
Legal Developments: First Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

Compass Bancshares, Inc.
Birmingham, Alabama

Compass Bank
Birmingham, Alabama

Order Approving the Acquisition of Bank Holding Companies, Merger of Banks, and Establishment of Branches

Compass Bancshares, Inc. (“Compass”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire TexasBanc Holding Co. (“TBH”), Weatherford, and its subsidiary, TexasBank, Fort Worth, both of Texas.² In addition, Compass’s subsidiary bank, Compass Bank, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)³ to merge with TexasBank, with Compass Bank as the surviving entity. Compass Bank has also applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at TexasBank’s main office and branch locations.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (70 *Federal Register* 70,613 (2005)) and in local publications in accordance with relevant statutes and the Board’s Rules of Procedure.⁵ As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the

Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

Compass, with total consolidated assets of approximately \$30.8 billion, is the 48th largest depository organization in the United States, and it controls deposits of approximately \$17.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Compass operates subsidiary depository institutions in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas and engages in numerous permissible nonbanking activities. In Texas, Compass is the eighth largest depository organization, controlling deposits of approximately \$7 billion, which represent 2 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

TBH, with total consolidated assets of approximately \$1.7 billion, operates one depository institution, TexasBank, which has branches only in Texas. TexasBank is the 31st largest depository institution in Texas, controlling deposits of approximately \$1.8 billion, which represent less than 1 percent of state deposits.

On consummation of the proposal, Compass would become the 47th largest depository organization in the United States, with total consolidated assets of approximately \$32.5 billion. Compass would become the seventh largest depository organization in Texas, controlling deposits of approximately \$8.8 billion, which represent 2.3 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.⁷ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction

6. Asset data are as of December 31, 2005, and national ranking data are as of September 30, 2005. Deposit data and state rankings are as of June 30, 2005, and reflect merger activity through November 15, 2005. In this context, the term “insured depository institutions” includes insured commercial banks, savings banks, and savings associations.

7. A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. §1841(o)(4)(C)).

1. 12 U.S.C. §1842.

2. Compass also would acquire M&F Financial Corp., Wilmington, Delaware, the intermediate parent holding company of TexasBank.

3. 12 U.S.C. §1828(c).

4. 12 U.S.C. §321. These branches are listed in Appendix A.

5. 12 CFR 262.3(b).

adopted a law expressly prohibiting merger transactions involving out-of-state banks.⁸ For purposes of section 3(d) of the BHC Act, the home state of Compass is Alabama, and for purposes of section 44 of the FDI Act, the home state of Compass Bank is Alabama.⁹ Compass proposes to acquire, and Compass Bank proposes to merge with, a bank located in Texas.

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all the conditions for an interstate acquisition and bank merger enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.¹⁰ In light of the facts of record, the Board is permitted to approve the proposal under both statutes.

COMPETITIVE CONSIDERATIONS

The BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Both acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.¹¹

Compass and TBH compete directly in the Dallas and Fort Worth banking markets in Texas.¹² The Board has carefully reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets,

the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by Compass and TBH,¹³ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁴ 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 each of these banking markets. After consummation of the proposal, the Dallas banking market would remain moderately concentrated and the Fort Worth banking market would remain highly concentrated, as measured by the HHI.¹⁵ In each market the increase in concentration would be small and numerous competitors would remain.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Dallas or Fort Worth banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

The BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and

8. 12 U.S.C. § 1831u.

9. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered, or operates a branch. See 12 U.S.C. §§ 1841(o)(4)–(7), 1842(d)(1)(A), and 1842(d)(2)(B). Under section 44 of the FDI Act, a state member bank’s home state is the state where it is chartered (12 U.S.C. § 1831u(g)(4)).

10. See 12 U.S.C. § 1842(d)(1)(A)–(B), (d)(2)(A)–(B); 12 U.S.C. § 1831u. Compass and Compass Bank are adequately capitalized and adequately managed, as defined by applicable law. TexasBank has been in existence and operated for the minimum period of time required by applicable law (five years). On consummation of the proposal, Compass and Compass Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 20 percent of the total amount of deposits of insured depository institutions in Texas. All other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act also would be met on consummation of the proposal.

11. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(e)(5).

12. The Dallas banking market is defined as follows: Dallas and Rockwall counties; the southeastern quadrant (including Denton and Lewisville) of Denton County; the southwestern quadrant (including McKinney and Plano) of Collin County; Forney and Terrell in Kaufman County; Midlothian, Waxahachie, and Ferris in Ellis County; and Grapevine and Arlington in Tarrant County, all in Texas. The Fort Worth banking market is defined as follows: Johnson and Parker counties; Tarrant County, excluding Grapevine and Arlington; Boyd, Newark, and Rhome in Wise County; and the southwestern quadrant (including Roanoke and Justin) of Denton County, all in Texas.

13. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits (SOD) data as of June 30, 2005 (adjusted to reflect mergers and acquisitions through November 15, 2005) and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market-share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

14. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

15. Summaries of the market data for these banking markets are provided in Appendix B.

future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Compass, and public comment on the proposal.¹⁶

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, 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 organizations at consummation, including their capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Compass, TBH, and their subsidiary depository institutions are well capitalized and the resulting organizations would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Compass has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase. Compass will use existing resources to fund the cash portion of the transaction.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organizations.¹⁷ The Board has reviewed the examination records of Compass, TBH, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with the relevant organizations and the organizations' records of

compliance with applicable banking law. Compass, TBH, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Compass's plans for implementing the proposal, including the proposed management after consummation.

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 in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act and the Bank Merger Act.

CONVENIENCE AND NEEDS AND OTHER CONSIDERATIONS

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board also must consider its effects on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁸ 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.¹⁹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Compass Bank and TexasBank, data reported by Compass Bank under the Home Mortgage Disclosure Act ("HMDA"),²⁰ other information provided by Compass, confidential supervisory information, and public comment received on the proposal. A commenter opposing the proposal asserted, based on 2004 HMDA data, that Compass engaged in disparate treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²¹

16. A commenter expressed concern about Compass Bank's relationships with unaffiliated retail check cashers, pawn shops, and other alternative-financial-service providers. 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. Compass has represented that Compass Bank has lending relationships with fewer than ten alternative-financial-service providers and that these firms are subject to the bank's annual "Know Your Customer" review related to the Bank Secrecy Act. Compass also has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

17. The commenter also expressed concern about a press report indicating that a political action committee related to Compass might have contributed to candidates on the recommendation of another unrelated political action committee currently under investigation for alleged violations of Texas campaign finance laws. The Board does not have jurisdiction to administer state campaign finance laws or to investigate or adjudicate alleged violations of such laws. This matter is not within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

18. 12 U.S.C. § 2901 et seq.

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

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

Compass Bank received a “satisfactory” rating at its most recent CRA performance evaluation from the Federal Reserve Bank of Atlanta, as of March 10, 2003 (“2003 Evaluation”).²² TexasBank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas, as of October 6, 2003. Compass Bank’s current CRA program will be implemented at the resulting bank after consummation of the merger of Compass Bank and TexasBank.

B. HMDA Data and Fair Lending Record

The Board has carefully considered Compass’s lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter alleged, based on 2004 HMDA data, that Compass denied home purchase and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various Metropolitan Statistical Areas (“MSAs”). In addition, the commenter alleged that in the Houston MSA, Compass made higher-cost loans more frequently to African Americans than to nonminority borrowers.²³ The Board reviewed the HMDA data for 2004 that were reported by Compass Bank on a company-wide basis and for the states and MSAs in which it principally operates.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 Compass Bank is excluding or imposing higher credit costs on any racial or ethnic 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.²⁴ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Compass Bank.

In the fair lending review conducted in conjunction with Compass Bank’s 2003 Evaluation, examiners cited failures to comply with the Board’s Regulation B (Equal Credit Opportunity Act) in a nonmortgage lending program but concluded that the bank’s record of complying with antidiscrimination laws generally had been sound. The Board has considered the actions that Compass Bank took since then to address the compliance failures, including immediate termination of the criticized practice when advised of examiners’ concerns and revisions to its compliance policies, procedures, and training.

The Board also has considered other steps by Compass to ensure compliance with fair lending and other consumer protection laws. Compass has stated that Compass Bank’s corporate compliance staff handles consumer compliance matters for the entire Compass organization. The corporate compliance staff monitors regulatory requirements, assists with and oversees implementation of compliance procedures and controls, and performs ongoing compliance risk assessments and monitoring. The corporate compliance staff also makes quarterly risk assessments available to a risk-management committee of Compass executives and to senior managers of Compass’s business lines making home mortgage and consumer loans. Compass Bank’s fair lending analysis includes testing to detect pricing, redlining, or underwriting issues, review of underwriting policies and practices, comparative file analysis, and analysis of HMDA data. Compass Bank also maintains a program to track and respond to consumer complaints, and the corporate compliance staff administers a web-based program to provide ongoing training to employees. Compass Bank’s current compliance program will be used at the resulting bank after Compass Bank and TexasBank merge.

The Board also has considered the HMDA data in light of other information, including Compass Bank’s CRA lending programs and the overall performance records of Compass Bank and TexasBank under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Compass, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would provide customers of TexasBank with a broader array of products and services, including expanded options for affordable mortgage loans and ATM networks. Based

22. Compass’s other subsidiary bank, Central Bank of the South, Anniston, Alabama, engages only in providing controlled-disbursement services, and accordingly, is not evaluated under the CRA. See 12 CFR 345.11(c)(3).

23. 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 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

24. The data, for example, do not account for the possibility that an institution’s outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

As previously noted, Compass Bank also has applied under section 9 of the FRA to establish and operate branches at the locations listed in Appendix B. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.²⁵

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved.²⁶ 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 Bank Merger Act, and the FRA. The Board's approval is specifically conditioned on compliance by Compass and Compass Bank with the conditions imposed in this order, the commitments made to the Board in connection with the applications, and receipt of all other regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transactions may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 8, 2006.

25. 12 U.S.C. §322; 12 CFR 208.6(b).

26. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. The Bank Merger Act and the FRA do not require the Board to hold a public meeting or hearing.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

BRANCHES IN TEXAS TO BE ESTABLISHED BY COMPASS BANK

Arlington

2221 E. Lamar Blvd., Suite 110
610 West Randol Mill Road
5980 S. Cooper Street

Benbrook

9200 Benbrook Blvd.

Cleburne

1671 West Henderson Street

Colleyville

4841 Colleyville Blvd.

Crowley

816 South Crowley Road

Denton

1013 W. University Drive
729 Fort Worth Drive

Flower Mound

3212 Long Prairie Road

Fort Worth

2525 Ridgmar Blvd.
8875 Camp Bowie West
300 W. Seventh Street
2601 Hulen Street
1600 W. Rosedale Drive

Granbury

702 West Pearl Street

Grapevine

1205 South Main Street

Hudson Oaks

2817 Fort Worth Highway

Lewisville

1101 W. Main Street

Southlake

2200 W. Southlake Blvd.

Weatherford

139 College Park Drive
102 N. Main Street
1400 Santa Fe Drive

Willow Park
5171 E. I-20 Service Road N.

Appendix B

MARKET DATA FOR BANKING MARKETS IN TEXAS

Moderately Concentrated Banking Market

Dallas

On consummation, the HHI would increase 2 points, to 1426. Compass operates the fourth largest depository institution in the market, controlling deposits of approximately \$2.5 billion, which represent approximately 4 percent of market deposits. TBH operates the 21st largest depository institution in the market, controlling deposits of approximately \$423.4 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Compass would remain the fourth largest depository institution in the market, controlling deposits of approximately \$2.9 billion, which represent approximately 5 percent of market deposits. One hundred and twenty-five depository institutions would remain in the banking market.

Highly Concentrated Banking Market

Fort Worth

On consummation, the HHI would increase 1 point, to 4711. Compass operates the 26th largest depository institution in the market, controlling deposits of approximately \$86.8 million, which represent less than 1 percent of market deposits. TBH operates the sixth largest depository institution in the market, controlling deposits of approximately \$908.1 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Compass would operate the fifth largest depository institution in the market, controlling deposits of approximately \$994.9 million, which represent approximately 2 percent of market deposits. Fifty-eight depository institutions would remain in the banking market.

Fulton Financial Corporation Lancaster, Pennsylvania

Order Approving the Merger of Bank Holding Companies

Fulton Financial Corporation (“Fulton”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to merge with Columbia Bancorp (“Columbia”) and acquire its subsidi-

ary bank, The Columbia Bank (“Columbia Bank”), both of Columbia, Maryland.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 61,826 (2005)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Fulton, with total consolidated assets of approximately \$12.3 billion, operates 14 subsidiary insured depository institutions in Pennsylvania, New Jersey, Virginia, Maryland, and Delaware, as well as a nondepository trust company in Pennsylvania. Fulton is the ninth largest depository organization in Pennsylvania, controlling deposits of approximately \$5.1 billion, which represent approximately 2.3 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³ In Maryland, Fulton is the 20th largest depository organization, controlling deposits of approximately \$481.3 million, which represent less than 1 percent of state deposits.

Columbia, with total consolidated assets of approximately \$1.3 billion, is the 12th largest depository organization in Maryland, controlling deposits of approximately \$976.5 million, which represent approximately 1 percent of state deposits. On consummation of the proposal, Fulton would become the 10th largest depository organization in Maryland, controlling deposits of approximately \$1.5 billion, which represent approximately 1.6 percent of state deposits.⁴ Fulton would have consolidated assets of approximately \$13.8 billion.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Fulton is Pennsylvania,⁵ and Columbia is located in Maryland.⁶

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all

2. In addition, Fulton has requested the Board’s approval to hold and exercise a warrant to purchase up to 19.9 percent of Columbia’s common stock. The warrant would expire on consummation of the proposal.

3. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Asset data are as of September 30, 2005. Deposit data and state rankings are as of June 30, 2005, and are adjusted to reflect mergers and acquisitions completed through January 6, 2006.

5. A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. §1841(o)(4)(C)).

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

1. 12 U.S.C. §1842.

conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁷ Accordingly, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. 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 Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

Fulton and Columbia compete directly in the Washington, D.C./Maryland/Virginia/West Virginia banking market (“Washington, D.C. market”).⁹ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market (“market deposits”) controlled by Fulton and Columbia,¹⁰ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹¹ and other characteristics of the market.

7. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). Fulton is adequately capitalized and adequately managed, as defined by applicable law. Maryland does not have a minimum age requirement applicable to the proposal. On consummation of the proposal, Fulton would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Maryland. All other requirements of section 3(d) would be met on consummation of the proposal.

8. 12 U.S.C. § 1842(c)(1).

9. The Washington, D.C. market includes: the Washington, D.C. Ranally Metropolitan Area (“RMA”); the non-RMA portions of Fauquier and Loudoun counties, and the cities of Alexandria, Fairfax, Falls Church, and Manassas, all in Virginia; the non-RMA portions of Calvert, Charles, Frederick, and St. Mary’s counties, all in Maryland; and Jefferson County, West Virginia.

10. Deposit and market share data are as of June 30, 2005, reflect mergers and acquisitions through January 6, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

11. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Washington, D.C. market.¹² The market would remain unconcentrated as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington, D.C. market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality,

Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial institutions.

12. Fulton is the 35th largest depository organization in the Washington, D.C. market, controlling deposits of approximately \$177.3 million, which represent less than 1 percent of market deposits. Columbia Bank is the 26th largest depository institution in the market, controlling deposits of approximately \$308.6 million, which represent less than 1 percent of market deposits. On consummation, Fulton would operate the 21st largest depository organization in the market, controlling deposits of approximately \$485.9 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 868. Ninety-one depository institutions would remain in the banking market after consummation of the proposal.

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.

Fulton, each of Fulton's subsidiary banks, and Columbia Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Fulton has sufficient financial resources to effect the proposal. The transaction is structured as a combination of cash and an exchange of shares. The cash portion of the transaction would be funded by issuing trust preferred securities.

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 Fulton and its subsidiary banks, Columbia, and Columbia Bank, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Fulton, each of Fulton's subsidiary banks, Columbia, and Columbia Bank are considered to be well managed. The Board also has considered Fulton's plans for implementing the proposal, including the proposed management after consummation.

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 in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹³ 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁴

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Fulton's subsidiary insured depository institutions and Columbia Bank, data reported by Fulton's subsid-

iary banks and Columbia Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁵ other information provided by Fulton, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 data reported under HMDA, that Fulton engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁶

Fulton's 14 subsidiary banks each received a rating of "satisfactory" or "outstanding" at its most recent CRA performance evaluation.¹⁷ Columbia Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of August 9, 2004. Fulton represented that it intends to maintain Columbia Bank's CRA program on consummation of the proposal.

B. HMDA and Fair Lending Record

The Board has considered carefully Fulton's lending record and HMDA data in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that certain Fulton subsidiary banks made higher-cost loans¹⁸ to African Americans and Hispanics more frequently than to nonminorities in various states and Metropolitan Statistical Areas ("MSAs"). The commenter also asserted that some Fulton subsidiary banks disproportionately excluded or denied applications by African-American and Hispanic applicants for HMDA-reportable loans.¹⁹ The Board reviewed the HMDA data for 2004 reported by certain subsidiary banks of Fulton in their assessment areas and in certain MSAs where portions of the banks' assessment areas are located.

15. 12 U.S.C. § 2801 et seq.

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

17. The appendix lists the most recent CRA performance ratings of Fulton's subsidiary banks.

18. 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 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

19. The majority of the commenter's concerns related to 2004 HMDA data reported by Resource Bank, Virginia Beach, Virginia. Fulton acquired Resource Bank in April 2004.

13. 12 U.S.C. § 2901 et seq.

14. 12 U.S.C. § 2903.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, the HMDA data provide an insufficient basis by themselves on which to conclude whether or not Fulton's subsidiary banks are excluding any racial or ethnic group or imposing higher credit costs on these groups 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.²⁰ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance by Fulton with fair lending laws. In the fair lending reviews conducted in conjunction with the most recent CRA evaluations of Fulton's subsidiary depository institutions, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Fulton has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Fulton represented that it undertakes significant monitoring of compliance in its mortgage lending operations by using a wide variety of audit and review programs, including loan file reviews, statistical analyses, and exception reviews. Fulton also performs a second review of all residential mortgage loan applications scheduled for denial to verify that no factors have been overlooked in the analysis of the application and to determine whether the applicant qualifies for any other available programs.

Fulton represented that it intends to maintain Columbia Bank's fair lending policies and procedures at the bank on consummation of the proposal, which include a quality-control review performed by an outside company. The quality-control review features statistical sampling and a random evaluation of denied loans and third-party originations. The review also includes verification of origination documents. Fulton represented that Columbia Bank's fair lending policies and procedures would be subject to oversight by Fulton on consummation of the proposal.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance records of each of Fulton's subsidiary banks. These efforts demonstrate that Fulton is active in meeting the convenience and needs of its entire community.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Fulton, public comment received on the proposal, and confidential supervisory information. The Board notes that the proposal would provide customers of Columbia with a broader array of products and services, including personal and corporate trust services, new leasing products, and expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.²¹ 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.²² The Board's approval is specifically conditioned on compliance by Fulton with the conditions imposed in this order and the

21. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

22. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that further delay in considering the proposal is not necessary.

commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by

the Board or the Federal Reserve Bank of Philadelphia, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 17, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

CRA RATINGS OF FULTON'S SUBSIDIARY BANKS

Bank	CRA Rating	Date	Supervisor
FNB Bank, National Association, Danville, Pennsylvania	Satisfactory	June 9, 2003	Office of the Comptroller of the Currency ("OCC")
Fulton Bank, Lancaster, Pennsylvania	Satisfactory	October 21, 2002	FDIC
Lafayette Ambassador Bank, Easton, Pennsylvania	Outstanding	December 1, 2003	Federal Reserve Bank of Philadelphia ("FRB Phil.")
Lebanon Valley Farmers Bank, Lebanon, Pennsylvania	Outstanding	February 22, 2005	FRB Phil.
Premier Bank, Doylestown, Pennsylvania	Satisfactory	January 5, 2004	FRB Phil.
Swineford National Bank, Middleburg, Pennsylvania	Satisfactory	March 7, 2005	OCC
The Bank, Woodbury, New Jersey	Outstanding	January 18, 2005	FDIC
First Washington State Bank, Windsor, New Jersey	Satisfactory	March 1, 2004	FDIC
Skylands Community Bank, Hackettstown, New Jersey	Satisfactory	April 28, 2005	FDIC
Somerset Valley Bank, Somerville, New Jersey	Satisfactory	January 21, 2004	FDIC
Hagerstown Trust Company, Hagerstown, Maryland	Satisfactory	January 18, 2005	FDIC
The Peoples Bank of Elkton, Elkton, Maryland	Outstanding	December 30, 2002	FDIC
Resource Bank, Virginia Beach, Virginia	Satisfactory	March 15, 2004	Federal Reserve Bank of Richmond
Delaware National Bank, Georgetown, Delaware	Outstanding	January 6, 2003	OCC

Huntington Bancshares, Incorporated Columbus, Ohio

Order Approving the Acquisition of a Bank Holding Company

Huntington Bancshares, Incorporated ("Huntington"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the

Board's approval under section 3 of the BHC Act¹ to acquire Unizan Financial Corp. ("Unizan") and its subsidiary bank, Unizan Bank, National Association ("Unizan Bank"), both of Canton, Ohio.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published

1. 12 U.S.C. §1842.

2. In addition, Huntington proposes to acquire the nonbanking subsidiaries of Unizan in accordance with section 4(k) of the BHC Act (12 U.S.C. §1843(k)).

(70 *Federal Register* 66,435 (2005)).³ The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Huntington, with total consolidated assets of \$32.7 billion, controls one depository institution, The Huntington National Bank (“Huntington Bank”), also in Columbus, with branches in Florida, Indiana, Kentucky, Michigan, Ohio, and West Virginia. Huntington is the fifth largest depository organization in Ohio, controlling deposits of approximately \$14.3 billion, which represent 7.1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).⁴

Unizan, with total consolidated assets of approximately \$2.5 billion, controls one depository institution, Unizan Bank, with branches only in Ohio. Unizan is the 14th largest depository organization in Ohio, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of state deposits. On consummation of the proposal, Huntington would become the fourth largest depository organization in Ohio, controlling deposits of approximately \$16.2 billion, which represent approximately 8.1 percent of state deposits.⁵

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁶

Huntington and Unizan compete directly in the Akron, Columbus, and Dayton, Ohio banking markets.⁷ The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets (“market deposits”) controlled by Huntington and Unizan,⁸ the concentration level of market deposits and the

increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets. After consummation, each banking market would be considered moderately concentrated, the increase in concentration would be small, and numerous competitors would remain.¹⁰

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Akron, Columbus, or Dayton banking markets or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

9. Under the DOJ Guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

10. The effect of the proposal on the concentration of banking resources in each market is described in Appendix B.

3. 12 CFR 262.3(b).

4. Asset data are as of September 30, 2005; statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through November 21, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. Huntington Bank has applied to the Office of the Comptroller of the Currency (“OCC”) for permission to merge with Unizan Bank and Unizan Financial Services Group, National Association, a nondepository national trust and wholly owned subsidiary of Unizan, on consummation of the proposal before the Board.

6. 12 U.S.C. §1842(c)(1).

7. These banking markets are described in Appendix A.

8. Deposit and market share data are as of June 30, 2005, are adjusted to reflect mergers and acquisitions through December 7,

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, 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.

Huntington and Huntington Bank are well capitalized and would remain so on consummation of the proposal.¹¹ Based on its review of the record, the Board believes that Huntington has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of Huntington and Unizan and the effect of the proposal on those resources. In addition, the Board has considered Huntington's plans for implementing the proposal, including the proposed management after consummation.

In reviewing this proposal, the Board has assembled and considered a detailed record, including substantial confidential and public information about Huntington, Unizan, and their subsidiaries. The Board considered its supervisory experiences with Huntington; the supervisory experiences and assessments of Huntington Bank's management, risk-management systems, and operations by the OCC; and the organizations' records of compliance with applicable banking laws. The Board also consulted with the Securities and Exchange Commission ("SEC") about Huntington's record of compliance with applicable federal securities laws and considered its public settlement of an investigation initiated by the SEC related to Huntington's accounting practices. The SEC terminated its investigation on June 2, 2005, when it approved Huntington's proposed settlement.¹²

In addition, the Board has considered that on February 28, 2005, Huntington entered into a formal written agreement ("Written Agreement") with the Federal Reserve Bank of Cleveland ("Cleveland Reserve Bank") to address certain deficiencies in its corporate governance, accounting policies and procedures, internal audit, risk

management, and financial and regulatory reporting.¹³ The Board has considered Huntington's record of compliance with the Written Agreement and the actions Huntington has already taken and is in the process of implementing rules to correct the deficiencies noted in the Written Agreement.¹⁴

Based on all the facts of record, including the actions Huntington has taken to address the managerial matters discussed above, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁵ 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁶

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of the subsidiary depository institutions of Huntington and Unizan, data reported by Huntington under the Home Mortgage Disclosure Act ("HMDA"),¹⁷ other information provided by Huntington, confidential supervisory information, and public comment received on the proposal. A commenter who opposed the proposal expressed concern about possible branch closures after consummation of the proposal. The commenter also alleged, based on 2004 HMDA data, that Huntington Bank engaged in discriminatory treatment of minority individuals in home mortgage lending.

11. As noted, Huntington also intends to merge Unizan Bank into Huntington Bank on consummation of the proposal. Huntington Bank would be well capitalized after consummation of the bank merger, which the OCC recently approved.

12. The investigation resulted in the SEC charging Huntington, one of its current officers, and two former officers with violations of several provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and their implementing rules. Under the settlement, Huntington and the officers entered into a cease-and-desist agreement, Huntington paid a civil money penalty of \$7.5 million for its actions, and the three officers paid disgorgement fees.

13. Huntington's Written Agreement included provisions that required Huntington to develop and submit to the Cleveland Reserve Bank the following documents: (i) written policies and procedures in the areas of accounting, financial and regulatory reporting, internal audit, and corporate governance that fully address the findings and recommendations of independent consultants approved by the Cleveland Reserve Bank; and (ii) a detailed written plan designed to strengthen Huntington's risk management in the areas of accounting and regulatory reporting. Huntington Bank entered into a similar written agreement with the OCC, which was terminated on October 6, 2005.

14. A commenter expressed a general concern about Huntington's accounting practices.

15. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

16. 12 U.S.C. § 2903.

17. 12 U.S.C. § 2801 et seq.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁸

Huntington Bank received an overall "satisfactory" rating at its most recent CRA evaluation by the OCC, as of March 31, 2003. The OCC has not yet evaluated Unizan Bank's CRA performance. Unizan Bank was formed in 2002 by the merger of First National Bank of Zanesville ("First National"), Zanesville, and The United National Bank and Trust Company ("United National"), Canton, both in Ohio. Both banks had "satisfactory" CRA performance ratings by the OCC when they were consolidated.¹⁹ Huntington has represented that, on consummation of the proposal, it will implement Huntington Bank's current CRA policies, procedures, and programs at the combined organization.

B. Branch Closings

Huntington stated that it intends to close six branches and consolidate three other branches after consummation but that none of these branches are in LMI census tracts. Huntington also provided the Board with Huntington Bank's policy regarding office openings, closings, and consolidations. That policy entails a review of a number of factors before a branch is closed, including consideration of any adverse impact on LMI communities. Examiners at Huntington Bank's most recent CRA performance evaluation reported that the bank's service delivery systems were accessible to geographies and individuals of different income levels throughout its assessment areas.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.²⁰ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisor before closing a branch. In addition, the Board notes that the OCC, as the appropriate

federal supervisor of Huntington Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

C. HMDA and Fair Lending Records

The Board has carefully considered the lending record and HMDA data of Huntington Bank in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Huntington Bank disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants. The commenter also asserted that Huntington Bank made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.²¹ The Board reviewed HMDA data for 2004 reported by Huntington Bank on a company-wide basis.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 Huntington Bank is excluding or imposing higher credit costs on any racial or ethnic 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.²² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Huntington Bank with fair lending laws and the CRA performance record of Huntington Bank and Unizan Bank that are detailed above. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of the subsidiary

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

19. First National received an overall "satisfactory" CRA performance rating as of December 8, 1998, and United National received an overall "satisfactory" CRA performance rating as of October 29, 2001.

20. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

21. 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 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

22. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

depository institutions of Huntington and Unizan, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that Huntington has taken steps to ensure compliance with fair lending and other consumer protection laws. Huntington represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, Huntington represented that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policy using monthly reporting and quality control reviews. Huntington also represented that its fair lending policy includes a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas.

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

D. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Huntington, comments received on the proposal, and confidential supervisory information. Huntington represented that the proposal would benefit Unizan customers by providing expanded delivery channels and access to a broader array of investment products, including annuities and a broader array of mutual funds, and enhanced investment management and research capabilities. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application 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.²³ The Board's

23. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if

approval is specifically conditioned on compliance by Huntington with the conditions imposed in this order and the commitments made in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Cleveland Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 26, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

OHIO BANKING MARKETS IN WHICH HUNTINGTON AND UNIZAN COMPETE DIRECTLY

Akron

(1) Summit County, excluding (i) the cities of Hudson, Macedonia, and Twinsburg, and (ii) the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg and the villages adjoining those townships;

(2) Portage County, excluding (i) the cities of Aurora and Streetsboro and (ii) the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham and the villages adjoining those townships;

(3) in Medina County, the city of Wadsworth, the townships of Guilford and Sharon, and the village of Seville;

(4) in Stark County, the townships of Lake and Lawrence and the villages of Canal Fulton and Hartville; and

(5) in Wayne County, the city of Rittman, the townships of

a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Chippewa and Milton, and the villages adjoining those townships.

Columbus

Delaware, Franklin, Fairfield, Licking, Madison, Morrow, Pickaway, and Union counties and Perry County, excluding the township of Harrison.

Dayton

Greene, Miami, Montgomery, and Preble counties.

Appendix B

MARKET DATA FOR OHIO BANKING MARKETS

Akron

Huntington operates the seventh largest depository institution in the market, controlling deposits of \$364.6 million, which represent approximately 4.2 percent of market deposits. Unizan operates the 13th largest depository institution in the market, controlling deposits of approximately \$116.6 million, which represent approximately 1.4 percent of market deposits. After consummation of the proposal, Huntington would remain the seventh largest depository organization in the market, controlling deposits of approximately \$481.2 million, which represent approximately 5.6 percent of market deposits. Twenty-three depository institutions would remain in the banking market. The HHI would increase 11 points, to 1349.

Columbus

Huntington operates the largest depository institution in the market, controlling deposits of \$8.1 billion, which represent approximately 28.6 percent of market deposits. Unizan operates the 11th largest depository institution in the market, controlling deposits of approximately \$300.8 million, which represent approximately 1.1 percent of market deposits. After consummation of the proposal, Huntington would remain the largest depository organization in the market, controlling deposits of approximately \$8.4 billion, which represent approximately 29.7 percent of market deposits. Fifty-five depository institutions would remain in the banking market. The HHI would increase 60 points, to 1639.

Dayton

Huntington operates the seventh largest depository institution in the market, controlling deposits of \$242.9 million, which represent approximately 2.5 percent of market deposits. Unizan operates the eighth largest depository institution in the market, controlling deposits of approximately \$225.6 million, which represent approximately 2.3 percent of market deposits. After consummation of the proposal, Huntington would become the sixth largest

depository organization in the market, controlling deposits of approximately \$468.5 million, which represent approximately 4.9 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase 13 points, to 1512.

Marshall & Ilsley Corporation Milwaukee, Wisconsin

Order Approving the Merger of Bank Holding Companies

Marshall & Ilsley Corporation ("M&I"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act¹ to acquire Trustcorp Financial, Inc. ("Trustcorp"), St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company ("MSBTC"), Clayton, both of Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 4365 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

M&I, with total consolidated assets of approximately \$46.3 billion, operates four subsidiary insured depository institutions in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. In Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately \$1.6 billion, which represent 1.7 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").²

Trustcorp, with total consolidated assets of approximately \$748 million, operates one depository institution, MSBTC, which has branches only in Missouri. Trustcorp is the 17th largest depository organization in Missouri, controlling deposits of approximately \$606 million.

On consummation of this proposal, M&I would have total consolidated assets of approximately \$47 billion. In Missouri, M&I would become the sixth largest depository organization, controlling deposits of approximately \$2.2 billion, which represent 2.4 percent of state deposits.

1. 12 U.S.C. §1842. The Board also approved today the separate applications and a notice by M&I to acquire Gold Banc Corporation, Inc. ("Gold Banc") and its subsidiary bank Gold Bank, both of Leawood, Kansas, under sections 3 and 4 of the BHC Act and the application by M&I's subsidiary bank, M&I Marshall & Ilsley Bank ("M&I Bank"), Milwaukee, Wisconsin, a state member bank, to merge with Gold Bank under section 18(c) of the Federal Deposit Insurance Act, with M&I Bank as the surviving entity (collectively, the "Gold Banc proposal"). See *Marshall & Ilsley Corporation*, 92 *Federal Reserve Bulletin* C121 (2006) ("Gold Banc Order").

2. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of February 24, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of M&I is Wisconsin,³ and MSBTC is located in Missouri.⁴

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met. Accordingly, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁵

M&I and Trustcorp compete directly in the St. Louis, Missouri banking market (“St. Louis market”).⁶ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market (“market deposits”)⁷ controlled by M&I and Trust-

corp, the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁸ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the St. Louis market.⁹ The market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would likely not have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies also have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL AND MANAGERIAL RESOURCES AND FUTURE PROSPECTS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other

3. A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

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

5. 12 U.S.C. § 1842(c)(1).

6. The St. Louis market consists of (1) the city of St. Louis; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties; the eastern half of Gasconade County, including the cities of Hermann and Owensville; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; and (2) Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, and St. Clair counties; the western part of Randolph County (bounded by route 3 to the east and the Kaskaskia River to the south), including the cities of Red Bud, Ruma, and Evansville; and Washington County, excluding Ashley and DuBois townships, and the city of Centralia, all in Illinois.

7. Deposit and market share data are as of June 30, 2005, reflect merger and acquisition activity as of February 24, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corpora-*

tion, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

8. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice 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 institutions.

9. M&I is the sixth largest depository organization in the St. Louis market, controlling deposits of approximately \$1.7 billion, which represent 3.5 percent of market deposits. Trustcorp is the 14th largest depository organization in the market, controlling deposits of approximately \$606 million, which represent 1.3 percent of market deposits. On consummation, M&I would become the fifth largest depository organization in the market, controlling deposits of approximately \$2.3 billion, which represent 4.8 percent of market deposits. The HHI would increase 9 points, to 735. One hundred and forty-two depository institutions would remain in the banking market after consummation of the proposal.

supervisory information from the various primary federal and state banking supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by M&I.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the proposal under the financial factors. M&I, its subsidiary depository institutions, and MSBTC are all well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase, and M&I will fund the cash portion by incurring long-term debt.

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 M&I, Trustcorp, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. M&I, Trustcorp, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on proposals under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁰ The CRA requires the federal financial supervisory agencies to encourage insured depository insti-

tutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals.¹¹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of M&I and Trustcorp, data reported by the subsidiary depository and lending institutions of M&I and Trustcorp under the Home Mortgage Disclosure Act ("HMDA"),¹² other information provided by M&I, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and repeated its allegations from the Gold Banc proposal that, based on 2004 data reported under HMDA, M&I's subsidiary depository institution, M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, made higher-cost loans more frequently to minority borrowers than to nonminority borrowers in certain states. The commenter also alleged that M&I FSB's nationwide mortgage subsidiary, M&I Mortgage Corp. ("M&I Mortgage"), and MSBTC disproportionately denied minority applicants for certain home mortgage loans in the St. Louis Metropolitan Statistical Area ("MSA").¹³ In reviewing this proposal, the Board incorporates its findings in the Gold Banc proposal.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁴

M&I Bank, M&I's largest subsidiary depository institution as measured by total deposits, received an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 11, 2003. M&I's other subsidiary depository institutions received "satisfactory" ratings at their most recent

10. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

11. 12 U.S.C. § 2903.

12. 12 U.S.C. § 2801 et seq.

13. In addition, the commenter reiterated the assertions it raised in the Gold Banc proposal about an investment made by Gold Bank in multifamily housing revenue bonds, which is not an institution involved in this proposal. The Board considered that issue in connection with its approval of the Gold Banc proposal. *See* Gold Banc Order, at 14 n. 31.

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

CRA performance evaluations.¹⁵ MSBTC received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of March 1, 2005.

M&I represented that it would implement its CRA policies, procedures, and programs throughout the combined organization. This implementation would be carried out by local and regional CRA committees with coordinated oversight from M&I’s corporate CRA committee, in accordance with its CRA program.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Trustcorp in light of public comment received on the proposal. As noted, the commenter reiterated the comments it submitted in the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans¹⁶ more frequently to minority borrowers than nonminority borrowers statewide in Wisconsin and Ohio.¹⁷ As noted in the Gold Banc Order, the Board reviewed HMDA data reported by M&I FSB in its assessment area in the Milwaukee-Waukesha Primary Metropolitan Statistical Area and in its assessment areas statewide in Wisconsin and Ohio.

The commenter also based its allegation that M&I Mortgage and MSBTC denied applications by minority borrowers for conventional home-purchase loans more frequently than nonminority applicants in the St. Louis MSA on 2004 HMDA data. The Board analyzed 2004 HMDA data, M&I Bank, M&I FSB, M&I Mortgage, and reported by Southwest Bank in Southwest Bank’s assessment areas in the St. Louis MSA and statewide in Missouri.¹⁸ In addition, the Board analyzed 2004 HMDA data reported by MSBTC in its assessment area in the St. Louis MSA and in its assessment areas statewide in Missouri.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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

M&I or Trustcorp is excluding or imposing higher costs on any racial or ethnic 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.¹⁹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by M&I and Trustcorp with fair lending laws. The Board also consulted with the FDIC, the primary regulator of MSBTC, and considered the compliance examination records of M&I’s and Trustcorp’s subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by their subsidiary depository institutions.

The record also indicates that M&I, Trustcorp, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure compliance with fair lending and other consumer protection laws. As noted in the Gold Banc Order, M&I represented that it has centralized programs in place to monitor and manage compliance that feature (1) ongoing comprehensive training programs to ensure that regulatory requirements and policies are clearly communicated to personnel and (2) an internal audit department that periodically performs independent testing and validation of the compliance performance of M&I’s various business units to ensure compliance with fair lending and consumer protection laws and to measure the effectiveness of internal controls. The Board hereby reaffirms and adopts the facts and findings detailed in the Gold Banc Order with respect to M&I’s lending compliance and auditing programs.²⁰ M&I also represented that it would implement its centralized compliance-related policies and procedures across its combined organization, thereby ensuring that all entities have the same compliance monitoring and independent testing processes and centralized performance of critical functions, such as underwriting for consumer and mortgage lending.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance

15. Southwest Bank of St. Louis (“Southwest Bank”), a subsidiary bank of M&I, received an overall “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of August 11, 2003. M&I Bank FSB received an overall “satisfactory” rating at its most recent CRA performance evaluation by the Office of Thrift Supervision as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

16. 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 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

17. The commenter also repeated its allegation from the Gold Banc proposal that, based on 2004 HMDA data, M&I FSB made higher-cost loans more frequently to Latinos than to nonminority borrowers in Missouri. M&I FSB has no assessment areas in Missouri.

18. M&I Bank, M&I FSB, and M&I Mortgage do not have an assessment area in the St. Louis MSA or in Missouri.

19. The data, for example, do not account for the possibility that an institution’s outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

20. See Gold Banc Order, at footnote 17.

records of the subsidiary depository and lending institutions of M&I and Trustcorp. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on the Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by M&I, the comment received on the proposal, and confidential supervisory information. M&I represented that the proposal would provide customers of Trustcorp with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above and in the Gold Banc Order, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.²¹ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&I with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order,

21. The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

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

By order of the Board of Governors, effective March 13, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

National City Corporation Cleveland, Ohio

Order Approving the Acquisition of a Bank Holding Company

National City Corporation ("National City"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act¹ to acquire Forbes First Financial Corporation ("Forbes"), St. Louis, and its subsidiary bank, Pioneer Bank and Trust Company ("Pioneer Bank"), Maplewood, both in Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 933 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

National City, with total consolidated assets of \$142.4 billion, is the 15th largest depository organization in the United States and controls deposits of \$76.6 billion, which represent approximately 1.3 percent of total deposits in insured depository institutions in the United States.² National City operates subsidiary insured depository institutions in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, and Pennsylvania. In Missouri, National City is the tenth largest depository organization, controlling deposits of \$1.46 billion, which represent approximately 1.6 percent of total deposits of insured depository institutions in the state ("state deposits").

Forbes, with total consolidated assets of approximately \$529.5 million, operates one depository institution, Pioneer Bank, which has branches only in Missouri. Pioneer Bank is the 32nd largest depository institution in Missouri, controlling deposits of \$397 million, which represent less than 1 percent of state deposits.

On consummation of this proposal, National City would remain the 15th largest depository organization in the United States, with total consolidated assets of \$142.9

1. 12 U.S.C. §1842.

2. Asset and nationwide deposit and ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 7, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

billion. National City would become the seventh largest depository organization in Missouri, controlling deposits of approximately \$1.9 billion, which represent approximately 2 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of National City is Ohio,³ and Pioneer Bank is located in Missouri.⁴

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁵ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. 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 Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁶

National City and Forbes compete directly in the St. Louis, Missouri banking market (“St. Louis market”).⁷ The Board has reviewed carefully the competitive

effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by National City and Forbes,⁸ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁹ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the St. Louis market.¹⁰ After consummation of the proposal, the St. Louis market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation would not likely have a significantly adverse effect on competition in the St. Louis market or in any other relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis market or in any other relevant

County; Loutre township in Montgomery County, all in Missouri; and (2) Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe and St. Clair counties, the western part of Randolph County (bounded by Route 3 to the east and the Kaskaskia River to the south), including the cities of Red Bud, Ruma, and Evansville; and Washington County, excluding Ashley and DuBois townships, and the city of Centralia, all in Illinois.

8. Market share data are as of June 30, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

9. Under the DOJ Guidelines, *49 Federal Register 26,823 (1984)*, a market is considered unconcentrated if the post-merger HHI is below 1000. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

10. National City is the seventh largest depository organization in the St. Louis market, controlling deposits of \$1.5 billion, which represent 3.1 percent of market deposits. Forbes operates the 18th largest depository institution in the market, controlling deposits of \$397.2 million, which represent less than 1 percent of market deposits. After consummation of the proposal, National City would become the sixth largest depository organization in the market, controlling deposits of \$1.8 billion, which represent approximately 3.8 percent of market deposits. The HHI would increase 5 points, to 731. One hundred and thirty-nine bank and thrift competitors would remain in the market.

3. A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

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

5. *See* 12 U.S.C. §§ 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). National City is adequately capitalized and adequately managed, as defined by applicable law. Pioneer Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). *See* Mo. Rev. Stat. § 362.077. On consummation of the proposal, National City would control less than 10 percent of the total amount of deposits of insured depository institutions (“total deposits”) in the United States. National City also would comply with the applicable state deposit cap in Missouri by controlling less than 13 percent of state deposits. *See* Mo. Rev. Stat. § 362.915. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

6. 12 U.S.C. § 1842(c)(1).

7. The St. Louis market consists of (1) the city of St. Louis; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties; the eastern half of Gasconade County, including the cities of Hermann and Owensville; Boone township in Crawford

banking market and that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by National City, and public comments received on the proposal.¹¹

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance.¹² In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors. National City, all its subsidiary banks, and Pioneer Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that National City has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase, and National City will use available resources to fund the transaction.

11. A commenter expressed concern about National City's relationships with unaffiliated retail check cashers, pawn shops, and other alternative financial services providers. 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. National City has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

12. The commenter also expressed concern about a press report asserting that nontraditional mortgage loans, such as interest-only mortgages, could raise asset-quality issues for institutions holding them. The press report indicated that First Franklin Financial Corporation, San Jose, California, a subsidiary of National City Bank of Indiana ("National City Indiana"), Indianapolis, Indiana, originates many interest-only mortgages. The Board and the Office of the Comptroller of the Currency ("OCC"), the primary regulator of National City Indiana, carefully scrutinize institutions' lending programs, including the policies and procedures and risk-management processes that they have in place for nontraditional lending products. The Board has consulted with the OCC about the risk-management processes for nontraditional lending activities at National City Indiana and its mortgage subsidiaries.

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 National City, Forbes, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. National City, Forbes, and their subsidiary depository institutions are considered to be well managed. The Board also has considered National City's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹³ The CRA requires the federal financial supervisory agencies to encourage financial 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁴

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of National City's subsidiary banks and Pioneer Bank, data reported by National City under the Home Mortgage Disclosure Act ("HMDA"),¹⁵ other information provided by National City, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data, that National City engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by

13. 12 U.S.C. § 2901 et seq.

14. 12 U.S.C. § 2903.

15. 12 U.S.C. § 2801 et seq.

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.¹⁶

National City's largest subsidiary bank, as measured by total deposits, is its Cleveland subsidiary, National City Bank ("National City Cleveland").¹⁷ The bank received an "outstanding" rating by the OCC, as of February 22, 2000. National City's remaining subsidiary banks all received either "outstanding" or "satisfactory" ratings at their most recent CRA evaluations.¹⁸ Pioneer Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of June 12, 2003. National City has indicated that its CRA and consumer compliance programs would be implemented at Pioneer Bank on consummation of the proposal.

B. HMDA Data, Subprime Lending, and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of National City in light of public comment about its record of lending to minorities. A commenter alleged, based on 2004 HMDA data, that National City disproportionately denied applications for HMDA-reportable loans by African-American and Latino applicants in certain Metropolitan Statistical Areas ("MSAs"). The commenter also asserted that National City made higher-cost loans to African Americans and Latinos more frequently than to nonminorities.¹⁹ The Board reviewed HMDA data reported by all of National City's subsidiary banks, and National City's nonbank lending subsidiary, National City Mortgage Services, Kalamazoo, Michigan, (collectively, "National City Lenders"), in the MSAs identified by the commenter and focused its analysis on the MSAs that comprise the assessment areas of the National City Lenders in Illinois, Indiana, Kentucky, Michigan, and Ohio.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 National City is excluding or imposing higher credit costs on any racial or ethnic 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.²⁰ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by National City with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of National City's subsidiary banks, examiners noted no substantive violations of applicable fair lending laws. The Board has also consulted with the OCC about the fair lending compliance records of those institutions.

National City has represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, National City represented that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policy using monthly reporting and quality control reviews. National City also represented that its fair lending policy includes a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas. National City has indicated that its consumer compliance program will be implemented at Pioneer Bank after consummation of the proposal.²¹

The Board also has considered the HMDA data in light of other information, including the CRA performance records of each of National City's subsidiary banks. These established efforts and records demonstrate that National City is active in helping to meet the credit needs of its entire community.

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

17. As of December 31, 2005, National City Cleveland accounted for more than 42 percent of the total domestic deposits of National City's six subsidiary banks.

18. The appendix lists the most recent CRA ratings of National City's other subsidiary banks.

19. 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 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

21. A commenter expressed concern about a press report that National City had imposed a prepayment penalty on a customer who used insurance proceeds to pay off a mortgage on her home, which was damaged by Hurricane Katrina. The Board has referred this individual complaint to National City and to the OCC for their review and has considered National City's response.

C. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by National City, comments received on the proposal, and confidential supervisory information. National City represented that the proposal would provide customers of Forbes with access to a broader array of financial products, including trust, foreign exchange, and brokerage services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application 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.²² The

22. A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the

Board’s approval is specifically conditioned on compliance by National City with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to 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 proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 23, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

commenter’s request in light of all the facts of record. In the Board’s view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter’s request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix

CRA PERFORMANCE EVALUATIONS OF NATIONAL CITY’S BANKS

Bank	CRA Rating	Date	Supervisor
National City Bank of Indiana, Indianapolis, Indiana	Satisfactory	February 2000	OCC
National City Bank of Kentucky, Louisville, Kentucky	Satisfactory	February 2000	OCC
National City Bank of the Midwest, Bannockburn, Illinois	Outstanding	February 2000	OCC
National City Bank of Pennsylvania, Pittsburgh, Pennsylvania	Outstanding	February 2000	OCC
National City Bank of Southern Indiana, New Albany, Indiana	Satisfactory	February 2000	OCC

*New York Community Bancorp, Inc.
Westbury, New York*

*New York Community Newco, Inc.
Westbury, New York*

Order Approving the Acquisition of a Bank

New York Community Bancorp, Inc. (“NYCB”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), and New York Community Newco, Inc. (“Newco”), have requested the Board’s approval pursuant to section 3 of the BHC Act¹ to acquire Atlantic Bank of New York (“Atlantic Bank”), New York, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 119 (2006)). The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act.³

NYCB, with total consolidated assets of approximately \$26.3 billion, operates two depository institutions, New York Community Bank (“NY Community Bank”), Flushing, New York, with branches in New Jersey and New York, and NY Commercial Bank,⁴ with branches in New York.⁵ NYCB is the eighth largest depository organization in New York, controlling deposits of approximately \$11.7 billion, which represent approximately 2 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

Atlantic Bank, with total consolidated assets of approxi-

mately \$2.7 billion, has branches only in New York. Atlantic Bank is the 30th largest insured depository institution in New York, controlling deposits of approximately \$1.8 billion.

On consummation of the proposal, NYCB would have consolidated assets of approximately \$29 billion. NYCB would remain the eighth largest depository organization in New York, controlling deposits of approximately \$13.5 billion, which represent approximately 2 percent of state deposits.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 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 its probable effect in meeting the convenience and needs of the community to be served.⁶

NYCB and Atlantic Bank compete directly in the Metro New York banking market (“New York banking market”).⁷ The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by NYCB and Atlantic Bank,⁸ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁹ and other characteristics of the market.

1. 12 U.S.C. §1842.

2. NYCB would acquire Atlantic Bank from National Bank of Greece, S.A., Athens, Greece. NYCB has also requested the Board’s approval pursuant to section 3 for its subsidiary bank, New York Commercial Bank (“NY Commercial Bank”), Islandia, New York, to purchase all the assets and assume all the liabilities of Atlantic Bank in exchange for the subsidiary bank’s stock, which Atlantic Bank would immediately dividend back to NYCB. The proposed purchase-and-assumption transaction also is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) and the state of New York.

3. Twenty commenters expressed concerns on various aspects of the proposal.

4. On December 31, 2005, NYCB acquired Long Island Financial Corporation (“LIFC”) and thereby acquired its subsidiary bank, Long Island Commercial Bank (“LICB”), both of Islandia, New York. See *New York Community Bancorp, Inc.*, 92 *Federal Reserve Bulletin* C33 (2006) (“NYCB/LIFC Order”). In connection with the acquisition, NYCB (1) changed the name of New York Commercial Bank, a limited-purpose bank wholly owned by NY Community Bank, to New York Municipal Bank (“NYMB”), Flushing, New York, and (2) renamed LICB as NY Commercial Bank. NYCB has represented that it intends to dissolve NYMB.

5. Asset data are as of December 31, 2005, and statewide deposit and ranking data are as of June 30, 2005. Data reflect subsequent merger activity through March 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. 12 U.S.C. §1842(c)(1).

7. The New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

8. Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through March 6, 2006), and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation of the proposal, the market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.¹⁰

The DOJ also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the New York banking market or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety

or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

10. After the proposed acquisition, the HHI would increase 1 point, to 1054. NYCB operates the tenth largest depository organization in the market, controlling deposits of approximately \$12.2 billion, which represent less than 2 percent of market deposits. Atlantic Bank is the 35th largest depository institution in the market, controlling deposits of approximately \$1.8 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, NYCB would operate the ninth largest depository institution in the market, controlling deposits of approximately \$14 billion, which represent less than 2 percent of market deposits. Two hundred and ninety depository institutions would remain in the banking market.

of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board carefully considered the proposals under the financial factors. NYCB, Newco, their subsidiary depository institutions, and Atlantic Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash purchase. Based on its review of the record in this case, the Board believes that NYCB, Newco, and Atlantic Bank have sufficient financial resources to effect the proposal.

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 NYCB and its subsidiary depository institutions and Atlantic Bank, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Moreover, the Board has consulted with the FDIC, the primary federal banking supervisor of NYCB's subsidiary banks and Atlantic Bank.¹¹ The Board also has considered NYCB's plans for implementing the proposal, including the proposed management after consummation. NYCB, Newco, and their subsidiary depository institutions and Atlantic Bank are considered to be well managed.

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

11. Commenters alleged that NY Community Bank holds mortgages on a significant number of deteriorated multifamily buildings in New York City and that it has failed to conduct adequate due diligence on the buildings before extending credit to the owners of these buildings. A commenter alleged that many of NY Community Bank's multifamily borrowers are overleveraged, thereby preventing them from maintaining their buildings in good condition. NYCB stated that it conducts inspections before closing mortgage transactions on multifamily residential properties and periodically reinspects the properties during the term of the loan. In its reinspection program for residential buildings, NYCB represented that its inspectors notify borrowers in writing of any deferred maintenance found during routine reinspections and that, when appropriate, follow-up actions are taken by NYCB. NYCB further represented that NY Community Bank has never incurred a loss on a multifamily loan in more than 25 years. The Board consulted with the FDIC, the primary federal regulator of NY Community Bank and NY Commercial Bank, about the adequacy of NY Community Bank's management of its multifamily loan programs. The Board notes that the supervisory guidance proposed by the banking agencies for institutions with concentrations in commercial real estate lending, including lending activities involving multifamily residential buildings, urges lenders to remain informed about any credit deterioration or value impairment affecting the collateral. See proposed *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, www.federalreserve.gov/boarddocs/press/bcreg/2006/20060110/.

resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹² The CRA requires the federal financial supervisory agencies to encourage financial 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 an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating depository institutions’ expansionary proposals.¹³

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of NYCB’s subsidiary depository institutions and Atlantic Bank, data reported by NYCB under the Home Mortgage Disclosure Act (“HMDA”),¹⁴ other information provided by NYCB, confidential supervisory information, and public comments received on the proposal.¹⁵

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of both organizations. An institution’s most recent CRA performance evaluation is a particularly important consideration

12. 12 U.S.C. §2901 et seq.

13. 12 U.S.C. §2903.

14. 12 U.S.C. §2801 et seq.

15. As discussed above in footnote 11, a number of commenters alleged that some of NY Community Bank’s multifamily loan borrowers do not maintain their properties appropriately, and some commenters identified specific landlords and buildings with alleged housing code violations. Most commenters asserted that NY Community Bank’s alleged failure to ensure good property maintenance by its mortgagor/residential landlords is a disservice to the tenants and the communities where the bank lends. They argued that the Board should deny the proposal or approve it only on the condition that NYCB address property maintenance concerns. NYCB represented that NY Community Bank contributes positively to the communities it serves by providing approximately \$14 billion in loans to building and apartment owners in the New York City area in the last five years. As noted above, NYCB has provided information about its preclosing-inspection and postclosing-reinspection programs for its multifamily loans, and the Board has consulted with the FDIC about the adequacy of NY Community Bank’s management of its multifamily lending program. The Board has also considered the weight given to those loans by the FDIC in its evaluation of the CRA performance record of NY Community Bank. In addition, the Board has previously considered these allegations in the context of NYCB’s application to acquire LIFC. See *NYCB/LIFC Order*.

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.¹⁶

NY Community Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 25, 2002.¹⁷ NY Commercial Bank, formerly LICB, received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 15, 2004. Atlantic Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 7, 2005. NYCB has represented that it intends to implement Atlantic Bank’s CRA program at NY Commercial Bank.

B. HMDA Data and Fair Lending Record

The Board has carefully considered NY Community Bank’s lending record and HMDA data in light of public comment about the bank’s record of lending to minorities. Two commenters expressed concern, based on 2004 HMDA data in certain Metropolitan Statistical Areas (“MSAs”) in New York and New Jersey, that NY Community Bank has (1) denied or excluded the home mortgage and refinance applications of African-American and Latino borrowers more frequently than those of nonminority applicants and (2) lagged its competitors in conventional home mortgage lending in minority geographies.¹⁸ In its consideration of NYCB’s proposal to acquire LIFC, the Board reviewed essentially these same allegations in light of the HMDA data for 2004 reported by NY Community Bank in its assessment area.¹⁹

16. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620, 36,640 (2001).

17. A commenter alleged that NY Community Bank maintains few full-service branches in low-income, minority neighborhoods. FDIC examiners reported in the most recent CRA performance evaluation of NY Community Bank that the bank had a limited branch presence in the low-income census tracts of its assessment area. Examiners noted, however, that new branch openings and relocations during the evaluation period improved the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Overall, NY Community Bank’s performance was rated “low satisfactory” for the service test. Atlantic Bank and LICB each received a “high satisfactory” rating for the service test at its most recent CRA performance evaluation, and examiners noted that the retail banking services of each bank were reasonably available to all segments of its assessment area, including LMI geographies.

18. One commenter complained that NYCB provided the 2004 HMDA data of NY Community Bank on paper rather than electronically in the CD-ROM format requested by the commenter. The Board notes that neither HMDA nor the CRA require financial institutions to provide HMDA data in an electronic format on written request. See 12 CFR 203.5. Another commenter expressed concern that NY Community Bank did not consistently report the ethnicity, race, and gender of denied applicants. The Board has consulted with the FDIC about the bank’s compliance with HMDA reporting requirements. The Board and the other banking agencies make HMDA data available to the public through the Federal Financial Institutions Examination Council, which provides HMDA data through its web site and in CD-ROM format on request.

19. The Board reviewed 2004 HMDA data reported by NY Community Bank in portions of the following metropolitan divisions that

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to support a conclusion on whether or not NY Community Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups 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.²⁰ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by NY Community Bank with fair lending laws. In the fair lending review conducted in conjunction with the bank's CRA evaluation in 2002, examiners noted no violations of the substantive provisions of applicable fair lending laws. In addition, the Board has consulted with the FDIC, the primary federal supervisor of NY Community Bank, about the bank's record of compliance with fair lending laws and other consumer protection laws.

As noted in the *NYCB/LIFC Order*, the record also indicates that NYCB has taken steps designed to ensure compliance with fair lending laws and other consumer protection laws. NYCB represented that it has implemented fair lending policies, procedures, and training programs at NY Community Bank and that all lending department personnel at the bank are required to take annual compliance training. NYCB further represented that the bank's fair lending policies and procedures are designed to help ensure that loan officers price loans uniformly, illegally discriminatory loan products are avoided, and current and proposed lending activities and customer complaints are reviewed. NY Community Bank conducts independent audits of its lending activities, and audit results are provided to its Audit

Committee of the Board of Directors, Compliance Department, and Legal Department. The bank also analyzes HMDA Loan Application Register data to help assess its lending activities for compliance with the CRA.

NYCB has represented that NY Commercial Bank maintains similar policies and programs designed to ensure compliance with applicable fair lending and consumer protection laws. NYCB intends to combine the compliance programs of NY Commercial Bank and NY Community Bank into one comprehensive compliance program managed through NYCB.

The Board also has considered the HMDA data in light of other information, including NY Community Bank's CRA lending programs and the overall performance records of NY Community Bank and Atlantic Bank under the CRA.²¹ These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by NYCB, comments received on the proposal, and confidential supervisory information.²² The Board notes that the proposal would expand the availability and array of banking products and services to Atlantic Bank's customers, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

21. A commenter also expressed concern, based on 2004 HMDA data, that the percentage of NY Community Bank's total number of conventional home mortgage loans and refinancings in LMI census tracts in the New York City MD lagged the percentages for the aggregate of lenders ("aggregate lenders"). The Board notes that the percentage of NY Community Bank's total HMDA-reportable loans in LMI census tracts and to LMI individuals in the New York City MD exceeded the percentages for the aggregate lenders.

22. A commenter expressed concern about planned branch closures at NY Community Bank. NYCB has represented that it does not plan to close any branches in connection with this proposal or the planned merger of Atlantic Bank into NY Commercial Bank. The Board notes that federal law will require NYCB or its subsidiary banks to provide notice before the date of any proposed branch closing, including a 30-day advance notice to the public and a 90-day advance notice to the FDIC and customers of the branch (12 U.S.C. § 1831r-1, as implemented by *Joint Policy Statement Regarding Branch Closings*, 64 *Federal Register*, 34,844 (1999)). The bank also must provide reasons and other supporting data for the proposed closure, consistent with the institution's written policy for branch closings. The Board notes that the FDIC, as the appropriate federal supervisor of NY Community Bank and NY Commercial Bank, will continue to review each depository institution's branch closing record during CRA performance evaluations.

comprise the bank's assessment area: (1) Nassau-Suffolk, New York; (2) New York-White Plains-Wayne, New York-New Jersey ("New York City MD"); and (3) Newark-Union, New Jersey-Pennsylvania. See *NYCB/LIFC Order*.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

CONCLUSION

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.²³ The Board's approval is specifically conditioned on compliance by NYCB with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction shall not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 30, 2006.

Voting for this action: Chairman Bernanke and Governors Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson and Governor Bies.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

*Sky Financial Group, Inc.
Bowling Green, Ohio*

**Order Approving Acquisition of Shares
of a Bank Holding Company**

Sky Financial Group, Inc. ("Sky"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval

23. Several commenters requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing or meeting on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

under section 3 of the BHC Act¹ to acquire through its subsidiary, Sky Holdings, Inc., Wilmington, Delaware, up to 9.99 percent of the voting shares of LNB Bancorp, Inc. ("LNB") and thereby indirectly acquire an interest in LNB's subsidiary bank, The Lorain National Bank ("Lorain National"), both of Lorain, Ohio.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 76,850 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Sky, with total consolidated assets of approximately \$15.7 billion, controls Sky Bank,³ Salineville, Ohio, with branches in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia. Sky is the eighth largest depository organization in Ohio, controlling deposits of approximately \$8.1 billion, which represent 4 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").⁴ LNB, with consolidated assets of approximately \$801.1 million, is the 25th largest depository organization in Ohio, controlling approximately \$642.8 million in deposits. If Sky were deemed to control LNB on consummation of the proposal, Sky would become the seventh largest depository organization in Ohio, controlling approximately \$8.7 billion in deposits, which represent 4.3 percent of state deposits.

The Board received a comment from LNB objecting to the proposal on the grounds that the investment could create uncertainty about the future independence of LNB or result in Sky controlling and potentially harming LNB.⁵ LNB asserted that the commitments that Sky has provided to prevent the exercise of a controlling influence over LNB are insufficient, and LNB requested that the Board impose additional commitments to ensure that Sky cannot exercise control over LNB. The Board has considered these comments carefully in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding

1. 12 U.S.C. §1842.

2. Sky currently owns 4.73 percent of LNB's voting shares and proposes to acquire the additional voting shares through open-market purchases.

3. Sky also controls Sky Trust, National Association ("Sky Trust"), Pepper Pike, Ohio, a limited-purpose bank that provides only trust services.

4. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity as of February 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. LNB also expressed concern that investor uncertainty over the future of LNB due to Sky's investment could result in the sale of LNB shares by long-term investors and undermine LNB's business plan. The Board is limited under the BHC Act to consideration of the factors specified in the act. *See Western Bancshares, Inc. v. Board of Governors of the Federal Reserve System*, 480 F.2d 749 (10th Cir. 1973). The potential effect of a proposal on the behavior of other investors in the market is not among the factors the Board is charged with considering under the BHC Act or other applicable statutes.

company.⁶ The requirement in section 3(a)(3) of the BHC Act, however, that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks.⁷ On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.⁸

Sky has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over LNB. Sky has agreed to abide by certain commitments on which the Board previously has relied in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.⁹ For example, Sky has committed not to exercise or attempt to exercise a controlling influence over the management or policies of LNB or any of its subsidiaries; not to seek or accept representation on the board of directors of LNB or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with LNB or any of its subsidiaries. Sky also has committed not to attempt to influence the dividend policies, loan decisions, or operations of LNB or any of its subsidiaries. The Board concludes that additional commitments are unnecessary to ensure that Sky does not acquire control of, or have the ability to exercise a controlling influence over, LNB through the proposed acquisition of voting shares. Moreover, the BHC Act prohibits Sky from acquiring shares of LNB in excess of the amount considered in this proposal or attempting to exercise a controlling influence over LNB without the Board's prior approval.

The Board has adequate supervisory authority to monitor Sky's compliance with its commitments and can take enforcement action against Sky if it violates any of the commitments.¹⁰ The Board also has authority to initiate a control proceeding¹¹ against Sky if facts presented later indicate that Sky or any of its subsidiaries or affiliates, in fact, controls LNB for purposes of the BHC Act. Based

on these considerations and all the other facts of record, the Board has concluded that Sky would not acquire control of, or have the ability to exercise a controlling influence over, LNB through the proposed acquisition of voting shares.¹²

FINANCIAL AND MANAGERIAL CONSIDERATIONS AND FUTURE PROSPECTS

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

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. When applicable, the Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.¹³

The Board has carefully considered the financial factors. Sky and Sky Bank are well capitalized and would remain

6. See, e.g., *Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) ("*Penn Bancshares*"); *C-B-G, Inc.*, 91 *Federal Reserve Bulletin* 421 (2005) ("*C-B-G*"); *S&T Bancorp Inc.*, 91 *Federal Reserve Bulletin* 74 (2005) ("*S&T Bancorp*"); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.*, 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

7. See 12 U.S.C. § 1842(a)(3).

8. See, e.g., *Penn Bancshares* (acquisition of up to 24.89 percent of the voting shares of a bank holding company); *C-B-G* (acquisition of up to 24.35 percent of the voting shares of a bank holding company); *S&T Bancorp* (acquisition of up to 24.9 percent of the voting shares of a bank holding company); *Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

9. See, e.g., *Penn Bancshares, C-B-G; S&T Bancorp; Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). Sky's commitments are set forth in the appendix.

10. See 12 U.S.C. § 1818(b)(1).

11. See 12 U.S.C. § 1841(a)(2)(C).

12. LNB asserted that Sky did not fully investigate or disclose whether it and any associated persons had already acquired more than 5 percent of the shares of LNB without prior approval of the Board, or whether Sky and any such persons constitute a "group acting in concert" under the Change in Bank Control Act ("CIBC Act") (12 U.S.C. section 1817(j)) and are required to file a CIBC Act Notice. Sky surveyed its management officials with major policymaking functions about their ownership of LNB shares and reported those findings as part of this proposal. In addition, Sky has represented and committed to the Board that it does not and will not have any agreement, understanding, or arrangement with any person regarding voting or transferring LNB shares and that it has not provided financing for the purchase of LNB shares. The Board has reviewed information provided by Sky and LNB and confidential supervisory information about the current ownership of both organizations, including information about the ownership of LNB's shares by individuals associated with Sky, in light of the Board's rules and precedent for aggregating shares held by a company and persons associated with the company. The record does not support a finding that Sky has acted together with any of its directors, officers, or employees or together with any other person to acquire voting shares of LNB in violation of the BHC Act or the CIBC Act.

13. As previously noted, the current proposal provides that Sky would acquire only up to 9.99 percent of LNB's voting shares and would not be considered to control LNB. Under these circumstances, the financial statements of Sky and LNB would not be consolidated.

so on consummation of the proposal. Based on its review of the record, the Board believes that Sky has sufficient financial resources to effect the proposal. The proposed transaction would be funded from Sky's general corporate resources.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Sky, Sky Bank, Sky Trust, LNB, and Lorain National, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. Sky, Sky Bank, Sky Trust, LNB, and Lorain National are considered to be well managed.

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

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁴

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.¹⁵ The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.¹⁶

Sky and LNB compete directly in the Cleveland, Ohio banking market ("Cleveland market").¹⁷ In particular, the

Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market ("market deposits") controlled by Sky and LNB,¹⁸ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹⁹ and other characteristics of the market. If Sky and LNB were viewed as a combined organization, consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Cleveland market.²⁰ Although the market would remain highly concentrated, the increase in market concentration as measured by the HHI would be small, and numerous competitors would remain in the market.²¹

The Department of Justice also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

villages adjoining these townships in Summit County; and part of the city of Vermilion in Erie County, all in Ohio.

18. Deposit and market share data are as of June 30, 2005, reflect mergers and acquisitions through January 4, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

19. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI 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 institutions.

20. LNB expressed concern that Sky is expanding its operations in the Cleveland market by acquiring banks instead of internal growth. Bank holding companies may expand in any geographic market by acquisition, as long as the acquisition is consistent with the competitive requirements and other factors of the BHC Act.

21. Sky is the 11th largest depository organization in the Cleveland market, controlling \$1.1 billion in deposits, which represent 1.9 percent of the total deposits in depository institutions in the market ("market deposits"). LNB is the 13th largest depository organization in the market, controlling \$642.8 million in deposits. If considered a combined banking organization on consummation of the proposal, Sky and LNB would be the ninth largest depository organization in the Cleveland market, controlling approximately \$1.8 billion in deposits, which would represent 2.9 percent of market deposits. The HHI for the Cleveland market would increase 4 points, to 1883. Forty-three depository institutions would remain in the market.

14. *See* 12 U.S.C. §1842(c)(1).

15. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

16. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37, 38 (1993); *Sun Banks* at 244.

17. The Cleveland market is defined as Cuyahoga, Geauga, Lake, and Lorain counties; all of Medina County except the city of Wadsworth, the townships of Guilford, Sharon, and Wadsworth, and the village of Seville; the cities of Aurora and Streetsboro, the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham, and the villages adjoining these townships in Portage County; the cities of Hudson, Macedonia, and Twinsburg, the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg, and the

Accordingly, in light of all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive considerations are consistent with approval of the proposal.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.²² 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.²³

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. Sky Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Reserve Bank of Cleveland as of October 14, 2003. Lorain National also received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of October 7, 2002.

Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all other facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.²⁴ The Board's approval is specifically conditioned on compliance by Sky with the conditions

22. 12 U.S.C. §2901 et seq.

23. 12 U.S.C. §2903.

24. LNB expressed concern that public disclosure of Sky's proposal was inadequate because it did not accompany disclosure in public reports filed with the Securities and Exchange Commission ("SEC"). All public notices required by the Board's regulations in connection with the application have been made, including publishing notice of the transaction in local newspapers in the communities where Sky and LNB are headquartered (12 CFR 262.3(b)(1)(ii)(E)). Furthermore, Sky has represented that it was not legally required to disclose the proposed transaction in filings with the SEC, because the proposed investment would not qualify as a material investment for Sky and therefore would not trigger an SEC filing requirement. The SEC has

imposed in this order and all the commitments made to the Board in connection with the application, including the commitments discussed in this order, and receipt of all required regulatory approvals.²⁵ The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of LNB's voting shares shall not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 24, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

In connection with its application to acquire up to 9.99 percent of LNB, Sky commits that it will not, directly or indirectly, without the Federal Reserve System's prior approval:

- (1) exercise or attempt to exercise a controlling influence over the management or policies of LNB or any of its subsidiaries;
- (2) seek or accept representation on the board of directors of LNB or any of its subsidiaries;
- (3) serve, have, or seek to have any representative serve as an officer, agent, or employee of LNB or any of its subsidiaries;
- (4) take any action that would cause LNB or any of its subsidiaries to become a subsidiary of Sky or any of its subsidiaries;
- (5) acquire or retain shares that would cause the combined interests of Sky and its subsidiaries, and their respective officers, directors, and affiliates, to equal or exceed 25 percent of the outstanding voting shares of LNB or any of its subsidiaries;
- (6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of LNB or any of its subsidiaries;
- (7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of LNB or any of its subsidiaries;

jurisdiction to determine whether Sky has violated any federal securities laws or violations.

25. LNB questioned when the passivity commitments that Sky provided would become effective. The commitments are effective when Sky owns, controls, or holds the power to vote at least 5 percent of LNB's voting shares.

- (8) attempt to influence the dividend policies or practices of LNB or any of its subsidiaries;
- (9) attempt to influence the investment, loan, or credit decisions or policies; pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of LNB or any of its subsidiaries;
- (10) dispose or threaten to dispose of shares of LNB or any of its subsidiaries in any manner as a condition of specific action or nonaction by LNB or any of its subsidiaries; or
- (11) enter into any other banking or nonbanking transactions with LNB or any of its subsidiaries, except that Sky may establish and maintain deposit accounts with depository institution subsidiaries of LNB, provided that the aggregate balance of all such accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with LNB or any of its subsidiaries.

Synovus Financial Corp. Columbus, Georgia

Order Approving the Merger of Bank Holding Companies

Synovus Financial Corp. (“Synovus”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Riverside Bancshares, Inc. (“Riverside”) and its subsidiary bank, Riverside Bank (“Riverside Bank”), both of Marietta, Georgia.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 54,747 (2005)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Synovus, with total consolidated assets of approximately \$27.1 billion, is the 46th largest depository organization in the United States.² Synovus operates 39 subsidiary insured depository institutions in Alabama, Florida, Georgia, South Carolina, and Tennessee, as well as a nondepository trust company in Georgia. Synovus is the fourth largest depository organization in Georgia, and its subsidiary depository institutions control approximately \$10.6 billion in combined deposits, which represent 7.1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³

1. 12 U.S.C. § 1842.

2. National asset and ranking data are as of September 30, 2005.

3. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through November 25, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Riverside, with total consolidated assets of approximately \$668.6 million, operates one depository institution, Riverside Bank, which has branches only in Georgia. Riverside Bank is the 30th largest insured depository institution in Georgia, controlling deposits of approximately \$459.5 million.

On consummation of the proposal, Synovus would have consolidated assets of \$27.8 billion. In Georgia, Synovus would remain the fourth largest depository organization, controlling deposits of \$11.1 billion, which represent 7.4 percent of state deposits.⁴

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁵

Seven Synovus banks⁶ compete directly with Riverside Bank in the Atlanta Area Banking Market (“Atlanta Market”).⁷ The Board has carefully reviewed the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Synovus’s Atlanta Area banks and Riverside Bank,⁸ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”)

4. Synovus represented that it plans to file an application with the Federal Deposit Insurance Corporation (“FDIC”) for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) to merge Riverside Bank into Bank of North Georgia (“BNG”), Alpharetta, Georgia, a Synovus subsidiary bank, after consummation of the proposal.

5. 12 U.S.C. § 1842(c)(1).

6. These institutions include: Athens First Bank & Trust Company, Athens; Bank of Coweta, Newnan; BNG; Citizens & Merchants State Bank, Douglasville; First Nation Bank, Covington; The National Bank of Walton County, Monroe; and Peachtree National Bank, Peachtree City, all of Georgia (collectively, “Synovus’s Atlanta Area banks”).

7. The Atlanta Market is defined as: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County excluding the town of Clermont; the towns of Auburn and Winder in Barrow County; and the town of Luthersville in Meriwether County, all in Georgia.

8. Deposit and market share data are as of June 30, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the relevant thresholds in the DOJ Guidelines in the Atlanta Market. After consummation, the Atlanta Market would remain unconcentrated, as measured by the HHI. In addition, the increase in concentration would be small, and numerous competitors would remain in this market.¹⁰

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal likely would not have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta Market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI 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.

10. On consummation of the proposal, the HHI would increase 4 points, to 1601 in the Atlanta Market. Synovus operates the fourth largest depository organization in the market, controlling deposits of \$3.4 billion, which represent 3.9 percent of market deposits. Riverside operates the 19th largest depository institution in the market, controlling deposits of approximately \$459.5 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Synovus would continue to operate the fourth largest depository organization in the market, controlling deposits of approximately \$3.9 billion, which represent 4.4 percent of market deposits. One hundred eight depository institutions would remain in the banking market.

mation, information provided by Synovus, and public comment on the proposal.¹¹

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, 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.

Synovus and all its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Synovus has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination

11. A commenter criticized the relationship between Synovus’s lead subsidiary bank, Columbus Bank and Trust (“CB&T”), Columbus, Georgia, and an unaffiliated lender, CompuCredit Corporation (“CompuCredit”), Atlanta, Georgia. The Board previously reviewed CB&T’s relationship with CompuCredit in its decision approving Synovus’s acquisition of a de novo institution. See *Synovus Financial Corp.*, 91 *Federal Reserve Bulletin* 273, 275 n.15 (2005) (“Board’s February 2005 Decision”). The Board noted that CompuCredit is an unaffiliated organization that engages in subprime credit card and payday lending activities. CB&T and CompuCredit offer a co-branded credit card program (“credit card affinity program”) under a contractual arrangement. Under the contract, CB&T reviews, modifies, and approves the credit terms and underwriting criteria proposed by CompuCredit for the credit card affinity program and issues the credit cards, and CompuCredit buys the credit card receivables and provides certain marketing and other services for the issued cards. Synovus represented that, since the Board’s February 2005 Decision, CB&T has engaged in the following additional activities to ensure regulatory compliance of its CompuCredit relationship with applicable fair lending and consumer protection laws: (1) reviewing the application of the credit and underwriting criteria to the credit card accounts and the scoring used to adjust credit lines under the credit card affinity program; (2) reviewing the process for approving statement inserts and strengthening controls over the process; (3) participating in CompuCredit’s internal compliance audits; (4) developing a system to allow the CB&T compliance officer to engage in remote, anonymous monitoring of customer service and collection calls handled by CompuCredit and its service providers; and (5) requiring CB&T’s compliance officer to perform monthly reviews of the CompuCredit relationship and to provide reports to CB&T’s Credit Risk Committee concerning those reviews. In addition, Synovus represented that it is not involved in any other business conducted by CompuCredit and does not own or control CompuCredit within the meaning of the BHC Act. The Board also consulted with the FDIC and reviewed supervisory and other confidential information about the credit card affinity program and CB&T’s relationship with CompuCredit.

records of Synovus, Riverside, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Synovus, Riverside, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Synovus's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹² The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹³

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of Synovus and Riverside, data reported by Synovus under the Home Mortgage Disclosure Act ("HMDA"),¹⁴ other information provided by Synovus, confidential supervisory information, and public comment received on the proposal. Based primarily on 2004 HMDA data, a commenter alleged that Synovus, through its primary mortgage lender, Synovus Mortgage Company ("SMC"), Birmingham, Alabama,¹⁵ engaged in discriminatory treatment of minority individuals in its home mortgage lending operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA perfor-

mance 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.¹⁶

All Synovus subsidiary depository institutions that have been examined under the CRA received "outstanding" or "satisfactory" ratings at their most recent performance evaluations. CB&T, Synovus's lead bank, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 18, 2005. Riverside Bank also received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of November 17, 2003. Synovus has represented that it will institute BNG's CRA policies, procedures, and programs at Riverside Bank after its merger with and into BNG. As noted above, Synovus plans to merge Riverside Bank with BNG, and Synovus will operate Riverside Bank's branches as branches of BNG after consummation of the proposed transaction.¹⁷

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of SMC in light of public comment received on the proposal. The commenter alleged, based primarily on 2004 HMDA data, that SMC denied the home mortgage and refinance applications of African Americans more frequently than those of nonminority applicants in several Metropolitan Statistical Areas ("MSAs") in Alabama and Georgia where it operates. The commenter also alleged that SMC made higher-cost loans more frequently to African-American borrowers than to nonminority borrowers on a company-wide basis, on a statewide basis in Alabama, and in MSAs in Alabama, Florida, and Georgia.¹⁸ The Board has analyzed the 2004 HMDA data reported by SMC on a company-wide basis and for its lending in Alabama, Florida, and Georgia.¹⁹

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 SMC is excluding or imposing higher costs on any racial or

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

17. BNG received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 10, 2004.

18. 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 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

19. Specifically, the Board examined the HMDA data for SMC company-wide, in Alabama statewide, and in certain MSAs in Alabama, Florida, and Georgia that constitute significant markets for SMC.

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

13. 12 U.S.C. §2903.

14. 12 U.S.C. §2801 et seq.

15. SMC is a subsidiary of First Commercial Bank, also of Birmingham.

ethnic 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.²⁰ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Synovus and Riverside with fair lending laws. The Board also consulted with the FDIC, the primary regulator of First Commercial Bank, SMC, and CB&T, and considered examination records of compliance with fair lending laws of these and other Synovus subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by First Commercial Bank, SMC, CB&T, or any other Synovus subsidiary depository institution.

The record also indicates that Synovus and SMC have taken steps to ensure compliance with fair lending and other consumer protection laws. Synovus represented that it has programs in place to monitor and manage compliance that include periodic reviews of all consumer lending programs, systemic tracking of applicable laws and regulations, ongoing risk analyses, the development of programs to train personnel involved in consumer lending, and oversight of the drafting and use of consumer lending forms for its depository and lending institutions to verify compliance with applicable consumer and fair lending laws. Synovus also represented that it is enhancing its system for corporate-wide reporting of compliance information. Synovus represented that its internal audit function examines SMC annually, and that SMC has engaged an independent third-party firm to review monthly a random sample of all closed loans from the application stage to the loan closing for any evidence of illegal discrimination.

The Board also has considered the HMDA data in light of other information, including Synovus's CRA lending programs and the overall CRA performance records of the subsidiary depository and lending institutions of Synovus and Riverside. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

20. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

C. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by the applicant, comments received on the proposal, and confidential supervisory information. Synovus represented that the proposal would provide customers in Riverside Bank's assessment area with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.²¹ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.²² The Board's approval is specifically conditioned on compliance by Synovus with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein

21. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

22. The commenter also requested that the Board extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As noted, the commenter had ample opportunity to submit its views and has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is necessary.

and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 19, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

The Toronto-Dominion Bank *Toronto, Canada*

TD Banknorth Inc. *Portland, Maine*

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank (“TD”) and its subsidiary, TD Banknorth Inc. (“TD Banknorth”) (collectively “Applicants”), both financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the BHC Act¹ to acquire Hudson United Bancorp and its wholly owned subsidiary, Hudson United Bank, both of Mahwah, New Jersey.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 56,166 and 57,876 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

TD, with total consolidated assets of approximately \$310 billion, is the second largest banking organization in Canada.³ TD is the 39th largest depository organization in the United States, controlling \$29.2 billion in deposits through its U.S. subsidiary insured depository institutions, TD Waterhouse Bank, National Association (“TDW Bank”), Jersey City, New Jersey, and TD Banknorth, National Association (“TDB Bank”), Portland, Maine. TD

also operates a branch in New York City and an agency in Houston.

Hudson United Bancorp, with total consolidated assets of approximately \$9.1 billion, is the 74th largest depository organization in the United States, controlling deposits of \$6.6 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States. On consummation of this proposal, TD would become the 34th largest depository organization in the United States, controlling deposits of approximately \$35.8 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met.⁴ For purposes of the BHC Act, the home state of TD is New York, and Hudson United Bank is located in Connecticut, Pennsylvania, New Jersey, and New York.⁵

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁶ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a

4. Under section 3(d), a bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. §1841(o)(4)(C)). New York is the home state of TD for purposes of the International Banking Act and Regulation K (12 U.S.C. §3103; 12 CFR 211.22).

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

6. 12 U.S.C. §1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). TD is adequately capitalized and adequately managed, as defined by applicable law. Hudson United Bank has been in existence and operated for the minimum period of time required by applicable state law. *See* Conn. Gen. Stats. Ann. Ch. 666 §36a–411 (five years). Pennsylvania and New Jersey do not have minimum age requirements applicable to the proposal. On consummation of the proposal, TD would control less than 10 percent of the total amount of deposits of insured depository institutions (“total deposits”) in the United States. TD would also control less than 30 percent of total deposits in Connecticut and New Jersey, consistent with state law. *See* Conn. Gen. Stats. Ann. Ch. 666 §36a–411 and N.J. Stat. Ann. 17:9A–413(2003). All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

1. 12 U.S.C. §1842.

2. Applicants propose to acquire the nonbanking subsidiaries of Hudson United Bank in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y (12 U.S.C. §1843(k); 12 CFR 225.87).

3. Canadian asset data are as of October 31, 2005, and rankings are as of July 31, 2005. Both are based on the exchange rate then in effect. Domestic assets are as of September 30, 2005, and deposit data and rankings are as of June 30, 2005.

proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁷

TD and Hudson United Bancorp compete directly in the Metro New York and the Hartford and New Haven, Connecticut banking markets.⁸ The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by TD and Hudson United Bancorp,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in these banking markets.¹¹ After consummation, the Metro New York and New Haven banking markets would remain moderately concentrated, and the Hartford banking market would remain highly concentrated, as measured by the HHI. In each market, the increase in concentration would be small, and numerous competitors would remain.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in any of these markets or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

7. 12 U.S.C. § 1842(c)(1).

8. These banking markets are described in Appendix A.

9. Deposit and market share data are based on Summary of Deposits reports filed as of June 30, 2005, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. The Department of Justice has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

11. Market data for these banking markets are provided in Appendix B.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by the Applicants, and public comment on the proposal.¹² The Board also has consulted with the Office of the Superintendent of Financial Institutions (“OSFI”), which is responsible for the supervision and regulation of Canadian banks.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The capital levels of TD would continue to exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the U.S. subsidiary depository institutions of Applicants and Hudson United Bancorp are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase. TD will use existing resources to enable TD Banknorth to fund the cash portion of the

12. A commenter expressed concerns about press reports of a lawsuit recently filed against TD by options traders at the Chicago Board of Options Exchange. The lawsuit involves allegations about the price paid by TD in its earlier acquisition of the traders’ limited liability company. This matter is not within the Board’s jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See, e.g., *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

consideration to be received by Hudson United Bancorp shareholders.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of TD's U.S. operations, Hudson United Bancorp, and Hudson United Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws.¹³ TD, Hudson United Bancorp, and their U.S. subsidiary banks are considered well managed. The Board has also considered Applicants' plans for implementing the proposal, including the proposed management after consummation.

Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.¹⁴

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.¹⁵ As noted, the home country supervisor of TD is the OSFI.

13. A commenter also expressed concern about TDB Bank's relationships with unaffiliated retail check cashers, pawn shops, and other nontraditional providers of financial services. 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. Applicants have indicated that they regularly review TDB Bank's relationships with these types of businesses and have opted to continue relationships with those firms willing to meet certain conditions. These conditions include providing representations and warranties in each loan agreement with TDB Bank that the firm will comply with all applicable laws, including all applicable fair lending and consumer protections laws, and will follow the bank's requirements to ensure compliance with anti-money-laundering laws and regulations. Applicants have represented that neither TDB Bank nor any of its affiliates play any role in the lending practices, credit review, or other business practices of these firms, nor does the bank or any of its affiliates purchase any loans originated by these firms.

14. A commenter reiterated its concerns about allegations in press reports that TD assisted Enron in preparing false financial statements. The commenter had submitted substantially similar comments in connection with TD's proposal to acquire Banknorth Group, Inc., Portland, Maine. As noted in the Board's order approving that proposal, the Securities and Exchange Commission ("SEC") has the authority to investigate and adjudicate whether any violations of federal securities laws have occurred. *The Toronto-Dominion Bank*, 91 *Federal Reserve Bulletin* 277, fn. 15, (2005) ("TD Banknorth Order"). The Board has consulted with the SEC about this matter.

15. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

In approving applications under the BHC Act and the International Banking Act ("IBA"),¹⁶ the Board previously has determined that TD was subject to home country supervision on a consolidated basis by the OSFI.¹⁷ Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁸ The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed to make available to the Board such information on the operations of it and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable TD and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that TD has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on this proposal, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁹ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁰

The Board has considered carefully all the facts of record, including reports of examination on the CRA performance records of TD's subsidiary insured depository institutions and Hudson United Bank, data reported by Applicants under the Home Mortgage Disclosure Act

16. 12 U.S.C. § 3101 et seq.

17. *TD Banknorth Order*.

18. See 12 U.S.C. § 1842(c)(3)(A).

19. 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

20. 12 U.S.C. § 2903.

("HMDA"),²¹ other information provided by Applicants, and public comments on the proposal. Two commenters opposed the proposal and expressed concern about the community reinvestment or home mortgage lending records of TDB Bank and Hudson United Bank. One commenter expressed concern about possible branch closures after consummation of the proposal. Commenters also alleged, based on 2004 HMDA data, that TDB Bank and Hudson United Bank provided a low level of home mortgage lending to LMI borrowers or in LMI communities and that Applicants engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²²

TDW Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 10, 2003.²³ The OCC has not yet evaluated TDB Bank's CRA performance. After acquiring Banknorth Group, Inc. in 2005, TD formed TDB Bank by renaming Banknorth, National Association ("Banknorth Bank"), Portland, Maine. Banknorth Bank was formed in 2002 by the consolidation of seven subsidiary banks of Banknorth Group, Inc.²⁴ All those subsidiary banks had "satisfactory" or "outstanding" CRA performance ratings when they were consolidated.²⁵

Hudson United Bank received an overall rating of "satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of February 10, 2005.²⁶

On consummation of the proposal, Applicants propose to merge Hudson United Bank into TDB Bank.²⁷ Applicants stated that TDB Bank will implement its CRA organization and programs in Hudson United Bank's markets immediately after consummation of the acquisition.²⁸ In addition, Applicants represented that TDB Bank will hire a community development manager, who will be responsible for coordinating the CRA plan in Hudson United Bank's markets, and will appoint a CRA committee composed of senior managers from both banks to oversee the development and implementation of this plan.

B. CRA Performance of TDW Bank and TDB Bank

The Board considered the March 2003 CRA evaluation of TDW Bank and the July 2001 evaluation of TDB Bank in the *TD Banknorth Order*. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the *TD Banknorth Order* concerning TDW Bank's and TDB Bank's CRA performance records. Applicants provided the Board additional information about both banks' CRA performance since the latest evaluations. The Board also consulted with the OCC about the CRA performance of TDW Bank and TDB Bank and with the FDIC about the CRA performance of Hudson United Bank since the banks' most recent CRA evaluations.

1. CRA Performance of TDW Bank

As noted, TDW Bank received a "satisfactory" CRA performance rating in its March 2003 evaluation.²⁹ Examiners reported that the bank originated or purchased almost \$16.8 million in community development loans during the evaluation period and had met its annual goals for community development lending each year. These loans funded affordable housing for LMI individuals in the bank's assessment areas in New Jersey and New York.

The bank's community development investments totaled almost \$77 million at the end of the evaluation period and included investments in community development financial institutions, low-income housing tax credit projects, and affordable housing bonds issued by the New Jersey and

21. 12 U.S.C. § 2801 et seq.

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

23. TD dissolved its other U.S. subsidiary insured depository institution, TD Bank USA, FSB, Jersey City, New Jersey, as of December 31, 2004.

24. Peoples Heritage Bank, N.A. ("Peoples Heritage"), also of Portland, was the surviving institution of that consolidation and was renamed Banknorth Bank.

25. Peoples Heritage received an "outstanding" CRA performance rating by the OCC as of July 2001. First Massachusetts Bank, N.A. ("First Massachusetts"), Worcester, Massachusetts, Banknorth Group, Inc.'s largest subsidiary bank before consolidation, received a "satisfactory" CRA performance rating by the OCC as of April 2001. The CRA performance ratings of the remaining consolidated subsidiary banks are listed in Appendix A of the *TD Banknorth Order*.

26. The evaluation period for the lending test was January 1, 2002, through December 31, 2004. The evaluation period for the investment and service tests was April 25, 2002, through February 25, 2005.

27. Applicants have filed an application under the Bank Merger Act (12 U.S.C. § 1828(e)) with the OCC to merge Hudson United Bank into TDB Bank, with TDB Bank as the surviving entity.

28. One commenter expressed concern that TDB Bank had not provided a detailed plan for how it will meet the needs of the communities served by Hudson United Bank after consummation of the proposal. The OCC will evaluate TDB Bank's CRA performance after consummation in future CRA evaluations of the bank.

29. TDW Bank has elected to be evaluated for CRA performance under a strategic plan. Under this alternative, a bank submits a plan, subject to the OCC's approval, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment area, and the OCC evaluates the bank on its success in achieving the goals in the approved plan. See 12 CFR 25.27. The evaluation period for the March 2003 evaluation was January 1, 2000, through December 31, 2002, and reviewed the bank's CRA performance under strategic plans approved by the OCC in March 1998 (for 2000) and November 2000 (for 2001 and 2002). In February 2004, the OCC approved the bank's strategic plan for 2004 through 2006.

New York housing authorities. Examiners reported that the bank met its goals for community development investments in 2000 and 2002 and substantially met its goal in 2001. Examiners also reported that TDW Bank made \$1.04 million in qualified community development grants during the evaluation period and met its annual goals for grants in all three years. In addition, the bank met its annual goals for membership in community development organizations, including organizations involved in providing affordable LMI housing and supporting community development corporations.

2. CRA Performance of TDB Bank

As noted, TDB Bank is the successor to Banknorth Bank, which was formed in 2002 through the consolidation of the subsidiary banks of Banknorth Group, Inc. The OCC began a CRA evaluation of TDB Bank during the fourth quarter of 2004, but the results are not yet available. The Board has consulted with the OCC, however, about the preliminary results of this exam. The OCC also has not evaluated TDB Bank's predecessor, Banknorth Bank. Banknorth Bank's principal predecessor banks included Peoples Heritage and First Massachusetts, which, as noted, received "outstanding" and "satisfactory" ratings, respectively, at their most recent CRA evaluations by the OCC in 2001.

Peoples Heritage. Peoples Heritage received a rating of "outstanding" under the lending test in its July 2001 CRA performance evaluation.³⁰ Examiners stated that the bank's overall distribution of home mortgage loans to LMI geographies and borrowers was good during the evaluation period. They also noted that Peoples Heritage participated in mortgage programs sponsored by the state of Maine that offered flexible underwriting and documentation standards, below-market interest rates, and low-down-payment requirements.

Examiners reported that Peoples Heritage's record of making small loans to businesses in LMI census tracts was excellent.³¹ The bank also made more than \$16 million in community development loans during the evaluation period, including \$11 million in loans to help create more than 160 units of housing for LMI individuals and families.

Peoples Heritage received ratings of "high satisfactory" and "outstanding" on the investment and service tests, respectively, in the July 2001 evaluation. During the evaluation period, Peoples Heritage made 80 qualified investments totaling \$3.6 million, a level that examiners described as good. Examiners noted that the percentage of the bank's branches in LMI census tracts generally equaled or exceeded the percentage of the population living in LMI

census tracts in the bank's assessment areas. They also reported that Peoples Heritage provided an excellent level of community development services.

First Massachusetts. First Massachusetts received a rating of "high satisfactory" under the lending test in its April 2001 CRA performance evaluation.³² Examiners stated that the bank's distribution of home mortgage loans to LMI geographies and borrowers was adequate or better in each of the bank's assessment areas. They also noted that the bank participated in a number of state and federal affordable housing programs with flexible underwriting criteria and other features designed to promote home ownership among LMI individuals.

Examiners reported that First Massachusetts's record of making small loans to businesses in LMI census tracts was adequate or better in each of the bank's assessment areas. The bank also made more than \$23 million in community development loans during the evaluation period, including loans to the Massachusetts Housing Partnership Fund, which promotes affordable housing and neighborhood development throughout the state.

First Massachusetts received ratings of "low satisfactory" and "high satisfactory" on the investment and service tests, respectively, in the April 2001 evaluation. During the evaluation period, the bank made approximately \$11.3 million in qualified investments, a level that examiners described as adequate. Examiners characterized First Massachusetts's distribution of branches as good or excellent in its assessment areas and stated that the bank provided an adequate level of community development services.

Recent CRA Activities of TDB Bank. During 2004, TDB Bank originated or purchased more than 14,000 HMDA-reportable loans totaling approximately \$1.7 billion throughout its combined assessment areas in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. In each of those states, TDB Bank made higher percentages of its HMDA-reportable loans to LMI borrowers than the percentages for lenders in the aggregate ("aggregate lenders") in 2004.³³

To assist first-time and LMI homebuyers, TDB Bank also offers loans insured by the Federal Housing Authority and loans guaranteed by the Department of Veterans Affairs and participates in state housing finance agency programs that offer below-market interest rates and lower-down-payment requirements. Applicants represented that the bank originated more than 2,900 loans totaling more than \$275 million through these programs between January 2002 and June 2005.

From January 1, 2004, to December 31, 2004, TDB Bank's percentages of small loans to businesses in LMI and

30. The evaluation period for the lending test was July 1, 1998, through December 31, 2000. The evaluation period for the service and investment tests was September 1, 1998, through July 9, 2001.

31. In this context, "small loans to businesses" refers to loans with original amounts of \$1 million or less that are either secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

32. The evaluation period was July 1, 1997, through December 31, 2000, except for community development lending, investments, and services, which were evaluated from August 1, 1997, through April 20, 2001.

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

predominantly minority census tracts were higher than or comparable to the percentages for the aggregate lenders in its combined assessment areas.³⁴ In all its assessment areas across six states, the bank continues to participate in Small Business Administration (“SBA”) and state programs focused on lending to small businesses unable to secure conventional financing. Applicants represented that TDB Bank was ranked the largest SBA lender in Maine and Vermont, the second largest SBA lender in New Hampshire, the third largest SBA lender in Massachusetts, and the fifth largest SBA lender in both New York and Connecticut for the twelve-month period ending September 2004. From January 1, 2003, through December 31, 2004, TDB Bank made more than 24,128 small loans to businesses totaling \$3.1 billion.

Applicants also represented that TDB Bank made 211 community development loans totaling more than \$307 million from January 2002 through June 2005. Applicants stated that this community development lending included loan commitments of \$7 million to finance the construction of 108 units of affordable housing in Massachusetts and two \$3.6 million loans to a nonprofit affordable housing organization to create and preserve affordable housing in New Hampshire. They noted that the bank made loan commitments totaling almost \$4.8 million during this same period to renovate public schools in Maine.

In addition, Applicants represented that TDB Bank’s community development investments totaled approximately \$100 million from January 2002 through June 2005. Applicants noted that these investments included commitments of more than \$72 million to fund low-income housing tax credit projects in Maine, Massachusetts, New Hampshire, and Connecticut. They also indicated that the bank made community development grants totaling more than \$7.6 million during the same period to a wide range of community organizations throughout the bank’s assessment areas.

C. Hudson United Bank

As noted, Hudson United Bank received an overall “satisfactory” rating in its February 2005 CRA evaluation. The institution received a “high satisfactory” rating under the lending, investment, and service tests. Examiners noted that Hudson United Bank’s geographic distribution of loans reflected excellent penetration among retail customers of different income levels and business customers of different sizes.³⁵ In particular, examiners commended the bank’s use of flexible lending programs to enable customers to receive credit when they otherwise would not qualify.

34. For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

35. A commenter expressed concern that Hudson United Bank had scaled back its home mortgage lending in several cities to avoid reinvestment obligations under the CRA. As noted, Applicants have indicated that TDB Bank will establish goals to improve performance under the CRA in Hudson United Bank’s assessment areas.

Examiners also praised Hudson United Bank for increasing its portfolio of qualified investments more than 186 percent above its investment levels in the previous evaluation period. During the evaluation period, the bank’s qualified investments in its assessment areas totaled \$61.5 million. Examiners commended Hudson United Bank for purchasing a significant volume of loans in response to the affordable housing and small business needs of individuals and businesses in the bank’s assessment areas.

In addition, examiners noted that Hudson United Bank’s retail banking services, including its branches, ATMs, and telephone and online banking, provided customers with very good access to the institution. Examiners also reported that Hudson United Bank provided a relatively high level of community development services to organizations throughout its assessment areas.

D. Branch Closures

One commenter expressed concern about the proposal’s possible effect on branch closings.³⁶ Applicants have stated that they plan to close or consolidate four branches as a result of this proposal but that these actions would not leave any markets without service. In addition, Applicants represented that only one of the branches they plan to close or consolidate as a result of this proposal, TDB Bank’s branch in Wallingford, Connecticut, is in an LMI census tract. Applicants stated that the Wallingford branch will combine with a Hudson United Bank branch, located within 700 yards, that offers better service capacity. Applicants also advised that TDB Bank expects to open a de novo branch in an LMI neighborhood in both the Hartford, Connecticut and Boston, Massachusetts Metropolitan Statistical Areas (“MSAs”) by early 2007.

Applicants stated that TDB Bank will apply its branch closing policy across the institution after consummation of the acquisition. That policy requires senior and retail management to assess the impact of a closing on employees, customers, corporate clients, and the community at large.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.³⁷ In addition, the Board notes that the OCC, as the

36. The commenter also expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the limited factors the Board is authorized to consider under the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. *See, e.g., Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

37. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. §1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least a 30-day notice and the appropriate federal supervisory agency and customers of the branch with at least a 90-day notice before the date of the proposed branch

appropriate federal supervisor of TDB Bank, will continue to review the bank's branch closing records in the course of conducting CRA performance evaluations.

E. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of Applicants and Hudson United Bancorp in light of public comment received on the proposal. The commenters alleged, based on 2004 HMDA data, that TD Banknorth denied the home mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various MSAs in the New England region.³⁸ In addition, a commenter alleged that Hudson United Bank made higher-cost loans more frequently to African-American borrowers than to nonminority borrowers.³⁹ The Board reviewed the HMDA data for 2004 that were reported as follows: (1) by TDB Bank in the six states in its assessment areas, (2) by Hudson United Bank in the four states in its assessment areas, (3) in the MSAs identified by the commenters, and (4) in certain other MSAs.⁴⁰

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 Hudson United Bank or TDB Bank is excluding or imposing higher credit costs on any racial or ethnic 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.⁴¹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data

closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

38. A commenter expressed concern that TDB Bank failed to adequately reinvest in minority communities and that the bank lagged its competitors in home mortgage lending to minority individuals and in minority census tracts throughout its assessment areas.

39. 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 3 percentage points for first-lien mortgages and 5 percentage points for second-lien mortgages (12 CFR 203.4).

40. The Board also reviewed the data for the Portland, Maine MSA, which is TDB Bank's home market, and for the Hartford and New Haven, Connecticut MSAs, which are served by Hudson United Bank.

41. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository institutions of Applicants and Hudson United Bank. In the fair lending reviews conducted in conjunction with the CRA evaluations discussed above, examiners noted no substantive violations of applicable fair lending laws by TDB Bank or Hudson United Bank. In addition, the Board has consulted with the OCC, the primary federal supervisor of TDB Bank, and the FDIC, the primary federal supervisor of Hudson United Bank.

The record also indicates that Applicants have taken steps to ensure compliance with fair lending laws and other consumer protection laws. Applicants have indicated that TDB Bank's corporate compliance program includes regulatory monitoring, issue and implementation management, complaint tracking, computer-based compliance training, and frequent reports to business-line managers and the Board Risk Committee of TDB Bank's board of directors. To ensure compliance with fair lending laws, TDB Bank has developed a comprehensive review program overseen by a fair lending manager, who has responsibility for reviewing all marketing materials, lending policies and procedures, and for conducting fair lending file reviews annually. Applicants also reported that TDB Bank's fair lending file review includes comparative file analysis of underwriting, pricing, overrides, and exceptions for targeted products. This review includes an annual analysis of TDB Bank's HMDA data to identify any fair lending issues. Such issues are entered into a corporate-compliance database for tracking, resolution, and follow-up. Applicants have stated that every component of TDB Bank's existing compliance programs would be carried over into Hudson United Bank's operations and that additional compliance staff would be hired to help ensure their implementation.

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

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record,⁴²

42. One commenter requested that the Board condition its approval of the proposal on TD's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that

including reports of examination of the CRA records of the institutions involved, information provided by the Applicants, public comments on the proposal, and confidential supervisory information. The Board notes that the proposal would offer the customers of Hudson United Bancorp a wider array of banking products and services, including access to TDB Bank's more extensive branch network. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴³ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.⁴⁴ The Board's approval is specifically

neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., J.P.Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005).* In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the Applicants and the programs that they have in place to serve the credit needs of their CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by TD under this factor, the Board similarly will review TD's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

43. Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why the written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

44. One commenter also requested that the Board extend the comment period and delay action on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter has had ample opportunity to submit its views and has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review

conditioned on compliance by Applicants with the conditions imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 13, 2006.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Olson and Kohn. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

BANKING MARKETS IN WHICH APPLICANTS AND HUDSON UNITED BANCORP COMPETE DIRECTLY

Metro New York

Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

Hartford, Connecticut

This definition is based on the Hartford Ranally Metro Area. It includes Andover, Ashford, Avon, Barkhamsled, Berlin, Bloomfield, Bolton, Bristol City, Broad Brook, Burlington, Canton, Centerbrook, Chaplin, Chester, Colchester, Colebrook, Collinsville, Columbia, Coventry, Cromwell, Deep River, Durham, East Granby, East Haddam, East Hampton, East Hartford, East Windsor, Eastford, Ellington, Enfield, Essex, Farmington, Forestville, Glastonbury, Granby, Hadam, Hampton, Hartford City, Hartland, Hebron, Higganum, Kensington, Lebanon, Manchester, Mansfield, Marlborough, Middlefield, Middletown City, Moodus, New

of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is warranted.

Britain City, New Hartford, Newington, North Windham, Old Saybrook, Plainville, Plantsville, Plymouth, Poquonock, Portland, Rockville City, Rocky Hill, Scotland, Simsbury, Somers, South Glastonbury, South Windsor, Southington, Southingtonboro, Stafford, Stafford Springs, Storrs, Storrs Mansfield, Suffield, Terryville, Thompsonville, Tolland, Union, Unionville, Vernon, Vernon-Rockville, Warehouse Point, Weatogue, West Hartford, West Suffield, West Willington, Wethersfield, Willimantic City, Willington, Winchester, Windham, Windsor, Windsor Locks, and Winsted City.

New Haven, Connecticut

The New Haven Ranally Metro Area and the town of Westbrook.

Appendix B

MARKET DATA FOR BANKING MARKETS

Highly Concentrated Banking Markets

Hartford, Connecticut

TD operates the fourth largest depository institution in the market, controlling deposits of \$1.8 billion, which represent 7 percent of market deposits. Hudson United Bancorp operates the 20th largest depository institution in the market, controlling deposits of approximately \$145 million, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would continue to operate the fourth largest depository institution in the market, controlling deposits of approximately \$1.9 billion, which represent approximately 8 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase 8 points, to 2468.

Moderately Concentrated Banking Markets

Metro New York

TD operates the eighth largest depository institution in the market, controlling deposits of \$24.2 billion, which represent 3 percent of market deposits. Hudson United Bancorp operates the 24th largest depository institution in the market, controlling deposits of approximately \$4.4 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would remain the eighth largest depository institution in the market, controlling deposits of approximately \$28.6 billion, which represent 4 percent of market deposits. Two hundred fifty-four depository institutions would remain in the banking market. The HHI would increase 3 points, to 1040.

New Haven, Connecticut

TD operates the 12th largest depository institution in the market, controlling deposits of \$80 million, which represent less than 1 percent of market deposits. Hudson United

Bancorp operates the seventh largest depository institution in the market, controlling deposits of approximately \$769 million, which represent 8 percent of market deposits. After the proposed acquisition, TD would become the seventh largest depository institution in the market, controlling deposits of approximately \$849 million, which represent approximately 9 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 12 points, to 1351.

*Whitney Holding Corporation
New Orleans, Louisiana*

Order Approving the Acquisition of a Bank Holding Company

Whitney Holding Corporation (“Whitney”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire First National Bancshares, Inc. (“Bancshares”) and its subsidiary bank, 1st National Bank & Trust (“1st Bank”), both of Bradenton, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 600 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Whitney, with total consolidated assets of \$10.1 billion, controls Whitney National Bank (“Whitney Bank”), also of New Orleans, with branches in Alabama, Florida, Louisiana, Mississippi, and Texas. Whitney is the third largest depository organization in Louisiana, controlling deposits of approximately \$4.8 billion, which represent approximately 8.4 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).² In Florida, Whitney is the 43rd largest depository organization, controlling deposits of approximately \$860.3 million, which represent less than 1 percent of state deposits.

Bancshares, with total consolidated assets of approximately \$378.7 million, operates one subsidiary bank, 1st Bank, with branches only in Florida. Bancshares is the 93rd largest depository organization in Florida, controlling deposits of approximately \$292.4 million, which represent less than 1 percent of state deposits. On consummation of the proposal, Whitney would become the 35th largest depository organization in Florida, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of state deposits.

1. 12 U.S.C. §1842.

2. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 23, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Whitney is Louisiana,³ and 1st Bank is located in Florida.⁴

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁵ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. 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 Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁶

Whitney and Bancshares do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of

the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, publicly reported and other financial information, information provided by Whitney, and public comment received on the proposal. The Board also has considered these factors in light of the effect that Hurricane Katrina had on the Gulf Coast region and its impact on Whitney's resources and future prospects.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of measures in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors. Whitney, Bancshares, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board believes that Whitney has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination cash purchase and share exchange. The cash portion of the transaction would be funded from Whitney's general corporate resources.

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 Whitney, Bancshares, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law.⁷ Whitney, Bancshares, and their subsidiary depository institutions are

3. 12 U.S.C. § 1842(d). Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

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

5. 12 U.S.C. § 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). Whitney is well capitalized and well managed, as defined by applicable law. 1st Bank has been in existence and operated for the minimum period of time required by Florida law. On consummation of the proposal, Whitney would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Florida. See Fla. Stat. Ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

6. 12 U.S.C. § 1842(c)(1).

7. A commenter who opposed the proposal expressed concern about Whitney Bank's relationship with a rent-to-own company, which is an unaffiliated, nontraditional provider of financial services. As a general matter, the activities of this type of business are permissible, and such businesses are licensed by the states where they operate. Whitney Bank has implemented a policy for its commercial credit facilities to finance companies or other consumer lenders to fund consumer loans. This policy provides for an evaluation of the practices of such borrowers to identify any potentially predatory lending practices and for ongoing monitoring and management of relationships with such borrowers.

considered to be well managed. The Board also has considered Whitney's plans for implementing the proposal, including the proposed management after consummation.

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 in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").⁸ 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.⁹

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of the subsidiary depository institutions of Whitney and Bancshares, data reported by Whitney Bank and 1st Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁰ other information provided by Whitney, confidential supervisory information, and public comment received on the proposal. The Board also has consulted with the Office of the Comptroller of the Currency ("OCC") regarding Whitney's efforts to revitalize and stabilize the communities it serves that were affected by Hurricane Katrina. A commenter alleged, based on 2004 HMDA data, that Whitney Bank and 1st Bank engaged in discriminatory treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹¹

Whitney Bank received an overall "outstanding" rating at its most recent CRA evaluation by the OCC, as of

January 6, 2003. 1st Bank received an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of March 4, 2002. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current CRA policies, procedures, and programs at 1st Bank.

B. HMDA and Fair Lending Records

The Board has carefully considered the lending record and HMDA data of Whitney Bank and 1st Bank in light of public comment about their respective records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Whitney Bank and 1st Bank disproportionately denied applications for HMDA-reportable loans by minority applicants in several Metropolitan Statistical Areas ("MSAs"). The Board reviewed HMDA data for 2004 reported by Whitney Bank in MSAs in Alabama, Florida, Louisiana, Mississippi, and Texas and for 1st Bank in the MSA in Florida that includes its assessment area.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 Whitney Bank or 1st Bank is excluding or imposing higher credit costs on any racial or ethnic 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.¹² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that reflect on-site evaluations of compliance by Whitney Bank and 1st Bank with fair lending laws and the CRA performance records of Whitney Bank and 1st Bank. In the fair lending reviews that were conducted in conjunction with the banks' most recent CRA performance evaluations, examiners noted no substantive violations of applicable fair lending laws.

12. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

8. 12 U.S.C. §2901 et seq.; 12 U.S.C. §1842(c)(2).

9. 12 U.S.C. §2903.

10. 12 U.S.C. §2801 et seq.

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

The record also indicates that Whitney has taken steps to ensure compliance with fair lending and other consumer protection laws. Whitney represented that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, Whitney represented that it performs a review of all denials of HMDA-reportable purchase money loans and a two-level review of all other HMDA-reportable denials of loans. Whitney also represented that its fair lending policy includes a comparative file review of all HMDA-reportable loan denials for minorities. Whitney has represented that, on consummation of the proposal, it will implement policies and procedures consistent with Whitney Bank's current fair lending policies, procedures, and programs at 1st Bank.

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

C. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Whitney, comments received on the proposal, and confidential supervisory information. Whitney represented that the proposal would benefit Bancshares customers by providing access to an expanded ATM network and a broader array of products and services, including additional mortgage services, loan and checking account programs for low-income consumers, and international banking and cash management services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application 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.¹³ The

13. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to

Board's approval is specifically conditioned on compliance by Whitney with the conditions imposed in this order and the commitments made in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 7, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Bank Hapoalim, B.M.
Tel Aviv, Israel

Arison Holdings (1998) Ltd.
Tel Aviv, Israel

Israel Salt Industries Ltd.
Atlit, Israel

Order Approving Notice to Engage in a Nonbanking Activity

Bank Hapoalim, B.M. ("Bank Hapoalim"), Arison Holdings (1998) Ltd. ("Arison"), and Israel Salt Industries Ltd. ("Israel Salt") (collectively, "Notificants"),¹ foreign

clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

1. Arison and Israel Salt own 16.5 percent and 7 percent, respectively, of Bank Hapoalim and are parties to a shareholder agreement among

banking organizations subject to the provisions of the Bank Holding Company Act (“BHC Act”),² have requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act³ and section 225.24 of the Board’s Regulation Y⁴ to acquire all the voting shares of Investec (US) Incorporated (“Investec”), New York, New York. Investec would be acquired through Notificants’ wholly owned subsidiaries, Zohar Hashemesh Le’Hashkaot Ltd., also of Tel Aviv, and Hapoalim U.S.A. Holding Company, Inc., also of New York. As a result, Notificants and their subsidiaries would engage in the United States in the following activities:

- (1) providing financial and investment advisory services, in accordance with section 225.28(b)(6) of Regulation Y;⁵
- (2) providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, in accordance with section 225.28(b)(7) of Regulation Y;⁶ and
- (3) underwriting and dealing in government obligations and money market instruments that state member banks may underwrite or deal in under 12 U.S.C. §§ 24 and 335 and engaging as principal in investing and trading activities, in accordance with section 225.28(b)(8) of Regulation Y.⁷

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (70 *Federal Register* 71,304 (2005)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Bank Hapoalim, with consolidated assets of more than \$60 billion, is the largest banking organization headquartered in Israel. In the United States, Bank Hapoalim maintains branches in New York, Chicago, and Miami and a representative office in Miami. Investec is a securities broker-dealer and a member of the New York Stock Exchange, Inc. and NASD.

The Board has determined by regulation that acting as a financial or investment advisor, providing agency transactional services for customer investments, and engaging in investment transactions as principal are activities closely related to banking for purposes of section 4(c)(8) of the

the owners of 29 percent of the voting shares of Bank Hapoalim. Under the agreement, Arison and Israel Salt each have the power under certain circumstances to control the voting of all the shares held by the parties to the agreement. As a result, Arison and Israel Salt each is considered to control Bank Hapoalim, and each institution has joined in the filing of the notice.

2. As a foreign bank operating branches in the United States, Bank Hapoalim, and any company that controls Bank Hapoalim, is subject to the BHC Act by operation of section 8(a) of the International Banking Act of 1978 (12 U.S.C. § 3106(a)).

3. 12 U.S.C. §§ 1843(c)(8) and 1843(j).

4. 12 CFR 225.24.

5. 12 CFR 225.28(b)(6).

6. 12 CFR 225.28(b)(7).

7. 12 CFR 225.28(b)(8).

BHC Act. Notificants have committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board’s orders governing these activities. To approve the notice, the Board also must determine that the acquisition of Investec by Notificants can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.⁸

As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on those resources.⁹ The Board has considered, among other things, information provided by Bank Hapoalim, public comment,¹⁰ confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information in assessing the financial and managerial strength of Bank Hapoalim.

In evaluating the financial factors of this proposal, the Board has considered a number of factors, including capital adequacy and earnings performance. Bank Hapoalim’s capital ratios exceed the minimum levels that would be required by the Basel Capital Accord and are considered equivalent to the capital that would be required of a U.S. banking organization. Moreover, consummation of this proposal would not have a significant impact on the financial condition of Bank Hapoalim. Based on its review, the Board finds that Notificants have sufficient financial resources to effect the proposal.

In addition, the Board has carefully considered the managerial resources of Bank Hapoalim, the supervisory experiences of the relevant banking supervisory agencies with Bank Hapoalim, and Bank Hapoalim’s record of compliance with applicable U.S. banking laws.¹¹ The Board

8. 12 U.S.C. § 1843(j)(2)(A).

9. 12 CFR 225.26.

10. A commenter expressed concern about Israel’s anti-money-laundering policies and procedures based on (1) a report dated June 22, 2000, by the Financial Action Task Force (“FATF”), an intergovernmental body that develops and promotes policies to combat money laundering, and (2) an advisory issued by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). These matters were cited in the Board’s order approving Notificants’ application to become bank holding companies. See 87 *Federal Reserve Bulletin* 327 n.11 (2001). In June 2002, the FATF recognized that Israel had addressed the deficiencies identified in its 2000 report. FinCEN withdrew its advisory in July 2002, noting that Israel “now has in place a counter-money-laundering system that generally meets international standards.” FinCEN Advisory Withdrawal Issue 17A.

11. The commenter criticized Bank Hapoalim’s record under the Community Reinvestment Act (“CRA”) (12 U.S.C. § 2901 et seq.) based on a CRA evaluation as of June 30, 1997, and a news report from 1993 on the CRA records of foreign banks generally, including Bank Hapoalim. The CRA does not provide for consideration of a notificant’s CRA performance record in the evaluation of a notice under section 4 of the BHC Act. The Board notes that Bank Hapoalim’s insured New York branch received an overall “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of June 9, 2003.

has also consulted with home country authorities responsible for supervising Bank Hapoalim concerning the proposal and the managerial resources of Notificants¹² and reviewed reports of examination from the appropriate federal and state supervisors of the U.S. operations of Bank Hapoalim that assessed its managerial resources. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of Notificants are consistent with approval.

The Board has also considered carefully the competitive effects of the proposal in light of all the facts of record. Because Bank Hapoalim does not currently engage in the proposed activities in the United States, the proposal would result in no loss of competition. Moreover, there are numerous existing and potential competitors in the industry. In addition, the market for the proposed services is regional or national in scope. Based on all the facts of record, the Board concludes that Bank Hapoalim's proposed activities would have a de minimis effect on competition for the relevant nonbanking activities.

The Board expects that the proposed activities would result in benefits to the public by enhancing Bank Hapoalim's ability to serve its customers. These customers will also benefit from the convenience and efficiency of being able to use the services of a broker-dealer affiliated with Bank Hapoalim.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal discussed above. Accordingly, based on all the facts of record, the Board has determined that the balance of the public-benefits factor that it must consider under section 4(j) of the BHC Act is consistent with approval of the proposal.

Based on the foregoing, the Board has determined that the notice should be, and hereby is, approved.¹³ In reaching

12. The commenter also expressed concern about the proposal based on news reports of investigations by Israeli authorities into allegations of money laundering at Bank Hapoalim. As a matter of practice and policy, the Board generally has not tied consideration of a proposal to the scheduling or completion of an investigation if, as in this case, the applicant or notificant has an overall satisfactory record of performance and the issues being reviewed can be resolved in the examination and supervisory process. See 62 *Federal Register* 9290 (1997) (Preamble to the Board's Regulation Y). The Board has consulted with the Bank of Israel, Bank Hapoalim's home country supervisor, about the measures that Bank Hapoalim has taken to strengthen controls to prevent the bank from being used for money laundering or other illicit activities.

13. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered carefully the comment-

er's 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 Notificants with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),¹⁴ and to the Board's authority to require such modification or termination of the activities of the Notificants or any of their 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 these actions, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

This transaction 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 the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 10, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Société Générale *Paris, France*

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

Société Générale, a foreign bank that is treated as a financial holding company ("FHC") for purposes of the Bank Holding Company Act ("BHC Act"),¹ has requested the Board's approval under section 4 of the BHC Act and the Board's Regulation Y to engage in physical commodity

er's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

14. 12 CFR 225.7 and 225.25(c).

1. 12 U.S.C. § 3106.

trading in the United States.² Société Générale currently conducts physical commodity trading and related activities outside the United States.³

Regulation Y authorizes a bank holding company (“BHC”) to engage as principal in derivative contracts based on financial and nonfinancial assets (“Commodity Derivatives”). Under Regulation Y, a BHC may engage in such activities involving Commodity Derivatives subject to certain restrictions that are designed to limit the BHC’s activity to trading and investing in financial instruments rather than dealing directly in physical nonfinancial commodities (“Permissible Commodity Derivatives Activities”). Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

The BHC Act, as amended by the Gramm-Leach-Bliley Act (“GLB Act”), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.⁴ The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.⁵ Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.⁶

In addition, the BHC Act 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.⁷ 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 in a manner that complements the financial activity.⁸ The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board’s prior approval under

section 4(j) of the BHC Act.⁹

Société Générale regularly engages in Permissible Commodity Derivatives Activities based on a variety of commodities and physical commodity transactions outside the United States and, through SGE, engages in limited physical commodities activities in the United States pursuant to authority under Regulation K.¹⁰ Société Générale plans to expand its physical commodity transactions operations in the United States and, therefore, has requested that the Board permit it to engage in physical commodity trading activities in the United States involving commodities such as natural gas, crude oil, and electricity and to take and make delivery of physical commodities to settle Commodity Derivatives (“Commodity Trading Activities”).¹¹ The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in Commodity Derivatives based on that commodity.¹² In light of the foregoing and all other facts of record, the Board believes that Commodity Trading Activities are complementary to the Permissible Commodity Derivatives Activities of Société Générale.

To authorize Société Générale to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the U.S. financial system generally.¹³ In addition, the Board must determine that the performance of Commodity Trading Activities by Société Générale “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.”¹⁴

Approval of the proposal would likely benefit Société Générale’s customers by enhancing Société Générale’s ability to provide efficiently a full range of commodity-related services. Approving Commodity Trading Activities for Société Générale also would enable it to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in those markets.

2. 12 U.S.C. § 1843; 12 CFR Part 225.

3. Société Générale will enter into physical commodity trades in the United States through its indirect, wholly owned nonbanking subsidiary, Société Générale Energie (USA) Corp. (“SGE”), New York, New York. SGE currently engages in some physical commodities activities in the United States, pursuant to authority under Regulation K, that are related to the foreign physical commodities activities of its parent company, Société Générale Energie (S.A.). See 12 CFR 211.23(f)(5).

4. 12 U.S.C. § 1843(c)(8).

5. The Board determined by regulation before November 12, 1999, that engaging as principal in Commodity Derivatives Activities, subject to certain restrictions, was closely related to banking. Accordingly, engaging as principal in Permissible Commodity Derivatives Activities is a financial activity for purposes of the BHC Act. See 12 U.S.C. § 1843(k)(4)(F).

6. 12 U.S.C. § 1843(k)(1)(A).

7. 12 U.S.C. § 1843(k)(1)(B).

8. See 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) (“It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.”).

9. 12 U.S.C. § 1843(j).

10. 12 CFR 211.23(f)(5).

11. Société Générale has committed that on receiving approval from the Board to conduct Commodity Trading Activities in the United States as an activity complementary to a financial activity, it will conduct such activities pursuant to section 4 authority only, consistent with the limitations placed by the Board on such activities.

12. *Deutsche Bank AG*, 92 *Federal Reserve Bulletin* C54 (2006); *JPMorgan Chase & Co.*, 92 *Federal Reserve Bulletin* C57 (2006); *Barclays Bank PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in Commodity Derivatives based on Brent crude oil.

13. 12 U.S.C. § 1843(k)(1)(B).

14. 12 U.S.C. § 1843(j)(2)(A).

The Board has evaluated the financial resources of Société Générale and its subsidiaries. Société Générale's capital levels exceed the minimum levels that would be required under the Basel Capital Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization.

Based on all the facts of record, the Board believes that Société Générale has the managerial expertise and internal control framework to manage adequately the risks of taking and making delivery of physical commodities as proposed. The Board notes that Société Générale has established and maintained policies for monitoring, measuring, and controlling the credit, market, settlement, reputational, legal, and operational risks involved in its Commodity Trading Activities. These policies address key areas, such as counterparty-credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of Commodity Trading Activities. Société Générale has integrated the risk management of Commodity Trading Activities into its overall risk-management framework.

As a condition of this order, to limit the potential safety and soundness risks of Commodity Trading Activities, the market value of commodities held by Société Générale as a result of Commodity Trading Activities must not exceed 5 percent of Société Générale's consolidated tier 1 capital (as calculated under its home country standard).¹⁵ Société Générale also must notify the Federal Reserve Bank of New York if the market value of commodities held by Société Générale as a result of its Commodity Trading Activities exceeds 4 percent of its tier 1 capital.

In addition, Société Générale may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or that have been specifically approved by the Board.¹⁶ This requirement is designed to prevent Société Générale from becoming involved in dealing in finished goods and other

items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of Société Générale to additional risks, including storage, transportation, legal, and environmental risks, Société Générale would not be authorized (i) to own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) to process, refine, store, or otherwise alter commodities in the United States. In conducting its Commodity Trading Activities, Société Générale has committed to use appropriate storage and transportation facilities owned and operated by third parties.¹⁷

Société Générale and its Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

Permitting Société Générale to engage in the limited amount and types of Commodity Trading Activities described above, on the terms described in this order, would not appear to pose a substantial risk to Société Générale, depository institutions, or the U.S. financial system generally. Through its existing authority to engage in Permissible Commodity Derivatives Activities, Société Générale already may incur the price risk associated with commodities. Permitting Société Générale to buy and sell commodities in the spot market or physically settle Commodity Derivatives would not appear to increase significantly its potential exposure to commodity-price risk.

For these reasons, and based on Société Générale's policies and procedures for monitoring and controlling the risks of Commodity Trading Activities, the Board concludes that consummation of the proposal would not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that would outweigh any potential adverse effects.

Based on all the facts of record, including the representations and commitments made to the Board by Société Générale in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y, including those in section 225.7,¹⁸ and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the

15. Société Générale would be required to include in this 5 percent limit the market value of any commodities it holds as a result of a failure of reasonable efforts to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y (12 CFR 225.28(b)(8)(ii)(B)).

16. The particular commodity derivative contract that Société Générale takes to physical settlement need not be exchange traded, but (in the absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of CFTC-authorized commodity contracts. See Commodity Futures Trading Commission, *FY 2004 Annual Report to Congress* 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

17. Approving Commodity Trading Activities as a complementary activity, subject to limits and conditions, would not in any way restrict the existing authority of Société Générale to deal in foreign exchange, precious metals, or any other bank-eligible commodity.

18. 12 CFR 225.7.

notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective March 15, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER SECTIONS 3 AND 4 OF THE BANK HOLDING COMPANY ACT

BB&T Corporation Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies

BB&T Corporation (“BB&T”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Main Street Banks, Inc. (“Main Street”), Atlanta, and its subsidiary bank, Main Street Bank, Covington, both of Georgia. BB&T also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act² and section 225.28(b)(14) of the Board’s Regulation Y³ to acquire Main Street’s subsidiary, MSB Payroll Solutions, LLC (“MSB Data”), Alpharetta, Georgia, and thereby engage in permissible data-processing activities.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 3094 (2006)). The time for filing comments has expired, and the Board has considered the application and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

BB&T, with total consolidated assets of approximately \$109.2 billion, is the 17th largest depository organization in the United States.⁵ BB&T operates subsidiary insured

depository institutions in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, Tennessee, West Virginia, and the District of Columbia. In Georgia, BB&T is the sixth largest depository organization, controlling deposits of \$4.7 billion, which represent 3.2 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

Main Street, with total consolidated assets of approximately \$2.4 billion, operates one depository institution, Main Street Bank, which has branches only in Georgia. Main Street Bank is the ninth largest insured depository institution in Georgia, controlling deposits of \$1.7 billion, which represent approximately 1.2 percent of state deposits.

On consummation of this proposal, BB&T would remain the 17th largest insured depository organization in the United States, with total consolidated assets of approximately \$111.9 billion. BB&T would become the fifth largest depository organization in Georgia, controlling deposits of approximately \$6.3 billion, which represent approximately 4.3 percent of state deposits.⁶

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company’s home state if certain conditions are met. For purposes of the BHC Act, the home state of BB&T is North Carolina,⁷ and Main Street Bank is located in Georgia.⁸

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁹ In light of all the facts of record, the Board is permitted to approve the proposal under this provision.

6. Branch Banking and Trust Company (“BB&T Bank”), Winston-Salem, North Carolina, a subsidiary bank of BB&T, has received approval from the Federal Deposit Insurance Corporation (“FDIC”) to merge with Main Street Bank, with BB&T Bank as the survivor. BB&T has indicated that it anticipates consummating that merger approximately four months after acquiring Main Street.

7. A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

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

9. *See* 12 U.S.C. § 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). BB&T is adequately capitalized and adequately managed, as defined by applicable law. Main Street Bank has been in existence and operated for the minimum period of time required by applicable state law (three years). *See* Ga. Code Ann. § 7-1-608(a)(2). On consummation of the proposal, BB&T would control less than 10 percent of the total amount of deposits of insured depository institutions (“total deposits”) in the United States. BB&T would also control less than 30 percent of total deposits in Georgia. All other requirements of section 3(d) would be met on consummation of the proposal.

1. 12 U.S.C. § 1842.

2. 12 U.S.C. §§ 1843(c)(8) and 1843(j).

3. 12 CFR 225.28(b)(14).

4. In addition, BB&T proposes to acquire Main Street’s nonbanking insurance agency and underwriting subsidiary in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

5. Asset and nationwide ranking data are as of December 31, 2005. Statewide deposit and ranking data are as of June 30, 2005, and reflect merger activity through February 24, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

BB&T and Main Street compete directly in the Atlanta Area and the Athens Area banking markets in Georgia.¹¹ The Board has reviewed carefully the competitive effects of the proposal in both banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by BB&T and Main Street,¹² the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹³ 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 both banking markets. After consummation, each market would remain unconcentrated, as measured by the HHI. In addition, the increase in concentration would be small, and numerous competitors would remain in each market.¹⁴

The DOJ also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the transaction likely would not have a significantly adverse effect on competition in any relevant

banking market. In addition, the appropriate banking agencies have 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 proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta Area or Athens Area banking markets or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by BB&T, and public comments received on the proposal.¹⁵

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. The Board considers a variety of factors in this evaluation, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the proposal under the financial factors. BB&T, all its subsidiary banks, and Main Street Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that BB&T has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined

10. 12 U.S.C. §1842(c)(1).

11. These banking markets are described in Appendix A.

12. Deposit and market share data are as of June 30, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

13. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI 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.

14. The effect of the proposal on the concentration of banking resources in each market is described in Appendix B.

15. A commenter expressed concern about BB&T’s relationships with unaffiliated pawn shops and other nontraditional providers of financial services. 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. BB&T has stated that it does not focus on marketing credit services to such nontraditional providers and that it makes loans to those firms under the same terms, circumstances, and due diligence procedures applicable to BB&T’s other small business borrowers. BB&T has also represented that it does not play any role in the lending practices, credit review, or other business practices of those firms.

organization. The Board has reviewed the examination records of BB&T, Main Street, and their subsidiary banks, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. BB&T, Main Street, and their subsidiary depository institutions are considered to be well managed. The Board also has considered BB&T's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁶ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals.¹⁷

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of BB&T's subsidiary banks and Main Street Bank, data reported by BB&T under the Home Mortgage Disclosure Act ("HMDA"),¹⁸ other information provided by BB&T, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data, that BB&T engaged in discriminatory treatment of minority individuals in its home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-

site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁹

BB&T's largest subsidiary bank, as measured by total deposits, is BB&T Bank.²⁰ The bank received an "outstanding" rating by the FDIC, at its most recent CRA performance evaluation, as of December 20, 2004. BB&T's remaining subsidiary banks all received "satisfactory" ratings at their most recent CRA evaluations.²¹ Main Street Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 14, 2004. BB&T has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from Main Street after the merger of BB&T Bank and Main Street Bank.

B. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of BB&T in light of public comment about its record of lending to minorities. A commenter alleged, based primarily on 2004 HMDA data, that BB&T had disproportionately denied applications for HMDA-reportable loans by African-American and Latino applicants. The commenter also asserted that BB&T made higher-cost loans²² more frequently to African Americans and Latinos than to nonminorities.²³ The Board has analyzed the 2004 HMDA data reported by BB&T's subsidiary banks in the Metropolitan Statistical Areas ("MSAs") of Atlanta-Sandy Springs-Marietta, Charlotte-Gastonia-Concord, Durham, Raleigh-Cary, Washington-Arlington-Alexandria, and Winston-Salem; and in their assessment areas statewide in Georgia, Kentucky, Maryland, and North Carolina.²⁴

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic

19. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620, 36,640 (2001).

20. As of December 31, 2005, BB&T Bank accounted for approximately 67.2 percent of the total domestic deposits of BB&T's four subsidiary banks.

21. Appendix C lists the most recent CRA ratings of BB&T's other subsidiary banks.

22. 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 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

23. The commenter also expressed concern about referrals of loan applicants to Lendmark Financial Services ("LFS"), a nonbank subsidiary of BB&T that makes subprime loans. BB&T has represented that it might refer to LFS applications denied by a BB&T subsidiary bank that do not meet the bank's underwriting guidelines. Before making a referral, however, these applications undergo an internal second-review procedure. In addition, BB&T notes that LFS has a policy to refer applicants who meet the Freddie Mac underwriting guidelines to BB&T's subsidiary banks.

24. In addition, the Board analyzed 2004 HMDA data reported by LFS in the Charlotte-Gastonia-Concord MSA and statewide in North Carolina.

16. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

17. 12 U.S.C. § 2903.

18. 12 U.S.C. § 2801 et seq.

groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not BB&T or its subsidiaries are excluding or imposing higher costs on any racial or ethnic 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.²⁵ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by BB&T's subsidiary banks with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of those banks, examiners noted no substantive violations of applicable fair lending laws.

The record also indicates that BB&T has taken steps to ensure compliance with fair lending and other consumer protection laws. BB&T employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, BB&T monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets, and by conducting a more extensive internal comparative file review when merited. Finally, BB&T provides fair lending training to its lending personnel, including training to help ensure that loan originators consistently disseminate credit-assistance information to applicants.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of each of BB&T's subsidiary banks. Their established efforts and records demonstrate that BB&T is active in helping to meet the credit needs of its entire communities.

C. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BB&T, comments received on the proposal, and confidential supervi-

25. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

sory information. BB&T represented that the proposed transaction would provide Main Street customers with expanded products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

NONBANKING ACTIVITIES

As noted, BB&T also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to engage in data-processing activities through the acquisition of MSB Data, which provides payroll services to small businesses. The Board has determined by regulation that financial and banking data-processing activities are permissible for a bank holding company under Regulation Y,²⁶ and BB&T has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.

To approve this notice, the Board must also determine that the performance of the proposed activities by BB&T "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."²⁷ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of BB&T and Main Street and their subsidiaries, and the effect of the proposed transaction on their resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has carefully considered the competitive effects of BB&T's proposed acquisition of MSB Data in light of all the facts of record. BB&T and Main Street both engage in activities related to data processing. The market for the activity is regional or national in scope and unconcentrated. The record in this case also indicates that there are numerous providers of these services. Accordingly, the Board concludes that BB&T's acquisition of MSB Data would not have a significantly adverse effect on competition in any relevant market.

The acquisition of MSB Data by BB&T would benefit the public by allowing BB&T to offer expanded payroll products and services to customers in the Atlanta area. After consummation, BB&T intends to merge MSB Data with and into BB&T's data-processing subsidiary, BB&T Payroll Services, Inc. BB&T represented that this merger would provide customers of MSB Data with access to BB&T's more advanced technology and software systems on which to run their payroll systems and expanded support for the payroll services that are offered. Customers also

26. 12 CFR 225.28(b)(14).

27. See 12 U.S.C. § 1843(j)(2)(A).

would have access to additional payroll products and services, such as payroll cards and a secure online payroll service.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor under section 4(j)(2) of the BHC Act is consistent with approval.²⁸

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application and notice should be, and hereby are, approved.²⁹ 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 BB&T with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),³⁰ and to the Board's authority

28. A commenter asserted that the Board should, in the context of the current proposal, review BB&T's recently announced plans to acquire the assets of FSB Financial Ltd. ("FSB"), Arlington, Texas, a nonbanking company that purchases automobile-loan portfolios. The FSB acquisition is not related to the current proposal. Moreover, if the FSB acquisition is consummated under authority of section 4(k) of the BHC Act, the acquisition would not require prior approval of the Federal Reserve System. BB&T would require prior Federal Reserve System approval if the acquisition were proposed under sections 4(c)(8) and 4(j) of the BHC Act, and the transaction would be reviewed in light of the requirements and standards discussed above.

29. A commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

30. 12 CFR 225.7 and 225.25(c).

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

The proposed banking acquisitions may not be consummated before the 15th calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 27, 2006.

Voting for this action: Chairman Bernanke and Governors Bies, Olson, Kohn, Warsh, and Kroszner. Absent and not voting: Vice Chairman Ferguson.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

GEORGIA BANKING MARKETS IN WHICH BB&T AND MAIN STREET COMPETE DIRECTLY

Athens Area

Clarke, Jackson, Madison, Oconee, and Oglethorpe counties; and Barrow County, excluding the cities of Auburn and Winder.

Atlanta Area

Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County, excluding the town of Clermont; the towns of Auburn and Winder in Barrow County; and the town of Luthersville in Meriwether County.

Appendix B

MARKET DATA FOR GEORGIA BANKING MARKETS

Athens Area

BB&T operates the 17th largest depository institution in the Athens Area banking market, controlling deposits of \$47.4 million, which represent 1.5 percent of market deposits. Main Street operates the 11th largest depository

institution in the market, controlling deposits of approximately \$106.9 million, which represent 3.3 percent of market deposits. After consummation of the proposal, BB&T would become the eighth largest depository organization in the market, controlling deposits of approximately \$154.3 million, which represent approximately 4.8 percent of market deposits. The HHI would increase 10 points, to 888. Twenty-two bank and thrift competitors would remain in the banking market.

Atlanta Area

BB&T operates the sixth largest depository institution in

the Atlanta Area banking market, controlling deposits of \$2.1 billion, which represent 2.4 percent of market deposits. Main Street operates the seventh largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which represent 1.8 percent of market deposits. After consummation of the proposal, BB&T would become the fifth largest depository organization in the market, controlling deposits of approximately \$3.7 billion, which represent approximately 4.1 percent of market deposits. The HHI would increase 8 points, to 1557. One hundred and eight bank and thrift competitors would remain in the banking market.

Appendix C

CRA PERFORMANCE EVALUATIONS OF BB&T'S BANKS

Bank	CRA Rating	Date	Supervisor
Branch Banking and Trust Company, Winston-Salem, North Carolina	Outstanding	December 2004	FDIC
Branch Banking and Trust Company of South Carolina, Greenville, South Carolina	Satisfactory	December 2004	FDIC
Branch Banking and Trust Company of Virginia, Richmond, Virginia	Satisfactory	December 2004	FDIC
BB&T Bankcard Corporation, Columbus, Georgia	Satisfactory	May 2005	FDIC

*Marshall & Ilsley Corporation
Milwaukee, Wisconsin*

Order Approving the Merger of Bank Holding Companies

Marshall & Ilsley Corporation (“M&I”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Gold Banc Corporation, Inc. (“Gold Banc”) and its subsidiary bank, Gold Bank, both of Leawood, Kansas.² M&I also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act³ and sections 225.28(b)(5), (b)(6), (b)(7), and (b)(8) of the Board’s Regulation Y⁴ to acquire the nonbanking subsidiaries of Gold Banc and thereby engage in permissible investment advisory, securities brokerage, underwriting, and trust activities. In addition, M&I’s subsidiary bank, M&I Marshall & Ilsley Bank (“M&I Bank”), Milwaukee, Wisconsin, a state member bank, has requested the Board’s approval under sec-

tion 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)⁵ to merge with Gold Bank, with M&I Bank as the surviving entity. M&I Bank has also applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at Gold Bank’s main office and branch locations.⁶

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (70 *Federal Register* 72,433 (2005)) and in local newspapers in accordance with relevant statutes and the Board’s Rules of Procedure.⁷ As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the Board has considered the applications and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&I, with total consolidated assets of approximately \$46.3 billion, operates four subsidiary insured depository institutions in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. In Wisconsin, M&I is the largest depository organization, controlling deposits of approximately \$18.3 billion, which represent 18.1 percent

1. 12 U.S.C. §1842.

2. The Board also approved today a separate application by M&I to acquire Trustcorp Financial, Inc., St. Louis, and its subsidiary bank, Missouri State Bank and Trust Company, Clayton, both of Missouri, under section 3 of the BHC Act. See *Marshall & Ilsley Corporation*, 92 *Federal Reserve Bulletin* C79 (2006).

3. 12 U.S.C. §§4(c)(8) and 4(j).

4. 12 CFR 225.28 (b)(5)–(b)(8).

5. 12 U.S.C. §1828(c).

6. 12 U.S.C. §§321 and 1831u. These branches are listed in the appendix.

7. 12 CFR 262.3(b).

of the total amount of deposits of insured depository institutions in the state (“state deposits”).⁸ In Florida, M&I is the 287th largest depository organization, controlling deposits of approximately \$37 million, which represent less than 1 percent of state deposits. In Missouri, M&I is the ninth largest depository organization, controlling deposits of approximately \$1.6 billion, which represent 1.7 percent of state deposits.

Gold Banc, with total consolidated assets of approximately \$4.2 billion, operates one depository institution, Gold Bank, which has branches in Florida, Kansas, Missouri, and Oklahoma. Gold Banc is the fifth largest depository organization in Kansas, controlling deposits of approximately \$1.5 billion, which represent 3.1 percent of state deposits. In Florida, Gold Banc is the 44th largest depository organization, controlling deposits of approximately \$829 million. In Missouri, Gold Banc is the 36th largest depository organization, controlling deposits of approximately \$394.4 million.

On consummation of the proposals, M&I would have consolidated assets of \$50.5 billion. In Florida, M&I would become the 42nd largest depository organization, controlling deposits of \$866 million, which represent less than 1 percent of state deposits. In Missouri, M&I would become the seventh largest depository organization, controlling deposits of \$2 billion, which represent 2.2 percent of state deposits.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.⁹ For purposes of the BHC Act, the home state of M&I is Wisconsin,¹⁰ and Gold Bank is located in Florida, Kansas, Missouri, and Oklahoma.¹¹

Section 44 of the Federal Deposit Insurance Act (“FDI Act”) authorizes banks with different home states to merge under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.¹² For purposes of section 44 of the FDI Act, the home state of M&I Bank is Wisconsin,

8. Asset data are as of December 31, 2005. State deposit and ranking data are as of June 30, 2005, and reflect merger activity through January 23, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

9. 12 U.S.C. § 1842(d).

10. Under section 3(d) of the BHC Act, a bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later (12 U.S.C. § 1841(o)(4)(C)).

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

12. 12 U.S.C. § 1831u.

and the home state of Gold Bank is Kansas.¹³ Neither Wisconsin nor Kansas has a law prohibiting merger transactions involving out-of-state banks applicable to the proposals.¹⁴

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.¹⁵ In light of all the facts of record, the Board is permitted to approve the proposals under both statutes.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. These acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposals are clearly outweighed in the public interest by the probable effect of the proposals in meeting the convenience and needs of the community to be served.¹⁶

M&I and Gold Banc do not compete in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL AND MANAGERIAL RESOURCES AND FUTURE PROSPECTS

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and depository

13. Under section 44 of the FDI Act, a state member bank’s home state is the state where it is chartered (12 U.S.C. § 1831u(g)(4)).

14. In 1997, the Kansas State bank commissioner issued an order specifically authorizing Kansas banks to engage in interstate merger transactions. See State of Kan. State Bank Comm’r, *Special Order 1997-2*, (May 30, 1997).

15. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B); 12 U.S.C. § 1831u(a)–(b). M&I and M&I Bank are adequately capitalized and adequately managed, as defined by applicable law. Gold Bank has been in existence and operated for the minimum period of time required by applicable state law. See Fla. Stat. § 628.295 (three years); Kan. Stat. Ann. § 9-541 (five years); and Mo. Rev. Statutes § 362.077 (five years). Oklahoma does not have a minimum age requirement applicable to the proposals. On consummation of the proposals, M&I and M&I Bank would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. M&I and M&I Bank also would control less than 30 percent of the total amount of deposits of insured depository institutions in each relevant state. See Fla. Stat. § 628.295(8); Mo. Rev. Statutes § 362.915. All other requirements of sections 3(d) and 44 would be met on consummation of the proposals.

16. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

institutions involved in the proposals and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state banking supervisors of the organizations involved in the proposals, publicly reported and other financial information, information provided by M&I, and public comment on the proposals.¹⁷

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board carefully considered the proposals under the financial factors. M&I and each of its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposals. Based on its review of the record, the Board finds that M&I has sufficient financial resources to effect the proposals. The proposal to acquire Gold Banc is structured as a partial share exchange and partial cash purchase, and M&I will fund the cash portion by incurring long-term debt.

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 M&I, Gold Banc, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law. M&I, Gold Banc, and their subsidiary depository institutions are considered to be well managed. The Board also has considered M&I's plans for implementing the proposals, including the proposed management after consummation.

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

17. A commenter expressed concern about relationships of M&I, Gold Banc, and their subsidiaries with unaffiliated alternative-financial-service providers. 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. M&I stated that one of the relationships referenced by the commenter no longer exists and that any current relationships with such providers of nontraditional financial services are limited to extensions of credit to those businesses. M&I also stated that loans to those businesses represent less than 1 percent of the loan portfolios of M&I and Gold Banc and would not have a material impact on the financial or managerial resources of the organization.

resources and future prospects of the organizations involved in the proposals are consistent with approval, as are the other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on proposals under section 3 of the BHC Act and the Bank Merger Act, the Board also must consider the effects of the proposals on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of M&I and Gold Banc, data reported by M&I and Gold Banc under the Home Mortgage Disclosure Act ("HMDA"),²⁰ other information provided by M&I and Gold Banc, confidential supervisory information, and public comment received on the proposals. The Board received two comments on the proposals. One commenter alleged, based primarily on 2004 HMDA data, that M&I, through its subsidiary depository institutions and nonbank lending subsidiary, and Gold Bank engaged in discriminatory treatment of minority individuals in their home mortgage lending. The other commenter contended that M&I Bank provided a low number of home mortgage loans to African Americans in the Milwaukee-Waukesha Primary Metropolitan Statistical Area ("PMSA") and that Gold Bank's amount of home mortgage lending to LMI borrowers in Kansas City was insufficient.²¹ This commenter also expressed concern that M&I Bank's investments in LMI communities have been limited in nature and should be expanded.²²

18. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

19. 12 U.S.C. § 2903.

20. 12 U.S.C. § 2801 et seq.

21. The commenter also criticized M&I Bank's home mortgage lending to LMI borrowers in Kansas City. The Board notes that no portion of the Kansas City Metropolitan Statistical Area ("MSA") has been a part of M&I Bank's assessment area.

22. The commenter stated that some homeowner counselors had advised that M&I Bank's policies include a "skip pay" feature for delinquent borrowers but that the bank rarely allowed that feature to be exercised. M&I responded that this "skip pay" feature is not an option in collecting a debt from a delinquent borrower. Rather, it is a promotional program for certain M&I Bank loans that allows delinquent borrowers to miss a payment. M&I stated, however, that the bank offers delinquent installment loan borrowers the option to defer a payment if necessary, with a corresponding extension of the loan term to account for the missed payment.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²³

M&I Bank, M&I's largest subsidiary depository institution as measured by total deposits, received an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 11, 2003 ("2003 CRA Evaluation"). All M&I's other subsidiary depository institutions received "satisfactory" ratings at their most recent CRA performance evaluations.²⁴ Gold Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Kansas City, as of January 24, 2005 ("2005 Gold Bank CRA Evaluation").

M&I represented that it will implement its CRA policies, procedures, and programs throughout the combined organization. This implementation will be carried out by local and regional CRA committees with coordinated oversight from M&I's corporate CRA committee, which is the current model for M&I's CRA program.²⁵

B. CRA Performance of M&I Bank

As noted, M&I Bank received an "outstanding" overall CRA performance rating in the 2003 CRA Evaluation.²⁶

23. See *Interagency Questions and Answers Regarding Community Reinvestment*, 71 *Federal Register* 12,424 and 36,639 (2001).

24. Southwest Bank of St. Louis received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis, as of August 11, 2003. M&I Bank FSB ("M&I FSB"), Las Vegas, Nevada, received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of February 23, 2005. M&I Bank of Mayville, Mayville, Wisconsin, is a special-purpose bank that is not evaluated under the CRA.

25. M&I has stated that it will retain Gold Banc's Community Development Officer to maintain connections in the communities that Gold Banc currently serves.

26. In the 2003 CRA Evaluation, examiners included the lending of M&I Mortgage Corp. ("M&I Mortgage"), M&I FSB's nationwide mortgage subsidiary, in its evaluation of M&I Bank's performance under the CRA lending test. Examiners also included the lending of M&I Community Development Corporation ("M&I CDC"), a subsidiary of M&I, in the evaluation of M&I Bank's community development lending activity under the CRA lending test. In addition, the investments of M&I CDC and Marshall & Ilsley Foundation ("M&I Foundation"), another subsidiary of M&I, were included in the evaluation of M&I Bank's performance under the investment test. M&I Bank, M&I CDC, and M&I Foundation are collectively referred to as "M&I Bank." The evaluation period for HMDA-reportable, small business, and small farm loans was January 1, 2001, through December 31, 2002. The evaluation period for community development lending was August 1, 2001, through July 31, 2003. The evaluation period for the investment and services tests was August 1,

Under the lending test, M&I Bank received an overall rating of "high satisfactory," and examiners commended M&I Bank for having a generally strong distribution of loans among borrowers of different income levels and a high level of community development lending in both Wisconsin and Minnesota. Examiners also commended the bank's extensive use of innovative or flexible lending practices in meeting the credit needs of its assessment areas. In M&I Bank's Wisconsin assessment area, the bank also received a "high satisfactory" rating for the lending test, and examiners commended the bank's strong responsiveness to community credit needs, particularly for its distribution of loans to borrowers of different income levels and to business and farms of different sizes.

In the Milwaukee-Waukesha PMSA, examiners considered the geographic distribution of M&I Bank's HMDA-reportable, small business, and small farm lending to be adequate. Examiners noted that the percentage of the bank's total number of home improvement loans in LMI geographies exceeded the percentages for lenders in the aggregate ("aggregate lenders") during the evaluation period.²⁷ Although the percentages of the bank's total number of home purchase and home refinance loans in LMI census tracts in the Milwaukee-Waukesha PMSA fell below the percentages for the aggregate lenders, examiners noted that the bank's geographic distribution of such loans had significantly improved since 2001. They concluded that the bank's lending levels in the Milwaukee-Waukesha PMSA were not unreasonable, because owner-occupied housing units in such census tracts represented only 14.9 percent of total housing units, and the bank faced strong competition from other lenders.²⁸

In the 2003 CRA Evaluation, M&I Bank received "outstanding" ratings under the investment test overall and for its assessment areas in Wisconsin. Examiners reported that the bank made qualified investments totaling \$7.9 million and charitable donations totaling more than \$1.2 million during the evaluation period. Examiners commended the bank for focusing its investment efforts on areas that demonstrated the greatest need, such as the bank's assessment areas in the Milwaukee-Waukesha PMSA and the Madison MSA.

M&I represented that, from August 2003 to July 2005, M&I Bank made approximately \$15.7 million in qualified investments and grants in the bank's assessment areas, including investments of approximately \$5.3 million in the Milwaukee area, which represented a significant increase since the 2003 CRA Evaluation. In addition, as noted by a commenter, M&I CDC received the "Vision Award" from the Milwaukee Awards for Neighborhood

2001, through July 31, 2003.

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

28. A commenter commended M&I Bank's small-business lending in the Milwaukee area in 2004, noting that the bank exceeded the performance of its peers in making small-business loans and lending to small businesses in LMI census tracts.

Development Innovation and the Local Initiatives Support Corporation in 2004 for its investments in affordable housing.

In the 2003 CRA Evaluation, M&I Bank also received an “outstanding” rating for the service test, based on its distribution of branches and ATMs, accessibility of delivery systems, record of opening and closing branch offices, and innovativeness of products and services. Examiners noted that approximately 12 percent of M&I Bank’s branches and 16 percent of its ATMs were in LMI census tracts.²⁹ Examiners commended the bank for having an “excellent” level of community development services and for providing support to various organizations within its combined assessment area, including providing seminars and consulting services for first-time homebuyers, facilitating affordable housing, and supporting organizations that assist LMI families, small businesses, and small farm owners.

C. CRA Performance of Gold Bank

As noted previously, Gold Bank received an overall “satisfactory” rating in the 2005 Gold Bank CRA Evaluation.³⁰ Under the lending test, examiners gave Gold Bank a “high satisfactory” rating and commended the bank’s geographic loan distribution, noting that the overall geographic distribution of HMDA-reportable and small business loans reflected a favorable penetration in LMI census tracts across the bank’s assessment areas. They also found that the bank’s overall distribution of loans among borrowers of different income levels was good and consistently exceeded the performance of the aggregate lenders in the majority of the bank’s assessment areas. Examiners also found that Gold Bank’s community-development lending performance was adequate and generally responsive to assessment-area credit needs.

In the Kansas City MSA, Gold Bank received an “outstanding” rating on the lending test. Examiners commended the bank’s “excellent” responsiveness to assessment area credit needs, geographic distribution of loans, and distribution of loans among individuals of different income levels. Examiners reported that the percentage of the bank’s home purchase loans in LMI census tracts in 2003 significantly exceeded the percentage for the aggregate lenders.

Gold Bank received a “high satisfactory” rating on the investment test in the 2005 Gold Bank CRA Evaluation,

29. A commenter expressed appreciation for M&I Bank’s active presence in some of Milwaukee’s lowest-income communities and its participation in economic development organizations.

30. The evaluation period for HMDA-reportable, small business, and small farm loans was from January 1, 2003, through September 30, 2004. The evaluation period for community development loans and the service and investment tests was from October 28, 2002, through January 24, 2005. Gold Bank’s performance in its Kansas City multistate MSA assessment area (“Kansas City MSA”) received significantly greater weight from examiners, because a majority of the bank’s total deposits and loans were concentrated in that assessment area.

with examiners particularly commending the bank’s performance in the Kansas City MSA. Examiners concluded that the bank exhibited adequate responsiveness to community development needs in the Kansas City MSA through its donation and grant activity. During the review period, the bank provided 39 qualified investments totaling \$8.1 million, including 34 grants and donations.³¹

Gold Bank received a “low satisfactory” rating on the service test. Examiners reported that the bank’s offices were generally accessible to all portions of its assessment areas, including LMI geographies, although branches and ATMs were predominantly located in middle- and upper-income areas.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending record and HMDA data of M&I and Gold Banc in light of public comment received on the proposals. A commenter alleged, based primarily on 2004 HMDA data, that M&I Bank, M&I Mortgage, and M&I FSB denied the home mortgage and refinance applications of minority applicants more frequently than those of nonminority applicants and made higher-cost loans more frequently to minority borrowers than nonminority borrowers nationwide in the Milwaukee and St. Louis MSAs, and statewide in Missouri, Ohio, and Wisconsin.³² The same commenter also alleged that Gold Bank denied home mortgage applications of African-American and Latino borrowers more frequently than nonminority applicants in the Kansas City MSA. Another commenter expressed concern that the amount of mortgage lending by M&I Bank to African Americans in the Milwaukee MSA area lagged behind the performance of the aggregate lenders.

The Board has analyzed 2004 HMDA data reported by M&I Bank, M&I Mortgage, M&I FSB, and their affiliates nationwide and in their primary assessment areas, including their assessment areas in the Milwaukee-Waukesha PMSA; the MSAs of Appleton, Oshkosh-Neenah, Lake County-Kenosha County, Madison, and St. Louis; and statewide in Arizona, Illinois, Minnesota, Missouri, Nevada, Ohio, and Wisconsin. In addition, the Board has

31. A commenter criticized Gold Bank’s investment-performance record and investment rating because of credit Gold Bank received in its 2005 CRA Evaluation from the Kansas City Reserve Bank for making an investment in multifamily housing revenue bonds that were ultimately intended to benefit LMI residents. The Board has consulted with the Kansas City Reserve Bank on this matter. Through no fault of Gold Bank, the bonds were called and no multifamily housing was constructed. Gold Banc made various, timely public disclosures regarding the impairment of the bonds and also timely notified the Kansas City Reserve Bank. The Board notes that M&I represented that it would implement its CRA policies, procedures, and programs, including its CRA investment programs, throughout the areas served by Gold Bank after consummation of the proposals.

32. 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 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

analyzed 2004 HMDA data reported by Gold Banc in its assessment areas in the Kansas City MSA and statewide in Kansas, Missouri, and Oklahoma.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing 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 M&I or Gold Banc is excluding or imposing higher costs on any racial or ethnic 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.³³ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by M&I and Gold Banc with fair lending laws. The Board also consulted with the OTS, the primary regulator of M&I FSB, and considered the compliance examination records of M&I's and Gold Banc's subsidiary depository institutions. Examiners noted no evidence of illegal credit discrimination by any of M&I's or Gold Banc's subsidiary depository institutions.

The record also indicates that M&I, Gold Banc, their subsidiary depository institutions, and their nonbank lending subsidiaries have taken steps to ensure compliance with fair lending and other consumer protection laws. M&I represented that it has centralized programs in place to monitor and manage compliance that feature periodic reviews of all consumer lending programs, the tracking of applicable laws and regulations, ongoing compliance-risk analyses, the development of programs to train personnel involved in consumer lending, and oversight of the creation and use of consumer lending forms for its depository and lending institutions. M&I also represented that it has ongoing, comprehensive training programs to ensure that regulatory requirements and policies are updated to reflect changes in law and internal policies or procedures and are clearly communicated to personnel. In addition, M&I represented that its internal audit department peri-

33. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

odically performs independent testing and validation of the compliance performance of M&I's various business units to ensure compliance with fair lending and other consumer protection laws and to measure the effectiveness of internal controls. After consummation of the proposed transaction, M&I stated that it would implement its centralized compliance-related policies and procedures across the combined organization, thereby ensuring that all areas have the same compliance monitoring and independent testing processes. In addition, critical functions, such as underwriting of consumer and mortgage loans, also would be performed centrally to provide consistent application of policies and procedures across the organization.

The Board also has considered the HMDA data in light of other information, including the CRA lending programs of M&I and Gold Banc and the overall CRA performance records of their subsidiary depository and lending institutions. These established efforts and records demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

E. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record,³⁴ including reports of examination of the CRA records of the institutions involved, information provided by M&I and Gold Banc, comments received on the proposals, and confidential supervisory information. M&I represented that the proposals would provide customers of Gold Banc with access to a broader array of financial products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

NONBANKING ACTIVITIES

M&I also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Gold Banc's nonbanking

34. One commenter requested that the Board condition its approval of the proposals on certain community reinvestment and other commitments by M&I. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., JPMorgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005); *The Toronto-Dominion Bank*, 92 *Federal Reserve Bulletin* C100 (2006). In this case, as in past cases, the Board has focused instead on the demonstrated CRA performance records of M&I's subsidiaries and the programs that they have in place to serve the credit needs of their assessment areas when the Board reviewed the proposals under the convenience and needs factor. In reviewing future applications by M&I under this factor, the Board similarly will review the actual CRA performance records of M&I's subsidiaries and the programs they have in place to meet the credit needs of their communities at that time.

subsidiaries, Gold Capital Management, Inc. (“Gold Capital”) and Gold Trust Company (“Gold Trust”).³⁵ Gold Capital engages in investment advisory, securities brokerage, and government securities underwriting activities. Gold Trust is a nondepository trust company engaged in trust services.

The Board has determined by regulation that financial and investment advisory services, securities brokerage services, underwriting government obligations, and trust company services are permissible for bank holding companies under Regulation Y.³⁶ M&I has committed to conduct these activities in accordance with the Board’s regulations and orders for bank holding companies engaged in these activities.

To approve this notice, the Board must determine that M&I’s acquisition of Gold Capital and Gold Trust and the performance of the proposed activities “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”³⁷ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of M&I, its subsidiaries, and the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that the financial and managerial considerations are consistent with approval of the notice.

The Board has considered the competitive effects of M&I’s proposed acquisition of Gold Capital and Gold Trust in light of all the facts of record. Gold Capital engages in nonbanking activities through its offices in Kansas and Gold Bank’s retail branches in Florida, Kansas, Missouri, and Oklahoma. M&I engages in similar nonbanking activities through the offices of its nonbanking subsidiary companies³⁸ and at the branches of its banking subsidiaries in Arizona, Florida, Illinois, Minnesota, Missouri, Nevada, and Wisconsin. Gold Trust also provides its trust services at Gold Bank’s branches, and M&I provides trust services through Marshall & Ilsley Trust Company National Association at its offices in Indianapolis, Indiana, and at the branches and offices of M&I’s subsidiary banks. The record indicates that the markets for these activities, which include investment advisory, securities brokerage, government securities underwriting, and trust services, are regional or national in scope and that the markets are unconcentrated with numerous competitors. Accordingly,

the Board concludes that M&I’s acquisition of Gold Capital and Gold Trust would have a de minimis effect on competition for these nonbanking activities in any relevant market.

In addition, the Board has reviewed carefully the public benefits of the proposed acquisition of Gold Banc. The proposals would allow M&I to provide an expanded range of trust and investment products and services to Gold Banc’s customers, including trust and administrative services for retirement plans, secured working-capital lending, leasing, and data-processing services. In addition, the proposals would enable M&I to offer an expanded physical presence to its own customers through Gold Banc’s network.

Based on all of the facts of record, the Board has determined that consummation of the nonbanking proposal can reasonably be expected to produce public benefits that would outweigh possible adverse effects under the standard of review in section 4(j)(2) of the BHC Act.

BRANCHES

As previously noted, M&I Bank has also applied under section 9 of the FRA to establish branches at the locations listed in the appendix. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and the Board’s Regulation H and finds those factors to be consistent with approval.³⁹

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.⁴⁰ In reaching its conclusion, the

39. 12 U.S.C. § 322; 12 CFR 208.6(b).

40. A commenter requested that the Board hold a public hearing or meeting on the proposals. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. The Board’s regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). The Bank Merger Act and the FRA do not require the Board to hold a public hearing or meeting. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter’s request in light of all the facts of record. In the Board’s view, the commenter had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered carefully in acting on the proposals. The request fails to identify disputed issues of fact that are material to the Board’s decision and would be clarified by a public meeting or hearing. Moreover, the commenter’s request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or

35. M&I also would acquire Gold Banc’s remaining nonbanking activities and businesses, such as Gold Capital’s insurance agency services, broker-dealer activities, and distribution and management services for open-end investment companies, and Gold Merchant Banc, Inc., a subsidiary of Gold Banc that engages in merchant banking activities, under section 4(k) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y 12 U.S.C. § 1843(k)(4)(H); 12 CFR 225.87; 12 CFR Subpart J.

36. See 12 CFR 225.28(b)(5)–(b)(8).

37. See 12 U.S.C. § 1843(j)(2)(A).

38. M&I Brokerage Services, Inc., which provides securities brokerage and investment advisory services, has an office in Milwaukee.

Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&I with the conditions imposed in this order and the commitments made to the Board in connection with the applications and notice. The Board's approval of the non-banking aspects of the proposals also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),⁴¹ 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. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed banking acquisitions may not be consummated before the 15th calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 13, 2006.

Voting for this action: Chairman Bernanke, Vice Chairman Ferguson, and Governors Bies, Olson, Kohn, Warsh, and Kroszner.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix

MAIN OFFICE AND BRANCHES TO BE ACQUIRED BY M&I

Florida

Charlotte County
1777 Tamiami Trail, Murdock

Hillsborough County
301 North Tamiami Trail, Ruskin
601 North Ashley Drive, Tampa

Manatee County
2525 Manatee Avenue, West Bradenton
5503 Manatee Avenue, West Bradenton
4502 Cortez Road, West Bradenton
4115 U.S. Highway 301 East, Ellenton

warranted in this case. Accordingly, the request for a public hearing or meeting on the proposals is denied.

41. 12 CFR 225.7 and 225.25(c).

1301 8th Avenue West, Palmetto
6821 15th Street East, Sarasota

Sarasota County
1201 South Beneva Road, Sarasota
240 South Pineapple Avenue, Sarasota

Kansas

Crawford County
417 North Broadway, Pittsburg
Fourth and Walnut Streets, Pittsburg

Johnson County
8840 State Line, Leawood
11301 Nall, Leawood
1511 West 101st Terrace, Lenexa
15203 West 119th Street, Olathe
9529 Antioch Road, Overland Park
12080 Blue Valley Parkway, Overland Park
6333 Long, Shawnee
7225 Renner Road, Shawnee
21900 Shawnee Mission Parkway, Shawnee

Missouri

Buchanan County
2211 North Belt Highway, Saint Joseph
4305 Frederick Boulevard, Saint Joseph

Clay County
105 North Stewart Court, Suite 100, Liberty

Jackson County
18800 East Highway 40, Independence
800 West 47th Street, Kansas City
1201 North West Briarcliff Parkway, Kansas City

Oklahoma

Tulsa County
2500 West Edison Street, Tulsa
11032 South Memorial, Tulsa
5120 South Garnett, Tulsa

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Banco Latinoamericano de Exportaciones S.A.

Panama City, Republic of Panama

Order Approving Establishment of a Representative Office

Banco Latinoamericano de Exportaciones S.A. ("Bank"),
Panama City, Republic of Panama, a foreign bank within

the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, April 15, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$3.2 billion,¹ is the third largest bank in Panama and focuses on the provision of trade finance services.² Bank operates representative offices in Argentina, Brazil, and Mexico. In the United States, Bank operates an agency in New York, New York.

The proposed representative office would act as a liaison between Bank’s head office in Panama and its existing and prospective customers in the United States. The office would engage in representative functions in connection with the products and services offered by Bank, solicit new business, provide information to U.S.-based companies about conducting business in Latin America, and perform preliminary and servicing steps in connection with lending.

The IBA and Regulation K require that the Board, in acting on an application by a foreign bank to establish a representative office, take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. §§ 3107 and 3105(d)(2); 12 CFR 211.24(d)(2)).³ The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR

211.24(c)(2)). The Board will consider that the supervision standard has been met where it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁴ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications, because representative offices may not engage in banking activities (12 CFR 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

Bank has provided the following information regarding home country supervision. Bank is supervised by the Superintendency of Banks of the Republic of Panama (“Superintendency”). The Superintendency is responsible for the regulation, supervision, and examination of financial institutions operating in Panama. The Superintendency implements legislation concerning capital adequacy, liquidity, asset classification, and large credit and foreign-currency exposures. The Superintendency has the authority to impose remedial measures, including civil money penalties, against banks that violate Panamanian banking laws and regulations.

The Superintendency supervises and regulates Bank through a combination of on-site examinations and off-site monitoring. On-site examinations are conducted annually and cover the Bank’s overall financial condition, capital adequacy, asset quality, corporate governance, and compliance with the law. Off-site monitoring of Bank is conducted by the Superintendency through the review of required weekly, monthly, quarterly, and annual reports. Bank is also subject to quarterly external audits.⁵ These audits cover internal controls, risk management, asset quality, and the preparation of financial statements.

Based on all the facts of record, including the information above, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The Superintendency has no objection to the establishment of the proposed representative office.

4. *See, e.g., Banco Financiera Comercial Hondurena, S.A.*, 91 *Federal Reserve Bulletin* 444 (2005); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); and *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001); *see also Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Kommerci Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); and *Commercial Bank Ion Tiriac, S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

5. External auditors are subject to standards established by the Superintendency.

1. Data are as of December 31, 2005.

2. Bank was established by central banks in the region to finance trade throughout Latin America. Bank has three classes of shares. The ownership of the first class of shares is restricted to central banks or state-owned financial institutions in Latin America. Other financial institutions may hold the second class of shares. The third class of shares is publicly traded on the New York Stock Exchange.

3. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

With respect to the financial and managerial resources of Bank, taking into consideration its record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank has capital that exceeds the Basel minimums. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for it to ensure compliance with U.S. law.

Panama has enacted laws based on the general recommendations of the Financial Action Task Force. Panama is a member of the Caribbean Financial Action Task Force and participates in other international fora that address the prevention of money laundering.⁶ Money laundering is a criminal offense in Panama, and banks are required to establish internal policies and procedures for the detection and prevention of money laundering. The Superintendency requires banks to adopt know-your-customer policies, report suspicious transactions to Panama's Financial Intelligence Unit, and maintain records. Bank states that it has established anti-money-laundering policies and procedures, which include the implementation of know-your-customer policies, suspicious-activity-reporting procedures, and related training programs and manuals. These policies and procedures are reviewed by the Superintendency and by Bank's internal and external auditors.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Superintendency may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank's application to

6. Panama is a party to the 1988 UN Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the UN International Convention Against Transnational Organized Crime, and the UN International Convention for the Suppression of the Financing of Terrorism. Panama is also a member of the Organization of American States Inter-American Drug Abuse Control Commission.

establish the representative office is hereby approved.⁷ Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.⁸ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 27, 2006.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Banco Popular Español, S.A.
Madrid, Spain

**Order Approving Establishment
of a Representative Office**

Banco Popular Español, S.A. ("Bank"), Madrid, Spain, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, July 29, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$88.3 billion,¹ is the lead bank of the third largest commercial banking group in Spain and provides wholesale and retail banking services through a network of branches in

7. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. See 12 CFR 265.7(d)(12).

8. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Office of Financial Regulation, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. Unless otherwise indicated, data are as of December 31, 2004.

Spain, Portugal, and France.² Bank also has representative offices in Asia, Latin America, Canada, and elsewhere in Europe.

The proposed representative office would serve as a liaison between Bank's existing and prospective customers in Spain and the United States. The office would also promote the Bank's services to potential customers in the United States and Latin America, provide information to customers concerning their accounts, inform U.S.- and Spanish-owned businesses of business opportunities existing in Spain, and receive applications for extensions of credit and other banking services on behalf of Bank.

The IBA and Regulation K require that the Board, in acting on an application by a foreign bank to establish a representative office, take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. § 3105(d)(2); 12 CFR 211.24(d)(2)).³ The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a consolidated basis.⁴ Bank is supervised by the Bank of Spain on substantially the same terms and conditions as

those other banks. Based on all the facts of record, including the above information, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The Bank of Spain has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration its record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Bank of Spain may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and the terms

2. Bank also owns controlling interests in ten bank subsidiaries and owns nonbank subsidiaries that engage in activities related to securities and mutual funds, asset management, insurance, leasing, factoring, and venture capital.

3. In assessing the supervision standard, the Board considers, among other of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

4. *See Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Banco Pastor, S.A.*, 87 *Federal Reserve Bulletin* 555 (2001); *Caja de Ahorros de Valencia, Castellón y Alicante*, 84 *Federal Reserve Bulletin* 231 (1998); *Banco Exterior de España S.A.*, 81 *Federal Reserve Bulletin* 616 (1995); *Corporación Bancaria de España*, 81 *Federal Reserve Bulletin* 598 (1995); *Banco Santander S.A.*, 79 *Federal Reserve Bulletin* 622 (1993); *Banco de Sabadell S.A.*, 79 *Federal Reserve Bulletin* 366 (1993).

and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.⁵ Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.⁶ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective February 8, 2006.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Caja de Ahorros de Galicia, Caixa Galicia A Coruña, Spain

Order Approving Establishment of an Agency

Caja de Ahorros de Galicia, Caixa Galicia ("Bank"), A Coruña, Spain, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. §3105(d)) to establish an agency in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami (*Miami Daily Business Review*, July 28, 2005). The time for filing comments has expired, and all comments received have been considered.

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. See 12 CFR 265.7(d)(12).

6. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Office of Financial Regulation, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

Bank, a savings bank with total assets of approximately \$42 billion,¹ is the 11th largest bank in Spain.² Bank provides wholesale and retail banking services through more than 700 branches throughout Spain. Bank also engages through its subsidiaries in real estate, insurance, venture capital, information technology, transportation, and utilities services, as well as manufacturing and energy-related activities. Outside Spain, Bank operates branches in Portugal and Switzerland and representative offices in France, England, Switzerland, Mexico, Argentina, and Venezuela. Bank currently does not have any operations in the United States.

The proposed agency would offer deposit and investment management services, largely for Latin American customers. The agency would also provide corporate banking and foreign trade services to companies.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. §3105(d)(2); 12 CFR 211.24).³ The Board also considers additional standards set forth in the IBA and Regulation K (12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a

1. Asset data are as of June 30, 2005.

2. Spanish savings banks are generally organized as mutual entities and do not have shareholders. Bank's operations are controlled and governed by a general assembly and a board of directors. The 160-member general assembly includes representatives of the municipalities in which Bank operates (25 percent); Bank's depositors (40 percent); representatives designated by 34 regional civic organizations (25 percent); and Bank's employees (10 percent). Bank's board of directors is composed of 21 board members, proportionally representing the entities comprising the general assembly.

3. In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

consolidated basis.⁴ Bank is supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)). The Bank of Spain has no objection to the establishment of the proposed agency.

Spain's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. In addition, Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with those recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Spain, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate

assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish an agency in Miami, Florida, is hereby approved.⁵ Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.⁶ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. §1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective March 20, 2006.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Caja de Ahorros del Mediterráneo Alicante, Spain

Order Approving Establishment of an Agency

Caja de Ahorros del Mediterráneo ("Bank"), a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA (12 U.S.C. §3105(d)) to establish an agency in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami (*The Miami Herald*, October 21, 2005). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of approximately \$54 billion,¹ is

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

6. The Board's authority to approve the establishment of the proposed agency parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida Department of Financial Services to license the proposed agency of Bank in accordance with any terms or conditions that it may impose.

1. Asset and ranking data are as of September 30, 2005.

4. *See Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Caixa de Aforros de Vigo*, 88 *Federal Reserve Bulletin* 132 (2002).

the fifth largest savings bank in Spain.² Bank is the top-tier company of CAM, which is the ninth largest banking organization in Spain. CAM provides a broad range of banking, financial, and other services primarily in Spain. Bank maintains representative offices in seven countries and operates several nonbank subsidiaries in the Cayman Islands that issue bonds. Bank does not have any operations in the United States and would be a qualifying foreign banking organization under Regulation K.

The Miami agency would offer commercial banking, private banking, and correspondent banking services targeted primarily at Spanish customers. The agency also would coordinate CAM's access to U.S. capital markets.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 CFR 211.24).³ The Board also considers additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Spain, that those banks were subject to home

country supervision on a consolidated basis.⁴ Bank is supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)). The Bank of Spain has no objection to the establishment of the proposed agency.

Spain's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. In addition, Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Spain, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank and its top-tier parent have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and its top-tier parent have committed to cooperate

2. Spanish savings banks are generally organized as mutual entities and do not have shareholders. Bank's operations are controlled and governed by a general assembly, a board of directors, and a control commission. The 180-member general assembly includes representatives of the municipalities in which Bank operates (24 percent); Bank's depositors (36 percent); representatives designated by the parliament of the community of Valencia and other communities in which the founding entities of Caja de Ahorros del Mediterráneo ("CAM") are located (27 percent); and Bank's employees (13 percent). Bank's board of directors is composed of 20 board members, proportionally representing the entities comprising the general assembly. Bank's ten-member control commission oversees the board of directors and is the administrator of elections.

3. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

4. *See* *Caja de Ahorros de Galicia, Caixa Galic*, 92 *Federal Reserve Bulletin* C132 (2006); *Banco Popular Español, S.A.*, 92 *Federal Reserve Bulletin* C130 (2006); *Banco Bilbao Vizcaya Argentaria, S.A.*, 91 *Federal Reserve Bulletin* 258 (2005); *Banco Pastor, S.A.*, 87 *Federal Reserve Bulletin* 555 (2001); *Caja de Ahorros de Valencia, Castellón y Alicante*, 84 *Federal Reserve Bulletin* 231 (1998); *Banco Exterior de España S.A.*, 81 *Federal Reserve Bulletin* 616 (1995); *Corporación Bancaria de España*, 81 *Federal Reserve Bulletin* 598 (1995); *Banco Santander S.A.*, 79 *Federal Reserve Bulletin* 622 (1993); and *Banco de Sabadell S.A.*, 79 *Federal Reserve Bulletin* 366 (1993).

with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish an agency in Miami, Florida, is hereby approved.⁵ Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.⁶ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective March 30, 2006.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Kreditanstalt für Wiederaufbau Frankfurt, Germany

Order Approving Establishment of a Representative Office

Kreditanstalt für Wiederaufbau, ("Bank"), Frankfurt, Germany, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a

5. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

6. The Board's authority to approve the establishment of the proposed agency parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the Florida Office of Financial Regulation to license the proposed agency of Bank in accordance with any terms or conditions that it may impose.

newspaper of general circulation in New York (*The New York Times*, July 27, 2005), and the time for filing comments has expired.

Bank, with total consolidated assets of approximately \$445 billion, is the seventh largest bank in Germany.¹ As a government-owned development bank,² Bank engages primarily in lending and financing activities in furtherance of public sector initiatives, such as providing loans for housing, small businesses, and municipal infrastructure, and provides various other services, such as disbursing German government loans and grants to developing countries and providing advisory services in connection with privatizations. Bank also engages in export and project finance through a division of the Bank known as IPEX-Bank.³ It has representative offices in Brazil, China, Thailand, and Turkey that primarily serve its IPEX-Bank division. In the United States, Bank operates KfW International Finance, Inc., Wilmington, Delaware, a funding vehicle established to access U.S. capital markets.

The proposed representative office primarily would act as a liaison with existing and potential customers and conduct market research for the IPEX-Bank division of Bank. Additionally, the proposed representative office would support Bank's activities with developing countries by acting as a liaison with multinational organizations located in the United States, such as the United Nations, the World Bank, and the International Monetary Fund.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board shall take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2)). The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)).⁴ The

1. Asset data are as of December 31, 2004.

2. The federal government of Germany owns 80 percent of the shares of Bank. The remaining 20 percent of Bank's shares is owned by various state governments in Germany.

3. Bank intends to divest the IPEX-Bank division by 2008. The European Commissioner for Competition determined that the IPEX-Bank division engages in activities that are inconsistent with Bank's status as a government-owned development bank.

4. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated

Board will consider that the supervision standard has been met where it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁵ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications, because representative offices may not engage in banking activities (12 C.F.R. 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered the following information. The Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) is the primary regulator of commercial banks in Germany, and the Board has previously considered the supervisory regime in Germany for commercial banks.⁶ Bank is not considered a commercial bank under German law. Rather, it is a development bank established pursuant to a special statute, and its primary regulator is the Federal Ministry of Finance (“MoF”). Although it is exempt from many of the legal provisions that govern commercial banks, Bank has voluntarily subjected itself to the guidelines that BaFin has established for commercial banks with respect to lending and trading activities, and internal audit, and as noted below, compliance with these guidelines is subject to annual audit. Bank is required by law to maintain minimum capital of €3.75 billion, and is prohibited from distributing profits. The MoF has authority to adopt all measures necessary to ensure that Bank’s business conforms with all applicable laws.

The MoF exercises its supervision in consultation with the Federal Ministry of Economics and Labor. The Ministers of Finance and of Economics and Labor alternate as chairmen and deputy chairmen of Bank’s supervisory board. The MoF may at any time request on-site examinations by third parties or conduct examinations itself, and such examinations can encompass all business areas, including subsidiaries and foreign offices. MoF officials meet with Bank officials at least biweekly, including, on occasion, at Bank’s foreign offices, to discuss Bank’s

strategy, new fields of activity, new products, and related issues.

The MoF also monitors Bank’s condition through a review of required regulatory reports. These include quarterly financial reports and risk reports, annual audited consolidated financial statements that are filed with a report from the external auditor, results of internal audit reviews, and regular reports regarding risk analysis and measures taken to prevent money laundering.

Bank is subject to an annual external audit by auditors appointed by the MoF. The scope of the external audit includes the bank’s consolidated financial statements, internal controls, including controls to prevent money laundering, and compliance with BaFin’s guidelines for lending, trading activities, and internal audit. Inasmuch as Bank is a government-owned entity, the Federal Court of Auditors also has the discretion to audit Bank’s financial statements. The results of such audits are reported to the upper and lower houses of parliament and to the MoF.

Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The MoF has authorized Bank to establish the proposed office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank’s record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Germany is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, or other illicit activities. Money laundering is a criminal offense in Germany, and Bank is subject to laws that require it to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout its worldwide operations. Bank has policies and procedures to comply with these laws and regulations, which include reporting suspicious transactions promptly to the German Financial Intelligence Unit and other appropriate law enforcement authorities.

With respect to access to information on Bank’s operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and relevant

supervision. No single factor is essential, and other elements may inform the Board’s determination.

5. *See, e.g., Banco Financiera Comercial Hondureña, S.A.*, 91 *Federal Reserve Bulletin* 444 (2005); *Nacional Financiera, S.N.C.*, 91 *Federal Reserve Bulletin* 295 (2005); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001); *see also Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Komerčni Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); *Commercial Bank Ion Tiriac, S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

6. *See, e.g., Deutsche Genossenschafts-Hypothekenbank AG*, 92 *Federal Reserve Bulletin* C61 (2006).

government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the MoF may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.⁷ Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.⁸ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings against Bank and its affiliates under 12 U.S.C. §1818.

By order, approved pursuant to authority delegated by the Board, effective January 3, 2006.

JENNIFER J. JOHNSON
Secretary of the Board

7. Approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

8. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York or its agent, the New York State Banking Department ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

FINAL ENFORCEMENT DECISIONS ISSUED BY THE BOARD

IN THE MATTER OF A NOTICE TO PROHIBIT FURTHER PARTICIPATION AGAINST

*Oyeacholem Moseri,
Former Employee,*

*First North American National Bank,
Kennesaw, Georgia (Closed)*

Docket No. OCC-AA-EC-05-72

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("the FDI Act") in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Oyeacholem Moseri ("Respondent"), from further participation in the affairs of any financial institution based on actions he took while employed at First North American National Bank, Kennesaw, Georgia (the "Bank"). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision ("Recommended Decision") of Administrative Law Judge Ann Z. Cook (the "ALJ"), and orders the issuance of the attached Order of Prohibition.

I. Statement of the Case

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges (12 U.S.C. §1818(e)(4)). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified *misconduct*, including a violation of law or regulation, an unsafe or unsound practice, or a breach of

fiduciary duty; (2) that the conduct had a specified *effect*, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution (12 U.S.C. § 1818(e)(1)(A)–(C)).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intent to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice (12 CFR 19.19(a) and 263.19(a)). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer (12 CFR 19.19(c)(1) and 263.19(c)(1)).

B. Procedural History

On August 31, 2005, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation and Notice of Assessment of a Civil Money Penalty ("Notice") that sought, *inter alia*, an order of prohibition against Respondent based on his conduct while employed at the Bank. The Notice directed Respondent to file a written answer within 20 days of the date of service of the Notice in accordance with 12 CFR 19.19(a) and (b), and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The Notice was served in accordance with the OCC rules by overnight delivery, and was signed for by an individual named "Moseri." In addition, on September 22, 2005, the OCC served the notice upon Respondent's relative and co-resident, Jane Moseri, at Respondent's personal residence. Nonetheless, Respondent failed to file an answer within the 20-day period or thereafter.

On November 23, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On November 29, 2005, the ALJ issued an Order to Show Cause, providing Respondent until December 19, 2005, to file an answer to the Notice and to show good cause for having failed to do so previously. To date, Respondent has not filed any reply to the Order to Show Cause or answered the Notice.

C. Respondent's Actions

The Notice alleges that Respondent was employed as a collections officer for Bank. His sole responsibility was to help Bank collect funds from delinquent credit card account holders by telephoning customers whose accounts were on a Bank-generated list of delinquent accounts. Respondent had no responsibility over nondelinquent accounts, nor did he have permission to view or alter any information contained in the records of nondelinquent account holders. Nonetheless, Respondent improperly viewed the personal account records of more than 600 customers whose accounts were nondelinquent. Further, during the period August–September 2000, Respondent improperly viewed and altered the personal account records of at least 11 additional

customers whose accounts were also nondelinquent. These alterations, detailed in the ALJ's Recommended Decision, included changing the address and telephone number of nondelinquent accounts to Respondent's personal residence and other addresses, the issuance and activation of new cards to some of those accounts, and illegitimate charges to two of those cards totaling \$1,359.74.

II. Discussion

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice" (12 CFR 19.19(c)). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer to the Notice despite notice to him of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The allegations in the Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It was a breach of fiduciary duty, unsafe and unsound practice, and violation of law or regulation, for Respondent to view nondelinquent credit card account holder information; alter account addresses and telephone numbers in such accounts; and request (or cause to be requested) new or replacement credit cards to be issued to some of the altered accounts. Respondent's actions resulted in loss to the Bank and financial gain to the Respondent, in that he incurred (or caused to be incurred) illegitimate charges totaling at least \$1,359.74 on two of the altered accounts. Finally, such actions also exhibit personal dishonesty and willful disregard for the safety and soundness of the Bank.

Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 23rd day of March, 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

IN THE MATTER OF A NOTICE TO PROHIBIT FURTHER PARTICIPATION AGAINST

*Oyeacholem Moseri,
Former Employee,*

*First North American National Bank,
Kennesaw, Georgia (Closed)*

Docket No. OCC-AA-EC-05-72

ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against OYEACHOLEM MOSERI ("Moseri"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), of First North American National Bank, Kennesaw, Georgia.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the FDI Act (12 U.S.C. § 1818(e)(7)(B)), Moseri is hereby prohibited:
 - (a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;
 - (b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));
 - (c) from violating any voting agreement previously approved by any federal banking agency; or
 - (d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).
2. Any violation of this Order shall separately subject Moseri to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board.

This Order shall become effective at the expiration of 30 days after service is made.

By Order of the Board of Governors, this 23rd day of March, 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

IN THE MATTER OF

*Jean Peyrelevade,
A former institution-affiliated party of*

*CREDIT LYONNAIS, S.A.,
Paris, France*

Docket Nos. 03-041-CMP-I, 03-041-B-I, 03-041-E-I

ORDER TO CEASE AND DESIST ISSUED UPON
CONSENT

WHEREAS, pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. section 1818(b)), the Board of Governors of the Federal Reserve System (the "Board of Governors") issues this consent Order to Cease and Desist (the "Order") against Jean Peyrelevade ("Peyrelevade"), a former institution-affiliated party, as defined in Sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. sections 1813(u) and 1818(b)(4)), of Credit Lyonnais, S.A., Paris, France ("Credit Lyonnais"), a foreign bank;

WHEREAS, the Board of Governors, on December 18, 2003, issued a combined Notice of Charges and of Hearing, Notice of Assessment of Civil Money Penalties, and Notice of Intent to Prohibit (the "December 18, 2003, Notice") against Peyrelevade. The December 18, 2003, Notice alleges that Peyrelevade participated in violations of law and regulation and engaged in unsafe and unsound practices with respect to alleged violations by Credit Lyonnais in connection with its alleged acquisition and retention of indirect control of voting shares of the successor to the Executive Life Insurance Company of California. Peyrelevade has denied the allegations;

WHEREAS, Peyrelevade and the United States Attorney for the Central District of California have entered into a plea agreement in accordance with the principles of *North Carolina v. Alford*, 400 U.S. 25 (1970) and *United States v.*

Alber, 56 F.3d 1106 (9th Cir. 1995) related to certain matters set forth in the December 18, 2003, Notice which, if accepted by the United States District Court for the Central District of California, will result in Peyrelelade being precluded from participating in the conduct of the affairs of an insured depository institution in the United States pursuant to 12 U.S.C. section 1829 and paying a fine of \$500,000;

WHEREAS, pursuant to the provisions of this Order, Peyrelelade has agreed to certain limitations and restrictions regarding his participation in the conduct of the affairs of foreign banks in the United States;

WHEREAS, this Order resolves the proceedings initiated by the December 18, 2003, Notice; and

WHEREAS, by affixing his signature hereunder, Peyrelelade has consented to the issuance of this Order by the Board of Governors, has agreed to comply with each and every provision of this Order, and has waived any and all rights he might otherwise have pursuant to 12 U.S.C. section 1818 or 12 C.F.R. Part 263, or otherwise (a) to a hearing for the purpose of taking evidence with respect to any matter implied or set forth in the December 18, 2003 Notice or herein; (b) to obtain judicial review of this Order or any provision hereof; and (c) to challenge or contest in any manner the basis, issuance, validity, effectiveness, or enforceability of this Order or any provisions hereof.

NOW, THEREFORE, before the introduction of any testimony or adjudication of, or finding on, any issue of fact or law implied herein, and without this Order constituting an admission by Peyrelelade of any allegation made or implied by the Board of Governors in connection with this proceeding, and solely for the purpose of settlement of this proceeding and to avoid protracted or extended proceedings:

IT IS HEREBY ORDERED, pursuant to section 8(b) of the FDI Act that:

1. Peyrelelade shall not, directly or indirectly, violate the Bank Holding Company Act 12 U.S.C. section 1841 et seq., as amended (the "BHC Act") or any rules or regulations issued pursuant thereto.
2. Without the prior written approval of the Board of Governors and the appropriate federal banking agency, Peyrelelade shall not serve or function as an officer, director, employee, or agent of any United States branch or agency, United States commercial lending company, or other United States subsidiary of a foreign bank that is subject to the provisions of 12 U.S.C. section 3106(a).
3. Without the prior approval of the Board of Governors and the appropriate federal banking agency, while serving as an officer, director, or employee outside of the United States of a foreign bank that is subject to 12 U.S.C. section 3106(a), or any subsidiary of a foreign bank that is subject to 12 U.S.C. section 3106(a) (collectively, a "Foreign Banking Organization"), Peyrelelade shall not:
 - (a) assume direct reporting responsibility for the management of any United States branch, agency, or United States commercial lending company or other United States subsidiary of a Foreign Banking Organization;
 - (b) participate, directly or indirectly, in any audit of any United States branch, agency, or United States commercial lending company or other United States subsidiary of a Foreign Banking Organization, or participate in any review of or response to such an audit, *provided that*, Peyrelelade may provide information to persons conducting such audits upon the request of such persons; and
 - (c) participate in any manner in any decision by a Foreign Banking Organization with respect to the acquisition or retention by the Foreign Banking Organization of 5 percent or more of the voting shares of any United States company, unless he:
 - (i) consults experienced outside counsel to advise him on the implications of the acquisition or retention under the BHC Act, and makes full disclosure to such counsel on all material aspects of the transaction that may affect its treatment under the BHC Act;
 - (ii) notifies the Board of Governors in writing of his involvement in the transaction before it is completed, separate from any other notification or application requirements applicable to the Foreign Banking Organization; and
 - (iii) promptly thereafter produces to the Board of Governors, upon request, all documentation describing the terms of the proposed transaction and his role in it.
4. Within ten days of this Order, Peyrelelade shall designate an agent in the United States acceptable to the Board of Governors with respect to the service of process in connection with the enforcement of this Order.
5. Peyrelelade irrevocably consents to the jurisdiction of the Board of Governors with respect to any aspect of this Order or any violation thereof.
6. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors or any other U.S. federal or state agency or department from taking any other action affecting Peyrelelade; *provided, however*, the Board of Governors shall take no further action against Peyrelelade based on or with respect to: (i) any matters set forth in the December 18, 2003 Notice; (ii) any of the "Specified Acts or Omissions," attached as Exhibit B to the Plea Agreement; or (iii) any facts encompassed in the allegations recited in the Order to Cease and Desist and Order of Assessment of Civil Money Penalty issued by the Board of Governors against Credit Lyonnais, dated December 18, 2003.
7. This Order shall become effective upon the acceptance of the Plea Agreement by the United States District Court for the Central District of California. In the event that the Plea Agreement is rejected by the United States District Court for the Central District of California, this Order shall be null and void and shall not be

construed as an admission of guilt, liability, or any alleged factual matter referenced herein nor as a waiver of any potential defense that otherwise might be available to Peyrelevade. In the event that this Order becomes effective, each provision of this Order shall remain effective and enforceable until stayed, modified, terminated or suspended by the Board of Governors. Peyrelevade may apply to the Board of Governors to have this Order terminated, modified, or amended.

8. No amendment to the provisions of this Order shall be effective unless made in writing by the Board of Governors and Peyrelevade.
9. No representations, either oral or written, except those provisions as set forth herein, were made to induce any of the parties to agree to the provisions as set forth herein.
10. All communications regarding this Order shall be addressed to:
 - (a) Richard M. Ashton
Deputy General Counsel
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

- (b) Mr. Robert A. O'Sullivan
Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
- (c) Mr. Jean Peyrelevade
c/o John L. Douglas and
John E. Stephenson, Jr.
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309-3424

By Order of the Board of Governors of the Federal Reserve System, effective this 19th day of January 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

JENNIFER J. JOHNSON
Secretary of the Board

(signed)
Jean Peyrelevade

