

Legal Developments: Second Quarter, 2008

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

*Fifth Third Bancorp
Cincinnati, Ohio*

*Fifth Third Financial Corporation
Cincinnati, Ohio*

Order Approving the Merger of Bank Holding Companies

Fifth Third Bancorp (“Fifth Third”) and its wholly owned subsidiary, Fifth Third Financial Corporation (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 First Charter Corporation (“First Charter”) and its subsidiary bank, First Charter Bank (“FC Bank”), both of Charlotte, North Carolina.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 54,446 (2007)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.²

Fifth Third, with total consolidated assets of approximately \$111 billion, is the 18th largest depository organization in the United States.³ Fifth Third operates three subsidiary banks in 11 states and controls \$70.3 billion in deposits.⁴

1. 12 U.S.C. § 1842.

2. Thirty-five commenters supported the proposal and ninety-eight commenters expressed concerns about various aspects of the proposal.

3. Asset, national ranking, and national deposit data are as of December 31, 2007. Statewide deposit data are as of June 30, 2007, adjusted to reflect mergers through March 26, 2008.

4. Applicants’ subsidiary banks are Fifth Third Bank (“Ohio Bank”), Cincinnati, Ohio; Fifth Third Bank (“Michigan Bank”), Grand Rapids, Michigan; and Fifth Third Bank, N.A. (“Tennessee Bank”), Nashville, Tennessee. Through those banks, Applicants operate branches in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, and West Virginia.

First Charter has total consolidated assets of approximately \$4.9 billion and controls \$3.2 billion in deposits. Its only subsidiary bank, FC Bank, operates in North Carolina and Georgia. First Charter is the seventh largest depository organization in North Carolina, controlling \$3.1 billion in deposits, which represent 1.5 percent of the total amount of deposits of insured depository institutions in the state.⁵

On consummation of the proposal, Fifth Third would remain the 18th largest depository organization in the United States, with total consolidated assets of approximately \$115.8 billion. Fifth Third would control deposits of approximately \$73.6 billion, which represent less than 1 percent of the total amount of 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 bank holding company’s home state if certain conditions are met. For purposes of the BHC Act, the home state of Fifth Third is Ohio,⁶ and First Charter is located in Georgia and North Carolina.⁷

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

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

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

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

8. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). Applicants are adequately capitalized and adequately managed, as defined by applicable law. FC Bank has been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1) (B)(i)–(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). Applicants would control less than 30 percent of the state deposits in Georgia, and the proposal is not subject to any other deposit caps under state law (12 U.S.C. § 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

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 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.⁹

Applicants and First Charter do not compete directly in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined 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 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 received from the relevant federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Applicants, and public comment received on the proposal.¹⁰

In evaluating the financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and

significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, 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, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial resources of the organizations involved in the proposal. Applicants, First Charter, and their subsidiary banks are well capitalized and would remain so on consummation of this proposal. Based on its review of the record, the Board finds that Applicants have sufficient resources to effect the proposed transaction, which is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of the organizations involved in the proposed transaction. The Board has reviewed the examination records of Applicants, First Charter, 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 other relevant banking supervisory agencies, including the Office of the Comptroller of the Currency (“OCC”), with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. Applicants, First Charter, and their subsidiary depository institutions are considered to be well managed. The Board also has considered plans for implementing the proposal, including the proposed management after consummation.

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

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”).¹¹ 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

9. 12 U.S.C. § 1842(c)(1).

10. Many of the commenters expressed concern over Applicants’ employment practices, particularly in light of (1) Michigan Bank’s settlement agreement in July 2004 in a suit brought by the United States Equal Employment Opportunity Commission (“EEOC”) alleging employment discrimination on the basis of gender in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”); and (2) Ohio Bank’s March 2000 settlement agreement with the United States Department of Labor (“DOL”) to resolve allegations that the bank had engaged in race and gender discrimination at the bank’s Cincinnati headquarters in violation of equal employment opportunity requirements for federal contractors. Both settlement agreements involve issues entrusted to other federal agencies as a matter of law and were resolved by those agencies. Under Title VII, the EEOC has primary federal responsibility for investigating and taking legal action against allegations of employment discrimination, and by executive order, DOL is responsible for ensuring that federal contractors comply with equal employment opportunity requirements.

11. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹²

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of Applicants and First Charter, data reported by Applicants and First Charter under the Home Mortgage Disclosure Act (“HMDA”),¹³ other information provided by Applicants, confidential supervisory information, and public comment received on the proposal.¹⁴ Several commenters criticized the amounts and types of community development investments made by the subsidiary banks of Applicants and First Charter. Some commenters asserted that Applicants and First Charter operate too few branches in LMI or predominantly minority census tracts.¹⁵ In addition, a number of commenters contended, based on HMDA data, that Applicants and First Charter had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of 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 the institution’s appropriate federal supervisor.¹⁶

Ohio Bank, Applicants’ largest subsidiary bank as measured by assets and deposits, received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland, as of July 5, 2005 (“2005 Evaluation”).¹⁷ Applicants’ two other subsidiary banks received ratings of “outstanding” or “satisfactory” at their most recent CRA performance evaluations.¹⁸

12. 12 U.S.C. § 2903.

13. 12 U.S.C. § 2801 et seq.

14. Several commenters urged the Board to require Applicants to provide specific CRA pledges or plans or to require them to take certain actions in the future. The Board consistently has 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 and that the enforceability of any such third-party pledges, initiatives, or agreements are matters outside the CRA. *See, e.g., Wachovia Corporation, 91 Federal Reserve Bulletin 77* (2005). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

15. For purposes of this analysis, a predominantly minority census tract is a census tract with a minority population of 80 percent or more.

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

17. The evaluation period was January 1, 2003, through December 31, 2004.

18. Michigan Bank received an “outstanding” rating by the Federal Reserve Bank of Chicago, as of July 5, 2005, and Tennessee Bank received a “satisfactory” rating by the OCC, as of May 16, 2005.

FC Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond, as of March 6, 2006 (“2006 Evaluation”).¹⁹ Fifth Third has represented that it will implement Fifth Third Bank’s CRA program at the combined organization on consummation of the proposal.

CRA Performance of Ohio Bank. In addition to the overall “outstanding” rating that Ohio Bank received in the 2005 Evaluation,²⁰ the bank received separate overall “outstanding” or “satisfactory” ratings in all the states and multistate metropolitan areas reviewed.²¹ Examiners reported that Fifth Third Bank’s overall level of lending activity was excellent and that the geographic distribution of loans was good.²² They also stated that the bank’s distribution of loans to borrowers reflected a good penetration among customers of different income levels and to businesses of different revenue sizes.

In the 2005 Evaluation, examiners characterized Ohio Bank as a leader in making community development loans in its assessment areas, reporting that the bank made more than 190 community development loans totaling more than \$220 million during 2003 and 2004. Examiners noted that this dollar volume represented an increase of more than 46 percent from the volume of its community development lending during the previous evaluation period.

19. The evaluation period for HMDA-reportable loans and small loans to businesses was January 1, 2004, through December 31, 2005. “Small loans to businesses” are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. The evaluation period for the bank’s community development loans, investments, and services was February 2, 2004, through December 31, 2005.

20. Examiners considered the performance of certain subsidiaries of Applicants in the 2005 Evaluation. References to Ohio Bank in the convenience and needs analysis in this order incorporate these entities. The 2005 Evaluation focused on Ohio Bank’s CRA performance in its assessment areas in Ohio, which together accounted for more than 95 percent of the bank’s lending activity during the evaluation period. In Ohio, examiners conducted full-scope reviews of the bank’s performance in the Cincinnati and Columbus metropolitan statistical areas (“MSAs”) and in nonmetropolitan areas in Northwestern Ohio and in the Ohio Valley, which together accounted for approximately 58 percent of the bank’s lending activity during the evaluation period. Examiners also conducted limited-scope reviews of the bank’s performance in six other MSAs in Ohio. In addition, the 2005 Evaluation reviewed Ohio Bank’s CRA performance in Michigan, Pennsylvania, and West Virginia and in the Huntington-Ashland multistate metropolitan area in Kentucky, Ohio, and West Virginia.

21. One commenter expressed concern that Ohio Bank received “low satisfactory” or lower ratings under some of the component tests for Michigan, Pennsylvania, and the Huntington-Ashland multistate metropolitan area. Examiners noted that Ohio Bank entered Pennsylvania by establishing de novo branches in December 2004, which was the end of the evaluation period. The bank received higher ratings under the lending and other tests in other areas, and examiners concluded that the bank’s record of CRA performance during the review period, when viewed as a whole, warranted a rating of “outstanding.”

22. A commenter criticized the level of higher-cost loans made by Ohio Bank in LMI census tracts in the Cincinnati MSA. The Board notes that during 2005 and 2006 in that MSA, 6.4 percent of Applicants’ HMDA-reportable loans in LMI census tracts were higher-cost loans, compared with 37 percent for lenders in the aggregate.

Since the 2005 Evaluation, Ohio Bank has continued to make a substantial volume of loans. For example, the bank's HMDA-reportable loans throughout its assessment areas totaled more than \$6.2 billion in 2005 and 2006. In addition, Applicants represented that the bank made approximately \$243 million in total qualified community development loans throughout its assessment areas in 2005 and 2006.

In the 2005 Evaluation, examiners rated Ohio Bank's overall performance under the investment test as "outstanding." Qualifying community development investments totaled more than \$49 million during the evaluation period. Applicants represented that Ohio Bank has increased its community development investment activity since the 2005 Evaluation and noted that the bank had made qualified investments totaling more than \$101 million during 2005 and 2006.

In the 2005 Evaluation, examiners concluded that the bank's performance under the service test was "outstanding." Examiners found that the bank's retail delivery systems were accessible to all segments of the bank's assessment areas. They reported that the geographic distribution of the bank's Ohio branches was reasonable, with 18 percent of its branches in the state in LMI areas, as of year-end 2004. In addition, examiners noted that bank's directors, officers, and employees participated in numerous organizations and activities that promoted or facilitated affordable housing and services for LMI individuals and revitalization of LMI areas. Applicants have represented that since the 2005 Evaluation, Ohio Bank has continued to provide community development services, including financial literacy training for individuals and technical assistance to nonprofits and small businesses.

CRA Performance of FC Bank. As noted, FC Bank received an overall "satisfactory" rating in the 2006 Evaluation. Under the lending test, FC Bank received a "high satisfactory" rating, and examiners reported that the bank's distribution of lending in its assessment areas reflected a good penetration among retail customers of different income levels and business customers of varying sizes. Examiners concluded that the bank's community development lending was adequate, noting that such lending included more than \$5 million in loans to a consortium providing long-term permanent financing for LMI multi-family housing developments throughout North Carolina.²³

The bank received a "low satisfactory" rating under the investment test in the 2006 Evaluation. Examiners reported that the bank's level of qualified community development investments was considered adequate relative to available opportunities. The bank had qualified community development investments totaling approximately \$4 million and commitments to fund an additional \$2.2 million. These

23. Several commenters asserted that the bank should have made more community development loans to, and more investments in, community development corporations. The CRA does not require banks to provide any particular type of qualified community development loans or investments to meet the credit needs of their communities.

investments facilitated housing for LMI residents of North Carolina and provided for microenterprise development in the state.

In the 2006 Evaluation, FC Bank received a "low satisfactory" rating on the service test. Examiners concluded that FC Bank's branch locations were reasonably accessible to all segments of the bank's assessment areas.²⁴ Examiners reported that the bank provided a good level of community development services.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Applicants and First Charter in light of public comments received on the proposal. Two commenters alleged that Applicants had made a disproportionately small number of prime loans in predominantly minority census tracts in the Cincinnati MSA.²⁵ Several commenters contended that from 2004 through 2006, First Charter's record of HMDA-reportable loans to minority borrowers and communities indicated disproportionately low loan application rates, high denial rates, and low lending volume.²⁶ Two commenters also stated that First Charter made a disproportionately small number of prime loans to African Americans in the Charlotte MSA. The Board has focused its analysis on the 2005 and 2006 HMDA data reported by Applicants and First Charter.²⁷

Many commenters expressed concern about Applicants' record of compliance with fair lending laws in light of an agreement between Applicants and the United States Department of Justice ("DOJ") in 2004 ("2004 Agreement"). The 2004 Agreement settled allegations by DOJ that a banking corporation acquired by Fifth Third, Old Kent Financial Corporation ("Old Kent"), Grand Rapids, Michigan, had violated federal fair lending laws between 1996 and 2000. The alleged violations included operating more than 50 branches in the Detroit MSA but none in the city of Detroit and making only 335 small business, home improvement, and home refinance loans in predominantly minority census tracts in the MSA. Applicants acquired Old Kent in 2001, and the matters addressed in the 2004 Agreement occurred before that acquisition.

24. Three commenters alleged that a disproportionately small number of the bank's branches were in LMI census tracts. As noted above, examiners concluded that FC Bank's branch locations were reasonably accessible. After consummation of the proposal, examiners will continue to evaluate the branch network of the resulting bank's CRA performance under the service test.

25. One commenter asserted that Applicants did not make an adequate number of small business loans in predominantly minority communities or to minority borrowers generally.

26. In addition, one commenter asserted that FC Bank deliberately located a branch in Landis, North Carolina, rather than in a nearby town with a larger population of African Americans. The Board notes that FC Bank acquired this branch in 1987 as part of the bank's merger with Merchants & Farmers Bank, Landis.

27. The Board analyzed HMDA data for Applicants' assessment areas nationwide and in Ohio and Cincinnati and for First Charter's assessment areas in North Carolina and the Asheville, Charlotte, and Raleigh MSAs.

The 2004 Agreement required Applicants to open at least three branches and to spend at least \$3 million on interest-rate subsidies, down-payment or closing-cost grants, or other financial assistance to small business and home mortgage borrowers in the city of Detroit during a three-year period. Michigan Bank currently operates four branches in the city of Detroit, and in 2005 and 2006, Fifth Third originated 425 small business, home refinance, and home-improvement loans totaling more than \$85 million in predominantly minority census tracts in the Detroit MSA. The 2004 Agreement expired in February 2008.

The Board and other federal banking agencies review fair lending compliance in connection with their regular consumer compliance examinations of banks. Depending on the risk factors presented, those examinations might include transactional analysis, analysis of potential evidence of “steering” and “redlining,” and review of marketing practices, among other matters.²⁸ If during an examination the reviewing agency concludes that a bank has engaged in a pattern or practice of lending discrimination, that agency must refer the evidence to DOJ²⁹ and must take the evidence into account when rating the bank’s CRA performance.³⁰ In connection with their ongoing supervisory responsibilities, the Board and Reserve Banks will continue to periodically review the compliance of Ohio Bank and Michigan Bank with fair lending laws,³¹ and the OCC will perform similar reviews of Tennessee Bank.³²

As part of its compliance reviews, the Board carefully assesses HMDA data reported by the banking organizations it supervises. As noted, the Board also has carefully reviewed the HMDA data reported by Applicant and First Charter in reviewing this proposal. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Applicants or First Charter exclude any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information,³³ provide only limited information about the

covered loans.³⁴ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by Applicants, First Charter, and their subsidiaries. The Board also has reviewed its experience as the primary federal supervisor of Ohio Bank, Michigan Bank, and FC Bank³⁵ and has consulted with the OCC, the primary federal supervisor of Tennessee Bank.

The record of this proposal, including confidential supervisory information, indicates that Applicants and First Charter have taken steps to ensure compliance with fair lending and other consumer protection laws. Applicants have stated that they conduct regular internal reviews of compliance with fair lending laws, using regression analysis, matched-pair loan evaluations, and reviews of over-ages, broker pricing, rate spreads, and other data. In addition, Applicants require all employees involved in the lending process to complete fair lending training annually. Moreover, Applicants have complied with the settlement agreement with DOJ regarding Old Kent and its behavior before being acquired by Applicants, and that agreement has expired.

First Charter’s consumer credit loans are centrally underwritten and any overrides or exceptions are reviewed by credit-risk management to ensure compliance with fair lending laws. First Charter requires new employees with lending responsibilities to attend training covering pre-screening and other matters that raise fair lending issues. Applicants have stated that Fifth Third’s fair lending and

28. See *Interagency Fair Lending Examination Procedures*, an attachment to the Board’s Consumer Affairs Letter No. CA 04–8, dated October 24, 2004.

29. 15 U.S.C. § 1691e(g).

30. See, e.g., 12 CFR 25.28(c); 12 CFR 228.28(c).

31. Many commenters also expressed concern about an agreement in June 2006 between Ohio Bank and the United States Department of Housing and Urban Development to settle allegations that the bank had denied an individual a home-purchase loan based on race. As part of the agreement, the bank paid the individual \$125,000 and committed to increase its community development lending in the Northern Kentucky and Cincinnati areas, among other measures. In connection with its ongoing supervisory responsibilities for Ohio Bank, the Board has reviewed the allegations and will continue to review the bank’s community development activities in the Northern Kentucky and Cincinnati regions and in the bank’s other assessment areas.

32. The OCC has approved the proposed merger of FC Bank and Tennessee Bank.

33. 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).

34. 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.

35. Several commenters contended that FC Bank does not maintain an appropriate number of branches in predominantly minority census tracts in North Carolina, and other commenters asserted that Applicants do not maintain an appropriate number of branches in predominantly minority census tracts in the Cincinnati area. The Board notes that the correlation between a bank’s branch network and the racial demographics of the geographies it serves, if any, can be a factor in determining the level of scrutiny and the matters covered in fair lending examinations of the bank.

consumer compliance policies and procedures will be implemented at the combined organization after consummation of the proposal.

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

C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comments received on the proposal, and confidential supervisory information. Applicants stated that the proposal would result in the availability of expanded products and services on a more cost-effective basis for customers of Applicants and First Charter. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.

CONCLUSION

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.³⁶ 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 Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commit-

36. Several 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 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 necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.25(d)). 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 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.

ments 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 by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective April 15, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

JPMorgan Chase & Co.
New York, New York

Order Approving the Acquisition of Control of a Bank

JPMorgan Chase & Co. ("JPMC"), 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 indirect control of Bear Stearns Bank & Trust ("BSB&T"), Princeton, New Jersey, a subsidiary of The Bear Stearns Companies Inc. ("Bear Stearns"), New York, New York.² JPMC proposes to acquire more than 25 percent of the voting shares of Bear Stearns and then merge Bear Stearns with a newly formed subsidiary of JPMC, with Bear Stearns as the surviving entity.³ Based on all the facts and circumstances, the Board has determined that an emergency exists requiring expeditious action on the proposal.⁴ In making this determination, the Board has considered the market conditions and the financial condition of Bear Stearns, the parent company of BSB&T, as well as all the facts of record. The Board has provided notice to the primary federal and state

1. 12 U.S.C. § 1842.

2. JPMC includes the intermediate holding companies through which it will own the shares of BSB&T. Although BSB&T is a "bank" for purposes of the BHC Act, Bear Stearns is not treated as a bank holding company under the act. Bear Stearns controls BSB&T pursuant to section 4(f) of the BHC Act, which exempts a company from treatment as a bank holding company if the company controlled certain "nonbank banks" prior to March 5, 1987 (12 U.S.C. § 1843(f)). JPMC does not qualify for this exemption, however, and requires approval to acquire direct or indirect control of BSB&T.

3. JPMC is permitted by section 4(k) of the BHC Act to acquire control of Bear Stearns and its nonbanking subsidiaries without obtaining prior approval from the Board (12 U.S.C. § 1843(f)). Because JPMC qualifies as a financial holding company, the BHC Act requires only that JPMC provide the Board notice within 30 days after acquiring control of Bear Stearns and its nonbanking subsidiaries (12 U.S.C. § 1843(k)(6); 12 CFR 225.87).

4. 12 U.S.C. § 1842(b).

supervisors of BSB&T and the Department of Justice (“DOJ”); all have indicated they have no objection to the consummation of the proposal.

JPMC, with total consolidated assets of approximately \$1.6 trillion, is the third largest depository organization in the United States, controlling deposits of approximately \$511 billion, which represent 7.4 percent of the total amount of deposits of insured depository institutions in the United States.⁵ JPMC operates four subsidiary insured depository institutions in 18 states⁶ and engages in numerous nonbanking activities that are permissible under the BHC Act. JPMC is the sixth largest depository organization in New Jersey, controlling deposits of approximately \$7.1 billion. BSB&T operates in New Jersey and is the 45th largest depository organization in the state, controlling deposits of approximately \$398 million. On consummation of the proposal, JPMC would remain the third largest depository institution in the United States, with total consolidated assets of approximately \$1.6 trillion. JPMC would control deposits of approximately \$511 billion, which represent 7.4 percent of the total amount of deposits of insured depository institutions in the United States. In New Jersey, JPMC would become the fifth largest depository organization, controlling deposits of approximately \$7.4 billion, which represent approximately 3.8 percent of the deposits in insured depository institutions in the state (“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 JPMC is New York,⁷ and BSB&T is located in New Jersey.⁸

5. National asset, deposit, and ranking data are as of December 31, 2007. Statewide deposit and deposit ranking data are as of June 30, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. JPMC’s largest subsidiary bank, JPMorgan Chase Bank, National Association (“JPMC Bank”), Columbus, Ohio, operates branches in Arizona, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, New Jersey, New York, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. JPMorgan Chase Bank, Dearborn (“Dearborn Bank”), Dearborn, Michigan, operates only in Michigan. Chase Bank USA, National Association (“Chase Bank”), Newark, Delaware, operates as a credit card bank. JPMC also operates J.P. Morgan Trust Company, National Association, Los Angeles, California, which is an insured trust company.

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)).

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 or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and 1842(d)(2)(B)).

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

COMPETITIVE CONSIDERATIONS

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

JPMC and Bear Stearns have subsidiary depository institutions that compete directly in the Metropolitan New York-New Jersey banking market.¹⁰ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions controlled by JPMC and Bear Stearns in the market (“market deposits”),¹¹ the concentration level of market deposits and the increases in

9. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). JPMC is adequately capitalized and adequately managed, as defined by applicable law. There is no applicable age-requirement law in New Jersey, and BSB&T has been in existence and operated for more than five years. *See* 12 U.S.C. § 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, JPMC 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 state deposits in New Jersey. JPMC, therefore, would be in compliance with the relevant deposit cap under New Jersey law, which is 30 percent (12 U.S.C. § 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

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

11. Deposit and market share data are as of June 30, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest 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 institution 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).

those levels as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² and other characteristics of the market.

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

The DOJ has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in 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 banking market where JPMC and Bear Stearns compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

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

13. JPMC operates the largest depository institution in the Metropolitan New York–New Jersey banking market, controlling deposits of approximately \$228 billion, which represent 29 percent of market deposits. BSB&T controls \$398 million in deposits, which represents less than 1 percent of market deposits. On consummation, JPMC would remain the largest depository institution in the market, controlling deposits of approximately \$228 billion, which represent approximately 29 percent of market deposits. Approximately 271 depository institutions would remain in the banking market. The HHI would remain unchanged at 1118.

in the proposal, and other available financial information, including information provided by JPMC.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the relevant companies involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and other subsidiaries. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the applicant organization after consummation of the proposed transaction.

The Board has considered the proposal carefully under the relevant financial factors. JPMC, its subsidiary depository institutions, and BSB&T are well capitalized and would remain so on consummation of 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 JPMC and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. JPMC and its subsidiary depository institutions, as well as BSB&T, 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 other supervisory factors under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁴

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.¹⁵ Each of JPMC’s subsidiary depository institutions that is subject to the CRA received an “outstanding” rating

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

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

at its most recent CRA performance evaluation.¹⁶ BSB&T currently does not receive a CRA evaluation due to the bank's designation as a special purpose bank by the Federal Deposit Insurance Corporation.¹⁷

The Board has considered carefully all of the facts of record, including reports of examination of the CRA records of the institutions involved and confidential supervisory information. JPMC's acquisition of BSB&T will enhance and maintain the level of service provided to the customers currently served by BSB&T. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.

CONCLUSION

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its decision, 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 JPMC with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The transaction may not be consummated before the fifth 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 April 1, 2008.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

16. JPMC's lead bank, JPMC Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of September 8, 2003. JPMC Bank converted to a national bank on November 13, 2004. The Board has consulted with the Office of the Comptroller of the Currency ("OCC"), which is now JPMC Bank's primary federal supervisor, about the bank's performance since its evaluation in 2003. J.P. Morgan Trust Company received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of November 4, 2006. Chase Bank received an "outstanding" rating at its most recent CRA examination by the OCC, as of January 9, 2006. Dearborn Bank engages in cash management activities for its affiliated banks and is not subject to the CRA.

17. 12 CFR 345.11.

ORDERS ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Bank of America Corporation Charlotte, North Carolina

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

Bank of America Corporation ("Bank of America"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y¹ to acquire Countrywide Financial Corporation ("Countrywide"), Calabasas, California, and thereby indirectly acquire Countrywide's subsidiary savings association, Countrywide Bank, FSB ("Countrywide Bank"), Alexandria, Virginia.² In addition, Bank of America has requested the Board's approval to acquire indirectly certain other nonbanking subsidiaries of Countrywide and thereby engage in the following activities: credit extension and loan servicing; real estate and personal property appraisal; real estate settlement; credit bureau services; asset management, servicing, and collection; acquiring debt in default; securities brokerage; trust company functions; community development; and tax services in accordance with section 225.28(b) of the Board's Regulation Y.³

Bank of America, with total consolidated assets of \$1.7 trillion, is the largest depository organization in the United States measured by deposits, controlling deposits of approximately \$711.7 billion, which represent approximately 10.04 percent of the total amount of deposits of insured depository institutions in the United States.⁴ Bank

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

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

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

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

of America controls eight insured depository institutions⁵ that operate in 31 states and the District of Columbia.

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

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

FACTORS GOVERNING BOARD REVIEW OF THE TRANSACTION

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

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

of the proposal on competition in the relevant markets, and the public benefits of the proposal.⁹ In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁰

PUBLIC COMMENT ON THE PROPOSAL

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

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

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

A large number of commenters supported the proposal. Many of the commenters in support of the proposal commended Bank of America for its commitment to local communities and described favorable experiences with the affordable mortgage, small business, and community development programs of the organization. Commenters also praised the willingness of Bank of America to provide CRA-related products and services, such as affordable mortgage products, educational seminars, and loan funds, to support community development activities. In addition, commenters praised Bank of America's charitable contributions and noted that officers and employees of the organizations frequently provided valuable services to community organizations as board members and volunteers.

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

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

7. 12 CFR 225.28(b)(4)(ii) and 225.86.

8. 12 U.S.C. § 1843(j)(2)(A).

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

10. 12 U.S.C. § 2901 et seq.

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

A significant number of commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions or expressed concerns about the proposal.¹² Many commenters were concerned about the impact of the proposal on Bank of America's share of national deposits. Commenters expressed their belief that, if approved by the Board, Bank of America's acquisition of Countrywide would violate the statutory restriction on interstate bank acquisitions contained in section 3(d) of the BHC Act.¹³ Many commenters also believed that the acquisition would reduce competition in the mortgage origination and servicing markets and substantially increase concentration in the banking and financial services industry. In addition, commenters expressed concern about Bank of America's plans for integrating Countrywide's operations, business model, and management. Many commenters urged Bank of America to retain Countrywide staff to help adequately address borrowers' needs, and some commenters suggested that Bank of America retain Countrywide's main office and mortgage servicing headquarters.

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

Many commenters criticized Countrywide's lending and servicing operations and other business practices, focusing primarily on Countrywide's presence in the subprime lend-

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

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

COMPETITIVE CONSIDERATIONS

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

A. Acquisition of a Savings Association

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

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

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

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

15. Deposit and market share data are as of June 30, 2007, and are based on calculations in which the deposits of thrift institutions are

increase in those levels as measured by the Herfindahl–Hirschman Index (“HHI”) under the DOJ Merger Guidelines (“DOJ Guidelines”),¹⁶ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Washington, D.C. banking market.¹⁷ On consummation, this market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the market.¹⁸

The structural effects of the proposal in the Fort Worth, Texas banking market (“Fort Worth banking market”),¹⁹ as measured by the HHI on the basis of deposits, would substantially exceed the DOJ Guidelines. According to the Summary of Deposits (“SOD”) as of June 30, 2007, with the deposits of Bank of America and Countrywide fully weighted, Bank of America operates the third largest insured depository institution in the Fort Worth banking market, controlling deposits of approximately \$3 billion, which represent approximately 3.7 percent of market

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 institution deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52, 55 (1991).* In the market share calculations in this case, the Board weighted Countrywide’s deposits at 50 percent pre-acquisition and at 100 percent post-acquisition to reflect the resulting control of such deposits by a commercial banking organization.

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

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

18. Bank of America operates the second largest depository institution in the Washington, D.C. banking market, controlling deposits of approximately \$21.6 billion, which represent approximately 14.6 percent of market deposits. Countrywide operates the 42nd largest depository institution in the market, controlling deposits of approximately \$380 million, which represent less than 1 percent of market deposits. On consummation, Bank of America would remain the second largest depository institution in the market, controlling deposits of approximately \$22 billion, which represent approximately 14.8 percent of market deposits. Approximately 118 depository institutions would remain in the Washington, D.C. banking market. The HHI would increase 5 points to 877.

19. The Fort Worth banking market is defined as Tarrant, Johnson, Parker (excluding Mineral Wells), and Wise counties in Texas.

deposits.²⁰ Countrywide operates the largest insured depository institution in the market, controlling deposits of approximately \$60.2 billion, which represent approximately 73.2 percent of market deposits.²¹ On consummation, Bank of America would operate the largest insured depository institution in the market, controlling deposits of approximately \$63.3 billion, which represent approximately 76.9 percent of market deposits. The HHI would increase 539 points to 5962.²²

In accordance with its precedent when the HHI screening measurement exceeded DOJ Guidelines, the Board has conducted an in-depth review of the competitive effects of an acquisition. As the HHI increases or the change in the HHI resulting from a proposal becomes larger, increasingly stronger mitigating factors are required to support a determination that the competitive effects of the proposal are not significantly adverse.

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

In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude out-of-market deposits because all deposits are typically available to support lending and other banking activities at any location. The Board has adjusted the market deposits held by an applicant to exclude specific types of deposits only in rare situations, such as when evidence supported a finding that the excluded deposits

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

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

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

were not legally available for use in that market, and data were available to make comparable adjustments to the market shares for all other market participants.²³ The Board also has adjusted deposit data in the rare circumstance where there was strong evidence that a depository organization moved its national business-line deposits to a particular branch for business reasons unrelated to its efforts to compete in that market and did not use these deposits to enhance its competitive ability in that market or to manipulate SOD data used in competitive analyses by a federal supervisory agency.²⁴

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

Countrywide placed the national business-line deposits in the Fort Worth Branch for business reasons unrelated to Countrywide's efforts to compete in the Fort Worth banking market. There also is no evidence in the record that Countrywide moved the deposits to Fort Worth from another branch in an attempt to manipulate the SOD data used for competitive analyses by the appropriate federal supervisory agency. Moreover, although Countrywide holds approximately \$60.2 billion in deposits in the Fort Worth market based on SOD data, this office holds loans totaling only approximately \$30.1 million, which represents a loan-to-deposit ratio of 0.05 percent for Countrywide Bank in the Fort Worth banking market. This unusually low loan-to-deposit ratio is consistent with the conclusion that the SOD deposit data significantly overstate Countrywide's competitive presence in the Fort Worth banking market.²⁵

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

23. See *First Security Corp.*, 86 *Federal Reserve Bulletin* 122 (2000).

24. See *J.P. Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352, 355 (2004).

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

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

B. Other Nonbanking Activities

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

Bank of America and Countrywide compete in the mortgage servicing business. Countrywide is the largest mortgage servicer in the United States. The Board previously has found that the geographic market for mortgage servicing is national in scope. Although Bank of America would become the largest mortgage loan servicer in the United States on consummation of the proposal, the mortgage servicing market would remain unconcentrated and numerous competitors would continue to engage in mortgage servicing. The HHI for this market would increase no more than 152 points to no more than 882.²⁷

The geographic market for mortgage originations is less settled than for mortgage servicing, but current market trends and evidence suggest that the appropriate geographic market for mortgage originations also is national in scope.²⁸ This conclusion is confirmed by analysis of the most recent Home Mortgage Disclosure Act ("HMDA") data.²⁹ When taken as a whole, the HMDA data on mortgage originations

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

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

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

29. 12 U.S.C. § 2801 et seq.

strongly suggest that the geographic market for mortgage originations is no longer local or statewide but national in scope.

On consummation of this proposal, Bank of America would become the largest mortgage loan originator in the nation. The proposed acquisition would increase the HHI no more than 244 points to no more than 962. The market would remain unconcentrated with numerous mortgage originators.³⁰

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

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also conducted a detailed review of the probable competitive effects of the proposal, including the acquisition of Countrywide Bank and the other nonbanking subsidiaries of Countrywide. The DOJ has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market, including the Washington, D.C. and Fort Worth banking markets, or in any relevant market for the other proposed nonbanking activities. The appropriate federal supervisory agencies have also been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction, including the acquisition of Countrywide Bank and Countrywide's other nonbanking subsidiaries, would not have a significantly adverse effect on competition or on the concentration of resources in the Washington, D.C. and Fort Worth banking markets, or in any other relevant banking or nonbanking activities market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL AND MANAGERIAL RESOURCES

In reviewing the proposal under section 4 of the BHC Act, the Board has considered carefully the financial and managerial resources of Bank of America, Countrywide, and their subsidiaries, and the effect of the transaction on those

resources. This review was conducted in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by Bank of America and Countrywide.

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

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

In evaluating financial resources in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary insured depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In addition, the Board considers the ability of the organization to absorb the costs of the proposal and the plans for integrating operations after consummation.

The Board has considered carefully the financial factors of the proposal. Bank of America and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. In addition, Countrywide Bank is well capitalized and would continue to be so after consummation of the proposal. Based on its review of

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

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

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

the record, the Board also finds that Bank of America has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and would not increase the debt-service requirements of the combined company.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Bank of America, Countrywide, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant federal supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws.³³ Bank of America and its subsidiary depository institutions are considered to be well managed. In addition, the Board has considered carefully Bank of America's plans for implementing the proposal, including its proposed risk-management systems after consummation. The Board also has considered Bank of America's record of successfully integrating large organizations into its operations and risk-management systems after acquisitions. Bank of America will implement its risk-management policies, procedures, and controls at the combined organization. Bank of America is devoting significant financial and other resources to address all aspects of the post-acquisition integration process.

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

RECORDS OF PERFORMANCE UNDER THE CRA

As noted previously, the Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire any insured depository institution, including a savings association. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant deposi-

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

tory institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁴

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

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

Approximately 610 individuals and groups expressed concerns in their comments and testimony that included the mortgage and consumer lending records of Bank of America and Countrywide and Bank of America's ability to fulfill its CRA obligations after consummation of the proposal. Some commenters alleged that Countrywide's mortgage lending and servicing activities and the increasing rates of foreclosures in its portfolio were harming borrowers and communities. Many commenters opposed the proposal or recommended approval only if specific conditions were imposed.³⁵ Many commenters also alleged that Bank of America had not adequately addressed the community reinvestment needs of California communities or expressed general concern about the CRA performance of Bank of America in the state. One commenter asserted that BA

34. 12 U.S.C. § 2903.

35. A number of commenters urged the Board to require Bank of America to provide specific pledges or plans or to take certain future actions, including meeting with particular organizations. They also asked the Board to condition its approval on a commitment by Bank of America to institute specific business practices and to take specific actions with regard to assisting Countrywide mortgage borrowers who were in default or at risk of defaulting. Some commenters criticized Bank of America's performance under its previous community reinvestment pledges and urged the Board to require Bank of America to improve the CRA records of its subsidiary institutions. The Board consistently has found that (1) neither the CRA nor the federal supervisory agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements concerning future performance under the CRA with any organization or to meet with particular persons or organizations; and (2) the enforceability of any third-party pledges, initiatives, or agreements are matters outside the purview of the CRA. See *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 232-33 (2004) ("BOA/Fleet Order"). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal.

Bank had provided an insufficient amount of community development loans and investments in New York City.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.³⁶

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

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

CRA Performance of BA Bank. BA Bank is Bank of America's largest insured depository institution, representing approximately 79 percent of the organization's insured depository institution assets. In the BOA Evaluation, the bank received "outstanding" ratings under the lending, investment, and service tests. Examiners commended BA Bank's overall lending performance, which they described as demonstrating excellent or good lending-test results in

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

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

38. LaSalle Bank National Association was last evaluated by the OCC as of December 31, 2002. FIA Card Services, N.A., formerly known as MBNA America National Bank, National Association, was last evaluated by the OCC as of April 4, 2005. LaSalle Bank Midwest National Association was last evaluated by the OCC as of August 1, 2006. The Board approved Bank of America's application to acquire both LaSalle Bank and LaSalle Bank Midwest in 2007. See *Bank of America Corporation*, 93 *Federal Reserve Bulletin* C109 (2007) ("BOA/LaSalle Order"). BA California, BA Georgia, BA Oregon, and BA Rhode Island are special-purpose banks that are not subject to the CRA.

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

almost all of the 38 areas rated. During the evaluation period, BA Bank originated more than 3 million CRA-reportable loans totaling more than \$429 billion, including home mortgage loans totaling \$380 billion. Examiners reported that the bank's distribution of HMDA-reportable mortgage loans among borrowers of different income levels was good.⁴⁰ In addition, examiners reported that BA Bank's distribution of small business and small farm loans⁴¹ among businesses and farms of different revenue sizes was good. In the BOA Evaluation, examiners noted that the bank offered special loan products with flexible underwriting standards that assisted the bank in meeting the credit needs of LMI communities in its areas of operation. Examiners also reported that BA Bank's level of community development lending significantly enhanced its lending test performance.⁴²

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

In the BOA Evaluation, examiners reported that BA Bank consistently demonstrated strong performance under the investment test, noting that its performance was excel-

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

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

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

lent or good in 99 percent of its assessment areas. During the evaluation period, BA Bank made more than 10,500 investments, including grants and contributions, that totaled almost \$4.8 billion.⁴³ BA Bank funded the development of approximately 100,000 housing units for LMI families through its qualified investments in its assessment areas.⁴⁴ Examiners commended BA Bank for demonstrating significant leadership in its qualified investment activities and commented that the bank ranked among the most significant investors in both Low Income Housing Tax Credit (“LIHTC”) and New Market Tax Credit (“NMTC”) projects and was the largest financial institution investor in Community Development Financial Institutions (“CDFI”) projects.⁴⁵ In addition, examiners noted that BA Bank was one of a handful of financial institutions that acted as a direct developer of large scale multifamily housing projects in LMI areas.⁴⁶ Examiners also reported that the bank was the second largest corporate donor in the United States in 2005 with cash donations of \$130 million, more than half of which qualified for CRA credit.⁴⁷

BA Bank also has maintained a substantial level of community development investments in its assessment areas since the BOA Evaluation. Bank of America represented that BA Bank made more than 6,000 community development investments, totaling more than \$2.2 billion, during 2007.⁴⁸ In addition, Bank of America represented that the bank’s community development subsidiary has

developed more than 5,700 housing units through investments totaling \$520 million nationwide from 2005 through 2007.

In the BOA Evaluation, examiners commended BA Bank’s performance under the service test throughout its assessment areas.⁴⁹ Examiners noted that the bank’s provision of retail services showed excellent responsiveness to the banking needs of the communities and individuals of different income levels in the bank’s assessment areas.⁵⁰ They reported that BA Bank’s retail delivery systems were excellent, with the percentage of the bank’s branches in LMI census tracts within its assessment areas approximating or exceeding the overall percentage of the population residing in such LMI census tracts.⁵¹

CRA Performance of Countrywide Bank. As noted above, Countrywide Bank received an overall “satisfactory” rating in its 2004 CRA evaluation, with “low satisfactory” ratings on both the lending and service tests and an “outstanding” rating on the investment test. Examiners noted in the Countrywide Evaluation that the bank’s distribution of home mortgage loans reflected adequate penetration of LMI areas in its two assessment areas when compared with the distribution of owner-occupied housing units in those areas. In addition, examiners found that Countrywide Bank’s lending performance to borrowers of different income levels in both assessment areas was adequate considering the affordability barriers for low-income families in those areas. Examiners noted that the bank’s qualified investments and grants to community development organizations in its assessment areas were excellent relative to its financial resources. They commended the institution’s responsiveness to the areas most pressing community development needs. In addition, examiners found that Countrywide Bank’s branches, products, and services were reasonably accessible to communities and individuals of differing income levels and were deliv-

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

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

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

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

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

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

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

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

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

ered primarily through alternative delivery systems, such as the Internet call centers and a network of financial lending centers.⁵²

B. Conclusion on CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Bank of America, comments received on the proposal and responses to those comments, and confidential supervisory information. The Board has also considered that Bank of America proposes to institute its CRA policies and procedures at Countrywide. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.⁵³

OTHER CONSIDERATIONS

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

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

The Board’s analysis of the lending-related concerns included a review of 2006 and preliminary 2007 HMDA data reported by BA Bank and Countrywide Bank and their lending affiliates.⁵⁶ Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Bank of America or Countrywide Bank has excluded or imposed higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.⁵⁷ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates must conduct their mortgage lend-

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

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

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

55. 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 Part 203.4).

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

57. 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.

ing operations without any abusive lending practices and in compliance with all consumer protection laws.

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

The Board notes that Bank of America has represented it will operate the combined mortgage operations of BA Bank and Countrywide under BA Bank's policies, procedures, internal controls, and other risk-management systems to ensure compliance with fair lending and other consumer protection laws and regulations. The record, including confidential supervisory information, indicates that Bank of America has implemented many processes to help ensure compliance with all consumer protection laws and regulations.⁵⁸ Bank of America's compliance program includes fair lending policy and product guides, compliance file reviews, testing of HMDA data's integrity, and other quality-assurance measures to help ensure compliance with consumer protection laws. Bank of America also stated that it provides annual training to ensure that Bank of America's associates understand their responsibility for complying with the organization's fair lending and consumer protection policies.

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

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

disclosure of available product options, features, rates, and terms; and strengthening internal training and compliance programs.⁵⁹

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

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

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

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

PUBLIC BENEFITS

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers currently served by Countrywide. The proposal would also allow Bank of America to offer a wider array of affordable mortgage loans, enhanced loan remediation processes, and other banking products and services to Countrywide customers. Bank of America has represented that it would grant Countrywide Bank customers access to BA Bank's ATM network and branch locations on the same terms and conditions as BA Bank customers. As noted, Bank of America also would implement enhanced risk-management systems at the combined organization.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Moreover, based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

CONCLUSION

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

The acquisition shall not be consummated later than three months after the effective date of this order, unless

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

By order of the Board of Governors, effective June 5, 2008.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

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

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

61. 12 CFR 225.7 and 225.25(c).

ORDERS ISSUED UNDER FEDERAL RESERVE ACT

Rolling Hills Bank & Trust Atlantic, Iowa

Order Approving Establishment of a Branch

Rolling Hills Bank & Trust (“Bank”), a state member bank, has requested the Board’s approval under section 9 of the Federal Reserve Act (“Act”)¹ to establish a branch at 502 Broad Street, Adair, Iowa.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.² The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Bank is the 108th largest depository institution in Iowa, controlling approximately \$113.4 million in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.³ Bank’s main office and five branches are in Cass, Greene, and Pottawattamie counties, and the proposed branch would be in Adair County, all in Iowa.

Section 9(3) of the Act⁴ requires a state member bank to obtain the Board’s approval before establishing a branch. When acting on a branch application, the Board is required by section 9(4) of the Act to consider the financial condition of the applying bank, the general character of its management, and whether its corporate powers are consistent with the purposes of the Act.⁵ Under the Board’s regulation implementing section 9(4),⁶ the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank’s capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank’s performance under the Community Reinvestment Act (“CRA”);⁷ and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain limitations.

The Board has carefully considered the application in light of these factors and public comments received from a competing bank in Adair and from residents of the surrounding areas. The commenters asserted that their community’s demographic and economic characteristics would not support another branch profitably.

In considering the financial history and condition, future earnings prospects, and capital adequacy of Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, and information provided by Bank and the commenters. Bank is well capitalized and would remain so on consummation of the proposal. The Board also has reviewed Bank’s business plan and financial projections for the branch, including the projections for deposits, income, and costs. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Bank are consistent with approval of the proposal. The Board also has reviewed Bank’s proposed investment for a branch in Adair and concluded that its investment is consistent with regulatory limitations on investment in bank premises.⁸

In considering Bank’s managerial resources, the Board has reviewed the bank’s examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Bank and the bank’s record of compliance with applicable banking law, including anti-money-laundering laws. Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Bank’s management is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served, taking into account the comments received, and the bank’s performance under the CRA. Bank received a “satisfactory” rating by the Federal Reserve Bank of Chicago at its most recent CRA performance evaluation, as of December 6, 2004.⁹ The Board notes that the proposed new entry provides an additional source of products and services to consumers and businesses.¹⁰ The bank has represented that it currently receives deposits from and makes loans to customers in Adair and the surrounding areas in Adair County and that the proposed branch would provide residents of these communities with a more convenient source of banking services.¹¹ In reviewing this proposal, the Board also has considered the commenters’ allegations in light of Bank’s income and expense projections for the proposed branch, as well as its financial and managerial resources.¹² For these

8. 12 CFR 208.21(a).

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

10. Commenters speculated that another branch in Adair would harm the performance of both Bank and an existing institution and negatively affect the community.

11. Bank reported approximately \$2.3 million in deposits from and approximately \$1.3 million in loans to customers who work or reside in the area that would be served by the proposed branch.

12. The Board also reviewed the deposit and demographic data for the Adair County, Iowa banking market, which is defined as Adair

1. 12 U.S.C. § 321 et seq.

2. 12 CFR 262.3(b).

3. Statewide ranking and deposit data are as of June 30, 2007, and reflect mergers as of April 11, 2008.

4. 12 U.S.C. § 321 and 12 CFR 208.6(b).

5. 12 U.S.C. § 322.

6. 12 CFR 208.6(b).

7. 12 U.S.C. § 2901 et seq.

reasons and based on a review of the entire record, the Board has concluded that the convenience and needs considerations and Bank's record of performance under the CRA are consistent with approval of the proposal.

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹³ The Board's approval is specifically conditioned on Bank's compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Federal Reserve Bank of Chicago, acting under authority delegated by the Board.

By order of the Board of Governors, effective May 2, 2008.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

KfW IPEX-Bank GmbH *Frankfurt, Germany*

Order Approving Establishment of a Representative Office

KfW IPEX-Bank GmbH ("Bank"), a foreign bank within the meaning of the International Banking Act ("IBA"), has

applied under section 10(a) of the IBA¹ 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 newspaper of general circulation in New York (*The Daily News*, New York, New York). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$65.6 billion,² is a newly created indirect subsidiary that is wholly owned by Kreditanstalt für Wiederaufbau ("KfW"), also of Frankfurt.³ Bank engages in project and export finance activities. KfW is a government-owned development bank that engages in lending and financing activities in furtherance of public-sector initiatives. In the United States, KfW operates a representative office in New York, New York ("KfW Office"), and KfW International Finance, Inc., Wilmington, Delaware, a finance vehicle established to access U.S. capital markets.

On January 1, 2008, pursuant to an agreement between KfW and the European Commissioner for Competition, KfW established Bank as a separately incorporated subsidiary and transferred its export and project finance activities to Bank.⁴ Bank's proposed representative office would act as a liaison with existing and potential customers and conduct market research for Bank.⁵

In acting on a foreign bank's application under the IBA and Regulation K to establish a representative office, the Board shall take into account whether the foreign bank engages directly in the business of banking outside of the United States and has furnished to the Board the information it needs to assess the application adequately.⁶ The Board also shall take into account whether the foreign bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁷ Under Regulation K, a representative office application may be approved if the Board determines that the applicant bank is subject to a

County. The data indicate a modest decrease in population from 2000 to 2006 and a moderate increase in deposits during the same period.

13. A commenter requested that the Board hold a public meeting or hearing on the proposal. The Act does not require the Board to hold a public hearing on an application to establish a branch. Under its rules, the Board may, in its discretion, hold a public meeting or hearing on an application if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 262.3(e), 262.25(d)). 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 his 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 written comments do not present his 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. 12 U.S.C. § 3107(a).

2. Asset data are as of December 31, 2007.

3. The federal government of Germany owns 80 percent of the shares of KfW; the remaining 20 percent is owned by various state governments in Germany.

4. The purpose of the transaction was to ensure that these activities would be conducted in a manner consistent with KfW's status as a government-owned development bank and in compliance with European Union competition policy. To facilitate the transfer, KfW first established a separate division within KfW, KfW IPEX Bank ("IPEX Division"), in January 2004, and transferred the export and project finance activities to IPEX Division. KfW subsequently received Board approval to establish KfW Office. See *Kreditanstalt für Wiederaufbau*, 92 *Federal Reserve Bulletin* C135 (2006). KfW stated that it will close the KfW Office when Bank's proposed representative office is established.

5. KfW also has representative offices in Brazil, China, India, Russia, Thailand, Turkey, and the United Kingdom that have or will become offices of Bank.

6. 12 U.S.C. § 3107(a)(2).

7. *Id.*

supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁸ 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.⁹ The Board also considers additional standards set forth in the IBA and Regulation K.¹⁰

As noted above, KfW and Bank engage 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. In the proposed representative office, Bank may engage only in activities permissible for a representative office under Regulation K, which include the proposed customer liaison and market research activities noted above.¹¹

With respect to supervision by home-country authorities, the Board previously determined that KfW is subject to a supervisory framework that is consistent with the activities of KfW Office, taking into account the nature of such activities.¹² There has been no material change in the manner in which KfW is supervised by the Federal Ministry of Finance. With respect to Bank, the Board has considered that Bank is supervised by the Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”), the primary regulator of commercial banks in Germany. The Board previously has considered the supervisory regime in Germany for commercial banks in connection with applications involving other German banks.¹³ Bank is supervised by BaFin on substantially the same terms and conditions as those other banks.¹⁴ Based on all the facts of record, it has

been determined that KfW and Bank are 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 also have been taken into account.¹⁵ With respect to the financial and managerial resources of Bank, taking into consideration Bank’s record of operation as KfW’s IPEX Division in its home country, its overall financial resources, and its standing with its home-country supervisor, financial and managerial factors are consistent with approval. 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 and for its operations in general. The BaFin has no objection to the establishment of the proposed office.

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, and 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 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 (“BHC Act”), 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 BaFin 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

8. 12 CFR 211.24(d)(2).

9. A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank; conducting research; acting as a liaison between the foreign bank’s head office and customers in the United States; performing preliminary and servicing steps in connection with lending; and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity (12 CFR 211.24(d)(1)).

10. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank’s home-country supervisor has consented to the establishment of the office; (2) the financial and managerial resources of the bank; (3) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (4) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; and (5) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

11. See *supra* note 9.

12. *Kreditanstalt für Wiederaufbau*, *supra* note 4.

13. See, e.g., *Deutsche Genossenschafts-Hypothekenbank AG*, 192 *Federal Reserve Bulletin* C61 (2006).

14. To find that a foreign bank is subject to comprehensive, consolidated supervision, the Board also must find that any foreign

bank parent is subject to comprehensive, consolidated supervision. See 12 CFR 211.24(c)(1)(A). The order approving KfW’s representative office application in 2006 applied the lesser supervision standard to KfW because a determination of comprehensive, consolidated supervision was not required. The same standard has been applied in this case.

15. See *supra* note 10.

been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.¹⁶

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 by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, acting pursuant to authority delegated by the Board.¹⁷ 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 any of its affiliates with applicable federal statutes, the Board may require 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.¹⁸ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its finding and decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective June 23, 2008.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

SNS Property Finance B.V. Hoevelaken, The Netherlands

Order Approving Establishment of a Representative Office

SNS Property Finance B.V. ("Bank"), Hoevelaken, the Netherlands, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA¹ to establish a representative office in Arlington, Virginia. 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.

16. In addition, KfW previously made the same commitments in connection with its application to establish KfW Office. In light of these commitments, the Board has concluded that KfW also has provided adequate assurances of access to any appropriate information the Board may request.

17. See 12 CFR 265.7(d)(12).

18. 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 New York State Banking Department to license the proposed representative office of Bank in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. § 3107(a).

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Arlington, Virginia (*The Washington Post*, February 6, 2008). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$17 billion,² is the tenth largest bank in the Netherlands by asset size.³ Bank provides project financing, participation financing, and investment financing.⁴ Bank and its subsidiaries conduct business in Europe, Canada, and the United States. Bank currently operates a number of nonbanking subsidiaries in the United States that engage in real estate financing and other real estate activities. Bank operates one representative office in Paris, France.

The proposed representative office would act as a liaison between Bank's head office in the Netherlands and existing and prospective customers in the United States. The office would perform market research, conduct preliminary underwriting analysis, make new loan solicitations, and prepare loan proposals for internal review and approval by Bank's head office. In connection with Bank's lending and real estate operations, the proposed office would perform preliminary tasks, including assembling credit information, making property inspections, requesting appraisals, and securing title information.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether the foreign bank: (1) engages directly in the business of banking outside of 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 on a consolidated basis by its home-country supervisor.⁵ The

2. Data are as of December 31, 2007.

3. Bank is the largest project finance company and the third largest investment finance company in the Netherlands by asset size.

4. Bank is wholly owned by SNS Bank N.V., which is in turn wholly owned by SNS REAAL N.V. ("Company"). Stichting Beheer SNS REAAL ("Stichting Beheer"), a Dutch foundation, owns approximately 54.2 percent of Company, and the remaining shares are publicly held. Stichting Beheer's activities are limited to holding shares of Company, representing and safeguarding the interests of Company, and making disbursements of a philanthropic or social nature. Aviva plc, London, United Kingdom, indirectly owns a 5.85 percent interest in Company, and no other shareholder owns as much as 5 percent of the shares of Company.

5. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). 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; (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.

Board also considers additional standards set forth in the IBA and Regulation K.⁶ The Board considers the supervision standard to have been met when 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.⁷ 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.⁸ This application has been considered under the lesser standard.

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 Board previously has determined, in connection with applications involving other banks in the Netherlands, that those banks were subject to home-country supervision on a consolidated basis.⁹ Bank and SNS Bank N.V. are primarily supervised by the De Nederlandsche Bank N.V. (“Central Bank”) on substantially the same terms and conditions as those other banks.¹⁰ Based on all the facts of record, including the above information, it has been determined that Bank and SNS Bank N.V. are 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 have also been taken into account.¹¹ The

Central Bank 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.

The Netherlands is a member of the Financial Action Task Force (“FATF”) and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, the Netherlands 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 the Netherlands, 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 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 and Stichting Beheer have 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 and Stichting Beheer have 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 Central Bank 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 and Stichting Beheer have provided adequate assurances of access to any necessary information that the Board may request.

6. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

7. See, e.g., *Kreditanstalt für Wiederaufbau*, 92 *Federal Reserve Bulletin* C135 (2006); *Macquarie Bank Limited*, 90 *Federal Reserve Bulletin* 105 (2004); *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001).

8. 12 CFR 211.24(d)(2).

9. See, e.g., *ING Bank*, 85 *Federal Reserve Bulletin* 448 (1999); *Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland*, 80 *Federal Reserve Bulletin* 947 (1994).

10. On January 1, 2007, a new financial institutions law, the Act on Financial Supervision (“AFS”), became effective in the Netherlands. The AFS and subsequent regulations transitioned the Netherlands from sector-based to function-based supervision of financial institutions. The AFS was not intended to revise the material standards for financial supervision in the Netherlands and has not changed the material substantive standards for the supervision of Bank.

11. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). These standards include (1) whether the bank’s home-country supervisor has consented to the establishment of the office; (2) the financial and managerial resources of the bank; (3) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (4) whether the appropriate supervisors in the home country may share information on the bank’s operations with

the Board; and (5) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

Based on the foregoing and all the facts of record, and subject to the commitments made by Bank and Stichting Beheer and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby 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.¹² Should any restriction 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 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 and Stichting Beheer with the conditions imposed in this order and the commitments made to the Board in connection with this application. For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective May 23, 2008.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

12. See 12 CFR 265.7(d)(12).