

FEDERAL RESERVE SYSTEM

KeyCorp
Cleveland, Ohio

Order Approving the Merger of Bank Holding Companies

KeyCorp, 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 U.S.B. Holding Co., Inc. (“USB”), Orangeburg, and its subsidiary bank, Union State Bank, Nanuet, both of New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 Federal Register 52,129 (2007)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

KeyCorp, with total consolidated assets of approximately \$93.5 billion, is the 24th largest depository organization in the United States.³ KeyCorp’s only insured depository institution, KeyBank National Association

¹ 12 U.S.C. § 1842.

² In connection, with this proposal, KYCA, Cleveland, Ohio, a wholly owned subsidiary of KeyCorp, has applied to become a bank holding company by merging with USB. The resulting institution will merge with KeyCorp, with KeyCorp as the surviving institution. KeyCorp also proposes to acquire the nonbanking subsidiaries of USB in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

³ Asset and asset ranking data are as of June 30, 2007; national deposit and ranking data are as of March 31, 2007; statewide deposit and ranking data are as of June 30, 2006.

(“KeyBank”), also of Cleveland, operates in 14 states.⁴ In New York, KeyCorp is the 12th largest depository organization, controlling \$11.5 billion in deposits, which represents 1.4 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).⁵

USB, with total consolidated assets of approximately \$3 billion, controls one subsidiary bank, Union State Bank, which operates in New York and Connecticut. In New York, USB is the 30th largest depository organization, controlling approximately \$1.8 billion in state deposits.

On consummation of the proposal, KeyCorp would remain the 24th largest depository institution in the United States, with total consolidated assets of approximately \$96.7 billion. KeyCorp would control deposits of approximately \$59.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, KeyCorp would become the ninth largest depository organization, controlling deposits of approximately \$13.3 billion, which represent approximately 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 bank holding company’s home state if certain conditions

⁴ KeyBank operates branches in Alaska, Colorado, Florida, Idaho, Indiana, Kentucky, Maine, Michigan, New York, Ohio, Oregon, Utah, Vermont, and Washington.

⁵ In the context of this order, insured depository institutions include commercial banks, savings banks, and savings associations.

are met. For purposes of the BHC Act, the home state of KeyCorp is Ohio,⁶ and USB is located in New York and Connecticut.⁷

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁸ In light of all the facts of record, 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.

⁶ See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

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

⁸ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). KeyCorp is adequately capitalized and adequately managed, as defined by applicable law. Union State Bank has been in existence and operated for the minimum period of time required by applicable New York law, and the proposal is not subject to an age requirement under Connecticut law. See N.Y. Banking Law § 223-a (2001) (five years). On consummation of the proposal, KeyCorp would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in New York. 12 U.S.C. § 1842(d)(2)(B). The proposed transaction is not subject to any deposit cap in Connecticut under the BHC Act because KeyCorp does not operate in Connecticut or subject to any other relevant deposit cap under Connecticut law. See 12 U.S.C. § 1842(d)(2)(B)-(C). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

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

KeyCorp and USB have subsidiary depository institutions that compete directly in the Metropolitan New York-New Jersey banking market.¹⁰ 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 in depository institutions controlled by KeyCorp and USB in the markets (“market deposits”),¹¹ the concentration level of market deposits and the increases in these levels as measured by the

⁹ 12 U.S.C. § 1842(c)(1).

¹⁰ The Metropolitan New York-New Jersey banking market is defined as Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and the northern portions of Mercer County, all in New Jersey; Monroe and Pike Counties in Pennsylvania; Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

¹¹ Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through August 1, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (1984). 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, 55 (1991).

Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Metropolitan New York-New Jersey banking market.¹³ On consummation of the proposal, the market would remain moderately concentrated as measured by the HHI, and numerous competitors would remain in the market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in the banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

¹² 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.

¹³ On consummation, the HHI would remain unchanged at 1226 for the Metropolitan New York-New Jersey banking market. KeyCorp operates the 45th largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of market deposits. USB controls \$1.9 billion in deposits, which also represents less than 1 percent of market deposits. KeyBank would become the 29th largest depository institution in the market, controlling deposits of approximately \$3.5 billion, which represent approximately 1 percent of market deposits. On consummation of the proposal, 276 depository institutions would remain in the banking market.

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 banking market where KeyCorp and USB compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by KeyCorp.

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 depository institutions and the organizations' 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 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 considered the proposal carefully under the financial factors. KeyCorp, USB, and their subsidiary depository institutions are well capitalized, and KeyCorp and its subsidiary depository institutions would remain so on consummation of the proposal. Based on its review of the record, the Board finds that KeyCorp has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase, and KeyCorp will use existing resources to fund the cash portion of the purchase.

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 KeyCorp, USB, 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 bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws. KeyCorp, USB, and their subsidiary depository institutions are considered to be well managed. The Board also has considered KeyCorp'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 a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs

of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁴ 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.¹⁵

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of KeyCorp and USB, data reported by KeyCorp and USB under the Home Mortgage Disclosure Act (“HMDA”),¹⁶ other information provided by KeyCorp, confidential supervisory information, and a public comment received on the proposal. The commenter generally alleged that KeyCorp and USB have failed to meet the credit needs of the communities they serve, particularly the needs of LMI and predominantly minority communities in Westchester County, New York. In addition, the commenter contended that USB had not adequately served LMI communities due to an alleged insufficient number of branches and services in LMI communities. The commenter also alleged that KeyCorp and USB made an insufficient number of home mortgage and small business loans in LMI areas in Westchester County and the City of Newburgh in Orange County, New York. Furthermore, the commenter asserted, based on HMDA data reported in 2003,

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

¹⁵ 12 U.S.C. § 2903.

¹⁶ 12 U.S.C. § 2801 et seq.

that Union State Bank had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed 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.¹⁷

KeyBank received an “outstanding” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”), as of September 1, 2003 (“KeyBank 2003 Evaluation”).¹⁸ Union State Bank received a “satisfactory” CRA performance rating by the Federal Deposit Insurance Corporation (“FDIC”), as of June 27, 2005 (“Union 2005 Evaluation”).¹⁹ KeyCorp proposes to merge Union State Bank into KeyBank soon after consummation of the transaction and has represented that it will implement KeyBank’s CRA program at the combined institution.²⁰

¹⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁸ The evaluation period was January 1, 1999, through December 31, 2002, for the lending test and March 1, 1999, to August 31, 2003, for the service and investment tests.

¹⁹ The evaluation period was generally from January 1, 2003, to June 27, 2005.

²⁰ KeyBank has filed an application under the Bank Merger Act with the OCC for approval of the merger. 12 U.S.C. §1828(c).

CRA Performance of KeyBank. In addition to the overall “outstanding” rating that KeyBank received in the KeyBank 2003 Evaluation, the bank received an “outstanding” rating on each of the lending, investment, and service tests for its overall CRA performance. The bank also received “outstanding” ratings for its overall CRA performance in New York and in each of the eleven other states reviewed. Examiners reported that KeyBank's overall lending performance with respect to HMDA-reportable loans and small loans to businesses²¹ was very good and that the geographic distribution was excellent in assessment areas representing 70 percent of the bank's deposits. They further noted that KeyBank's distribution of HMDA-reportable loans and small loans to businesses among borrowers of different income levels was excellent in the majority of the assessment areas that were rated. Examiners also reported that the bank had a substantial volume of community development lending in every rated area as well as an excellent level of qualified investments in every state it served.

Examiners commented that in New York, the bank's overall distribution of loans to borrowers of different income levels was excellent and that its geographic distribution of loans was good.²² In the bank's Newburgh and New York MSAs assessment areas, examiners concluded that KeyBank's

²¹ “Small loans to businesses” are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans.

²² KeyCorp's statewide rating for New York was based on a full-scope evaluation conducted in KeyCorp's Buffalo/Niagara Falls Metropolitan Statistical Area (“MSA”) assessment area. Limited-scope evaluations were conducted in KeyCorp's ten other New York assessment areas and in particular, in the New York MSA, which includes Westchester County and the Newburgh MSA, including the City of Newburgh.

performance under the lending test was consistent with the bank's overall excellent performance statewide under that test. Examiners commended the bank's record of extending lending small loans to business in the Newburgh and New York MSAs and noted that the bank extended a higher percentage of its business loans in LMI census tracts than the percentage of businesses that were in such tracts. They also noted KeyBank's high volume of community development loan originations in the Newburgh and New York MSAs.

Since the KeyBank 2003 Evaluation, KeyBank has maintained its high level of lending activity. For example, KeyBank's HMDA-reportable loans throughout its assessment areas totaled more than \$2.8 billion in 2005 and 2006. In Orange and Westchester Counties and the assessment areas in New York, KeyBank's percentage of those loans to LMI individuals exceeded the percentage of loans made by lenders in the aggregate ("aggregate lenders")²³ during this period. KeyBank also made a substantial portion of its small loans to businesses in amounts of less than \$100,000 in 2005 and 2006. In addition, KeyBank represented that it made approximately \$2.4 billion in total qualified community development loans throughout its assessment areas, which included \$475 million in loans in the State of New York, since the KeyBank 2003 Evaluation.

In the KeyBank 2003 Evaluation, examiners noted that KeyBank had an excellent level of qualified investments in every state it served. Examiners concluded that KeyBank's performance under the investment test in the Newburgh and New York MSAs assessment areas was consistent with the bank's overall excellent performance under the investment test in the assessment areas in New York. KeyCorp represented that its qualified investments have totaled

²³ The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

\$112 million in the bank's New York assessment areas since the KeyBank 2003 Evaluation and noted that the bank had actively participated in the New Market Tax Credit Program.

In the KeyBank 2003 Evaluation, examiners stated that overall, KeyBank had provided excellent accessibility to its branches and ATMs in LMI areas and for people of different income levels in states representing 66 percent of its bank-wide deposits and good accessibility in the remaining states. Examiners rated the bank's performance under the service test in New York as "high satisfactory." They commended KeyBank's level of community development services and the overall accessibility of the bank's depository facilities in the state. Since the KeyBank 2003 Evaluation, KeyBank represented that it has expanded its services by allowing LMI customers to cash payroll and government checks for a special low fee and by offering them free checking accounts with no minimum deposit requirement.

CRA Performance of Union State Bank. As noted, Union State Bank received an overall "satisfactory" rating in the Union 2005 Evaluation.²⁴ Under the lending test, Union State Bank received a "high satisfactory" rating, and examiners reported that the bank's distribution of loans in its assessment area reflected a good penetration among retail customers of different income levels and business customers of varying sizes. Examiners noted that the high cost of housing and low levels of owner-occupied housing units in those tracts available for originations limited lending opportunities. They reported that USB made ongoing efforts to increase lending in LMI areas, including Union State Bank's continued

²⁴ During the Union 2005 Evaluation, USB's single assessment area included all of the areas in New York and Connecticut where USB operated branches. The FDIC's review of Union State Bank under the lending test in this evaluation included one of USB's nondepository subsidiaries for grants and donations.

use of the Federal Home Loan Bank's ("FHLB") First Home Club program for LMI borrowers.²⁵

Examiners concluded that Union State Bank's overall lending levels reflected good responsiveness to its assessment area's credit needs. They commended the bank's performance for originating loans of varying amounts to businesses of different sizes. In addition, the examiners noted that a significant majority of Union State Bank's business loan originations in 2003 were small loans to businesses with revenues of \$1 million or less. They also noted that Union State Bank's level of community development lending was outstanding.

Examiners rated Union State Bank's community development investment efforts as "outstanding" under the investment test and reported that Union State Bank had maintained an excellent level of qualified investments (approximately \$24 million) within the areas under review. In addition, they also noted that Union State Bank purchased approximately \$16.9 million in CRA-qualified investments since its previous evaluation, a substantial amount of investments that evidenced USB's efforts to address qualified investment opportunities and to promote affordable housing within its assessment area. Examiners also noted that USB participated in a consortium of lending institutions operating in New York and New Jersey that provided affordable housing assistance by offering construction and permanent financing for identified community affordable housing projects, such as single-family, apartment, or elderly housing throughout the two states.

²⁵ UBS offered a first-time homebuyer's program to LMI individuals. Under this program, the FHLB provided down-payment and closing-cost assistance by granting up to \$3 in matching funds for each \$1 saved by the household. USB also offered participants a reduced interest rate and application fees as well as lower closing costs. Applicants were required to attend homeownership counseling with a local community housing organization.

In the Union 2005 Evaluation, Union State Bank received a “high satisfactory” rating on the service test. Examiners reported that the bank’s delivery systems were reasonably accessible to essentially all portions of the institution’s assessment area, including LMI census tracts. They noted that Union State Bank’s services, including business hours, were tailored to the convenience and needs of the bank’s assessment area, particularly LMI areas, and included Spanish-language services for Latino customers. Examiners also commended USB for providing a relatively high level of community development services. In addition, they noted that Union State Bank personnel provided free technical assistance to small business owners and entrepreneurs in connection with the bank’s establishment of a Community Business Lending Team to increase lending in LMI communities.²⁶

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of KeyCorp and USB in light of the public comment received on the proposal. The commenter alleged, based on HMDA data, that USB had denied the home mortgage loan applications of African American and Latino borrowers more frequently than those of nonminority applicants. The Board has focused its analysis on the 2005 and 2006 HMDA data reported by KeyCorp and USB.²⁷

²⁶ The commenter also challenged the location and record of opening Union State Bank’s branches. As noted above, Union State Bank will be merged into KeyBank, and the OCC will review KeyBank’s record of opening branches in New York in connection with the merger application and during the course of conducting CRA evaluations.

²⁷ The Board analyzed HMDA data for KeyBank’s assessment areas nationwide, KeyBank’s and Union State Bank’s assessment areas in New York, and specifically in Westchester and Orange Counties, New York. The Board’s analysis of HMDA data for Union State Bank’s assessment area also included Fairfield County, Connecticut.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials 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 KeyCorp or USB are excluding any 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.²⁸ 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 or ethnicity. 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 with fair lending laws by KeyCorp, USB, and their subsidiaries. The Board also has consulted with the OCC, the primary federal supervisor of KeyCorp's subsidiary bank, and the FDIC, the primary federal supervisor of USB's subsidiary bank.

²⁸ 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.

KeyCorp has stated that its fair lending and consumer compliance policies and procedures will apply to the combined organization after consummation of the proposal. KeyCorp also will continue to use its loan origination, underwriting, processing, and servicing systems. The record, including confidential supervisory information, indicates that KeyCorp has taken steps to ensure compliance with fair lending and other consumer protection laws. KeyCorp has corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and its ongoing monitoring is designed to ensure compliance with policies and procedures. In addition, KeyCorp represented that its compliance staff members frequently receive education on best compliance practices and that USB personnel will receive the same training.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of KeyCorp and USB under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all of the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by KeyCorp, comments received on the proposal, and confidential supervisory information. KeyCorp represented that the proposal will result in greater convenience for KeyCorp and USB customers through KeyCorp's exploration of new methods and approaches to enhance the level of service provided to the communities currently served by USB, such as working

to encourage residents who depend on alternative financial service providers for banking services to establish a customer relationship with KeyBank. In addition, KeyCorp stated that its customers would benefit from a more extensive network of branch offices, ATMs, telephone call centers, and other facilities. 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 insured depository institutions are consistent with approval of the proposal.²⁹

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications 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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by KeyCorp with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

²⁹ The commenter also requested that KeyBank demonstrate that the compositions of its employees and board of directors reflect the community which it serves. The Board notes that the racial, ethnic, or gender makeup of a banking organization's staff or management is not a factor that the Board is permitted to consider under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

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

By order of the Board of Governors,³⁰ effective November 2, 2007.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

³⁰ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.