or policies of FBC or any of its subsidiaries; not to seek or accept representation on the board of directors of FBC or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with FBC or any of its subsidiaries. BNS also has committed not to attempt to influence the dividend policies, loan decisions, or operations of FBC or any of its subsidiaries.

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[5] See 12 U.S.C. § 1842(a)(3).

[6] See, e.g., Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000).

[7] The commitments made by BNS are set forth in Appendix A.

Based on these considerations and all the other facts of record, the Board has concluded that BNS would not acquire control of, or have the ability to exercise a controlling influence over, FBC or its subsidiary depository institutions through the proposed acquisition of FBC's voting shares. The Board notes that the BHC Act would require BNS to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of FBC or attempt to exercise a controlling influence over FBC.[8]

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.[9] The Board also must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4 of the BHC Act.

FirstBank of Puerto Rico and Scotia Bank, whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"), compete directly in the Aguadilla, Mayaguez, Ponce, and San Juan banking markets in Puerto Rico.[10] BNS also competes directly with FirstBank of Puerto Rico

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

[9] 12 U.S.C. § 1842(c)(1).

[10] These banking markets, and the effects of the proposal on the concentration of banking resources in these markets, are described in Appendix B.

through branch offices[11] in the St. John-St. Thomas and the St. Croix banking markets in the U.S. Virgin Islands.[12] BNS and First Bank Florida do not compete directly in any banking market.

The Board has reviewed carefully the competitive effects of the proposal in each of 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 FBC and BNS;[13] the

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[11] Deposits held by BNS's branch offices in the U.S. Virgin Islands are not insured by the FDIC. Pursuant to the IBA, a foreign bank wishing to engage in retail deposit-taking in the United States must organize or acquire an insured U.S. depository institution. Branch offices of foreign banks, with few exceptions, must confine their deposit-taking in the United States to activities not requiring FDIC insurance, such as wholesale deposit-taking. 12 U.S.C. § 3104(c). Typically, the Board has taken the view that these branches do not fully compete with U.S. depository institutions for purposes of the competitive analysis. See Banco Santander Central Hispano, S.A., 92 Federal Reserve Bulletin C151 (2006).

Because the U.S. Virgin Islands are not a "State" for purposes of the IBA, however, the limitation on retail deposit-taking does not apply to branches of foreign banks in the U.S. Virgin Islands. 12 U.S.C. §§ 3101(7) and 3104(c). As such, branches of foreign banks operating in the U.S. Virgin Islands may accept retail deposits and offer a full range of banking services in direct competition with local depository institutions to the extent permissible under local law and regulation. In light of all the facts of record, including information provided by the U.S. Virgin Islands Division of Banking and Insurance, the Board has concluded that BNS does compete with local depository institutions for retail deposits, small business loans, and various other banking services in the U.S. Virgin Islands and that uninsured deposits held by BNS branch offices, therefore, should be included for purposes of calculating relevant market data.

[12] The St. John-St. Thomas banking market includes the islands of St. John and St. Thomas. The St. Croix banking market includes the island of St. Croix.

[13] Deposit and market share data are as of June 30, 2006, are adjusted to reflect subsequent mergers and acquisitions through April 6, 2007, and are based on calculations in which the deposits of thrift institutions are included

concentration level of market deposits and the increase in the level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines");[14] other characteristics of the market; and the Passivity Commitments made by BNS with respect to FirstBank of Puerto Rico.

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Aguadilla, Mayaguez, Ponce, and San Juan banking markets in Puerto Rico.[15] On consummation of the proposal, three banking markets would remain highly concentrated and one market would remain moderately concentrated, as measured by the HHI. The change in the HHI in the three highly concentrated markets

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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 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, 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 (1991).

[14] Under the DOJ Guidelines, 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 ("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 and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

[15] The effect of the proposal on the concentration of banking resources in these markets is described in Appendix B.

would be small. In each of the four banking markets, numerous competitors would remain.

B. Two Banking Markets Warranting Special Scrutiny

BNS and FBC compete directly in two banking markets that warrant a detailed review: St. John-St. Thomas and St. Croix. As discussed below, if BNS were to acquire control of FBC, the post-consummation concentration levels would exceed the DOJ Guidelines, and BNS's resulting market share would exceed 35 percent in both markets.

St. John-St. Thomas Banking Market. BNS is the third largest depository institution in the St. John-St. Thomas market, controlling $212 million in deposits, which represents 13.3 percent of market deposits. FirstBank of Puerto Rico is the second largest depository institution in the market, controlling $576 million in deposits, which represents 36.2 percent of market deposits. If considered a combined organization on consummation of the proposal, BNS and FirstBank of Puerto Rico would be the largest depository organization in the banking market, controlling $788 million in deposits, which would represent approximately 49.5 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the St. John-St. Thomas banking market would increase 965 points to 5000.

St. Croix Banking Market. BNS is the third largest depository institution in the St. Croix market, controlling $131 million in deposits, which represents 20.8 percent of market deposits. FirstBank of Puerto Rico is the largest depository institution in the market, controlling $177 million in deposits, which represents 28.1 percent of market deposits. If considered a combined organization on consummation of the proposal, BNS and FirstBank of Puerto Rico would be the largest depository organization in the St. Croix banking market, controlling $308 million in deposits, which would represent approximately 48.9 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the St. Croix banking market would increase 1171 points to 3359.

Competitive Effects in the Two Markets. The market indexes suggest that consummation of the proposal would raise competitive issues in both the St. John-St. Thomas and St. Croix banking markets.[16] After careful analysis of the record, the Board has concluded, however, that no significant reduction in competition is likely to result from BNS's proposed indirect investment in FirstBank of Puerto Rico. Of particular significance in this case is the structure of the proposed investment, which is designed to limit the ability of BNS to control FBC. Although the Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially, both BNS and FBC have proposed special safeguards to limit access by BNS to competitively sensitive information and to limit the potential for BNS to influence the policies or management of FBC in the St. John-St. Thomas and St. Croix banking markets.[17]

As noted, the record shows that BNS intends to be a passive investor and that there will be no officer or director interlocks between BNS and FBC or FirstBank of Puerto Rico, although FBC has agreed to allow BNS to have a nonparticipating observer on FBC's board. The Board recognizes that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. To

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[16] The Board also notes that one depository institution entered the St. Thomas-St. John banking market de novo in 2006.

[17] See, e.g., Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); BOK Financial Corp., 81 Federal Reserve Bulletin 1052, 1053-54 (1995); SunTrust Banks, Inc., 76 Federal Reserve Bulletin 542 (1990); First State Corp., 76 Federal Reserve Bulletin 376, 379 (1990); Sun Banks, Inc., 71 Federal Reserve Bulletin 243 (1985).

address this concern, FBC and BNS have committed that FBC would restrict BNS from having access to any information that would allow anticompetitive behavior in the St. John-St. Thomas and St. Croix banking markets. For example, BNS would not be provided access to operational or management information regarding the operations of FBC in the U.S. Virgin Islands, and BNS's representative will not be present when any matters concerning those operations are presented to FBC's board. These restrictions and commitments, including the Passivity Commitments noted above, limit BNS's access to confidential information that could enable it to engage in anticompetitive behavior in the St. John-St. Thomas and St. Croix banking markets with respect to FirstBank of Puerto Rico. Anticompetitive behavior otherwise might occur in these banking markets through either coordinating BNS's activities with FBC or influencing the behavior of FBC. [18]

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 BNS's acquisition of 10 percent of the voting shares of FBC would likely have a significantly adverse effect on competition in any relevant banking market at this time. 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.

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[18] There are no other legal, contractual, or statutory provisions that would allow greater access to the bank's financial information in the two banking markets than is available to shareholders with less than a 5 percent interest.

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 also reviews financial and managerial resources of the organizations involved in a proposal under section 4 of the BHC Act.[19] The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by BNS. The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary responsibility for the supervision and regulation of Canadian banks, including BNS.

In evaluating the financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved both on a parent-only and on a consolidated basis, as well as the financial condition of the subsidiary depository organizations and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the pro forma organization, 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 financial factors of this proposal. Canada's risk-based capital standards are consistent with those

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[19] 12 CFR 225.26(b).

established by the Basel Capital Accord ("Accord"). The capital ratios of BNS would continue to exceed the minimum levels that would be required under the Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization. Furthermore, the U.S. subsidiary depository institutions involved are well capitalized and would remain so on consummation. The Board also has considered the financial resources of BNS and the other organizations involved and the effects of this proposal on the capital and financial resources of FBC and its subsidiary depository institutions. Based on its review of these factors, the Board finds that BNS has sufficient financial resources to effect the proposal and that the financial factors are consistent with approval. The proposed transaction is structured as a share purchase to be funded with available cash resources.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of FBC, its depository institutions, and the U.S. banking operations of BNS, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the Office of Thrift Supervision ("OTS") and the FDIC, with the organizations and their records of compliance with applicable banking law and with anti-money laundering laws.[20]

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[20] On March 16, 2006, the Board issued a cease and desist order ("Order") requiring FBC to address accounting deficiencies for certain mortgage loans, which subsequently led it to restate the company's financial statements. See In the Matter of First Bancorp, Doc. No. 06-006-B-HC. In a separate and coordinated action, the FDIC also issued a cease and desist order against FirstBank of Puerto Rico. The Order required, among other actions, that FBC hire an independent consultant to review its mortgage portfolio; establish policies and procedures to ensure appropriate classification of loans; submit a written capital plan to ensure that the consolidated organization maintains an adequate

Based on all the facts of record, the Board has concluded that considerations relating to the managerial resources and future prospects of the organizations involved in the proposal are consistent with approval. Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[21] As noted, the OSFI is the primary supervisor of Canadian banks, including BNS. The Board previously has determined that BNS is subject to comprehensive supervision on a consolidated basis by its home country supervisor.[22] Based on this finding and all the facts of record, the Board has concluded that BNS continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future

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capital position; and submit an acceptable liquidity contingency plan. The Board has reviewed carefully the progress made by FBC in implementing the Order's requirements. The Board expects that FBC will continue to take all necessary steps to ensure compliance with the Order.

[21] 12 U.S.C. § 1843(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

[22] The Bank of Nova Scotia, 93 Federal Reserve Bulletin C73 (2007).

prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.[23]

Convenience and Needs and CRA Performance Considerations

In acting on a proposal 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").[24] The Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.[25]

As provided in the CRA, the Board has evaluated the proposal 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

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[23] Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. 12 U.S.C. § 1842(c)(3)(A). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which the applicant operates and has communicated with relevant government authorities concerning access to information. In addition, BNS previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. BNS also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. In light of these commitments, the Board has concluded that BNS has provided adequate assurances of access to any appropriate information the Board may request.

[24] 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

[25] See, e.g., North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767 (2000).

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.[26]

Scotia Bank received a "satisfactory" rating from the FDIC at its most recent CRA performance evaluation, as of March 1, 2005. FirstBank of Puerto Rico received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 1, 2006, and FirstBank Florida received a "satisfactory" rating from the OTS at its most recent CRA performance evaluation, as of February 28, 2005.

Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Public Benefits

As noted above, BNS also has filed a notice under section 4(c)(8) and 4(j) of the BHC Act for its proposed indirect investment in FirstBank Florida. The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[27] To approve this notice, the Board also must determine that the proposed acquisition of FirstBank Florida "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects,

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[26] See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 at 36,640 (2001); 72 Federal Register 37,922 at 37,951 (2007).

[27] 12 CFR 225.28(b)(4)(ii).

such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[28]

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers currently served by FBC. BNS's investment in FBS, and thus indirectly in FirstBank Florida, would strengthen FBC's capital position and allow FBC to better serve its customers. For the reasons discussed above and based on the entire record, the Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

Based on all the facts of record, the Board concludes that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

Other Considerations

BNS also requests that it be permitted to acquire an indirect interest in FBC's noncontrolling minority investment in Sun American Bancorp and its subsidiary bank, Sun American Bank, both in Boca Raton, Florida (collectively, "Sun American"), without filing an application for the Board's prior approval under section 3 of the BHC Act.[29] FBC has entered into and complied with

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[28] See 12 U.S.C. § 1843(j)(2)(A).

[29] 12 U.S.C. § 1842(a)(3). In 2004, FBC was approved to acquire up to 9.9 percent of the voting shares of Sun American Bancorp, previously Southern

commitments not to exercise or attempt to exercise a controlling influence over Sun American that are similar to the Passivity Commitments noted above, and BNS would have no meaningful interaction or influence over Sun American through BNS's proposed minority, noncontrolling investment in FBC. Based on all the facts of record, the Board has determined that no regulatory purpose would be served by requiring BNS to file an application under the BHC Act for such an investment; accordingly, the Board will not require BNS to file an application.[30]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, 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. The Board's approval is specifically conditioned on compliance by BNS with the conditions imposed in this order and the commitments made to the Board in connection with the proposal. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[31] and to the Board's authority to require such modification or termination of the activities of BNS 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

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Security Bank Corporation. See letter to Ms. Szendrey-Ramos from Ms. Tham, Federal Reserve Bank of New York, dated May 10, 2004.

30 The Board notes that the requirements of section 3(d) of the BHC Act would be met if BNS were to acquire control of Sun American. 12 U.S.C. § 1842(d).

31 12 CFR 225.7 and 225.25(c).

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 bank-related portion of the proposal shall 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 this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,[32] effective August 9, 2007.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

[32] Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.

APPENDIX A

Passivity Commitments

In connection with its application to acquire up to 10 percent of First BanCorp ("FBC"), San Juan, Puerto Rico, Bank of Nova Scotia ("BNS"), Toronto, Canada, commits that it will not directly or indirectly:

(1) Exercise or attempt to exercise a controlling influence over the management or policies of FBC or any of its subsidiaries;

(2) Seek or accept representation on the board of directors of FBC or any of its subsidiaries;

(3) Have or seek to have any employee or representative serve as an officer, agent, or employee of FBC or any of its subsidiaries;

(4) Take any action that would cause FBC or any of its subsidiaries to become a subsidiary of BNS or any of BNS's subsidiaries;

(5) Acquire or retain shares that would cause the combined interests of BNS and any of BNS's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of FBC or any of its subsidiaries;

(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 FBC or any of its subsidiaries;

(7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of FBC or any of its subsidiaries;

(8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the 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 of FBC or any of its subsidiaries;

(9) Dispose or threaten to dispose of shares of FBC or any of its subsidiaries in any manner as a condition of specific action or nonaction by FBC or any of its subsidiaries; or

(10) Enter into any other banking or nonbanking transactions with FBC or any of its subsidiaries, except that BNS may establish and maintain deposit accounts with FBC, provided that the aggregate balances of all such

accounts do not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons not affiliated with FBC.

Notwithstanding the foregoing, BNS and FBC's subsidiary, First Bank of Puerto Rico, directly or indirectly, may act as a syndication or administrative agent, or in a similar agency or arranging capacity, in connection with a loan syndication or similar credit offering (together, "syndication") in which the other institution is a participating lender or member of the syndicate (together, "member"), provided that (1) the total fee income derived by either party as a member in such syndications in a calendar year will be less than 5 percent of First Bank of Puerto Rico's total fee income in dollar amounts in that year, (2) the loans booked by either party as a member in connection with such syndications in a calendar year will account for no more than 10 percent of the aggregate dollar amount of all loans committed and originated by First Bank of Puerto Rico in that year, and (3) any syndication-related arrangements between BNS and First Bank of Puerto Rico will be nonexclusive and on an arm's length basis on market terms.

APPENDIX B

BNS/FBC Banking Markets Consistent with Board Precedent and DOJ Guidelines

Deposit and market-share data are as of June 30, 2006, are adjusted to reflect subsequent mergers and acquisitions through April 6, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. All deposit data are in millions.

Data for the St. Thomas-St. John and St. Croix banking markets are discussed in the order.

Puerto Rico Banking Markets

Aguadilla –Aguada, Aguadilla, Anasco, Isabela, Lares, Moca, Rincon, and San Sebastian Municipios.

	Rank	Amount of Deposits	Share of Market Deposits (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BNS Pre-Merger	6	$28.6	2.31	3175	+12	8
FBC	5	$30.7	2.49			
BNS Post-Merger	4	$59.3	4.80			

Mayaguez –Cabo Rojo, Hormigueros, Lajas, Las Marias, Maricao, Mayaguez, Sabana Grande, and San German Municipios.

	Rank	Amount of Deposits	Share of Market Deposits (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BNS Pre-Merger	11	$7	0.35	2633	+3	10
FBC	6	$71.7	3.55			
BNS Post-Merger	6	$78.7	3.90			

Ponce – Adjuntas, Coamo, Guanica, Guayanilla, Juana Diaz, Penuelas, Ponce, Santa Isabel, Villalba, and Yauco Municipios.

	Rank	**Amount of Deposits**	**Share of Market Deposits (%)**	**Resulting HHI**	**Change in HHI**	**Remaining Number of Competitors**
BNS Pre-Merger	7	$88.8	4.02	1921	+21	11
FBC	10	$56.3	2.55			
BNS Post-Merger	5	$145.1	6.57			

San Juan – Aibonito, Aguas Buenas, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guayama, Guaynabo, Gurabo, Hatillo, Humacao, Jayuya, Juncos, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Morovis, Naugabo, Naranjito, Orocovis, Patillas, Quebradillas, Rio Grande, Salinas, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, and Yabucoa Municipios.

	Rank	**Amount of Deposits**	**Share of Market Deposits (%)**	**Resulting HHI**	**Change in HHI**	**Remaining Number of Competitors**
BNS Pre-Merger	11	$1,044	1.95	1521	+87	10
FBC	1	$11,878	22.16			
BNS Post-Merger	1	$12,922	24.11			