

FEDERAL RESERVE SYSTEM

American Express Company  
New York, New York

American Express Travel Related Services Company, Inc.  
New York, New York

Order Approving Formation of Bank Holding Companies  
and Notice to Engage in Certain Nonbanking Activities

American Express Company (“AMEX”) and American Express Travel Related Services Company, Inc. (“AMEX Travel”) (collectively, “Applicants”) have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to become bank holding companies on conversion of American Express Centurion Bank (“AMEX Bank”), Salt Lake City, Utah, to a bank.<sup>2</sup> AMEX Bank currently operates as an industrial loan company and is exempt from the definition of “bank” under the BHC Act.<sup>3</sup> Applicants have also filed with the Board elections to become financial holding companies on consummation of the proposal pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.<sup>4</sup>

In addition, as part of their proposal to become bank holding companies, AMEX and AMEX Travel have requested the Board’s approval under

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> AMEX Bank is a direct subsidiary of AMEX Travel and an indirect subsidiary of AMEX.

<sup>3</sup> 12 U.S.C. § 1841(c)(2)(H).

<sup>4</sup> 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y<sup>5</sup> to retain their voting shares of American Express Bank, FSB, Salt Lake City ("AMEX Thrift"), a federal savings association.<sup>6</sup> AMEX has also provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act.<sup>7</sup>

Section 3(b)(1) of the BHC Act requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the banks to be acquired and provide the supervisor a period of time (normally 30 days) within which to submit views and recommendations on the proposal.<sup>8</sup> Section 4(i)(4) of the BHC Act imposes a similar requirement with respect to a notice to acquire a savings association.<sup>9</sup> The BHC Act also authorizes the Board to reduce or eliminate these notice periods under certain circumstances.<sup>10</sup>

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal in accordance with the provisions of the BHC Act and the Board's regulations.<sup>11</sup> The Board has provided notice to the primary federal and state supervisors of AMEX

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<sup>5</sup> 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

<sup>6</sup> AMEX Thrift is a direct subsidiary of AMEX Travel and an indirect subsidiary of AMEX.

<sup>7</sup> 12 U.S.C. § 1843(c)(13).

<sup>8</sup> 12 U.S.C. § 1842(b)(1); 12 CFR 225.15(b).

<sup>9</sup> 12 U.S.C. § 1843(i)(4).

<sup>10</sup> 12 U.S.C. §§ 1842(b)(1) and 1843(i)(4).

<sup>11</sup> Id.; 12 CFR 225.16(b)(3), 225.16(g)(2), 225.25(d), and 262.3(l).

Bank, the Federal Deposit Insurance Corporation (“FDIC”) and Commissioner of the Utah Department of Financial Institutions; to the primary federal supervisor of AMEX Thrift, the Office of Thrift Supervision (“OTS”); and to the Department of Justice (“DOJ”). Those agencies have indicated that they have no objection to approval of the proposal. For the same reasons, and in light of the fact that this transaction represents the conversion of an existing subsidiary of Applicants from one form of a depository institution to another, the Board has also waived public notice of this proposal.<sup>12</sup>

AMEX, with total consolidated assets of approximately \$127 billion, provides charge and credit payment-card products and travel-related services and engages in other activities both in the United States and abroad.<sup>13</sup> AMEX Bank has total consolidated assets of approximately \$25.3 billion and controls deposits of approximately \$7.2 billion. It engages primarily in financing and lending activities and taking deposits of the type that are permissible for an industrial loan company under the exception in section 2(c)(2)(H) of the BHC Act. AMEX Thrift has total consolidated assets of approximately \$25 billion and controls deposits of approximately \$7.2 billion. AMEX Thrift engages primarily in credit card lending activities.

#### Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of a bank. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects

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<sup>12</sup> 12 CFR 225.16(b)(3), 225.16(g)(2), 225.25(d), and 262.3(l).

<sup>13</sup> Asset data for AMEX are as of September 30, 2008, and asset and deposit data for AMEX Bank and AMEX Thrift are as of June 30, 2008.

of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act<sup>14</sup> (“CRA”) of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.<sup>15</sup>

An acquisition of a savings association requires Board approval under sections 4(c)(8) and 4(j) of the BHC Act.<sup>16</sup> The Board previously has determined by regulation that the operation of a savings association is closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>17</sup> The Board also must determine that the operation of AMEX Thrift by Applicants “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>18</sup>

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<sup>14</sup> 12 U.S.C. § 2901 et seq.

<sup>15</sup> In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

<sup>16</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j); See 12 U.S.C. § 1843(i).

<sup>17</sup> 12 CFR 225.28(b)(4)(ii).

<sup>18</sup> 12 U.S.C. § 1843(j)(2)(A).

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed 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.<sup>19</sup> In addition, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of Applicants into a bank, with no resulting change in the ownership of Applicants, AMEX Bank, or AMEX Thrift. In addition, Applicants do not propose to acquire any additional depository institution as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors are consistent with approval of the proposal.

### Financial, Managerial, and Other 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 banks involved in the proposal and certain other supervisory factors.<sup>20</sup> The Board also reviews the financial and managerial resources of the organizations involved in the

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<sup>19</sup> 12 U.S.C. § 1842(c)(1).

<sup>20</sup> 12 U.S.C. § 1842(c)(2) and (3).

proposal under section 4 of the BHC Act. The Board has carefully considered these factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by AMEX and AMEX Travel. In addition, the Board has consulted with the primary federal and state supervisors of Applicants, AMEX Bank, and AMEX Thrift.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors. AMEX and AMEX Travel are adequately capitalized and all the AMEX entities that are subject to regulatory capital requirements currently exceed the relevant requirements. In addition, AMEX Bank and AMEX Thrift are currently well capitalized under applicable federal guidelines. AMEX Bank and AMEX Thrift also would be well capitalized on a pro forma basis on consummation of the proposal. Other financial factors are consistent with approval.

In addition, the Board has carefully considered the managerial resources of AMEX and AMEX Travel in light of all the facts of record, including confidential supervisory and examination information and information provided by Applicants. The Board has considered the supervisory experience of the relevant federal and state supervisory agencies of Applicants and their insured depository institutions with the organizations and institutions and their records of compliance with applicable banking law and anti-money laundering laws.<sup>21</sup>

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<sup>21</sup> A former subsidiary of Applicants was subject to a cease and desist order and concurrent civil money penalties related to Bank Secrecy Act violations issued by the Board on August 3, 2007. AMEX Travel was subject to related civil money penalties issued by the Financial Crimes Enforcement Network. The subsidiary at which the violations occurred, and against which the cease and desist order was applied, American Express Bank International, was sold by Applicants in late

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

Convenience and Needs and CRA Performance Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must 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 depository institutions under the CRA.<sup>22</sup> The Board must also review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.<sup>23</sup>

The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of the Applicants in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it

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2007. In reviewing the statutory factors, the Board has consulted with the relevant federal and state supervisors about the compliance by Applicants and their subsidiary depository institutions with anti-money laundering laws.

<sup>22</sup> 12 U.S.C. § 2903.

<sup>23</sup> See, e.g., North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767 (2000).

represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>24</sup>

AMEX Bank received an "outstanding" rating under the CRA at its most recent performance evaluation by the FDIC as of January 9, 2006 (the "FDIC Examination"). Consistent with the CRA regulations adopted by the federal banking agencies, AMEX Bank was evaluated under the community development test as a limited-purpose institution.<sup>25</sup> The FDIC Examination indicated that AMEX Bank originated and funded new community development loans totaling \$6.04 million during the examination period (January 28, 2003, through January 9, 2006) and had more than \$3 million in community development loan commitments. The FDIC Examination also determined that AMEX Bank provided an outstanding level of community development investments. Applicants have represented that the conversion of AMEX Bank to a bank for purposes of the BHC Act will enhance its ability to meet the convenience and needs of its communities by permitting the bank to offer a wider array of deposit products.

AMEX Thrift received an "outstanding" rating under the CRA at its most recent performance evaluation by the OTS, as of October 12, 2006 (the "OTS Examination"). AMEX Thrift also was evaluated under the community development test as a limited-purpose institution. The OTS Examination indicated that AMEX Thrift originated and funded new community development loans totaling \$16.0 million during the examination period (March 1, 2004, through

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<sup>24</sup> The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 64 Federal Register 23,641 (1999).

<sup>25</sup> See, e.g., 12 CFR 228.21(a)(2).



September 30, 2006), and that it provided more than \$118.8 million in qualifying community development investments.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance records of AMEX Bank and AMEX Thrift are consistent with approval of the proposal.

#### Nonbanking Activities and Financial Holding Company Declarations

Applicants engage in a wide range of nonbanking activities that have been determined to be financial in nature or incidental to a financial activity pursuant to section 4(k) of the BHC Act.<sup>26</sup> These activities include, among other things, extending credit and servicing loans, engaging in activities related to extending credit, issuing and selling consumer-type payment instruments, providing data processing services, and operating travel agencies.<sup>27</sup>

Applicants also have filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to retain their ownership interest in AMEX Thrift and thereby operate a savings association. As part of its evaluation of the public interest factors under section 4(j) of the BHC Act, the Board also must determine that the acquisition of the nonbank subsidiary and the performance of the proposed nonbanking activities by Applicants can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources,

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<sup>26</sup> See 12 U.S.C. § 1843(k).

<sup>27</sup> See 12 U.S.C. § 1843(k)(4)(A) and (F); 12 CFR 225.28(b)(1), (2), and (13). Financial holding companies may engage, in the United States and abroad, in travel agency services in connection with financial services offered by the financial holding company or others. 12 U.S.C. § 1843(k)(4)(G); 12 CFR 225.86(b)(2).

decreased or unfair competition, conflicts of interests, or unsound banking practices.<sup>28</sup>

The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would provide the current and future customers of AMEX, AMEX Travel, and AMEX Thrift with expanded financial products and services. For the reasons discussed above, and based on the entire record, the Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in significantly 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.

As noted, Applicants have filed elections to become financial holding companies pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board's Regulation Y. Applicants have certified that AMEX Bank and AMEX Thrift are well capitalized and well managed and have provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that these elections to become financial holding companies will become effective on consummation of the proposal if, on that date, AMEX Bank and AMEX Thrift remain well capitalized and well managed and each institution has a rating of at least "satisfactory" at its most recent performance evaluation under the CRA.

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<sup>28</sup> See 12 U.S.C. § 1843(j)(2)(A).

Section 4 of the BHC Act by its terms also provides any company that becomes a bank holding company two years within which to conform its existing nonbanking investments and activities to the section's requirements, with the possibility of three one-year extensions.<sup>29</sup> Applicants must conform to the BHC Act any impermissible nonfinancial activities and investments that they currently conduct or hold, directly or indirectly, within the time requirements of the act.

AMEX also has provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications under section 3 and the notices under section 4 of the BHC Act 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 the Board is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and all the commitments made to the Board in connection with the applications and notices. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>30</sup> and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to

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<sup>29</sup> See 12 U.S.C. § 1843(a)(2).

<sup>30</sup> 12 CFR 225.7 and 225.25(c).

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.

The proposal does not involve the acquisition, merger, or consolidation of a bank. On this basis and after consultation with the DOJ, the Board has determined that the post-consummation period in section 11 of the BHC Act does not apply to consummation of the conversion of AMEX Bank.<sup>31</sup> Accordingly, the transaction may be consummated immediately but not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>32</sup> effective November 10, 2008.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>31</sup> 12 U.S.C. § 1849(b)(1).

<sup>32</sup> Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Duke.