

## FEDERAL RESERVE SYSTEM

Bank of America Corporation  
Charlotte, North Carolina

### Order Approving the Acquisition of a Savings Association and Other Nonbanking Activities

Bank of America Corporation (“Bank of America”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y<sup>1</sup> to acquire Countrywide Financial Corporation (“Countrywide”), Calabasas, California, and thereby indirectly acquire Countrywide’s subsidiary savings association, Countrywide Bank, FSB (“Countrywide Bank”), Alexandria, Virginia.<sup>2</sup> In addition, Bank of America has requested the Board’s approval to acquire indirectly certain other nonbanking subsidiaries of Countrywide and thereby engage in the following activities: credit extension and loan servicing; real estate and personal property appraisal; real estate settlement; credit bureau services; asset management, servicing, and collection; acquiring debt in default; securities brokerage; trust company functions; community development; and tax services in accordance with section 225.28(b) of the Board’s Regulation Y.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

<sup>2</sup> Bank of America has formed a wholly owned subsidiary, Red Oak Merger Corporation (“Red Oak”), for purposes of acquiring Countrywide. Countrywide will merge with and into Red Oak, and Countrywide will become a subsidiary of Bank of America. In connection with this proposal, Bank of America also has applied to acquire from its subsidiary bank, Bank of America, National Association (“BA Bank”), Charlotte, North Carolina, 20,000 shares of Series B Nonvoting Convertible Preferred Stock of Countrywide, which is convertible at the option of the holder into approximately 15.7 percent of Countrywide’s voting common stock.

<sup>3</sup> See the appendix for a listing of these subsidiaries and their respective activities. Bank of America also proposes to acquire certain other Countrywide subsidiaries in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

Bank of America, with total consolidated assets of \$1.7 trillion, is the largest depository organization in the United States measured by deposits, controlling deposits of approximately \$711.7 billion, which represent approximately 10.04 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> Bank of America controls eight insured depository institutions<sup>5</sup> that operate in thirty-one states and the District of Columbia.

Countrywide, with total consolidated assets of approximately \$199 billion, is the 17<sup>th</sup> largest depository organization in the United States, controlling deposits of approximately \$61.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Countrywide Bank, Countrywide's only subsidiary insured depository institution, is located in Texas and Virginia.

On consummation of the proposal, Bank of America would remain the largest depository organization in the United States, with total consolidated assets of approximately \$1.9 trillion. Bank of America would control deposits of approximately \$773.4 billion, representing approximately 10.91 percent of the total amount of deposits of insured depository institutions in the United States.

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<sup>4</sup> Asset and nationwide deposit-ranking data are as of December 31, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations. As explained below, the nationwide deposit cap restriction contained in section 3(d) of the BHC Act does not apply to this transaction because the transaction involves the acquisition of a savings association and not a bank.

<sup>5</sup> BA Bank is Bank of America's largest subsidiary depository institution, as measured by both assets and deposits. Bank of America's other subsidiary depository institutions are Bank of America Oregon, National Association ("BA Oregon"), Portland, Oregon; Bank of America California, National Association ("BA California"), San Francisco, California; Bank of America Rhode Island, National Association ("BA Rhode Island"), Providence, Rhode Island; Bank of America Georgia, National Association ("BA Georgia"), Atlanta, Georgia; FIA Card Services, N.A., Wilmington, Delaware; LaSalle Bank National Association, Chicago, Illinois; and LaSalle Bank Midwest National Association, Troy, Michigan.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company and the other nonbanking activities for which Bank of America has requested approval are closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>6</sup> The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.<sup>7</sup> Bank of America has committed that all the activities of Countrywide Bank and the other nonbanking subsidiaries of Countrywide that it proposes to acquire will conform to the requirements for permissible activities under section 4 of the BHC Act and Regulation Y.

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of Countrywide Bank and Countrywide's other nonbanking subsidiaries "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>8</sup> As part of its evaluation under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the public benefits of the proposal.<sup>9</sup> In acting on a notice to acquire a savings association, the Board also reviews the records of

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<sup>6</sup> 12 CFR 225.28(b)(1), (2), (4)(ii), (5), (6)(vi), (7)(i), and (12).

<sup>7</sup> 12 CFR 225.28(b)(4)(ii) and 225.86.

<sup>8</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>9</sup> See 12 CFR 225.26; see, e.g., Wachovia Corporation, 92 Federal Reserve Bulletin C138 (2006); BancOne Corporation, 83 Federal Reserve Bulletin 602 (1997).

performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>10</sup>

#### Public Comment on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (73 Federal Register 11,419 (March 3, 2008) and 73 Federal Register 18,279 (April 3, 2008)), and the time for filing comments has expired. The Board extended the initial period for public comment to accommodate the broad public interest in this proposal, providing interested persons more than 50 days to submit written comments.

Because of the extensive public interest in the proposal, the Board held public meetings in Chicago, Illinois, and Los Angeles, California, to provide interested persons an opportunity to present oral testimony on the factors that the Board must review under the BHC Act.<sup>11</sup> Approximately 150 people testified at the public meetings, and many of those who testified also submitted written comments.

In total, approximately 770 individuals and organizations submitted comments on the proposal through oral testimony, written comments, or both. Commenters included members of Congress, a state government agency, community groups, nonprofit organizations, customers of Bank of America or Countrywide, and other interested organizations and individuals.

A large number of commenters supported the proposal. Many of the commenters in support of the proposal commended Bank of America for its commitment to local communities and described favorable experiences with the affordable mortgage,

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<sup>10</sup> 12 U.S.C. § 2901 et seq.

<sup>11</sup> The Board held the Chicago public meeting on April 22, 2008, and the Los Angeles public meetings on April 28 and 29, 2008. A few commenters requested that the Board hold additional public meetings in New York and in other communities affected by the acquisition, as well as extend the public comment period. The Board believes, however, that holding public meetings in Chicago and Los Angeles, as well as giving all commenters an extended period to submit written comments, provided sufficient opportunity for interested persons to present relevant information to the Board.

small business, and community development programs of the organization. Commenters also praised the willingness of Bank of America to provide CRA-related products and services, such as affordable mortgage products, educational seminars, and loan funds, to support community development activities. In addition, commenters praised Bank of America's charitable contributions and noted that officers and employees of the organizations frequently provided valuable services to community organizations as board members and volunteers.

A significant number of commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions or expressed concerns about the proposal.<sup>12</sup> Many commenters were concerned about the impact of the proposal on Bank of America's share of national deposits. Commenters expressed their belief that, if approved by the Board, Bank of America's acquisition of Countrywide would violate the statutory restriction on interstate bank acquisitions contained in section 3(d) of the BHC Act.<sup>13</sup> Many commenters also believed that the acquisition would reduce

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<sup>12</sup> Approximately 440 comments were submitted in the form of one of two substantially identical e-mail messages.

<sup>13</sup> A large number of commenters have expressed concern about the impact of the proposal on the deposit cap provision of section 3(d) of the BHC Act. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act"), Pub. L. 103-328 (1994), codified at 12 U.S.C. § 1842(d), provides that the Board may not approve any application for the interstate acquisition of a bank if consummation of the acquisition would result in the applicant controlling more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Countrywide Bank is chartered as a federal savings bank under the Home Owners' Loan Act. 12 U.S.C. § 1461 *et seq.* Section 2(c)(2)(B) of the BHC Act exempts federally chartered savings associations and savings banks, as defined by section 2(j) of the BHC Act, from the definition of "bank." As a result, Countrywide Bank is not a "bank," for purposes of the BHC Act and the nationwide deposit cap contained in the BHC Act. Therefore, the provisions of the Riegle-Neal Act prohibiting the Board from approving an application to acquire a bank if consummation of the acquisition would result in the applicant exceeding the national deposit cap do not apply to the present notice to acquire Countrywide Bank and the other nonblank subsidiaries of Countrywide. After consummation of the proposal, however, the calculation of Bank of America's total deposits would include Countrywide Bank's deposits for purposes of calculating compliance with the nationwide deposit cap

competition in the mortgage origination and servicing markets and substantially increase concentration in the banking and financial services industry. In addition, commenters expressed concern about Bank of America's plans for integrating Countrywide's operations, business model, and management. Many commenters urged Bank of America to retain Countrywide staff to help adequately address borrowers' needs, and some commenters suggested that Bank of America retain Countrywide's main office and mortgage servicing headquarters.

Several commenters expressed concerns about the safety and soundness of the proposed acquisition, arguing that Countrywide's current condition may unduly strain Bank of America's financial and managerial resources. Commenters also expressed concerns about the effect of Countrywide's legal exposures on Bank of America's resources, in light of lawsuits and investigations involving Countrywide. The majority of commenters urged Bank of America to develop a loss-mitigation plan for dealing appropriately with distressed borrowers or borrowers facing foreclosure.

Many commenters criticized Countrywide's lending and servicing operations and other business practices, focusing primarily on Countrywide's presence in the subprime lending market and its wide use of nontraditional mortgage products. A significant number of commenters criticized the performance of Bank of America and Countrywide under the CRA. Some of these commenters criticized Bank of America's community development and philanthropic initiatives. Other commenters expressed concern about the impact of the acquisition on Bank of America's commitment to CRA-related initiatives and its future performance under the CRA. In addition, some commenters expressed concern about Bank of America's and Countrywide's records of lending to minorities.

In evaluating the statutory factors under the BHC Act, the Board carefully considered the information and views presented by all commenters, including the

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requirement in connection with any subsequent application by Bank of America to acquire a bank pursuant to section 3 of the BHC Act or by one of its subsidiary banks to merge with a bank pursuant to the Bank Merger Act.

testimony at the public meetings and the written submissions. The Board also considered all the information presented in the notice and supplemental filings by Bank of America, various reports filed by the relevant companies, publicly available information, and other information and reports. In addition, the Board reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved and other information provided by the relevant federal financial institution supervisory agencies (“federal supervisory agencies”), the Securities and Exchange Commission (“SEC”), and the Department of Justice (“DOJ”). After a careful review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

#### Competitive Considerations

The Board has considered carefully the competitive effects of Bank of America’s acquisition of Countrywide, including the acquisition of Countrywide Bank and the other Countrywide nonbanking subsidiaries, in light of all the facts of record.

##### A. Acquisition of a Savings Association

Bank of America and Countrywide have subsidiary insured depository institutions that compete directly in two banking markets, Washington, D.C., and Fort Worth, Texas.<sup>14</sup> The Board has reviewed carefully the competitive effects of the proposal in both markets in light of all the facts of record, including public comment on the proposal. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in each market (“market deposits”) controlled by Bank of America and Countrywide,<sup>15</sup>

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<sup>14</sup> Countrywide Bank operates only two retail branches, one in Alexandria, Virginia, and one in Fort Worth, Texas. Countrywide Bank primarily delivers its products and services via Internet, call centers, and approximately 700 financial lending centers. It focuses on providing residential mortgage credit.

<sup>15</sup> Deposit and market share data are as of June 30, 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

the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the DOJ Merger Guidelines (“DOJ Guidelines”),<sup>16</sup> 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 Washington, D.C. banking market.<sup>17</sup> On consummation, this market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.<sup>18</sup>

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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). In the market share calculations in this case, the Board weighted Countrywide’s deposits at 50 percent pre-acquisition and at 100 percent post-acquisition to reflect the resulting control of such deposits by a commercial banking organization.

<sup>16</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-acquisition HHI is under 1000, moderately concentrated if the post-acquisition HHI is between 1000 and 1800, and highly concentrated if the post-acquisition HHI exceeds 1800. The 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-acquisition HHI is at least 1800 and the acquisition 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.

<sup>17</sup> The Washington, D.C. market is defined as the District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George’s Counties in Maryland; Arlington, Clarke, Culpeper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, and Warren Counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park in Virginia; and Berkeley and Jefferson Counties in West Virginia.

<sup>18</sup> Bank of America operates the second largest depository institution in the Washington, D.C. banking market, controlling deposits of approximately \$21.6 billion, which represent approximately 14.6 percent of market deposits. Countrywide operates the 42<sup>nd</sup> largest depository institution in the market, controlling deposits of approximately \$380 million, which represent less than 1 percent of market deposits. On consummation, Bank of America would remain the second largest depository institution in the market, controlling deposits of approximately \$22 billion, which represent approximately

The structural effects of the proposal in the Fort Worth, Texas banking market (“Fort Worth banking market”),<sup>19</sup> as measured by the HHI on the basis of deposits, would substantially exceed the DOJ Guidelines. According to the Summary of Deposits (“SOD”) as of June 30, 2007, with the deposits of Bank of America and Countrywide fully weighted, Bank of America operates the third largest insured depository institution in the Fort Worth banking market, controlling deposits of approximately \$3 billion, which represent approximately 3.7 percent of market deposits.<sup>20</sup> Countrywide operates the largest insured depository institution in the market, controlling deposits of approximately \$60.2 billion, which represent approximately 73.2 percent of market deposits.<sup>21</sup> On consummation, Bank of America would operate the largest insured depository institution in the market, controlling deposits of approximately \$63.3 billion, which represent approximately 76.9 percent of market deposits. The HHI would increase by 539 points to 5962.<sup>22</sup>

In accordance with its precedent when the HHI screening measurement exceeded DOJ Guidelines, the Board has conducted an in-depth review of the competitive effects of an acquisition. As the HHI increases or the change in the HHI resulting from a proposal becomes larger, increasingly stronger mitigating factors

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14.8 percent of market deposits. Approximately 118 depository institutions would remain in the Washington, D.C. banking market. The HHI would increase by 5 points to 877.

<sup>19</sup> The Fort Worth banking market is defined as Tarrant, Johnson, Parker (excluding Mineral Wells), and Wise Counties in Texas.

<sup>20</sup> When Countrywide Bank’s deposits are weighted at 50 percent pre-acquisition, Bank of America controls deposits representing approximately 5.8 percent of market deposits.

<sup>21</sup> When Countrywide Bank’s deposits are weighted at 50 percent pre-acquisition, Countrywide Bank controls deposits representing approximately 57.4 percent of market deposits.

<sup>22</sup> When Countrywide Bank’s deposits are weighted at 50 percent pre-acquisition and at 100 percent post-acquisition, the HHI increases by 2470 points to 5962.

are required to support a determination that the competitive effects of the proposal are not significantly adverse.

Bank of America asserts that inclusion of most deposits that were received and booked at Countrywide Bank's only branch in the Fort Worth banking market ("Fort Worth Branch") in calculations of market share indices for this transaction would distort the measures of the competitive effect of the proposal on the Fort Worth banking market. Bank of America has argued that, for purposes of evaluating the proposal's competitive effect in the Fort Worth banking market, the Board should exclude those deposits received by the Fort Worth Branch from various Countrywide affiliates and offices nationwide that are outside the Fort Worth banking market. Approximately \$60.2 billion of the deposits in the Fort Worth Branch are escrow deposits, brokered deposits, commercial deposits from title insurance and investment companies throughout the country, and deposits forwarded to the Fort Worth Branch from drop-boxes in Countrywide's national network of nonbanking offices. These national business-line deposits were previously maintained at Countrywide Bank's main office in Alexandria until they were transferred to the Fort Worth Branch in March 2005 to take advantage of lower state franchise taxes. Less than \$281 million, representing less than 1 percent, of those deposits booked at the Fort Worth Branch were in accounts of customers with addresses in the Fort Worth banking market.

In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude out-of-market deposits because all deposits are typically available to support lending and other banking activities at any location. The Board has adjusted the market deposits held by an applicant to exclude specific types of deposits only in rare situations, such as when evidence supported a finding that the excluded deposits were not legally available for use in that market, and data were available to make comparable adjustments to the market shares for all other market participants.<sup>23</sup> The Board also has adjusted deposit data in the rare circumstance where there was strong evidence that a depository organization moved its

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<sup>23</sup> See First Security Corp., 86 Federal Reserve Bulletin 122 (2000).

national business-line deposits to a particular branch for business reasons unrelated to its efforts to compete in that market and did not use these deposits to enhance its competitive ability in that market or to manipulate SOD data used in competitive analyses by a federal supervisory agency.<sup>24</sup>

The Board has conducted a more detailed analysis of Countrywide's activities in the Fort Worth banking market to evaluate whether the increase in concentration in the market, as measured by the HHI based on SOD data, overstates the anticompetitive effects of the proposal in the market. The Fort Worth Branch of Countrywide Bank is not a conventional retail branch. It is in a large office park building that is occupied primarily by Countrywide's national mortgage loan processing facilities. Only one teller window capable of handling retail banking transactions operates at that location. The branch accepts cash deposits but dispenses cash only by means of an automated teller machine ("ATM"). As noted, almost all deposits booked at the branch come from brokered deposits, deposits related to its mortgage operations, or other deposits from locations across the United States other than the Fort Worth banking market.

Countrywide placed the national business-line deposits in the Fort Worth Branch for business reasons unrelated to Countrywide's efforts to compete in the Fort Worth banking market. There also is no evidence in the record that Countrywide moved the deposits to Fort Worth from another branch in an attempt to manipulate the SOD data used for competitive analyses by the appropriate federal supervisory agency. Moreover, although Countrywide holds approximately \$60.2 billion in deposits in the Fort Worth market based on SOD data, this office holds loans totaling only approximately \$30.1 million, which represents a loan-to-deposit ratio of 0.05 percent for Countrywide Bank in the Fort Worth banking market. This unusually low loan-to-deposit ratio is consistent with the conclusion that the SOD deposit data

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<sup>24</sup> See J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352, 355 (2004).

significantly overstate Countrywide's competitive presence in the Fort Worth banking market.<sup>25</sup>

The Board also examined other aspects of the structure of the Fort Worth banking market. After consummation of the proposal, a large number of competitors would remain in the market. Seventy-three depository institutions would continue to compete in the Fort Worth banking market.

Based on a careful review of these and all other facts of record, the Board concludes that the increase in concentration, as measured by the HHI using SOD data without adjustment, overstates the competitive effect of the proposal in the Fort Worth banking market.<sup>26</sup> The Board also concludes that, with appropriate adjustment and after considering the structure of the market, consummation of the proposal would have no significantly adverse effect in the Fort Worth banking market.

#### B. Other Nonbanking Activities

The Board also has carefully considered the competitive effects of Bank of America's proposed acquisition of Countrywide's other nonbanking subsidiaries and activities in light of all the facts of record. Bank of America and Countrywide both engage in the following activities: mortgage lending and other credit extension originations and servicing; real estate and personal property appraisal; real estate settlement; credit bureau services; asset management, servicing, and collection; acquiring debt in default; securities brokerage; community development; trust company functions;

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<sup>25</sup> Although Countrywide Bank's national business-line deposits may be excluded from the Fort Worth banking market, the Board has nevertheless taken into account the fact that these deposits were used to fund Countrywide's nationwide mortgage operations.

<sup>26</sup> If the deposits attributable to customers with addresses outside the Fort Worth banking market were excluded from the calculation of its market concentration, Countrywide Bank would have a market share of less than 1 percent and Bank of America would remain the second largest insured depository institution in the market on consummation of the proposal, controlling deposits of approximately \$3.3 billion, which represent approximately 14.8 percent of market deposits. The HHI would increase 24 points to 900.

and tax services. Some commenters expressed concern that the proposal would adversely affect competition for mortgage lending in the United States.

Bank of America and Countrywide compete in the mortgage servicing business. Countrywide is the largest mortgage servicer in the United States. The Board previously has found that the geographic market for mortgage servicing is national in scope. Although Bank of America would become the largest mortgage loan servicer in the United States on consummation of the proposal, the mortgage servicing market would remain unconcentrated and numerous competitors would continue to engage in mortgage servicing. The HHI for this market would increase by no more than 152 points to no more than 882.<sup>27</sup>

The geographic market for mortgage originations is less settled than for mortgage servicing, but current market trends and evidence suggest that the appropriate geographic market for mortgage originations also is national in scope.<sup>28</sup> This conclusion is confirmed by analysis of the most recent Home Mortgage Disclosure Act (“HMDA”) data.<sup>29</sup> When taken as a whole, the HMDA data on mortgage originations strongly suggest that the geographic market for mortgage originations is no longer local or statewide but national in scope.

On consummation of this proposal, Bank of America would become the largest mortgage loan originator in the nation. The proposed acquisition would increase

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<sup>27</sup> Bank of America is the seventh largest mortgage loan servicer in the United States as of June 30, 2007. See American Banker, October 12, 2007.

<sup>28</sup> Earlier Board orders focused on the fact that long-distance mortgage origination providers offered loan rates that were substantially higher than rates offered by local sources for mortgage financing. This rate differential has decreased, however, as consumers have access both directly and through mortgage brokers to lenders nationwide.

<sup>29</sup> 12 U.S.C. § 2801 et seq.

the HHI by no more than 244 points to no more than 962. The market would remain unconcentrated with numerous mortgage originators.<sup>30</sup>

The Board also has considered the competitive effects of Bank of America's proposed acquisition of the other nonbanking subsidiaries of Countrywide. Most of the markets in which the nonbanking subsidiaries of Bank of America and Countrywide compete are regional or national in scope and unconcentrated with numerous competitors. Although community development, property appraisal, and real estate settlement activities generally are conducted locally, there are numerous providers of these services and neither Bank of America nor Countrywide control significant shares of these markets. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for these services.

C. Views of Other Agencies/Conclusion on Competitive Considerations

The DOJ also conducted a detailed review of the probable competitive effects of the proposal, including the acquisition of Countrywide Bank and the other nonbanking subsidiaries of Countrywide. The DOJ has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market, including the Washington, D.C. and Fort Worth banking markets, or in any relevant market for the other proposed nonbanking activities. The appropriate federal supervisory agencies have also 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 proposed transaction, including the acquisition of Countrywide Bank and Countrywide's other nonbanking subsidiaries, would not have a significantly adverse effect on competition or on the concentration of resources in the Washington, D.C. and Fort Worth banking markets, or in any other relevant banking or nonbanking activities market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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<sup>30</sup> As of June 30, 2007, Bank of America and Countrywide are, respectively, the fifth largest and largest mortgage loan originators in the United States. See American Banker, October 12, 2007.

### Financial and Managerial Resources

In reviewing the proposal under section 4 of the BHC Act, the Board has considered carefully the financial and managerial resources of Bank of America, Countrywide, and their subsidiaries, and the effect of the transaction on those resources. This review was conducted in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by Bank of America and Countrywide.

The Board has consulted with the Office of the Comptroller of the Currency (“OCC”) and the Office of Thrift Supervision (“OTS”), as the primary federal supervisors of Bank of America’s and Countrywide’s respective subsidiary depository institutions. Additionally, the Board has conferred with the SEC regarding the securities activities of Bank of America and Countrywide.

The Board has also considered the public comments that relate to these factors. Commenters expressed concern about the size of the combined organization and whether it would present special risks to the federal deposit insurance fund or the financial system in general. Several commenters expressed concerns over Countrywide’s risk-management systems, as well as concerns about Bank of America’s ability to effectively manage Countrywide’s operations.<sup>31</sup> Moreover, several commenters expressed concerns about existing and potential future investigations and lawsuits filed against Countrywide and its executives related to Countrywide’s operations.<sup>32</sup>

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<sup>31</sup> Several commenters expressed general and specific concerns over retention of Countrywide management staff and the existence of “golden parachute” payments for certain Countrywide executives. On consummation, Bank of America’s overall organization will continue to be governed by its policies, procedures, and senior executive leadership. The Board notes that “golden parachute” or indemnification payments are subject to applicable federal regulations and may require approval by appropriate supervisors. See 12 CFR 359.

<sup>32</sup> The Board will continue to monitor pending investigations and litigation involving Bank of America or Countrywide.

In evaluating financial resources in expansionary 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 insured depository institutions and the organizations' 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 combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In addition, the Board considers the ability of the organization to absorb the costs of the proposal and the plans for integrating operations after consummation.

The Board has considered carefully the financial factors of the proposal. Bank of America and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. In addition, Countrywide Bank is well capitalized and would continue to be so after consummation of the proposal. Based on its review of the record, the Board also finds that Bank of America has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and would not increase the debt service requirements of the combined company.

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 Bank of America, Countrywide, 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 federal supervisory agencies with the organizations and their records of compliance with applicable

banking laws and with anti-money laundering laws.<sup>33</sup> Bank of America and its subsidiary depository institutions are considered to be well managed. In addition, the Board has considered carefully Bank of America's plans for implementing the proposal, including its proposed risk-management systems after consummation. The Board also has considered Bank of America's record of successfully integrating large organizations into its operations and risk-management systems after acquisitions. Bank of America will implement its risk-management policies, procedures, and controls at the combined organization. Bank of America is devoting significant financial and other resources to address all aspects of the post-acquisition integration process.

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

#### Records of Performance Under the CRA

As noted previously, the Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire any insured depository institution, including a savings association. 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,

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<sup>33</sup> Some commenters expressed concerns about Bank of America's relationship with certain unaffiliated payday lenders. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible and the businesses are licensed by the states where they operate. Bank of America has stated that it conducts substantial due diligence reviews of its customers who provide alternative financial services, including reviews of anti-money laundering and Bank Secrecy Act compliance, and that it does not play any role in the lending practices, credit review processes, or other business practices of those firms.

including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.<sup>34</sup>

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of Bank of America and Countrywide, data reported by Bank of America and Countrywide under the CRA and the HMDA, other information provided by Bank of America, confidential supervisory information, and public comments received on the proposal.

Approximately 160 individuals, organizations, and businesses submitted comments or testified in support of the proposal. These commenters commended Bank of America’s record of performance under the CRA, particularly its sponsorship of homebuyer education programs in LMI communities and its financial support for community development and small business programs.

Approximately 610 individuals and groups expressed concerns in their comments and testimony that included the mortgage and consumer lending records of Bank of America and Countrywide and Bank of America’s ability to fulfill its CRA obligations after consummation of the proposal. Some commenters alleged that Countrywide’s mortgage lending and servicing activities and the increasing rates of foreclosures in its portfolio were harming borrowers and communities. Many commenters opposed the proposal or recommended approval only if specific conditions were imposed.<sup>35</sup> Many commenters also alleged that Bank of America had not

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<sup>34</sup> 12 U.S.C. § 2903.

<sup>35</sup> A number of commenters urged the Board to require Bank of America to provide specific pledges or plans or to take certain future actions, including meeting with particular organizations. They also asked the Board to condition its approval on a commitment by Bank of America to institute specific business practices and to take specific actions with regard to assisting Countrywide mortgage borrowers who were in default or at risk of defaulting. Some commenters criticized Bank of America’s performance under its previous community reinvestment pledges and urged the Board to require Bank of America to improve the CRA records of its subsidiary institutions. The Board consistently has found that (1) neither the CRA nor the federal supervisory agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements concerning future performance under the CRA with

adequately addressed the community reinvestment needs of California communities or expressed general concern about the CRA performance of Bank of America in the state. One commenter asserted that BA Bank had provided an insufficient amount of community development loans and investments in New York City.

A. CRA Performance Evaluations

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 CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>36</sup>

Bank of America's lead bank, BA Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2006 ("BOA Evaluation").<sup>37</sup> Two other subsidiary banks of Bank of America subject to the CRA, LaSalle Bank National Association, and FIA Card Services, N.A., also received "outstanding" ratings at their most recent CRA performance evaluations. A fourth subsidiary bank, LaSalle Bank Midwest National Association, received a "satisfactory" rating at its most recent CRA performance evaluation.<sup>38</sup>

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any organization or to meet with particular persons or organizations; and (2) the enforceability of any third-party pledges, initiatives, or agreements are matters outside the purview of the CRA. See Bank of America Corporation, 90 Federal Reserve Bulletin 217, 232-33 (2004) ("BOA/Fleet Order"). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal.

<sup>36</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

<sup>37</sup> The period for the BOA Evaluation was January 1, 2004, through December 31, 2006.

<sup>38</sup> LaSalle Bank National Association was last evaluated by the OCC as of December 31, 2002. FIA Card Services, N.A., formerly known as MBNA America National Bank, National Association, was last evaluated by the OCC as of April 4, 2005. LaSalle Bank Midwest National Association was last evaluated by the OCC as of August 1, 2006. The Board approved Bank of America's application to acquire both

Countrywide Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of October 18, 2004 (“Countrywide Evaluation”), before it converted from a commercial bank to a savings bank subject to the supervision of the OTS.<sup>39</sup> The Board also has consulted with the OTS, the current primary federal supervisor of Countrywide Bank. Bank of America has represented that it would institute the community development and community investment policies of BA Bank at Countrywide Bank to strengthen and help meet the banking needs of the communities it serves.

*CRA Performance of BA Bank.* BA Bank is Bank of America’s largest insured depository institution, representing approximately 79 percent of the organization’s insured depository institution assets. In the BOA Evaluation, the bank received “outstanding” ratings under the lending, investment, and service tests. Examiners commended BA Bank’s overall lending performance, which they described as demonstrating excellent or good lending-test results in almost all of the 38 areas rated. During the evaluation period, BA Bank originated more than 3 million CRA-reportable loans totaling more than \$429 billion, including home mortgage loans totaling \$380 billion. Examiners reported that the bank’s distribution of HMDA-reportable mortgage loans among borrowers of different income levels was good.<sup>40</sup> In addition,

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LaSalle Bank and LaSalle Bank Midwest in 2007. See Bank of America Corporation, 93 Federal Reserve Bulletin C109 (2007) (“BOA/LaSalle Order”). BA California, BA Georgia, BA Oregon, and BA Rhode Island are special-purpose banks that are not subject to the CRA.

<sup>39</sup> Before March 2007, Countrywide Bank was supervised by the OCC. The period for the OCC’s Countrywide Evaluation was January 1, 2002, through December 31, 2003.

<sup>40</sup> In BA Bank’s assessment areas in California, examiners generally found that the bank’s lending levels reflected excellent or good responsiveness to the credit needs of its assessment areas within the state. Examiners reported good distribution of loans among communities and borrowers of different income levels throughout BA Bank’s California assessment areas. In the New York-White Plains-Wayne Multistate Metropolitan Division (“MMD”) in New York and New Jersey (“New York MMD”), examiners found that the bank’s lending levels reflected excellent responsiveness to the credit needs of its assessment areas, and they noted that community development lending levels had a significantly positive impact within the New York MMD.

examiners reported that BA Bank's distribution of small business and small farm loans<sup>41</sup> among businesses and farms of different revenue sizes was good. In the BOA Evaluation, examiners noted that the bank offered special loan products with flexible underwriting standards that assisted the bank in meeting the credit needs of LMI communities in its areas of operation. Examiners also reported that BA Bank's level of community development lending significantly enhanced its lending test performance.<sup>42</sup>

After the BOA Evaluation, the bank has maintained a substantial level of home mortgage, small business, and community development lending. In 2007, the bank originated HMDA-reportable loans totaling approximately \$27 billion to LMI individuals throughout its assessment areas. BA Bank has continued to offer loan products with a variety of flexible down-payment and closing-cost options as well as standard FHA and VA loan products. BA Bank was also recognized in 2007 by the SBA for the tenth consecutive year as the nation's leading small business lender, with small business loan originations totaling more than \$25.6 billion. BA Bank represented that its community development lending during 2007 totaled approximately \$2 billion.

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<sup>41</sup> In this context, "small business loans" are loans with original amounts of \$1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to borrowers in the United States. "Small farm loans" are loans with original amounts of \$500,000 or less that are either secured by farmland or are used to finance agricultural production and other loans to farmers.

<sup>42</sup> Examiners commended BA Bank's community development lending performance under the investment test in California and New York. Examiners reported that the bank originated 222 community development loans during the evaluation period, totaling more than \$851 million, in the areas rated that included Los Angeles and San Francisco. Examiners noted that many of those loans were for economic development or affordable housing and helped create more than 1,500 jobs and 700 units of LMI housing. Examiners reported that the bank originated 167 community development loans, totaling more than \$562 million, in the New York MMD during the evaluation period and noted that a large number of such loans were for affordable housing and helped create more than 3,200 housing units in LMI areas.

In the BOA Evaluation, examiners reported that BA Bank consistently demonstrated strong performance under the investment test, noting that its performance was excellent or good in 99 percent of its assessment areas. During the evaluation period, BA Bank made more than 10,500 investments, including grants and contributions, that totaled almost \$4.8 billion.<sup>43</sup> BA Bank funded the development of approximately 100,000 housing units for LMI families through its qualified investments in its assessment areas.<sup>44</sup> Examiners commended BA Bank for demonstrating significant leadership in its qualified investment activities and commented that the bank ranked among the most significant investors in both Low Income Housing Tax Credit (“LIHTC”) and New Market Tax Credit (“NMTC”) projects and was the largest financial institution investor in Community Development Financial Institutions (“CDFI”) projects.<sup>45</sup> In addition, examiners noted that BA Bank was one of a handful of financial institutions that acted as a direct developer of large scale multifamily housing projects in LMI areas.<sup>46</sup> Examiners also reported that the bank was the second largest corporate

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<sup>43</sup> Examiners reported that BA Bank made almost 500 qualified investments totaling more than \$506 million during the evaluation period in the areas rated that included Los Angeles and San Francisco and helped create approximately 2,900 housing units in LMI areas. Examiners also found that retail banking services were readily accessible to areas and individuals of different income levels throughout California. In the New York MMD, examiners considered the bank’s performance under the investment test to be outstanding. The bank made more than 300 investments totaling approximately \$280 million in the New York MMD during the evaluation period, helping to create approximately 2,500 housing units in LMI areas.

<sup>44</sup> BA Bank’s CRA-qualified community development lending during 2007 in its California and New York assessment areas totaled approximately \$385.4 million and \$160.5 million, respectively.

<sup>45</sup> Examiners also highlighted BA Bank’s significant investments in LIHTC, NMTC, and CDFI projects in the New York MMD.

<sup>46</sup> Examiners also commended BA Bank for creating its Neighborhood Excellence Initiative, a program in 44 of the bank’s markets that is designed to develop relationships with nonprofit organizations that focus on community development. Examiners noted that the bank invested almost \$50 million in the initiative during the evaluation period.

donor in the United States in 2005 with cash donations of \$130 million, more than half of which qualified for CRA credit.<sup>47</sup>

BA Bank also has maintained a substantial level of community development investments in its assessment areas since the BOA Evaluation. Bank of America represented that BA Bank made more than 6,000 community development investments, totaling more than \$2.2 billion, during 2007.<sup>48</sup> In addition, Bank of America represented that the bank's community development subsidiary has developed more than 5,700 housing units through investments totaling \$520 million nationwide from 2005 through 2007.

In the BOA Evaluation, examiners commended BA Bank's performance under the service test throughout its assessment areas.<sup>49</sup> Examiners noted that the bank's provision of retail services showed excellent responsiveness to the banking needs of the communities and individuals of different income levels in the bank's assessment areas.<sup>50</sup> They reported that BA Bank's retail delivery systems were excellent, with the percentage

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<sup>47</sup> Some commenters criticized the amount of Bank of America's charitable donations and its methodology for making these donations. Bank of America represented that it has a record of providing significant corporate philanthropic donations in all the communities that it serves. The Board notes that neither the CRA nor the federal supervisory agencies' implementing rules require that institutions engage in charitable giving.

<sup>48</sup> Bank of America represented that BA Bank's community development investments during 2007 in its California and New York assessment areas totaled approximately \$476.6 million and \$126.8 million, respectively.

<sup>49</sup> One commenter asserted that Bank of America should ensure that certain banking products and services are made available to LMI customers in California. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes their costs to the consumer.

<sup>50</sup> BA Bank has entered into partnerships with national and local housing counseling agencies to offer pre- and post-purchase home mortgage counseling to LMI borrowers. Such counseling includes reviewing the buyer's credit report, income, and debt; preparing a budget; and conducting an affordability analysis.

of the bank's branches in LMI census tracts within its assessment areas approximating or exceeding the overall percentage of the population residing in such LMI census tracts.<sup>51</sup>

*CRA Performance of Countrywide Bank.* As noted above, Countrywide Bank received an overall "satisfactory" rating in its 2004 CRA evaluation, with "low satisfactory" ratings on both the lending and service tests and an "outstanding" rating on the investment test. Examiners noted in the Countrywide Evaluation that the bank's distribution of home mortgage loans reflected adequate penetration of LMI areas in its two assessment areas when compared with the distribution of owner-occupied housing units in those areas. In addition, examiners found that Countrywide Bank's lending performance to borrowers of different income levels in both assessment areas was adequate considering the affordability barriers for low-income families in those areas. Examiners noted that the bank's qualified investments and grants to community development organizations in its assessment areas were excellent relative to its financial resources. They commended the institution's responsiveness to the areas most pressing community development needs. In addition, examiners found that Countrywide Bank's branches, products, and services were reasonably accessible to communities and individuals of differing income levels and were delivered primarily through alternative delivery systems, such as the Internet call centers and a network of financial lending centers.<sup>52</sup>

#### B. Conclusion on CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Bank of America, comments received on the proposal and responses to those

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<sup>51</sup> One commenter alleged that BA Bank's branch network did not adequately serve LMI communities in New York City. Examiners found that BA Bank's retail services were reasonably accessible to areas and individuals of different income levels in the New York MMD. Examiners noted that the bank's recent branch openings and relocations improved accessibility to the bank's retail services, particularly in LMI areas.

<sup>52</sup> As noted, Countrywide Bank only operates a retail branch in Alexandria and Fort Worth and both branches only permit customers to conduct limited transactions.

comments, and confidential supervisory information. The Board has also considered that Bank of America proposes to institute its CRA policies and procedures at Countrywide. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.<sup>53</sup>

#### Other Considerations

In light of the public comments received on the proposal, the Board has considered carefully the compliance records of Bank of America and Countrywide with fair lending and other consumer protection laws in its evaluation of the public interest factors. Some commenters alleged, based on HMDA data, that Bank of America and Countrywide denied the home mortgage loan applications of African American and Hispanic borrowers more frequently than those of nonminority applicants nationwide and in certain Metropolitan Statistical Areas (“MSAs”).<sup>54</sup> Several commenters alleged, based on reviews of HMDA data, that Bank of America and Countrywide made

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<sup>53</sup> One commenter has reiterated his comments from previous Bank of America applications that urged the Board not to approve the proposal until Bank of America met certain “commitments” regarding its lending programs in Hawaii and its goal for mortgage lending to Native Hawaiians on Hawaiian Home Lands. See, e.g., BOA/Fleet Order at 232-33. In October 2007, the State of Hawaii Department of Hawaiian Homelands informed Bank of America that it had met its commitment to the state. As noted in the BOA/Fleet Order, Bank of America’s publicly announced plans to engage in certain lending programs in Hawaii were not commitments to the Board, and those plans were not conditions of the Board’s approvals in earlier applications by Bank of America or its predecessors. See id. As also previously noted, the Board views the enforceability of such third-party pledges, initiatives, and agreements to be matters outside the purview of the CRA.

<sup>54</sup> Some commenters also questioned Bank of America’s efforts in awarding contracts to minority- and women-owned businesses. Bank of America represented that 16 percent of its expenditures in 2007 were to firms that are majority owned by women, minorities, or disabled individuals. Although the Board fully supports programs designed to promote equal opportunity and economic opportunities for all members of society, the comments about supplier diversity programs are beyond the factors the Board is authorized to consider under the BHC Act. See, e.g., Deutsche Bank AG, 86 Federal Reserve Bulletin 509, 513 (1999).

disproportionately higher-cost loans to African American and Hispanic borrowers.<sup>55</sup> Some of these commenters also alleged that Countrywide often made such loans without regard to the borrower's qualifications for lower-cost, conventional mortgage loans. In addition, many commenters alleged that Countrywide had engaged in various abusive practices in mortgage sales, including concealing key loan provisions and terms, refusing to assist at-risk or defaulting customers, prematurely referring mortgages to foreclosure attorneys, and aiding and abetting abusive or discriminatory sales practices conducted by various third parties, such as mortgage brokers or home builders.

The Board's analysis of the lending-related concerns included a review of 2006 and preliminary 2007 HMDA data reported by BA Bank and Countrywide Bank and their lending affiliates.<sup>56</sup> 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 Bank of America or Countrywide Bank has excluded or imposed higher costs on 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.<sup>57</sup> HMDA data, therefore, have

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<sup>55</sup> Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 or more percentage points for first-lien mortgages and by 5 or more percentage points for second-lien mortgages. 12 CFR Part 203.4.

<sup>56</sup> The Board reviewed HMDA data for Bank of America in BA Bank's combined assessment areas nationwide and in California and North Carolina, in its assessment areas in the Charlotte, North Carolina MSA, and in the MSAs cited by commenters. The Board reviewed HMDA data for Countrywide Bank in its combined assessment areas (consisting of the Washington, D.C. MMD, the Bethesda, Maryland Metropolitan Division, and the Dallas-Fort Worth, Texas MSA), in California and Delaware, and in the MSAs cited by commenters. The Board notes that 2007 HMDA data are preliminary and that final data will not be available for analysis until fall 2008.

<sup>57</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether

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. Moreover, the Board believes that all bank holding companies and their affiliates must conduct their mortgage lending operations without any abusive lending practices and in compliance with all consumer protection laws.

In carefully reviewing the concerns about the organizations' lending activities, the Board has taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending and other consumer protection laws and regulations by BA Bank, Countrywide, and their lending affiliates. The Board also has consulted with the OCC, the primary federal supervisor of Bank of America's subsidiary banks, and with the OTS, the primary federal supervisor of Countrywide and Countrywide Bank. In addition, the Board has considered information provided by Bank of America, including its plans for managing the combined mortgage operations of BA Bank and Countrywide after consummation of the proposal.

The Board notes that Bank of America has represented it will operate the combined mortgage operations of BA Bank and Countrywide under BA Bank's policies, procedures, internal controls, and other risk-management systems to ensure compliance with fair lending and other consumer protection laws and regulations. The record, including confidential supervisory information, indicates that Bank of America has implemented many processes to help ensure compliance with all consumer

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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.

protection laws and regulations.<sup>58</sup> Bank of America's compliance program includes fair lending policy and product guides, compliance file reviews, testing of HMDA data's integrity, and other quality-assurance measures to help ensure compliance with consumer protection laws. Bank of America also stated that it provides annual training to ensure that Bank of America's associates understand their responsibility for complying with the organization's fair lending and consumer protection policies.

Bank of America represented that it would review and make appropriate modifications to the fair lending and consumer protection policies and procedures that would apply to the operations of Countrywide after consummation of the proposal and that it would institute unified policies and procedures for originating affordable mortgages, reducing foreclosure rates, serving traditionally underserved communities, and enhancing customer protections. Those measures would include discontinuing the origination of subprime loans and nontraditional mortgage products that may result in negative amortization; offering customers loan products for which they qualify; providing adequate disclosure of available product options, features, rates, and terms; and strengthening internal training and compliance programs.<sup>59</sup>

In addition, Bank of America represented that it would dedicate substantial financial, staffing, and other resources at the combined mortgage operations to assist

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<sup>58</sup> Some commenters alleged that the terms and fees associated with the credit card and some checking accounts offered by Bank of America are unfair or deceptive. As noted previously in the BOA/LaSalle Order, Bank of America has stated that it does not engage in or condone deceptive practices and that it conducts multiple, ongoing reviews to ensure that the terms, conditions, and marketing of its credit card products are appropriate and comply with applicable laws and regulations, including the Truth in Lending Act and the Board's Regulation Z. See BOA/LaSalle Order at C115.

<sup>59</sup> Many commenters expressed concern regarding the types of mortgage products to be sold by the combined mortgage operations of Bank of America and Countrywide after consummation of the proposal. Bank of America represented that it would offer a range of products that would continue to respond to market conditions and consumer demands, including conforming loans that are underwritten according to guidelines of government-sponsored entities or other standard guidelines; interest-only, fixed-rate, and adjustable-rate mortgage ("ARM") products, subject to a 10-year minimum interest-only period; and fixed-period ARMs subject to protections against severe step-ups in payment amounts.

customers in default or at risk of default with loan workouts to mitigate foreclosures. Bank of America plans to enhance loss-mitigation training, responsiveness to customers, management oversight, and audits of loan workouts and loss-mitigation activities. Bank of America also stated that it would enhance the combined mortgage operation's risk-management systems for originating and servicing loans received through brokers and correspondents to ensure compliance with fair lending and other consumer protection laws and regulations, as well as with prudent safety and soundness standards. These measures would include establishing qualification criteria for those third-party originators and monitoring their performance; requiring an executed agreement with those third parties to abide by applicable laws, regulations, and Bank of America's comprehensive guidelines; subjecting all loans received from third parties to automated fraud prevention and underwriting systems for approval; and limiting total broker compensation.<sup>60</sup>

Based on all the facts of record, the Board has concluded that considerations relating to the fair lending and consumer protection law compliance are consistent with approval under section 4 of the BHC Act.

#### Public Benefits

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 Countrywide. The proposal would

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<sup>60</sup> Some commenters expressed concerns about Bank of America's relationships with unaffiliated third parties engaged in subprime lending. The commenters provided no evidence that Bank of America originated, purchased, or securitized "predatory" loans or otherwise engaged in abusive lending practices. Bank of America has policies and procedures to help ensure that the subprime loans it purchases and securitizes are in compliance with applicable state and federal consumer protection laws. As noted in the BOA/LaSalle Order, Bank of America has stated that it conducts extensive due diligence reviews of the third-party loan originators with which it does business, as well as the loans that it purchases and the servicers of each pool, to help ensure that Bank of America is not facilitating "predatory" lending. See BOA/LaSalle Order at C112. The Board expects all banking organizations to conduct their operations in a safe and sound manner with adequate systems to manage operational, compliance, and reputational risks and will take appropriate supervisory actions to address and prevent abusive lending practices.

also allow Bank of America to offer a wider array of affordable mortgage loans, enhanced loan remediation processes, and other banking products and services to Countrywide customers. Bank of America has represented that it would grant Countrywide Bank customers access to BA Bank's ATM network and branch locations on the same terms and conditions as BA Bank customers. As noted, Bank of America also would implement enhanced risk-management systems at the combined organization.

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 significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Moreover, based on all the facts of record, the Board has concluded 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 the standard of section 4(j)(2) of the BHC Act is consistent with approval.

#### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Bank of America with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>61</sup> and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to

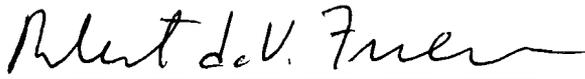
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<sup>61</sup> 12 CFR 225.7 and 225.25(c).

be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

The acquisition shall not 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>62</sup> effective June 5, 2008.



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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>62</sup> Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.

Appendix

Other Nonbanking Subsidiaries of Countrywide  
to be Acquired under Section 4 of the BHC Act

- (1) CB Securities Holdings 1, Inc. and CB Securities Holdings 2, Inc., both of Thousand Oaks, California; Countrywide Asset Management Corp., Countrywide Commercial Administration LLC, Countrywide Commercial Real Estate Finance, Inc., Countrywide Home Loans, Inc., Countrywide Mortgage Ventures, LLC, Countrywide Servicing Exchange, and LandSafe Appraisal Services, Inc., all of Calabasas, California; Countrywide Home Loans Servicing LP, Plano, Texas; Countrywide Warehouse Lending, West Hills, California; CTC Real Estate Services, Simi Valley, California; CWB Venture Management Corporation, Countrywide KB Home Loans, LLC, and CWB Mortgage Ventures, LLC, all of Thousand Oaks, California; LandSafe Credit, Inc., LandSafe Flood Determination, Inc., and LandSafe Title of Texas, Inc., all of Richardson, Texas; LandSafe Services of Alabama, Inc., Montgomery, Alabama; LandSafe Title of California, Inc., Rosemead, California; LandSafe Title of Florida, Inc., Fort Lauderdale, Florida; and LandSafe Title of Maryland, Inc., Baltimore, Maryland, and thereby engage in extending credit and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, in accordance with sections 225.28(b)(1) and (2) of Regulation Y (12 CFR 225.28(b)(1) and (2));
- (2) ReconTrust Company, National Association and ReconTrust Company, both of Thousand Oaks, California, and thereby engage in trust company activities in accordance with section 225.28(b)(5) of Regulation Y (12 CFR 225.28(b)(5));
- (3) Countrywide Tax Services Corp., Plano, Texas, and thereby engage in providing tax services for residential mortgage transactions in accordance with section 225.28(b)(6) of Regulation Y (12 CFR 225.28(b)(6));
- (4) Countrywide Capital Markets Asia (H.K.) Limited, Hong Kong, Special Administrative Region, People's Republic of China; Countrywide Capital Markets Asia Singapore Pte. Ltd., Republic of Singapore; Countrywide Investment Services, Inc., Chandler, Arizona; and thereby engage in providing securities brokerage services in accordance with section 225.28(b)(7) of Regulation Y (12 CFR 225.28(b)(7)); and
- (5) The Countrywide Foundation, Calabasas, California; and CWB Community Assets, Inc., Thousand Oaks, California, and thereby engage in community development activities in accordance with section 225.28(b)(12) of Regulation Y (12 CFR 225.28(b)(12)).