FRB Order No. 2025-17
October 17, 2025

FEDERAL RESERVE SYSTEM

Canandaigua National Corporation
Canandaigua, New York

Order Disapproving Notice to Engage in Activities
Complementary to a Financial Activity

Canandaigua National Corporation ("Canandaigua"), Canandaigua, New York, a financial holding company ("FHC") within the meaning of the Bank Holding Company Act ("BHC Act"),[1] has provided notice ("Notice") under section 4 of the BHC Act[2] and the Board's Regulation Y[3] to engage de novo in making certain guarantees to acquire real property, an activity that the Board has not previously approved under the BHC Act.

Under section 4(c)(8) of the BHC Act, as amended by the Gramm–Leach–Bliley Act ("GLB Act"),[4] a bank holding company may engage in activities that the Board had determined, by regulation or order prior to November 12, 1999, were so closely related to banking as to be a proper incident thereto.[5] In addition, the BHC Act permits an FHC to engage in activities that are financial in nature or incidental to a financial activity, as defined in section 4(k) of the BHC Act,[6] and permits the Board to

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[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1843.

[3] 12 CFR part 225.

[4] Pub. L. No. 106-102, 113 Stat. 1338 (1999).

[5] 12 U.S.C. § 1843(c)(8).

[6] 12 U.S.C. § 1843(k).

determine, in consultation with the Secretary of the Treasury, that an activity is financial in nature or incidental to a financial activity.[7]

The BHC Act also permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.[8] This authority is intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature but that is meaningfully connected to a financial activity such that it complements the financial activity.[9] The BHC Act provides that any FHC seeking to engage in a complementary activity must provide prior notice under section 4(j) of the BHC Act.[10] When reviewing such a proposal, the Board is required by the BHC Act to consider, in addition to the considerations described above, whether performance of the activity by the FHC can reasonably be expected to produce public benefits, 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 interest, unsound banking practices, or risk to the stability of the United States banking or financial system."[11] An adverse conclusion with respect to any individual statutory element for consideration may be sufficient grounds to support

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[7] 12 U.S.C. § 1843(k)(1)(A).

[8] 12 U.S.C. § 1843(k)(1)(B).

[9] See Bank Holding Companies and Change in Bank Control, 68 Fed. Reg. 68493, 68497 (Dec. 9, 2003); see also 145 Cong. Rec. 28550 (1999) (statement of Rep. Leach) ("It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.").

[10] 12 U.S.C. § 1843(j).

[11] 12 U.S.C. § 1843(j)(2)(A); see also 12 CFR 225.89(b) (describing the relevant factors for consideration by the Board).

denial, consistent with the Board's review of applications under statutory factors in other contexts.[12]

Canandaigua controls The Canandaigua National Bank and Trust Company ("Canandaigua Bank"), Canandaigua, New York, which operates solely in New York. Canandaigua also controls certain nonbank companies, including CNB Mortgage Company ("CNB Mortgage"), Pittsford, New York, a subsidiary of Canandaigua Bank.

As noted above, Canandaigua has requested that the Board expand the authority of FHCs to make certain guarantees to acquire real property ("cash guarantee mortgage program") under the BHC Act's complementary authority. Under the program, Canandaigua would provide guarantees to sellers on behalf of customers seeking to purchase residential real property who have been preapproved for a mortgage loan by CNB Mortgage. The guarantee could be exercised by the seller when a purchaser, preapproved by CNB Mortgage for a mortgage loan, is ultimately denied a mortgage for credit-related or other reasons. The examples provided by Canandaigua were related to changes in the circumstances of the customer between the preapproval and the time when final written approval would have been granted. Interested customers would provide an earnest money deposit of at least 15 percent of the purchase price,[13] and Canandaigua

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[12] See, e.g., Florida National Banks of Florida, Inc., 62 Federal Reserve Bulletin 696, 698 (1976) (denying the application by a company to retain voting shares in a bank acquired without proper prior approval of the Board on the grounds of adverse managerial considerations alone); Emerson First National Company, 67 Federal Reserve Bulletin 344, 345–46 (1981) (denying based on financial factors alone); see also Board of Governors v. First Lincolnwood Corp., 439 U.S. 234, 244–48 (1978) (holding that the Board may "disapprove formation of a bank holding company solely on grounds of financial or managerial unsoundness" under the BHC Act).

[13] Under the proposed cash guarantee mortgage program, the earnest money deposit would be submitted to the seller's real estate agent and held in escrow. The earnest money deposit would then either be released toward the purchase of the home by the prospective purchaser if approved for a mortgage from CNB Mortgage, if desired by the prospective purchaser, or released to Canandaigua toward the purchase of the property if the guarantee is exercised.

would agree with the seller that, if the relevant preapproved customer fails to obtain a final written mortgage approval from CNB Mortgage for the purchase of the property, then Canandaigua would assume all rights and obligations under the contract to purchase the property, subject to the seller's consent to assignment. If required to perform under the guarantee, Canandaigua would engage outside real estate counsel to consummate the purchase and would engage a property manager to maintain the property until disposition. Canandaigua would subtract reasonable closing costs and fees to acquire and sell the property, as well as reasonable carrying costs, from the customer's earnest money deposit, and after sale would return any remaining funds to the customer, to a maximum of 100 percent of the earnest money deposit. Canandaigua would not use any portion of the earnest money deposit to cover any loss resulting from the resale of the real property at a lower price than the purchase price paid by Canandaigua. Canandaigua would be exposed to any loss from acquiring and reselling the real property.

Canandaigua proposes to adhere to certain limits on this activity. Canandaigua would guarantee performance only on real estate purchase contracts where the purchase price does not exceed the mortgage preapproval amount authorized by CNB Mortgage. Moreover, Canandaigua has indicated that purchases of any property under the guarantee would occur only if the aggregate value of real estate owned under the program after the purchase, as measured by the contracted purchase price for each parcel, would not exceed $5 million at any time. Canandaigua also intends to hold title to property under the program for no longer than two years and would seek to dispose of property promptly.

***Statutory Considerations***

As an initial matter, the Board has considered whether the proposed activity is an activity that is financial in nature or incidental to a financial activity. The cash guarantee mortgage program is not among the activities that are by statute defined to be

financial in nature,[14] nor has the Board previously determined by rule or order that the proposed activity is financial in nature or incidental to a financial activity.[15]

*Substantial Risk to the Safety or Soundness of Depository Institutions or the Financial System Generally*

The Board has considered whether the proposed activity would pose a substantial risk to the safety or soundness of Canandaigua Bank, depository institutions, or the financial system generally.

Bank holding companies are generally prohibited from investing in real property.[16] This prohibition has its roots in a similar restriction on bank investments in real property. It has long been impermissible for national banks to acquire real estate

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[14] See 12 U.S.C. § 1843(k)(4) and (5).

[15] See 12 U.S.C. § 1843(k)(2). The Board has determined that one activity—acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate—is an activity that is financial in nature. See 12 CFR 225.86(d)(1). The Board does not believe consultation with the Secretary of the Treasury to determine whether the proposed cash guarantee mortgage program is an activity that is financial in nature to be appropriate in this instance. Section 4(k)(2) of the BHC Act requires the Board to notify and consult with the Secretary of the Treasury concerning any request, proposal, or application to determine whether an activity is financial in nature or incidental to a financial activity. 12 U.S.C. § 1843(k)(2)(A)(i). Under Regulation Y, an FHC that wishes to engage in an activity that is not otherwise permissible for an FHC to engage in must request a determination from the Board that the activity is permitted pursuant to section 225.86(e)(1) of Regulation Y and is therefore either financial in nature or incidental to a financial activity. 12 CFR 225.86(e)(2)(i). Canandaigua has not requested a determination that the proposed activity is permitted under section 4(k) of the BHC Act and section 225.86(e)(1) of Regulation Y.

[16] See 12 U.S.C. § 1843(a)(2) (providing generally that a bank holding company may not engage in any activity, directly or indirectly, except for (i) those of banking or managing or controlling banks and other authorized subsidiaries, (ii) servicing activities, and (iii) activities permitted under other provisions of section 4).

except in narrow circumstances.[17] This restriction has been intended to "keep the capital of the banks flowing in the daily channels of commerce," to prevent national banks from direct exposure to real estate, and to forestall the accumulation of significant real estate holdings by national banks.[18] There are certain exceptions to this general prohibition. For example, a national bank may own real estate used for the transaction of its banking business, as well as real estate acquired in satisfaction of debts previously contracted.[19] However, these exceptions historically have been expressly described in statute and narrowly drawn to allow banks to own real property to the extent required in the transaction of their banking activities.

The Board has not approved proposals by bank holding companies to engage in the purchase, sale, or development of land and real estate beyond the express authorities granted in the BHC Act, and has denied or disapproved such proposals when submitted. For example, the Board determined in 1972 that land development activity was not an activity closely related to banking, which at the time represented the outer limit of permissible domestic activities for bank holding companies.[20] While the powers of certain bank holding companies and FHCs were expanded following the enactment of

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[17] Section 5137 of the Revised Statutes of the United States, 12 U.S.C. § 29. The Board notes that national banks have been generally prohibited from investing in real estate since 1864. Id.

[18] National Bank v. Matthews, 98 U.S. 621, 626 (1878).

[19] 12 U.S.C. § 29. A bank holding company may similarly own real estate used wholly or substantially by the bank holding company, or by a subsidiary, in its operations or for its future use, as well as real estate acquired in satisfaction of debts previously contracted in good faith. See 12 U.S.C. §§ 1843(c)(1) and (2); 12 CFR 225.22(b)(2) and (d)(1).

[20] See 12 CFR 225.126(c); see also UB Financial Corp., 58 Federal Reserve Bulletin 428 (1972) (holding "[t]he Board is of the opinion that the activities of purchasing and selling of land or participating as a joint venturer in real estate development are not so closely related to banking as to be a proper incident thereto"); see also First Bank System, Inc., 81 Federal Reserve Bulletin 169, 176 (1995) (holding "that real estate brokerage activities are not permissible under the BHC Act").

the GLB Act,[21] Congress has not amended the prohibition against bank holding companies investing in real estate.[22] Instead, Congress, since passage of the GLB Act, has curbed the Board's authority to permit FHCs to engage in real estate-related activities.[23]

Canandaigua's proposal is inconsistent with the general prohibition on banking organizations investing in real estate and would involve Canandaigua in precisely the type of real estate exposure that the prohibition is intended to prevent.[24] Under the proposal, Canandaigua would purchase, hold, and ultimately dispose of real property, subjecting it and its subsidiaries to the considerable safety-and-soundness risks inherent in investing in real estate. Further, the proposed activity is outside the scope of the statutorily created exceptions to the general prohibition on investing in real estate. For example, the exception permitting national banks and bank holding companies to hold real estate acquired in satisfaction of debts previously contracted permits a national bank or bank holding company to hold real estate that was pledged to secure a credit extension, subject to certain maximum holding period requirements. In this way, national banks and bank holding companies reduce their credit risks. Under the proposal, by contrast, Canandaigua would be obligated to acquire the real property for its own account

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[21] See Gramm-Leach-Bliley Act §§ 102 and 103, Pub. L. No. 106-102, 113 Stat. 1338 (1999), codified at 12 U.S.C. §§ 1842 and 1843.

[22] 12 U.S.C. § 1843(a)(2).

[23] See Financial Services and General Government Appropriations Act, 2009 § 624, Pub. L. No. 118-8, div. D, tit. VI, § 624, 123 Stat. 524, 678, codified at 12 U.S.C. § 1843 note (providing that the Board may not determine, by rule, regulation, order, or otherwise, that for purposes of section 4(k) of the BHC Act, that real estate brokerage activity or real estate management activity is an activity that is financial in nature, is incidental to any financial activity, or is complementary to any financial activity). The Board does not believe that the proposed cash guarantee mortgage program constitutes real estate brokerage activity or real estate management activity. See also Bank Holding Companies and Change in Bank Control, 66 Fed. Reg. 307, 313 (proposing definitions of "real estate brokerage" and "real estate management" for purposes of the BHC Act).

[24] National Bank v. Matthews, 98 U.S. 621, 626 (1878).

if it determines the proposed borrower is not creditworthy and therefore does not extend credit to the borrower.

Canandaigua contends that certain aspects of its proposal mitigate the safety-and-soundness risks to the organization, including Canandaigua's historical rate of mortgage denial following preapproval, Canandaigua's experience in disposing of other real estate owned, and a proposed quantitative limit on the value of the real estate owned under the program at any one time. However, the BHC Act requires the Board to consider the safety-and-soundness risks of a proposed activity to "depository institutions or the financial system generally," not simply the risks that may arise for a particular notificant.[25] Consequently, although limitations on the financial exposure of a particular notificant to a proposed complementary activity are relevant to the Board's assessment of the safety-and-soundness statutory consideration,[26] the Board's assessment must take into account the broader safety-and-soundness risks that would be associated with FHCs conducting the activity. Given the risks discussed above, the Board is unable to determine that Canandaigua's proposed activity does not pose a substantial risk to the safety and soundness of financial institutions or the financial system generally, regardless of the proposed quantitative limit on the activity.

Past downturns in the market for real estate have caused excess harm to the banking system and financial institutions.[27] For example, rapidly decreasing real estate values caused significant losses to savings and loan associations during the savings and loan crisis in the 1980s,[28] and a significant number of banks in the northeastern United States failed in the early 1990s because of their significant lending exposures to real

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[25] 12 U.S.C. § 1843(k)(1)(B).

[26] See, e.g., Wellpoint, Inc., 93 Federal Reserve Bulletin C133, C135 (2007).

[27] See 1 Fed. Deposit Ins. Corp., History of the Eighties – Lessons for the Future, ch. 10, p. 338 (1997).

[28] See Congressional Budget Office, The Economic Effects of the Savings & Loan Crisis (1992), at 8.

estate that suffered significant declines in value.[29] More recently, in the financial crisis that emerged in 2007, a precipitous decline in the market for real estate induced the longest and deepest recession in generations.[30] Permitting FHCs to engage in the purchase and sale of real property as proposed by Canandaigua arguably would leave them even more exposed to the types of risks that contributed to these previous banking system crises. Moreover, the direct ownership of real estate would be inconsistent with the determination by Congress that banking and commerce generally should be separated, absent narrow statutory exceptions.

Based on the foregoing and all other facts of record, the Board concludes that the proposed cash mortgage guarantee program would pose a substantial risk to the safety or soundness of Canandaigua Bank, depository institutions, and the financial system generally.

*Other Statutory Considerations*

As discussed above, in considering a notice by an FHC to engage in a complementary activity, the Board also considers whether there is a reasonable basis for construing the proposed activities as complementary to a financial activity within the meaning of the GLB Act, and whether the performance of the proposed activities "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, unsound banking practices, or risk to the stability of the United States banking or financial system."[31]

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[29] See 1 Fed. Deposit Ins. Corp., History of the Eighties – Lessons for the Future, at 338 ("The problems of the northeastern banks arose to a large extent because they had been aggressive participants in the prosperous real estate markets of the 1980s.").

[30] See Final Report on the Nat'l Comm'n on the Causes of the Fin. and Econ. Crisis in the U.S. at 389 (2011).

[31] 12 U.S.C. § 1843(j)(2)(A); see also 12 CFR 225.89(b) (describing the relevant factors for consideration by the Board).

The Board believes certain aspects of Canandaigua's proposal raise concerns under the other statutory elements for consideration. For example, Canandaigua asserts that the proposed cash guarantee mortgage program would help its mortgage customers compete with all-cash offers and allow Canandaigua to compete with nonbank competitors that already offer such products in their market. However, it is not clear that these asserted benefits outweigh the possible adverse effects of the proposed activity, such as the unsound banking practices involved in real estate investment, as well as the negative financial impact that could fall on potential customers who lose their earnest money deposit under the cash guarantee mortgage program.

Because the Board has concluded that the proposed activity would pose a substantial risk to the safety or soundness of Canandaigua Bank, depository institutions, or the financial system generally, the Board has grounds to disapprove the notice without making a final determination with regard to the other factors.[32] As such, the Board declines to make a determination on these elements for consideration.

[32] See supra note 12 and accompanying text.

***Conclusion***

Based on the foregoing and all the facts of record, the Board determines that the Notice should be, and hereby is, disapproved.[33]

By order of the Board of Governors,[34] effective October 17, 2025.

***(Signed) Benjamin W. McDonough***

Benjamin W. McDonough
Deputy Secretary of the Board

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[33] Canandaigua asserts that the time for Board action on the Notice has expired. The Board believes that it has acted within the timelines specified for action in section 4(j) of the BHC Act. Section 4(j)(1)(C)(i) of the BHC Act provides for a 60-day processing period for any notice under section 4(k)(1)(B) of the BHC Act beginning on the date the Board receives a complete notice. 12 U.S.C. § 1843(j)(1)(C)(i). Section 4(j) of the BHC Act provides that the contents of a notice to engage in a complementary activity shall "contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice." Moreover, sections 4(j)(1)(C)(ii) and (E) of the BHC Act permit the Board to extend the processing period of such a notice by 30 and 90 days, respectively. 12 U.S.C. §§ 1843(k)(1)(C)(ii) and (E). The Board considers the Notice complete as of April 22, 2025, and the Federal Reserve extended the processing period pursuant to sections 4(j)(1)(C)(ii) and (E) of the BHC Act in accordance with those provisions. See Letter from Vaishali Sack, Deputy Associate Director, Board of Governors of the Federal Reserve System, to Frank H. Hamlin, III, President & CEO, Canandaigua National Corporation (June 20, 2025).

[34] Voting for this action: Chair Powell, Vice Chair Jefferson, Vice Chair for Supervision Bowman, Governors Waller, Cook, Barr, and Miran.