

Legal Developments

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

*Capital One Financial Corporation
McLean, Virginia*

Order Approving the Formation of a Bank Holding Company

Capital One Financial Corporation (“Capital One”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become a bank holding company after amending the charter of its subsidiary, Capital One Bank, Glen Allen, Virginia (“Capital One Bank”), from a limited-purpose, credit-card bank charter to a full-service bank charter. Capital One Bank is not a “bank” for purposes of the BHC Act,² but it proposes to become a full-service bank under the amended charter. Capital One Bank, a state member bank, also has requested the Board’s permission under section 9 of the Federal Reserve Act and section 208.3 of the Board’s Regulation H to change the general character of its business.³

In addition, Capital One has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and sections 225.28(b)(1), (2), (4), (6), and (12) of the Board’s Regulation Y to retain certain nonbanking subsidiaries of Capital One and thereby engage in permissible activities related to extending credit, providing investment advice, engaging in community development, and retaining Capital One’s wholly owned savings association, Capital One, F.S.B., McLean, Virginia (“Capital One FSB”).⁴ Capital One also has filed notices under section 4(c)(13) of the BHC Act and the Board’s Regulation K to retain certain foreign operations of Capital One.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 11,017 (2004)). 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 sections 3 and 4 of the BHC Act and the Federal Reserve Act.

Capital One, with total consolidated assets of \$39.8 billion, is and would remain the second largest depository organization in Virginia, controlling deposits of approximately \$18.6 billion, which represents 14.4 percent of the total deposits in insured depository institutions in the state.⁶

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. It also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effects of the proposal in meeting the convenience and needs of the community to be served.⁷ As stated above, the proposal involves a charter amendment that would result in Capital One Bank becoming a “bank” for purposes of the BHC Act and does not involve the acquisition of an additional depository institution. Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.⁸ The Board has reviewed these factors in light of all the facts of record, including supervisory reports of examination assessing the financial and managerial resources of Capital One Bank and Capital One FSB, information provided by Capital One, publicly reported and other financial information, and public comment on the proposal.⁹

1. 12 U.S.C. § 1842.

2. See 12 U.S.C. § 1841(c)(2)(F).

3. 12 U.S.C. § 321; 12 CFR 208.3.

4. 12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 CFR 225.28(b)(1), (2), (4), (6), and (12).

5. 12 U.S.C. § 1843(c)(13); 12 CFR 211.9.

6. Asset data are as of March 31, 2003. Deposit and ranking data are as of June 30, 2003.

7. 12 U.S.C. § 1842(c).

8. 12 U.S.C. § 1842(c)(2).

9. A commenter expressed concern about Capital One’s lobbying efforts in the Virginia legislature. Such matters are outside the limited

Capital One is well capitalized and will remain so on consummation of the proposal. In addition, the Board has considered the financial and managerial resources and examination records of Capital One's subsidiary depository institutions, Capital One Bank and Capital One FSB. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the institutions involved are consistent with approval of the proposal, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on the proposal, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹¹

The Board has carefully considered the effects of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including the CRA performance records of Capital One Bank and Capital One FSB, information provided by Capital One, and public comment on the proposal. Capital One Bank received an overall rating of "outstanding" at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond, as of April 28, 2003.¹² Capital One Bank is engaged exclusively in credit card operations and has been designated as a limited purpose bank for purposes of evaluating its CRA performance.¹³

At the most recent performance evaluation, examiners characterized Capital One Bank's community development performance as excellent and highly responsive to community needs. Examiners noted that Capital One Bank had made a number of investments, grants, and contributions to

statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

10. 12 U.S.C. § 2901 *et seq.*

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

12. Capital One FSB received an overall rating of "satisfactory" at its most recent CRA performance evaluation by its primary federal supervisor, the Office of Thrift Supervision ("OTS"), as of April 28, 2003.

13. *See* 12 CFR 228.25(a). A commenter expressed concern that Capital One planned to expand the activities of Capital One Bank to those of a full-service bank without submitting a CRA plan as part of its proposal. Capital One has stated that it has no immediate plans to engage in a broader range of activities that would change its designation as a limited purpose bank for purposes of the CRA. If Capital One Bank engages in activities that cause the bank to lose this designation, its CRA performance will be evaluated under the appropriate tests and standards. *See* 12 CFR 228.25(b). Capital One has experience with CRA evaluations of full-service institutions by virtue of operating Capital One FSB, which, as noted above, received a "satisfactory" rating from the OTS.

a variety of community organizations that serve the needs of LMI individuals and promote economic development in LMI areas. Examiners commended Capital One Bank for some of its innovative investments.

Based on these and all the facts of record, the Board has concluded that considerations relating to the convenience and needs of the communities to be served, including the CRA performance records of the institutions involved, are consistent with approval.

Nonbanking Activities

Capital One also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to retain its nonbanking subsidiaries. The subsidiaries engage in activities related to extending credit, providing investment advice, engaging in community development, and operating a savings association. The Board has determined by regulation that these activities are permissible for a bank holding company under Regulation Y,¹⁴ and Capital One has committed to conduct these activities in accordance with the Board's regulations and orders for bank holding companies engaged in these activities.

To approve the notice, the Board must determine that the acquisition of the nonbanking subsidiaries and the performance of the proposed activities by Capital One "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."¹⁵ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of Capital One and its subsidiaries, the companies to be retained, and the effect of the proposed transaction on those resources. In evaluating the proposal to retain Capital One FSB, the Board also has reviewed the CRA performance record of the institutions involved.¹⁶ For the reasons noted above, and based on all the facts of record, the Board has concluded that financial, managerial, and CRA considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of Capital One's retention of its nonbanking subsidiaries. As noted above, this proposal involves a charter amendment and would not result in the expansion of Capital One's operations. Accordingly, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the retention of Capital One's nonbanking subsidiaries. Capital One has indicated that the proposal would provide its customers a wider variety of banking services over time.

Based on all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of section 4(j)(2)(A) of the BHC Act.

14. *See* 12 CFR 225.28(b)(1), (2), (4), (6), and (12).

15. *See* 12 U.S.C. § 1843(j)(2)(A).

16. *See, e.g., Banc One Corporation, Inc.*, 83 *Federal Reserve Bulletin* 602 (1997).

Capital One also engages in a limited number of activities that are impermissible, or that are only permissible for financial holding companies, such as certain insurance agency and venture capital investment activities. Section 4(a)(2) of the BHC Act requires each company that becomes a bank holding company to conform its nonbanking activities and investments to the requirements of the BHC Act within two years of the date it becomes a bank holding company.¹⁷ The Board's action on this proposal is subject to the condition that Capital One take all actions necessary to conform its activities and investments to the requirements of the BHC Act and the Board's regulations thereunder in a manner acceptable to the Board, including by divestiture if necessary, within two years of the date of consummation of the proposal or such extended time period that the Board, in its discretion, may grant.¹⁸

Membership Considerations

Under section 208.3(d)(2) of the Board's Regulation H,¹⁹ a member bank may not cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership without the permission of the Board. In light of the proposed charter amendment, and the evolving nature of its business plan, Capital One Bank, a state member bank, has requested permission under Regulation H for a change in the general character of the bank's business to operate as a full-service bank.

The Board has carefully reviewed the proposed business plan of Capital One Bank and the powers it proposes to exercise under state law as a full-service commercial bank. In light of all the facts of record, the Board has determined that this change in the general character of Capital One Bank's business is consistent with the terms of Federal Reserve System membership and that Capital One Bank may retain its System membership after amending its charter.

Foreign Activities

Capital One also has requested the Board's consent under section 4(c)(13) of the BHC Act and section 211.9 of Regulation K to retain its foreign operations.²⁰ Based on all the facts of record, the Board concludes that all the factors required to be considered under the BHC Act and Regulation K are consistent with approval of this request.

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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by Capital One with the conditions imposed in this order and the commitments made to the Board in connection with the proposal. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),²¹ and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. The commitments made to the Board are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The transaction to become a bank holding company may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 6, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

F.N.B. Corporation Hermitage, Pennsylvania

Order Approving the Acquisition of a Bank Holding Company

F.N.B. Corporation ("F.N.B."), 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 Act to acquire Slippery Rock Financial Corporation ("SRFC") and its subsidiary bank, The First National Bank of Slippery Rock ("Slippery Rock Bank"), both in Slippery Rock, Pennsylvania.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 43,848 (2004)). The time for filing comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

F.N.B., with total consolidated assets of \$4.8 billion, is the 13th largest depository organization in Pennsylvania,

17. 12 U.S.C. § 1843(a)(2).

18. Section 4(a)(2) authorizes the Board, on request, to grant up to three one-year extensions of this conformance period, if the Board finds that the extensions "would not be detrimental to the public interest."

19. 12 CFR 208.3(d)(2); see also SR Letter 02-9, March 20, 2002.

20. See 12 U.S.C. § 1843(c)(13); 12 CFR 211.9.

21. 12 CFR 225.7 and 225.25(c).

1. 12 U.S.C. § 1842.

controlling approximately \$3.1 billion in deposits.² F.N.B. operates principally through its wholly owned subsidiary, First National Bank of Pennsylvania, Greenville, Pennsylvania (“F.N.B. Bank”).³ F.N.B. Bank also has branches in Ohio.

SRFC, with total consolidated assets of approximately \$330 million, is the 94th largest depository organization in Pennsylvania, controlling \$274.1 million in deposits. SRFC has one subsidiary insured depository institution, Slippery Rock Bank, which has branches only in Pennsylvania.

On consummation of this proposal, F.N.B. would have total consolidated assets of approximately \$5.1 billion. F.N.B. would remain the 13th largest depository organization in Pennsylvania, controlling approximately \$3.3 billion in deposits, which represents 1.6 percent of the total amount of deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or that would further any attempt to monopolize the business of banking in any relevant banking market. It also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its effect in meeting the convenience and needs of the community to be served.⁴

F.N.B. and SRFC compete directly in the New Castle and Pittsburgh banking markets in Pennsylvania and the Sharon banking market in Pennsylvania and Ohio (“Sharon Market”).⁵ The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by F.N.B. and SRFC,⁶ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guide-

lines (“DOJ Guidelines”),⁷ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Pittsburgh and New Castle banking markets.⁸ After consummation, the Pittsburgh banking market would remain moderately concentrated, and the New Castle banking market would remain highly concentrated. In both banking markets the change in market shares would be small and numerous competitors would remain.

In the Sharon Market the change in the HHI would slightly exceed DOJ Guidelines on consummation. F.N.B. is the largest insured depository organization in the market, controlling deposits of approximately \$518 million, which represent 30.3 percent of market deposits. SRFC is the sixth largest depository organization with deposits of approximately \$58.9 million, which represent 3.4 percent of market deposits. On consummation of the merger, F.N.B. would control deposits of \$576.8 million, which represent approximately 33.7 percent of market deposits. The HHI would increase by 209 points to 2,233.

Several factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the market. The presence and competitive strength of other depository institutions are important factors in this market. Nine bank and thrift competitors would remain in the market after consummation. In addition, two large commercial banking organizations besides F.N.B. would each control a significant share of market deposits, with approximately 25 percent and 17 percent of market deposits, respectively. Both of these competitors also have a substantial branch network in the Sharon Market that is similar in size to F.N.B.’s network. Moreover, one new competitor entered the market *de novo* during the last four years.

The Board also has considered that the market has an active credit union that offers a wide range of consumer banking products. The Mercer County Community Federal Credit Union, Sharon, Pennsylvania (“Mercer Credit Union”), controls \$29.2 million in deposits in the Sharon Market. At least 90 percent of the residents in the market are eligible to become members of Mercer Credit Union. In addition, the credit union operates street-level branches with drive-up service lanes in the market.

The Department of Justice has reviewed the proposal and advised the Board that consummation of the proposal is not likely to have a significantly adverse competitive

2. Total asset data are as of June 30, 2004, and statewide deposit and ranking data are as of June 30, 2003. Data reflect subsequent merger activity through September 8, 2004.

3. F.N.B. also owns a minority interest in Sun Bancorp, Inc., which wholly owns Sun Bank, both in Lewisburg, Pennsylvania.

4. 12 U.S.C. § 1842(c)(1).

5. These banking markets are described in Appendix A.

6. Market share data are as of June 30, 2003, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Board* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

7. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1,000 and 1,800 and highly concentrated if the post-merger HHI is more than 1,800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1,800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

8. The effects of the proposal on the concentration of banking resources in these banking markets are described in Appendix B.

effect in the Sharon Market or in any other relevant banking market. Moreover, the other federal banking agencies have been afforded an opportunity to comment on the proposal and have not objected to the proposal.⁹

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

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information from the primary federal supervisors for the subsidiary banks of F.N.B. and SRFC, publicly reported and other financial information, and information provided by F.N.B. In addition, the Board has consulted with the OCC, the primary federal supervisor of F.N.B. Bank and Slippery Rock Bank on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. F.N.B. is well capitalized and would remain so on consummation of the proposal. Moreover, F.N.B. has indicated that the cash portion of the transaction would be funded with available liquid resources.

The Board also has considered the managerial resources of F.N.B. and SRFC and the bank to be acquired, and the effect of the proposal on these resources. The Board has reviewed assessments of their management and risk-management systems by the relevant bank supervisory agencies and the organizations' records of compliance with applicable banking laws. In addition, the Board has considered F.N.B.'s plans to integrate SRFC and its subsidiary on consummation of the proposal and the proposed management of the resulting organization.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of F.N.B., SRFC, and their subsidiary banks are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also 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").¹⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the application process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹¹

The Board has carefully considered the effects of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including the CRA performance records of the subsidiary banks of F.N.B. and SRFC and other information from the banks. At their most recent CRA performance evaluations by the OCC, F.N.B. Bank and Slippery Rock Bank each received a "satisfactory" rating.¹² The Board notes that the proposal would allow F.N.B. to provide a broader range of products and services to SRFC's customers.

Based on these and all the facts of record, the Board has concluded that considerations relating to the convenience and needs of the communities to be served, including the CRA performance records of the institutions involved, are consistent with approval.

Conclusion

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

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

By order of the Board of Governors, effective September 23, 2004.

9. On September 8, 2004, the Office of the Comptroller of the Currency ("OCC") approved the application to merge Slippery Rock Bank with and into F.N.B. Bank.

10. 12 U.S.C. § 2901 *et seq.*

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

12. The rating of F.N.B. Bank is as of August 13, 2001, and the rating of Slippery Rock Bank is as of May 10, 1999. In addition, Sun Bank received a "satisfactory" performance evaluation rating from the Federal Deposit Insurance Corporation, as of April 1, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

Banking Markets Where F.N.B. and SRFC Compete Directly

New Castle, Pennsylvania

Lawrence County, excluding the townships of Little Beaver, New Beaver, Perry, and Wayne; and Wilmington township in Mercer County.

Pittsburgh, Pennsylvania

Allegheny, Beaver, and Washington Counties; the townships of South Buffalo, Gilpin, Parks, and Kiskiminetas in Armstrong County; the townships of Muddy Creek, Lancaster, Jackson, Forward, Penn, Jefferson, Winfield, Cranberry, Adams, Middlesex, Clinton, and Buffalo in Butler County; the townships of Washington, Jefferson, Perry, Lower Tyrone, Upper Tyrone, Bullskin, and Salt Lick in Fayette County; the townships of Conernaugh, Burrell, and West Wheatfield in Indiana County; the townships of Little Beaver, New Beaver, Perry, and Wayne in Lawrence County; and Westmoreland County, excluding St. Clair township.

Sharon, Pennsylvania and Ohio

Mercer County, excluding Wilmington township, and Mercer township in Butler County, all in Pennsylvania; and the townships of Brookfield and Hartford in Trumbull County, Ohio.

Appendix B

Market Data

New Castle, Pennsylvania

F.N.B. operates the fourth largest depository institution in the New Castle banking market, controlling \$146.1 million in deposits, which represents 8.5 percent of market deposits. SRFC operates the sixth largest depository institution in the market, controlling \$41.4 million in deposits, which represents 2.4 percent of market deposits. On consummation of the proposal, F.N.B. would operate the third largest depository institution in the market, controlling deposits of \$187.5 million, which represent approximately 10.9 percent of market deposits. Seven bank and thrift competitors would remain in the market. The HHI would increase 118 points to 3,337.

Pittsburgh, Pennsylvania

F.N.B. operates the eighth largest depository institution in the Pittsburgh banking market, controlling \$689.3 million in deposits, which represents 1.4 percent of market deposits. SRFC operates the 39th largest depository institution in the market, controlling \$26.9 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, F.N.B. would remain the eighth largest depository institution in the market, controlling \$716.2 million in deposits, which represent 1.5 percent of market deposits. Fifty-three bank and thrift competitors would remain in the market. The HHI would remain at 1,584.

Haines Financial Corp Woodward, Oklahoma

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank

Haines Financial Corp (“Haines Financial”) has requested the Board’s approval under section 3(a)(1) of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842(a)(1)) to become a bank holding company and to acquire all the voting shares of The First National Bank of Medford, Medford, Oklahoma (“Medford Bank”).

Notice of the proposal, affording interested persons an opportunity to comment, has been published (69 *Federal Register* 18,908 (2004)). The time for filing comments has expired, and the Board has considered all the comments on the application in light of the factors enumerated in section 3 of the BHC Act.

Haines Financial is a newly organized corporation that does not control a depository institution, and it has been formed to acquire Medford Bank. Medford Bank is one of the smaller depository institutions in Oklahoma,¹ controlling approximately \$22.6 million in deposits, which represents less than 1 percent of total deposits in the state.² The Board has reviewed carefully all the facts of record and has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that the competitive factors under section 3 of the BHC Act are consistent with approval of the proposal.

Section 3 of the BHC Act also requires the Board to consider the effect of the transaction on the convenience and needs of the community to be served.³ In evaluating this factor, the Board places particular emphasis on the ratings that the relevant depository institutions received at their most recent examinations under the Community Rein-

1. In this context, the term “depository institution” includes commercial banks, savings banks, and savings associations.

2. Deposit and ranking data are as of March 31, 2004.

3. 12 U.S.C. § 1842(c)(2).

vestment Act (12 U.S.C. § 2901 *et seq.*) (“CRA”). Medford Bank received a “satisfactory” CRA rating from its primary federal supervisor, the Office of the Comptroller of the Currency (“OCC”), as of December 31, 2001.

Haines Financial has stated that it intends to retain the bank’s current retail banking activities in the Medford community. After reviewing all the information submitted by Haines Financial and Medford Bank related to the convenience and needs factor, and based on all the facts of record, the Board concludes that considerations relating to convenience and needs, including the CRA performance of the institution to be acquired, are consistent with approval.

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 as well as the principal shareholders.⁴ As part of this analysis, the Board has reviewed confidential examination information about Medford Bank and publicly reported financial and other information about the bank, Haines Financial, and the proposal. The Board has also consulted with the OCC, the primary federal supervisor for Medford Bank, and considered confidential supervisory and other information from the banking agency. In addition, the Board has reviewed Haines Financial’s operating plan for Medford Bank and the proposed management of Haines Financial and the bank.

The Board notes that Haines Financial intends to retain Medford Bank’s management and that the bank would have a five-member board of directors that would include two of the bank’s current senior officers. Three of the five members of the proposed board of directors, which would include one of the principal shareholders of Haines Financial, are experienced bankers. Experienced individuals would also be responsible for managing the bank on a daily basis after consummation. In addition, the Board has taken into account the financial resources of Haines Financial, including its capital levels and ability to serve as a source of strength to the bank, as well as the proposed business plan for Medford Bank.

After considering all the facts of record, including all commitments made to the Board in connection with this proposal, the Board concludes that the financial and managerial resources and future prospects of Haines Financial and Medford Bank are consistent with approval, as are the other supervisory factors the Board is required to consider under the BHC Act.

Based on the foregoing and after considering all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered the 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 Haines Financial and all affiliated entities with the commitments and representations made to the Board in connection with the application. 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 acquisition of Medford Bank may not be consummated before the fifteenth 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 Kansas City, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 1, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

LBT Bancshares, Inc.
Litchfield, Illinois

Order Approving the Acquisition of Shares of a Bank Holding Company

LBT Bancshares (“LBT”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire approximately 54 percent of the voting shares of Security Bancshares, Inc. (“Security”) and thereby acquire control of Security’s subsidiary bank, Security National Bank (“Security Bank”), both in Witt, Illinois.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 5,957 (2004)). The time for filing comments has expired, and the Board has considered the proposal and the comments received in light of the factors set forth in section 3 of the BHC Act.

LBT and Security are under the common control of the Fleming family.¹ LBT controls Bank & Trust Company, Litchfield, Illinois (“LBT Bank”). LBT, with total consolidated assets of approximately \$194.2 million, is the 198th largest depository organization in Illinois, controlling deposits of \$168.5 million, which represents less than 1 percent of total deposits in insured depository institutions in the state (“state deposits”).² Security, with total consolidated assets of approximately \$49.7 million, is the 504th largest depository institution organization in Illinois, controlling deposits of \$41.9 million, which represents less

1. Mr. David W. Fleming and his two sons, Daniel and William, control more than 47 percent of the voting shares of LBT and more than 28 percent of the voting shares of Security. Under the proposal, LBT would acquire all the shares of Security held by the Fleming family and shares of Security held by certain shareholders.

2. Asset data are as of December 31, 2003. Statewide deposit and ranking data are as of June 30, 2003, and are derived from the Summary of Deposits data collected annually by the Federal Deposit Insurance Corporation.

4. *Id.*

than 1 percent of state deposits. On consummation of the proposal, LBT would become the 155th largest depository organization in Illinois, with total consolidated assets of approximately \$243.6 million and total deposits of \$210.4 million, representing less than 1 percent of state deposits.

LBT's proposal to acquire Security and Security Bank is opposed by the management of Security, which submitted comments to the Board urging denial on several grounds. The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed by the management of the institutions to be acquired.³ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.⁴ The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board's discretion under the BHC Act.⁵

The Board also has carefully considered all other information available, including information accumulated in the applications process, supervisory information of the Board and other agencies, relevant examination reports, and information provided by the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Illinois Office of Banks and Real Estate ("Illinois OBRE").

Competitive Considerations

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

proposal in meeting the convenience and needs of the community to be served.⁶

LBT and Security compete in the Hillsboro, Illinois, banking market ("Hillsboro banking market"), which is defined as Montgomery County, Illinois.⁷ The proposed transaction involves the combination of two bank holding companies that are affiliated with each other. These two organizations are also affiliated with a third banking organization in the Hillsboro banking market through common share ownership by Fleming family members.⁸

LBT proposes to acquire all the shares of Security currently held by the Fleming family, along with shares of Security held by other shareholders, in a reorganization that does not change the longstanding affiliation of these banking organizations.⁹ Members of the Fleming family have owned a controlling interest in LBT and Security Bank since 1993 and have controlled Country since at least 1987.¹⁰ The combination of LBT, Security Bank, and Country into a single banking organization in 1993 would

6. 12 U.S.C. § 1842(c)(1).

7. Management of Security contended, without providing material information, that the relevant geographic market for reviewing this transaction is the eastern portion of Montgomery County in which Security Bank maintains its banking offices and portions of the adjacent Christian County. In reviewing this contention, the Board has considered the geographic proximity of Montgomery County's population centers, the county's road network and average daily traffic volumes on those roads, and the location of its cities. The Board also has considered worker commuting data from the 2000 census, which indicate that 69 percent of commuters living in Montgomery County work at another location in the county, while only 4 percent of Montgomery County commuters work in Christian County and only 2 percent of Christian County commuters work in Montgomery County. In addition, the Board has considered evidence gathered from interviews with bankers indicating that banks in Montgomery County advertise regularly in local newspapers that circulate throughout Montgomery County, but not in newspapers in other counties. Based on these facts and other information, the Board concludes that the facts of record do not support modifying the Hillsboro banking market and that the appropriate geographic market for considering the competitive effects of the proposal is Montgomery County.

8. David Fleming controls more than 53 percent of the voting shares of Country Bancorp, Inc. ("Country"), which controls National Bank, both in Hillsboro.

9. In reviewing past proposals involving common share ownership of banking organizations, the Board has considered the competitive effects of a proposal at the time that the banking organizations came under such ownership. See *F.S.B., Inc.*, 78 *Federal Reserve Bulletin* 550 (1992); *Mid-Nebraska Bancshares, Inc.*, 64 *Federal Reserve Bulletin* 589 (1978), *aff'd* *Mid-Nebraska Bancshares, Inc. v. Board of Governors of the Federal Reserve System*, 627 F.2d 266 (D.C. Cir. 1980); *Mahaska Investment Co.*, 63 *Federal Reserve Bulletin* 579 (1977). The Board has approved proposals involving commonly controlled banking organizations in the same banking market when no competitive issues were presented in that market at the time the banking organizations came under common control. See *Texas East Bancorp*, 69 *Federal Reserve Bulletin* 636 (1983); *First Monco Bancshares, Inc.*, 69 *Federal Reserve Bulletin* 293 (1983).

10. In 1993, David, Daniel, and William Fleming owned, respectively, 11.5 percent, 10.8 percent, and 10.8 percent of LBT and 9.8 percent, 9.0 percent, and 7.1 percent of Security Bank. They collectively have owned more than 25 percent of the shares of LBT and Security Bank since 1993 and, therefore, have controlled both institutions. When Country applied in 1987 to acquire Montgomery

3. See *Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 93 (2004) ("*Central Pacific*"); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) ("*North Fork*"); *The Bank of New York Company*, 74 *Federal Reserve Bulletin* 257, 259 (1988) ("*BONY*").

4. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. See 12 U.S.C. § 1842(c).

5. See *Central Pacific*; *FleetBoston Financial Corporation*, 86 *Federal Reserve Bulletin* 751, 752 (2000); *North Fork*; *BONY*.

have resulted in an increase of 509 points to 1761 in the Herfindahl–Hirschman Index (“HHI”) for the Hillsboro banking market. The Hillsboro banking market would have been moderately concentrated, and the affiliation at that time was consistent with Board precedent and Department of Justice Merger Guidelines (“DOJ Guidelines”).¹¹ LBT’s current proposal does not materially change this existing affiliation.

The Department of Justice also has conducted a detailed review of the probable competitive effects of the proposal and has advised the Board that consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. The OCC and the Illinois OBRE have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record and for the reasons discussed in this order, the Board concludes that consummation of the proposal would not be likely to result in a significantly adverse effect on competition or on the concentration of banking resources in the Hillsboro market or in any other relevant banking market. Accordingly, the Board has determined that competitive factors are consistent with approval.

Financial, Managerial, and Supervisory Factors

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.¹² LBT, LBT Bank, and Security Bank each are currently well capitalized and will remain well capitalized on consummation of the proposal.

The Board has carefully reviewed confidential and other information about the management and the principal own-

ers of LBT.¹³ The Board has also reviewed, among other things, the following information: confidential reports of examination, including assessments of the managerial resources of Security and the relevant depository institutions; other confidential supervisory information received from the primary federal supervisors of each institution; and public comments.¹⁴ In addition, the Board has considered LBT’s representation that it does not currently anticipate any changes in the management of Security after consummation of the proposal. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of LBT and the institutions involved in the proposal are consistent with approval, as are the other supervisory considerations 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 its effects 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”).¹⁵ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁶

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of LBT and Security

County National Bank, also in Hillsboro, and thereby enter the Hillsboro banking market, David Fleming owned 33.3 percent of Country and, therefore, controlled Country.

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

12. Management of Security asserted that the sellers of the Security shares to LBT would not receive appropriate levels of consideration for the shares and, therefore, that information provided by LBT about the impact of the transaction on the financial resources of the institutions involved may be inaccurate. The fairness of the sales price received by shareholders is not, by itself, within the statutory factors the Board may consider. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). The Board has reviewed confidential supervisory information and other information about the cost of the proposal, in addition to information provided by LBT, in considering the impact of the proposal on the financial resources and future prospects of LBT and the banks involved.

13. Security’s management contended that members of the Fleming family did not comply with the Change in Bank Control Act, 12 U.S.C. § 1817(j) (“CIBC Act”), in acquiring control of Security. The review and approval of Security’s application under section 3 of the BHC Act to become a bank holding company included consideration of the Fleming family members as the principal shareholders of Security. *Security Bancshares, Inc.*, 87 *Federal Reserve Bulletin* 279 (2001). No separate CIBC Act filing is required for a transaction that is subject to approval under section 3 of the BHC Act. See 12 U.S.C. § 1817(j)(17)(A).

14. Management also asserted that certain directors of Security have breached their fiduciary duties and have violated a resolution adopted by the board of directors that requires any Security director who becomes aware of the availability of the company’s shares for purchase to notify Security. The resolution also gives Security a right of first refusal before a director may purchase its shares. LBT has filed suit to have this resolution declared null and void. The Board notes that these contentions are matters of general corporate law under applicable state law, which are currently under review in the appropriate legal forum, and that such matters are not within the Board’s jurisdiction to adjudicate. Board action under the BHC Act would not interfere with the ability of the courts to resolve any litigation pertaining to these matters and does not authorize consummation of a proposal that a court determines to be a violation of applicable law. The Board has considered these allegations in the context of the other information about management, as noted above.

15. 12 U.S.C. §§ 1842(c)(2) and 2903(a)(2).

16. 12 U.S.C. § 2901 *et seq.*

in light of all the facts of record, including public comments on the proposal. In particular, several commenters expressed general concern that the resulting banking organization would not meet the credit needs of communities in Montgomery County. Among other things, these commenters asserted, without offering supporting evidence, that the resulting banking reorganization would lead to disadvantageous changes in loan terms, increased fees, and fewer services. LBT stated that it does not expect to discontinue any of Security Bank's products or services and that it expects to expand the bank's products and services after consummation of the proposal.

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.¹⁷ The subsidiary banks of LBT and Security each received "satisfactory" ratings at their most recent CRA performance evaluations. LBT's subsidiary bank, Bank and Trust Company ("Trust Company"), received a "satisfactory" rating by the FDIC, as of July 16, 2003 (the "2003 Evaluation"), and Security Bank received a "satisfactory" rating by the OCC, as of February 2, 1998. Examiners did not identify any substantive violations of fair lending laws during these evaluations.

In the 2003 Evaluation, examiners reported that Trust Company had demonstrated a satisfactory level of helping to meet the credit needs of its assessment areas¹⁸ under the performance criteria for a small bank.¹⁹ Examiners found that the bank had maintained a good record of lending since the previous CRA evaluation and had an average loan-to-deposit ratio of approximately 72 percent during the preceding 18 quarters. Examiners characterized as excellent the level of Trust Company's lending in its assessment areas, noting that 94 percent of its loans by number and 92 percent of its loans by dollar volume were made in the assessment areas.

Examiners concluded that Trust Company had a reasonable record of lending to borrowers of different income levels and to businesses of different sizes. In its Non-MSA Assessment Area, examiners considered Trust Company's level of LMI mortgage lending to be reasonable. Examiners characterized as excellent Trust Company's record of lending to small businesses in the Non-MSA Assessment

Area.²⁰ During the evaluation period in this area, 92 percent of Trust Company's business loans by number and 51 percent of its business loans by dollar volume were in amounts of less than \$100,000.

Examiners also found that the overall geographic distribution of Trust Company's loans throughout its assessment areas was reasonable. They noted that, during the first six months of 2003, Trust Company increased the percentage of all its mortgage loans in moderate-income census tracts in the Non-MSA Assessment Area to a level that exceeded the percentage of owner-occupied housing units in such census tracts. In addition, the percentage of Trust Company's loans to businesses in moderate-income census tracts in the Non-MSA Assessment Area exceeded the percentage of total businesses in such census tracts.

The Board has carefully considered all the facts of record, including reports of examination of CRA performance of the institutions involved, information provided by LBT, all comments received and responses to those comments, and confidential supervisory information. Based on a review of the entire record and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposed transaction should be, and hereby is, approved.²¹ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by LBT with the conditions imposed in this order and the commitments

20. In this context, "lending to small business" means loans made to businesses with gross annual revenues of \$1 million or less.

21. 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 timely written recommendation of denial of the application. The Board has not received such a recommendation from any appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully commenters' requests in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal, and in fact, commenters have submitted written comments that the Board has considered carefully in acting on the proposal. Commenters' requests fail to identify disputed issues of fact that are material to the Board's decisions that would be clarified by a public hearing or meeting. Moreover, commenters' requests fail to demonstrate why their 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.

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

18. Trust Company's assessment areas for the 2003 Evaluation included Sangamon County in the Springfield Metropolitan Statistical Area ("MSA") and a non-MSA assessment area that included Greene, Macoupin, and Montgomery Counties ("Non-MSA Assessment Area"), all in Illinois.

19. Under the FDIC's CRA regulations, the performance of a bank with less than \$250 million in total assets is evaluated based on the following criteria: the bank's loan-to-deposit ratio; the bank's percentage of loans in its assessment areas; its lending to borrowers of different incomes, and to businesses and farms of different sizes; the geographic distribution of its loans by census tract or block numbering area; and the bank's response to any written complaints about its CRA performance. 12 CFR 345.26.

made to the Board in connection with the application. 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 decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of Security Bank shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 19, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

The Royal Bank of Scotland Group plc
Edinburgh, Scotland

The Royal Bank of Scotland plc
Edinburgh, Scotland

RBSG International Holdings Ltd.
Edinburgh, Scotland

Citizens Financial Group, Inc.
Providence, Rhode Island

Order Approving the Acquisition of a Bank Holding Company

The Royal Bank of Scotland Group plc (“RBS Group”), The Royal Bank of Scotland plc (“RBS”), RBSG International Holdings Ltd. (“RBSG”), and Citizens Financial Group, Inc. (“Citizens Financial”) (collectively, “Applicants”) have requested the Board’s approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) (“BHC Act”) to merge with Charter One Financial, Inc. (“Charter One”) and to acquire its subsidiary bank, Charter One Bank, National Association (“Charter One Bank”), both in Cleveland, Ohio.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 29,538 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

RBS Group, with total consolidated assets of approximately \$812.3 billion, is the fifth largest banking organiza-

tion in the world.² Citizens Financial, with total consolidated assets of approximately \$80 billion, is the 20th largest depository organization in the United States, controlling approximately \$61.5 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States.³ Citizens Financial operates subsidiary depository institutions in Connecticut, Delaware, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont and engages in nonbanking activities that are permissible under the BHC Act.

Charter One, with total consolidated assets of approximately \$41 billion, is the 30th largest depository organization in the United States. Charter One’s subsidiary depository institution controls deposits of \$27 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States, and engages in a broad range of permissible nonbanking activities nationwide.

On consummation of the proposal, Citizens Financial would become the 13th largest depository organization in the United States, with total consolidated assets of approximately \$121 billion and total deposits of \$88.5 billion, which represent approximately 1.4 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 home state of such bank holding company if certain conditions are met.⁴ For purposes of the BHC Act, the home state of Citizens Financial is Rhode Island, and Charter One’s subsidiary bank is located in Connecticut, Illinois, Indiana, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, and Vermont.⁵

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case. Citizens Financial currently is adequately capitalized and adequately managed, as defined by applicable law,⁶ and would remain so on consummation of the proposal. Charter One Bank has existed and operated for at least the mini-

2. Worldwide and national asset data are as of March 31, 2004, and ranking data are as of December 31, 2003.

3. Deposit data are as of June 30, 2003, and reflect the unadjusted total of the deposits reported by each organization’s insured depository institutions in their Consolidated Reports of Condition and Income for June 30, 2003. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. 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 the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C).

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

6. See 12 U.S.C. § 1842(d)(1)(A).

1. Citizens Financial, a financial holding company, proposes to acquire Charter One’s nonbanking subsidiaries pursuant to section 4(k) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y. 12 U.S.C. § 1843(k); 12 CFR 225.87.

num age requirements established by applicable state law.⁷ On consummation of the proposal, Citizens Financial and its affiliates 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, or the appropriate percentage established by applicable state law, of the total amount of deposits of insured depository institutions in each state in which both institutions currently are located.⁸ All other requirements of section 3(d) would be met in this case. Accordingly, based on 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 that would further any attempt to monopolize the business of banking in any relevant banking market. It also prohibits the Board from approving a proposal 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.⁹

Citizens Financial and Charter One compete directly in nine local banking markets in Connecticut, Massachusetts, New Hampshire, New York, Pennsylvania, and Vermont, including six markets where Charter One opened a branch on or after June 30, 2003.¹⁰ The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative share of total deposits in depository institutions controlled by Citizens Financial and Charter One in the markets (“market deposits”), the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”), and other characteristics of the markets.

Consummation of the proposed acquisition of Charter One would be consistent with Board precedent and the DOJ Guidelines in all nine banking markets.¹¹ As noted,

7. See 12 U.S.C. § 1842(d)(1)(B).

8. See 12 U.S.C. § 1842(d)(2)(A) and (B).

9. 12 U.S.C. § 1842(c)(1).

10. These banking markets are described in Appendix A. Deposit and market share data are based on Summary of Deposits reports filed as of June 30, 2003, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has indicated previously that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

11. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between

Charter One has opened branches in the following banking markets after June 30, 2003, and controls less than ½ of 1 percent of market deposits in each market: Boston, Pittsfield, and Worcester, all in Massachusetts; Metropolitan New York Area; Erie, Pennsylvania; and Hartford, Connecticut. Accordingly, the impact on competition in these markets would be *de minimis*. Consummation of the proposal also would be consistent with Board precedent and the DOJ Guidelines in the remaining banking markets where both institutions compete: Springfield, Massachusetts; Hanover–Lebanon, New Hampshire; and Brattleboro, Vermont. Moreover, numerous competitors would remain in all the banking markets.

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

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in the nine banking markets discussed above or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that the competitive effects 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 carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information received from the primary federal banking agency that supervises each institution, information provided by Citizens Financial, publicly reported and other financial information, and comments received on the proposal.¹² In addition, the Board has

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

12. Various commenters expressed concerns about the following matters: (1) press reports stating that RBS Group is a defendant in litigation involving the former government’s apartheid policies in South Africa, and (2) allegations that individuals at Charter One and RBS Group engaged in illegal options trading close to the proposal’s announcement. The first matter is not within the Board’s jurisdiction to adjudicate and is not related to the limited statutory factors the Board may consider when reviewing an application under the BHC Act. See, e.g., *Deutsche Bank AG*, 85 *Federal Reserve Bulletin* 509 (1999); see also *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) (“*Western Bancshares*”). The Securities and

consulted with the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”), the primary federal supervisors of Citizens Financial’s subsidiary banks and Charter One Bank, respectively, and relevant supervisory authorities in the United Kingdom.¹³

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. Citizens Financial, Charter One, and their subsidiary depository institutions are well capitalized and will remain so on consummation of the proposal. In addition, the capital ratios of RBS would continue to exceed the minimum levels that would be required under the Basel Capital Accord, and RBS Group’s capital levels are considered equivalent to those that would be required of a U.S. banking organization. The Board finds that the organization has sufficient financial resources to effect the proposal.

The Board has considered the managerial resources of RBS and Charter One, particularly the supervisory experience and assessments of management by the various bank supervisory agencies and the organizations’ records of compliance with applicable banking laws.¹⁴ The Board also has carefully reviewed the examination records of Citizens Financial, Charter One, and their subsidiary depository institutions, including assessments of their risk-management systems.¹⁵ In addition, the Board has consid-

ered Citizens Financial’s plans for integrating the proposed acquisition, including its available managerial resources and proposed management after consummation, and the company’s record of successfully integrating recently acquired institutions into its existing operations. Based on these and all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under the BHC Act.¹⁶

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive consolidated supervision or regulation on a consolidated basis by the appropriate authorities in the bank’s home country.¹⁷ The home country supervisor of RBS Group is the Financial Services Authority (“FSA”), which is responsible for the supervision and regulation of United Kingdom financial institutions.

In approving applications under the BHC Act and the International Banking Act (“IBA”),¹⁸ the Board previously has determined that various banks in the United Kingdom, including RBS, were subject to home country supervision on a consolidated basis by the FSA. In this case, the Board finds that the FSA continues to supervise RBS in substantially the same manner as it supervised United Kingdom banks at the time of those determinations.¹⁹ Based on this finding and all the facts of record, the Board concludes that RBS continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that a foreign bank has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.²⁰ The Board has reviewed the restrictions on disclosure in relevant

Exchange Commission (“SEC”), rather than the Board, has jurisdiction to investigate the second allegation and to adjudicate if any violations of federal securities laws have occurred. The Board has consulted with the SEC regarding this allegation.

13. One commenter, citing a press report, alleged that RBS Group violated U.S. trade sanctions through its activities in Iraq and elsewhere. The Board has considered these allegations in light of confidential supervisory information and consultations with the FDIC and other appropriate supervisory authorities, including confidential compliance examinations of the Citizens Financial subsidiary banks that included a review of each institution’s compliance with the applicable regulations of the Office of Foreign Assets Control.

14. A commenter opposing the proposal cited a press report of RBSG’s connection to investigations, lawsuits, and settlements relating to a foreign subsidiary of RBSG and Enron Corporation and asserted that these issues reflected unfavorably on the managerial resources of RBSG. The Board has considered this comment in light of the measures that RBSG has taken and is continuing to take to address these matters and to strengthen the company’s risk-management practices; the information available to RBSG’s management at the time; the experience, policies, and procedures of its management; and confidential supervisory information.

15. One commenter expressed concern about RBS Group’s financing of various activities and projects worldwide that allegedly damage the environment or cause other social harm. This concern was previously addressed by the Board in connection with its approvals of Applicants’ other recent proposals. The Board noted in those approvals, and affirms in this case, that the comment contains no allegations of illegality or of actions that would affect the safety and soundness of the institutions involved and is outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See *The Royal Bank of Scotland Group plc*, 90 *Federal Reserve Bulletin* 87, 88 n.16 (2004) (“Thistle Order”); *The Royal Bank of Scotland Group plc*, 89 *Federal Reserve Bulletin* 386, 389 n.26 (2003) (“Port Financial Order”); *The Royal Bank of Scotland Group plc*, 88 *Federal Reserve Bulletin* 51, 57 n.32 (2002) (“Mellon Order”). See also *Western Bancshares*.

16. A commenter also criticized RBS’s subsidiary, Greenwich Capital Markets, Greenwich, Connecticut (“Greenwich Capital”), for lobbying against state and local efforts to enact and enforce antipredatory-lending laws and ordinances. The Board notes that the commenter failed to allege or provide any evidence that RBS or Greenwich Capital engaged in any illegal predatory lending activities; engaged in any illegal activity or other action that has affected, or might reasonably be expected to affect, the safety and soundness of the institutions involved in this proposal; or engaged in any illegal activity or other action related to the other factors that the Board is authorized to consider under the BHC Act.

17. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank that has applied under section 3 of the BHC Act is subject to consolidated home country supervision. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank’s overall financial condition and its compliance with law and regulation. See 12 CFR 211.24(c)(1).

18. 12 U.S.C. § 3101 *et seq.*

19. See *HBOS Treasury Services plc*, 90 *Federal Reserve Bulletin* 103 (2004); see also *Port Financial Order*.

20. See 12 U.S.C. § 1842(c)(3)(A).

jurisdictions in which RBS Group operates and has communicated with relevant government authorities concerning access to information. In addition, RBS Group and its affiliates previously have committed to make available to the Board such information on the operations of RBS Group and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. RBS Group and RBS also previously have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable RBS Group and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that RBS Group and RBS have provided adequate assurances of access to any appropriate information that the Board may request. Based on these and all the facts of record, the Board concludes that the supervisory factors it is required to consider are consistent with approval.²¹

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 institution under the Community Reinvestment Act (“CRA”).²² The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²³

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of Citizens Financial and Charter One

in light of all the facts of record, including comments received on the proposal.²⁴ Ten commenters opposed the proposal and collectively asserted that Citizens Financial and Charter One needed to provide more prime-rate home mortgage loans to LMI and minority individuals, more small business loans to businesses owned by minority individuals or women, and more community development investments in LMI and minority communities.²⁵ Commenters also asserted that the data reported under the Home Mortgage Disclosure Act (“HMDA”)²⁶ indicated that Citizens Financial and Charter One engaged in disparate treatment of African-American, Hispanic, and LMI individuals in their home mortgage lending operations. In addition, several commenters expressed concern about possible branch closings.²⁷

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.²⁸ The Board recently reviewed the CRA performance records of the insured depository institutions con-

21. Two commenters cited press reports alleging that RBS Group does not maintain adequate antimoney-laundering controls or that foreign regulators have fined RBS Group for noncompliance with money-laundering regulations. The commenter also cited press reports that RBS Group allegedly has furnished financial services to terrorist organizations. These allegations were previously considered by the Board and, as explained in the Port Financial Order, the Board concluded that the financial, managerial, and other supervisory factors were consistent with approval. See Port Financial Order, *supra* at 390 n.27. The commenters provided no new material information that was not already part of the record considered by the Board in that order.

22. 12 U.S.C. § 2901 *et seq.*

23. A commenter expressed concern that the proposal may result in loss of jobs. The effect of a proposed transaction on employment in a community is not among the factors that the Board is authorized to consider under the BHC Act, and the federal banking agencies, courts, and the Congress consistently have interpreted the convenience and needs factor to relate to the effect of a proposal on the availability and quality of banking services in the community. See, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

24. Several commenters urged the Board to encourage or require Citizens Financial to make CRA-related commitments to certain community development organizations and to establish an advisory board to promote community development. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., *J. P. Morgan Chase and Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002). Several commenters also suggested that Citizens Financial should make more charitable contributions or commit a specific percentage of profits to philanthropic contributions. The Board notes that neither the CRA nor the agencies’ implementing rules require that financial institutions engage in any type of philanthropy.

25. Commenters also expressed concern about press reports of alleged discrimination by RBSG’s management against minority employees and Citizens Financial’s record of hiring minorities and awarding supplier contracts to minority- and women-owned businesses. The Board previously has stated that its limited jurisdiction to review applications under the BHC Act does not authorize the Board to adjudicate disputes involving an applicant that arise under statutes administered and enforced by another agency in areas such as employment discrimination. See, e.g., *Norwest Corporation*, 82 *Federal Reserve Bulletin* 580 (1996); see also *Western Bancshares*.

26. 12 U.S.C. § 2801 *et seq.*

27. Two commenters noted consumer complaints involving transactions at some of Citizens Financial’s subsidiary banks or involving transactions outside the United States at RBSG’s foreign subsidiary bank. These comments concern individual accounts and particular transactions, and the comments involving the Citizens Banks have been forwarded to the FDIC, the primary federal supervisor of the banks.

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

trolled by Citizens Financial (the "Citizens Banks") and found those records to be consistent with approval of a bank expansion proposal. Citizens CT, Citizens MA, Citizens NH, and Citizens RI (collectively "Citizens New England Banks") were all rated "outstanding" at their most recent CRA performance evaluations by the FDIC, as of December 2, 2002. In addition, Citizens Bank of Delaware ("Citizens DE") and Citizens Bank of Pennsylvania ("Citizens PA") received "outstanding" ratings in their most recent CRA performance evaluations by the FDIC, as of November 12, 2003.²⁹ Charter One Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of May 14, 2001.³⁰

Citizens Financial has stated that on consummation of the proposal, it would implement the Citizens Banks' CRA-related programs, policies, and procedures at Charter One Bank. In addition, Citizens Financial would augment Charter One Bank's existing products and services, including those products and services designed to serve the needs of LMI individuals and LMI communities. In addition, Citizens Financial anticipates integrating Charter One's community development lending and investment activities with those of the Citizens Financial Community Development Corporation.

B. CRA Performance of the Citizens Banks

Citizens New England Banks. As noted, the Citizens New England Banks each received an overall "outstanding" rating in its most recent CRA performance evaluations.³¹ Under the lending test, each bank was rated "outstanding," except Citizens CT, which received a "high satisfactory" rating. Examiners commended the Citizens New England Banks for good dispersion of loans among customers of different income levels and businesses of different sizes based on annual revenues.

In addition, examiners commended the Citizens New England Banks for offering a variety of innovative and flexible lending programs to help make their prod-

ucts available to LMI residents in their assessment areas.³² Since their last CRA evaluations, the Citizens New England Banks have continued their substantial levels of lending to LMI and minority individuals. In 2003, the banks made more than 1,360 affordable mortgage loans totaling approximately \$127 million.

Examiners also commended the Citizens New England Banks for their small business lending activities. Citizens MA was praised for its excellent responsiveness to the credit needs of small businesses in all portions of its assessment area, especially those in LMI census tracts. Examiners particularly commended Citizens MA for increasing the number of lending personnel to expand the bank's small business loan portfolio, which enabled the bank to become the leading lender for loans approved by the Small Business Administration ("SBA") in Massachusetts in 2001 and 2002. Examiners noted that Citizens CT was the second largest SBA lender in Connecticut during the evaluation period, even though the bank did not operate in Hartford or Bridgeport, which are two of the larger cities in Connecticut. Examiners also praised Citizens RI for making a greater proportion of its small business loans in LMI areas than other lenders made in its assessment area. In addition, examiners commended Citizens NH for its streamlined application process, which helped increase the bank's small business loan originations in its assessment area. Citizens NH has authorized its small business loan officers to make lending decisions for loans of up to \$250,000 at the branch level and to notify potential borrowers within 24 hours.

Citizens Financial reported that the Citizens New England Banks have continued their significant small business lending since 2002, including in LMI census tracts. In 2003, the Citizens New England Banks made approximately 2,460 loans to small businesses³³ in LMI census tracts that totaled more than \$213 million.

Examiners also commended the community development lending activity of the Citizens New England Banks. Examiners characterized Citizens MA's level of community development lending as very significant. Among the more than \$81 million in qualified community development loans the bank extended during the assessment period, examiners specifically noted Citizens MA's \$6 million loan to a nonprofit agency that constructed 22 duplexes to provide affordable housing for seniors in Sudbury, Massachusetts. Examiners also favorably noted Citizens CT's high level of community development lending and highlighted the bank's \$1.25 million loan to a

29. The CRA performance ratings of the Citizens Banks are provided in Appendix C. Boston Trust & Management Investment Company, a subsidiary of Citizens Financial, is a limited-purpose trust company and, therefore, not subject to the CRA.

30. Charter One Bank converted to a national charter in 2002. The OCC has been monitoring the bank's CRA performance in the course of its ongoing supervisory process since its conversion. The Board has consulted with the OCC on its most recent evaluations of Charter One Bank. The OCC plans to conduct its first CRA examination of the bank in mid-2005.

31. The evaluation period for the Citizens New England Banks was October 12, 1999, through December 2, 2002, although the evaluation considered the HMDA-reportable loans of the Citizens New England Banks and Citizens Mortgage Corporation ("CMC"), a subsidiary of Citizens RI, and the small business loans of the Citizens New England Banks, from January 2000 through September 2002. "HMDA-reportable loans" include home purchase, home refinance, home improvement, and multifamily loan categories.

32. One commenter called on Citizens to offer LMI individuals "Individual Development Accounts," which provide a means to educate accountholders in financial matters while matching their investments with grants. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to provide any specific types of banking products.

33. In this context, "loans to small businesses" includes loans with originated amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans.

nonprofit corporation to provide housing services to LMI individuals.

Citizens Financial reported that the Citizens New England Banks have continued their substantial level of community development lending since 2002. In 2003, the banks made community development loans totaling almost \$152 million to various organizations that support affordable housing development, economic development, and job creation.

The Citizens New England Banks each received an “outstanding” rating on the investment test in its most recent CRA performance evaluations. Examiners found that each bank demonstrated an excellent level of qualified community development investments, which reflected outstanding responsiveness to the credit and community development needs of its assessment area. Citizens MA made more than \$85 million in qualified community development investments, which included a \$1.7 million investment in 36 affordable housing units in Sandwich, Massachusetts. Examiners commended Citizens CT for its grant program offering down-payment and closing-cost assistance to LMI individuals. Examiners particularly noted that Citizens RI invested \$1.5 million in the Rhode Island Housing Equity Pool, which funds nonprofit organizations that provide LMI housing, and a \$4 million investment by Citizens NH in affordable housing projects created through low-income-housing tax credits.

The Citizens New England Banks have continued a high level of community development investments since their last CRA performance evaluations. In 2003, the Citizens New England Banks made approximately 116 community development investments totaling more than \$19 million. These investments were provided to numerous organizations in each bank’s assessment area that supported objectives such as neighborhood revitalization, financial education, and technical assistance and training to small businesses.

In addition, the Citizens New England Banks each received “outstanding” ratings under the service test at its most recent CRA performance evaluations. Examiners reported that Citizens MA provided a high level of retail and community development services, made its services available to geographies and individuals of all income levels, and tailored its services to the convenience and needs of its assessment area. Examiners similarly commended Citizens CT, noting that the bank’s website provided customers with access to the loan application process and discussions with financial advisors, banking experts, and community representatives. Citizens RI received very favorable comments from examiners for having the most extensive branch network in Rhode Island, bilingual branch personnel, and extended hours to improve customer access to its services. Examiners also reported that Citizens NH provided an excellent level of community development services during the evaluation period and highlighted the bank’s use of focus groups to obtain community feedback on its planned products and programs.

Citizens DE. As noted above, Citizens DE received an overall “outstanding” rating for CRA performance at its

most recent CRA performance evaluation. The bank also received an “outstanding” rating under each of the lending, investment, and service tests.

Examiners found that Citizens DE exhibited an excellent level of responsiveness to the credit and community development needs of its assessment areas.³⁴ During the evaluation period, Citizens DE originated or purchased more than 3,100 HMDA-reportable home mortgage loans totaling approximately \$437 million in its assessment areas. Examiners reported that the geographic distribution of HMDA-reportable home mortgage and small business loans reflected good penetration throughout the bank’s assessment areas, including LMI census tracts. Examiners also noted that the bank exhibited excellent distribution of HMDA-reportable home mortgage and small business loans to borrowers of different income levels and businesses of different sizes by annual revenue.

In addition, examiners commended Citizens DE for developing a mortgage loan program with flexible underwriting standards, including several products for first-time homebuyers that assisted in meeting the credit needs of its assessment areas. For example, the examiners cited the Citizens Neighborhood Plus program that offers a 30-year fixed rate for LMI borrowers or properties in LMI census tracts. The program is tailored to meet the needs of LMI applicants and offers an interest rate discount of 1 percent for low-income borrowers and properties in low-income census tracts, with grants of up to \$2,000 for qualified borrowers.

During the evaluation period, Citizens DE originated more than 600 small business loans that totaled approximately \$88 million. Examiners commended the bank’s small business lending activity and reported that the bank’s distribution of loans among businesses of different sizes by annual revenue in its assessment areas was good. In addition, examiners noted that Citizens DE was an active participant in the SBA’s loan programs.

Examiners reported that Citizens DE achieved an outstanding level of community development lending and exercised leadership in addressing community development credit needs in its assessment areas. During the evaluation period, Citizens DE originated or purchased six community development loans that totaled \$8.9 million. These loans included a \$2.5 million loan to a statewide, nonprofit multibank community development corporation that finances and invests in housing and related activities to assist LMI persons and areas throughout Delaware.

During the evaluation period, the bank made investments and grants totaling \$6.8 million that funded affordable housing, social services, and small business initiatives

34. The assessment areas of Citizens DE encompassed Wilmington, Dover, and the nonmetropolitan portion of Delaware. Examiners noted, however, that no LMI geographies were in the Dover Metropolitan Statistical Area (“MSA”) or the non-MSA portion of Delaware. The evaluation period was December 1, 2001, through November 12, 2003, although the evaluation considered the HMDA-reportable loans of Citizens DE and CMC and the small business loans of Citizens DE from January 2002 through September 2003.

in its assessment areas. Examiners reported that Citizens DE's amount of investments and the range of initiatives supported through its charitable contributions demonstrated the bank's outstanding level of commitment to community development activities.

Citizens DE received an "outstanding" rating under the service test. Examiners reported that the bank's retail delivery systems were reasonably accessible to all parts of its assessment areas, including LMI households. In addition, examiners characterized Citizens DE as a leader in providing community development services in its assessment areas. Examiners favorably noted that Citizens DE employed a full-time CRA Officer to manage the bank's community development efforts.

Citizens PA. As previously noted, Citizens PA received an overall "outstanding" rating for performance under the CRA. The bank also received an "outstanding" rating under each of the lending, investment, and service tests.

Examiners found that Citizens PA exhibited an excellent level of responsiveness to the credit and community development needs of its assessment areas. They noted that the bank's distribution of HMDA-reportable mortgage and small business loans among geographies of different income levels was well dispersed and that the bank also provided excellent loan distribution to LMI borrowers and small businesses. During the evaluation period, Citizens PA originated or purchased more than 33,000 HMDA-reportable home mortgage loans totaling almost \$4.3 billion in its assessment areas.³⁵

In addition, examiners commended Citizens PA for its extensive use of innovative and flexible lending practices that addressed the credit needs of LMI individuals and geographies, as well as those of small businesses. In addition to the Citizens Neighborhood Plus lending products, Citizens PA offered several programs sponsored by the Federal Housing Administration and the Federal National Mortgage Association for the purchase of owner-occupied primary residences. Examiners noted that these programs served LMI individuals by offering loans requiring little or no down payment and featuring flexible underwriting terms and a temporary reduction in principal and interest payments.

During the evaluation period, Citizens PA originated more than 9,000 small business loans that totaled almost \$1 billion in its assessment areas. Examiners noted that the distribution of small business loans among businesses of different sizes by annual revenue was strong in all the bank's assessment areas. They also noted that Citizens PA was the leading SBA lender in Pennsylvania and that its small business lending volume exceeded that of other lenders in the Philadelphia PMSA.

35. The assessment areas selected for a full-scope review of Citizens PA included the Philadelphia Primary Metropolitan Statistical Area ("PMSA") and the Pittsburgh MSA. These areas accounted for a majority of the assessment areas' population, LMI census tracts, and LMI households, as well as a majority of the bank's branches, loans, and deposits. The evaluation period was December 1, 2001, through November 12, 2003, although the review considered the HMDA-reportable loans of Citizens PA and CMC, and the small business loans of Citizens PA, from January 2002 through September 2003.

Examiners reported that Citizens PA was a leader in community development lending and extended a significant level of community development loans in its assessment areas. During the evaluation period, Citizens PA originated 48 community development loans totaling \$62 million. These loans included a \$7.7 million loan used to refinance mortgages for 262 units of affordable rental housing in several buildings in the University City area of West Philadelphia.

Examiners noted that the bank had an excellent level of qualified investments in community development that were responsive to the needs of its assessment areas, including significant investments in affordable housing, community development initiatives, and financial education initiatives. During the evaluation period, the bank made investments that totaled \$90.4 million in its assessment areas.

Examiners commended Citizens PA's performance for providing an excellent level of retail and community development services throughout its assessment areas. They reported that the bank's retail delivery systems were readily accessible to all portions of its assessment areas, including LMI households, and particularly noted the bank's bilingual ATM network. Examiners also characterized Citizens PA as a leader in providing community development services and commended the bank's CRA staff for being actively involved and the high levels of employee representation for the extent to which they served on the boards of local community development organizations.

C. CRA Performance of Charter One Bank

As noted above, Charter One Bank received an overall "satisfactory" rating for performance under the CRA from the OTS, as of May 2001.³⁶ The institution received an overall "low satisfactory" rating under the lending test. During the evaluation period, Charter One Bank purchased or originated more than 33,000 HMDA-reportable loans that totaled more than \$11 billion.³⁷ Examiners characterized Charter One Bank's overall lending to borrowers of all income levels as adequate. Although examiners noted Charter One Bank's "poor" geographic distribution of loans, they found that it had an overall good level of small business lending and an overall high level of community development lending.

During the evaluation period, Charter One Bank purchased or originated more than 1,900 small business loans that totaled approximately \$311 million. These small business loans totaled approximately \$126 million in New

36. The evaluation period was April 1, 1998, through March 31, 2001, for the bank's assessment areas in Ohio, Michigan, and New York (Rochester and Buffalo). For the remaining assessment areas, the evaluation period was January 1, 1999, to March 31, 2001. Examiners noted that the institution's overall rating was derived from Charter One Bank's performance in its Ohio, Michigan, and New York assessment areas, which constituted the substantial majority of its resources and operations during this period.

37. Charter One elected not to include loans by its subsidiaries, Charter One Mortgage Corporation or Charter One Credit Corporation, in these HMDA-reportable loans.

York and approximately \$72 million in Ohio.³⁸ Examiners particularly commended Charter One Bank's support for small business lending in Albany, citing its lines of credit totaling \$16 million to a financial intermediary that provides financing to small businesses and is a major source of loans to businesses owned by women and minorities.

Examiners also commended Charter One Bank for its overall high level of community development lending and its particularly strong performance in Ohio and New York. They noted that Charter One Bank's community development lending focused on assisting the development of affordable housing and the promotion of economic development to revitalize LMI areas in its assessment areas. During the evaluation period, Charter One Bank originated more than 90 community development loans that totaled more than \$170 million, including loans totaling \$93 million in Ohio and more than \$63 million in New York. Examiners noted favorably that Charter One Bank provided \$10.8 million in loans to finance housing projects benefiting low-income and disabled individuals in Rochester and loans totaling \$4.4 million to finance the revitalization of a low-income area of Buffalo.³⁹ In Detroit, the institution made a \$2.9 million loan to finance the construction of 50 single-family-housing rental units, which were made available to families whose incomes were at or below 60 percent of the area median family income in Detroit.

Charter One represented that since converting to a national bank charter in 2002, it has taken steps to improve its lending to LMI and minority borrowers and in LMI and predominantly minority communities. Among other changes, Charter One Bank stated that it substantially increased the number of community loan officers working in its major lending markets. In addition, the bank introduced special financial incentives to branch personnel who refer home purchase or refinance mortgage loans in LMI areas to its mortgage operations and to community loan officers for loans they originate with low-income borrowers or in low-income census tracts. Charter One Bank also enhanced its efforts to lend more to minorities through increased print and radio advertising that focuses on minority communities.

Charter One stated that since the bank's most recent examination, the bank has increased lending to LMI borrowers and in LMI and minority census tracts⁴⁰ in its major assessment areas. In 2002, Charter One Bank originated more than 15,000 HMDA-reportable loans totaling approximately \$1.5 billion to LMI borrowers and borrowers in LMI and minority census tracts in its major assessment areas. In 2003, those loans increased to more than

26,400 HMDA-reportable loans that totaled approximately \$2.4 billion.

Charter One Bank received a "high satisfactory" rating under the investment test. During the evaluation period, Charter One Bank made more than 50 community development investments that totaled more than \$11.2 million in its assessment areas. In Ohio, examiners also reported that the institution made more than 25 community development investments totaling \$1.7 million, which were primarily investments that qualified for low-income-housing tax credits. In New York, Charter One Bank made at least seven community development investments that totaled more than \$5 million.

Charter One stated that the bank has made numerous investments in a variety of organizations and programs in the bank's assessment areas since its most recent examination. In 2002, Charter One Bank provided more than \$55 million in investments to organizations involved in creating jobs, affordable housing, and economic development projects. In 2003, the bank provided approximately \$7.3 million in investments, grants, and donations in its assessment areas.

Charter One Bank received an overall "high satisfactory" rating under the service test, which included a review of its branch distribution and product offerings.⁴¹ Examiners reported that Charter One Bank's branches and delivery systems provided access to financial products and services for consumers of different income levels. They noted that the institution offered specific products designed for LMI individuals and communities, including its Totally Free Checking Account that featured a \$50 minimum balance and no check-writing charges. In addition, they reported that Charter One Bank employed bilingual staff at selected locations in Cleveland, New York, and Michigan and operated a customer call center that could translate calls into more than 140 languages. Examiners also favorably noted that Charter One Bank participated in the "Cleveland Saves" program, which enables participants to open money market savings accounts with an opening balance of only \$10. In several of its Ohio assessment areas, examiners reported that the institution also provided a free check-cashing service for noncustomers at some branches in LMI areas.

In several MSAs, Charter One also provided community development services through its participation in the Federal Home Loan Bank ("FHLB") Affordable Housing Programs. Examiners commended Charter One Bank for taking a leadership role in providing community development services, noting specifically the involvement of its employees with organizations that promoted or provided affordable housing for LMI individuals and the technical assistance it provided to community development organizations applying to the FHLB Affordable Housing Programs.

38. Two commenters criticized Charter One for failing to provide adequate support to micro-credit organizations and small businesses.

39. Some commenters asserted that Charter One neglected the community reinvestment and credit needs of New York after its recent acquisitions and mergers. The Board has reviewed Charter One Bank's lending data since its most recent acquisitions in light of these comments.

40. In this context, "minority census tracts" means census tracts with a minority population of 50 percent or more.

41. One commenter asserted that Charter One does not adequately serve LMI individuals due to an insufficient number of branches and inadequate marketing and product offerings.

D. HMDA, Subprime, and Fair Lending Records

The Board has carefully considered the lending records of Citizens Financial and Charter One in light of comments received on the HMDA data for 2001 and 2002 reported by the banks and their subsidiaries.⁴² Several commenters alleged that the denial disparity ratios⁴³ for some Citizen Banks and Charter One Bank in certain MSAs indicated that they disproportionately denied or excluded African-American and Hispanic applicants for home mortgage loans.⁴⁴ The Board considered substantially similar comments about the HMDA-reportable lending of the Citizens Banks to African Americans and Hispanics in Delaware, Pennsylvania, Massachusetts, and Rhode Island in the Port Financial and Thistle Orders, and those analyses are incorporated herein by reference.⁴⁵

As noted in these Orders, the Citizens Banks' denial disparity ratios for African-American and Hispanic applicants in 2002 were generally lower than or comparable with those ratios for the aggregate of lenders ("aggregate lenders") in each of the markets reviewed.⁴⁶ In their Rhode Island, Massachusetts, and Connecticut statewide assessment areas, the Citizens New England Banks' denial disparity ratios for African-American and Hispanic applicants in 2002 were lower than those ratios for the aggregate lenders in these assessment areas. In their Delaware and Pennsylvania statewide assessment areas, Citizens DE's and Citizens PA's denial disparity ratios for African-American and Hispanic applicants in 2002 were lower than or comparable with those ratios for the aggregate lenders in these assessment areas.

In 2003, the Citizens Banks' HMDA data show that their overall volume of applications and originations increased substantially, including their total HMDA-reportable loans originated to African-American and Hispanic applicants. In addition, the denial disparity ratios of the Citizens Banks generally approximated the ratios for the aggregate lenders in their statewide assessment areas in 2003.

42. The Board analyzed HMDA data for 2001, 2002, and 2003 from the Citizens Banks and Charter One Bank. This review included HMDA data for loan originations in a number of individual MSAs, as well as in the metropolitan portions of Citizens Banks' and Charter One Bank's assessment areas statewide.

43. The denial disparity ratio equals the denial rate for a particular racial category (for example, African Americans) divided by the denial rate for whites.

44. Commenters used 2002 HMDA data to allege that Citizens Banks denied home mortgage loan applications from African Americans and Hispanics more frequently than applications from nonminorities in MSAs in Delaware, Pennsylvania, Massachusetts, and Rhode Island. Some commenters alleged that Charter One Bank denied home mortgage loan applications from African Americans and Hispanics more frequently than applications from nonminorities in certain other markets. In addition, several commenters expressed concern that Charter One Bank was originating fewer loans to LMI individuals and in LMI and minority census tracts than the aggregate of lenders throughout its assessment areas.

45. See Port Financial Order, *supra* at 388; Thistle Order, *supra* at 90.

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

Charter One Bank's 2002 HMDA data indicate that its denial disparity ratios for African-American and Hispanic applicants were generally higher than those ratios for the aggregate lenders in each of the markets reviewed, but the bank's denial disparity ratios generally improved somewhat in 2003. In 2002, the percentage of Charter One Bank's total HMDA-reportable loans originated to Hispanics was comparable with the percentage for the aggregate lenders in the MSAs reviewed. However, the percentage of Charter One Bank's total HMDA-reportable loans originated to African Americans was lower than the percentage for the aggregate lenders in 2002 in a majority of the MSAs reviewed. Although the bank's percentage of total HMDA-reportable loan originations to borrowers in LMI census tracts generally lagged the percentage for the aggregate lenders in the areas reviewed, its percentage of total HMDA-reportable loan originations to LMI individuals generally was comparable with or exceeded the percentages for the aggregate lenders.

The 2003 HMDA data indicate that Charter One Bank improved its lending to minority and LMI individuals and to borrowers in LMI and minority census tracts.⁴⁷ The percentage of the bank's total HMDA-reportable loans originated to African Americans more closely approximated the percentage for the aggregate lenders in most of the MSAs reviewed and exceeded their percentages in Albany and Rochester. Charter One Bank's percentage of total HMDA-reportable loan originations for borrowers in LMI census tracts similarly improved in 2003. Charter One Bank supplemented its loan originations by purchasing a number of HMDA-reportable loans to LMI and minority individuals and to borrowers in LMI and minority census tracts. The Board also has consulted with the OCC, which is monitoring Charter One Bank's lending to minorities and in LMI and minority census tracts.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that Charter One Bank or the Citizens Banks are excluding any race or income segment of the population or geographic areas on a prohibited basis. The Board is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of race or income level. The Board recognizes, however, that HMDA data alone provide an

47. One commenter criticized Charter One Bank for relying on loan purchases instead of directly originating loans in LMI and minority areas. The federal regulatory agencies' regulations that implement the CRA do not differentiate between loan originations and purchases for purposes of evaluating an institution's CRA lending performance. See, e.g., 12 CFR 228.22. The commenter also urged Charter One to increase its outreach efforts to underserved communities and to use more flexible underwriting standards to increase its loan originations to LMI and minority borrowers. Citizens Financial represented that it plans to increase Charter One Bank's home mortgage loan originations.

incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.⁴⁸ Moreover, HMDA data indicating that one affiliate is lending to minorities or LMI individuals more than another affiliate do not, without more information, indicate that either affiliate has engaged in illegal discriminatory lending activities.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the Citizens Banks, Charter One Bank, and their lending subsidiaries. Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of these institutions at their most recent CRA performance evaluations.

The record also indicates that Charter One and Citizens Financial have taken several affirmative steps to ensure compliance with fair lending laws. Charter One has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Charter One's compliance program includes compliance file reviews, an antipredatory-lending policy, a fair-lending policy, product guides, and credit counseling.⁴⁹

Citizens Financial also has a centralized compliance function and has implemented corporate-wide compliance policies and procedures to help ensure that all Citizens Financial's business lines, including those offered by the Citizens Banks and CMC, comply with fair lending and other consumer protection laws and regulations. It employs compliance officers and staff responsible for compliance training and monitoring, and conducts file reviews for

48. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

49. Commenters asserted that CMC has referral relationships with at least three high-cost subprime lenders and that CMC has failed to implement adequate safeguards to ensure that it does not have relationships with lenders that violate consumer protection laws and regulations or otherwise engage in illegal predatory lending. Citizens Financial stated that CMC does not originate high-cost loans and that CMC uses conventional underwriting standards to determine whether a borrower qualifies for a conforming loan, coupled with a second-review procedure to ensure that all applicants who qualify for a conforming loan are offered one. If CMC is unable to offer a conforming loan to an applicant, it delivers the application to an unaffiliated investor or lender who uses its own underwriting criteria to decide whether to offer a loan to the applicant. Citizens Financial also represented that CMC has no involvement in the underwriting processes or credit decisions of the unaffiliated investors or lenders. The unaffiliated investor or lender, however, is selected under objective criteria for determining that the investor or lender can meet the credit needs of the borrower. In addition, Citizens Financial represented that CMC attempts to help customers to resolve issues with those investors or lenders if requested.

compliance with federal and state consumer protection laws and regulations for all product lines and sources of loan originations. Citizens Financial also regularly performs self-assessments of its fair-lending-law compliance and fair-lending-policy training for its employees. Citizens Financial stated that its compliance program would be implemented at Charter One after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of the Citizens Banks and Charter One Bank. These records demonstrate that Citizens Financial and Charter One are active in helping to meet the credit needs of their entire communities.

E. Branch Closings

The Board has considered the commenters' concerns about possible branch closings in light of all the facts of record. One commenter expressed concern about Citizens Financial's closure of branches after other acquisitions. In addition, several commenters requested RBS to commit to maintaining its branches in LMI and minority census tracts. Citizens Financial stated that it does not currently anticipate closing, relocating, or consolidating any branch of Charter One Bank or the Citizens Banks in connection with this proposal. Moreover, Citizens Financial indicated that it intends to continue Charter One Bank's plans to expand in LMI markets by opening new branches inside retail outlets in LMI census tracts. The Board has considered Citizens Financial's branch closing policy and its record of opening and closing branches. Examiners reviewed the Citizens Banks' branch closing policy as part of the most recent CRA evaluations of each bank and found that it complied with federal law.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.⁵⁰ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisor before closing a branch. Citizens Financial represented that if it decides to close, relocate, or consolidate any branch of the Citizens Banks or Charter One Bank in connection with this proposal, it will comply with all applicable requirements of federal and state law. The Board notes that the FDIC and the OCC, as the appropriate federal supervisors of the Citizens Banks and Charter One Bank, respectively, will continue to review each bank's branch closing record in the course of conducting CRA performance evaluations.

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

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Charter One and Citizens Financial, comments received on the proposal, confidential supervisory information, and Citizens Financial's plans to implement its CRA-related policies, procedures, and programs at Charter One Bank.⁵¹ The Board notes that the proposal would provide Charter One's customers with access to a broader array of products and services in an expanded service area, including access to an expanded branch and ATM network and internet banking services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁵² In reaching its conclusion, the Board

51. Commenters alleged that RBS Group has indirectly supported "predatory lending" by a number of unaffiliated consumer lenders through the securitization activities and warehouse lending services of its subsidiaries, Greenwich Capital and Financial Assets Securities Corp., also in Greenwich ("FASC"). Applicants stated that Greenwich Capital underwrites securities backed by mortgage loans, including subprime mortgage loans originated by unaffiliated third parties. In addition, Greenwich Capital and its affiliate, Greenwich Capital Financial Products, Inc., Greenwich ("GCFP"), provide warehouse financing and repurchase facilities to unaffiliated mortgage originators, including some engaged in subprime lending. Greenwich Capital also has invested in securities backed by subprime loan pools that are issued by unaffiliated parties. Applicants stated that Greenwich Capital, GCFP, FASC, and Citizens Financial do not play any formal or informal role in the unaffiliated lenders' loan origination processes, lending practices, or credit-approval processes. Applicants also stated that Greenwich Capital conducts due diligence reviews in connection with its securitization activities that typically include evaluations to determine if the lenders are complying with federal and state laws. The Board previously considered these allegations in the Thistle, Port Financial, and Mellon Orders, and hereby affirms and adopts its findings in those orders. See Thistle Order, *supra* at 91 n.30; Port Financial Order, *supra* at 389 n.22; Mellon Order, *supra* at 57 n.30. The commenters have not provided any new material information that would warrant a different conclusion in this proposal. Moreover, the Board notes that the Federal Trade Commission, Department of Housing and Urban Development, and Department of Justice have responsibility for enforcing compliance with fair lending laws by nondepository institutions and to date have not found any violations of fair lending laws by these companies.

52. Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an

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 imposed in this order and the commitments made to the Board in connection with the 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, as such, may be enforced in proceedings under applicable law.

The acquisition of Charter One Bank shall not be consummated before the fifteenth 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 Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 16, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

Banking Markets in which Citizens Financial and Charter One Compete Directly

Springfield, Massachusetts

The towns of Agawam, Amherst, Belchertown, Blanford, Chester, Chesterfield, Chicopee City, Cummington, Deerfield, Easthampton, East Longmeadow, Granby, Feeding Hills, Goshen, Granville, Hadley, Hampden, Hatfield, Holyoke City, Huntington, Leverett, Longmeadow, Ludlow, Monson, Montgomery, Northampton City, Palmer, Pelham, Plainfield, Russell, Springfield City, South Hadley, Shutesbury, Southampton, Southwick, Sunderland, Three Rivers, Tolland, Ware, Warren, Westfield City, Westhampton, West Springfield, Whately, Wilbraham, Williamsburg, and Worthington.

opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and have submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their evidence adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

Hanover–Lebanon, New Hampshire

New Hampshire portion: the towns of Canaan, Enfield, Grafton, Hanover, Lebanon, Lyme, Orange, Orford, and Piermont in Grafton County; the towns of Grantham and Plainfield in Sullivan County.

Vermont portion: the towns of Bradford, Corinth, Fairlee, Strafford, Thetford, Vershire, and West Fairlee in Orange County; and the towns of Hartford, Hartland, Norwich, Sharon, West Windsor, and Windsor in Windsor County.

Brattleboro, Vermont

Vermont portion: the towns of Brattleboro, Brookline, Dummerston, Guilford, Halifax, Marlboro, Newfane, Putney, Townsend, and Vernon in Windham County.

New Hampshire portion: the town of Hinsdale in Cheshire County.

Worcester, Massachusetts

Massachusetts portion: the towns of Auburn, Barre, Boylston, Brimfield, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Holland, Hubbardston, Leicester, Millbury, New Braintree, Northboro, North Brookfield, Northbridge, Oakham, Oxford, Paxton, Princeton, Rochdale, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Uxbridge, Wales, Webster, Westboro, West Brookfield, West Boylston, Whitinsville, and Worcester City.

Connecticut portion: the town of Thompson.

Pittsfield, Massachusetts

Massachusetts portion: the towns of Adams, Becket, Cheshire, Clarksburg, Dalton, Florida, Hancock, Hinsdale, Lanesboro, Lee, Lenox, Middlefield, Monroe, New Ashford, North Adams, Peru, Pittsfield City, Richmond, Savoy, Stockbridge, Tyringham, Washington, West Stockbridge, Williamstown, and Windsor.

Vermont portion: the towns of Readsboro and Stamford.

Boston, Massachusetts

Massachusetts portion: the towns of Abington, Acton, Allston, Amesbury, Andover, Arlington, Ashburnham, Ashby, Ashland, Auburndale, Avon, Ayer, Bedford, Bellingham, Belmont, Berkley, Berlin, Beverly City, Billerica, Blackstone, Bolton, Boston City, Boxboro, Boxford, Braintree, Bridgewater, Brighton, Brockton City, Brookline, Burlington, Cambridge, Canton, Carlisle, Carver, Charlestown, Chelmsford, Chelsea, Chester, Chestnut Hill, Cochituate, Cohasset, Concord, Danvers, Dedham, Dighton, Dorchester, Dover, Dracut, Dunstable, Duxbury, East Bridgewater, East Maynard, Easton, East Weymouth, Essex, Everett, Fitchburg City, Foxboro, Framingham, Franklin, Fremont, Gardner City, Georgetown, Gloucester City, Groton, Grove Hall, Groveland, Halifax, Hamilton, Hanover, Hanson, Harvard, Haverhill City, Hingham, Holbrook, Holliston, Hopedale, Hopkinton, Hudson, Hull, Hyde Park,

Ipswich, Jamaica Plain, Kingston, Lakeville, Lancaster, Lawrence City, Leominster City, Lexington, Lincoln, Littleton, Lowell City, Lunenburg, Lynn, Lynnfield, Malden, Manchester, Manomet, Mansfield, Marblehead, Marlborough City, Marshfield, Mattapan, Maynard, Medfield, Medford, Medway, Melrose, Mendon, Merrimac, Methuen, Middleboro, Middleton, Milford, Millis, Millville, Milton, Nahant, Natick, Needham, Newbury, Newburyport City, Newton City, Newtonville, Norfolk, North Abington, North Andover, North Beverly, North Chelmsford, North Easton, North Plymouth, North Norton, North Waltham, Norwell, Norwood, Peabody City, Pembroke, Pepperell, Plainville, Plymouth, Plympton, Quincy, Randolph, Raymond, Raynham, Reading, Readville, Revere, Rockland, Rockport, Rowley, Roxbury, Salem City, Salisbury, Saugus, Scituate, Sharon, Sherborn, Shirely, Somerville, Southborough, Stoneham, Stoughton, Stow, Sudbury, Swampscott, Taunton City, Templeton, Tewksbury, Topsfield, Townsend, Tyngsboro, Upton, Waban, Wakefield, Walpole, Waltham City, Wareham, Watertown, Wayland, Wellesley, Wentham, West Bridgewater, West Newbury, Westford, Westminster, Weston, Westwood, Weymouth, Whitman, Wilmington, Winchendon, Winchester, Winthrop, Woburn, Wollaston, and Wrentham.

New Hampshire portion: the towns of Amherst, Atkinson, Brookline, Chester, Danville, Derry, East Hamstead, Fremont, Greenville, Hampstead, Hollis, Hudson, Kingston, Litchfield, Lyndeboro, Mason, Merrimac, Milford, Mount Vernon, Nashua City, New Ipswich, Newton, Pelham, Plaistow, Raymond, Salem, Sandown, Seabrook, South Hampton, Wilton, and Windham.

Hartford, Connecticut

The towns of Andover, Ashford, Avon, Barkhamsled, Berlin, Bloomfield, Bolton, Bristol City, Broad Brook, Burlington, Canton, Chaplin, Colchester, Collinsville, Columbia, Coventry, Cromwell, Durham, East Granby, East Haddam, East Hampton, East Hartford, East Windsor, Ellington, Enfield, Farmington, Forestville, Glastonbury, Granby, Haddam, Hampton, Hartford City, Hartland, Harwinton, Hebron, Higganum, Kensington, Lebanon, Manchester, Mansfield, Marlborough, Middlefield, Middletown City, Moodus, New Britain City, New Hartford, Newington, North Windham, Plainville, Plantsville, Plymouth, Poquonock, Portland, Rockville City, Rocky Hill, Scotland, Simsbury, Somers, South Glastonbury, South Windsor, Southington, Southingtonboro, Stafford, Stafford Springs, Storrs, Storrs Mansfield, Suffield, Terryville, Thompsonville, Tolland, Union, Vernon, Vernon-Rockville, Warehouse Point, West Hartford, West Suffield, West Willington, Wethersfield, Willimantic City, Willington, Winchester, Windham, Windsor, Windsor Locks, and Winsted City.

Metropolitan New York Area

New York portion: the counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens,

Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

New Jersey portion: the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren and the townships of Mercer County: East Windsor, Hightstown, Hopewell, Pennington, Princeton, Princeton Borough, Washington (excluding the city of Robbinsville), and West Windsor. Pennsylvania portion: Pike County. Connecticut portion: Fairfield County; the townships of Bridgewater, Canaan, Kent, New Milford, Roxbury, Salisbury, and Sharon in Litchfield County; the cities of Cornwall Bridge, Falls Village, Lakeville, Marble Dale, New Preston, and Washington Depot in Litchfield County; and the townships of Ansonia, Beacon Falls, Derby, Milford, Oxford, and Seymour in New Haven County.

Erie, Pennsylvania

Erie County; the townships of Bloomfield and Sparta in Crawford County; and the townships of Columbus and Spring Creek in Warren County.

Appendix B

Market Data

Unconcentrated Banking Markets

Metropolitan New York Area

Citizens Financial operates the 155th largest depository institution in the market, controlling deposits of \$147 million, which represent less than 1 percent of market deposits. Charter One has approval to operate four *de novo* branches and has opened two of the branches in the banking market since March 31, 2004, and Citizens Financial has three branches. FDIC deposit data reflecting the deposits of Charter One's branches are not yet available. After the proposed merger, 267 depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branches. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Metropolitan New York Area banking market. The HHI would remain unchanged at 971.

Moderately Concentrated Banking Markets

Springfield, Massachusetts

Citizens Financial operates the 16th largest depository institution in the market, controlling deposits of \$82.5 million, which represent approximately 1 percent of market deposits. Charter One operates the third largest depository institution in the market, controlling deposits of \$416.7 million, which represent approximately 7 percent of market deposits. After the proposed merger, Citizens

Financial would operate the third largest depository institution in the market, controlling deposits of approximately \$499.4 million, which represent approximately 7.8 percent of market deposits. Twenty-three depository institutions would remain in the banking market. The HHI would increase by 17 points to 1155.

Hanover-Lebanon, New Hampshire

Citizens Financial operates the third largest depository institution in the market, controlling deposits of \$121.6 million, which represent approximately 13 percent of market deposits. Charter One operates the fifth largest depository institution in the market, controlling deposits of \$81.2 million, which represent approximately 8 percent of market deposits. After the proposed merger, Citizens Financial would operate the third largest depository institution in the market, controlling deposits of \$202.8 million, which represent approximately 21.2 percent of market deposits. Eleven depository institutions would remain in the banking market. The HHI would increase by 215 points to 1653.

Worcester, Massachusetts

Citizens Financial operates the 15th largest depository institution in the market, controlling deposits of \$69 million, which represent approximately 1.2 percent of market deposits. Charter One opened a *de novo* branch in the market on July 1, 2003, and Citizens Financial has six branches. FDIC deposit data reflecting the deposits of Charter One's branch are not yet available. After the proposed merger, 28 depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branch. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Worcester banking market. The HHI would remain unchanged at 1,163.

Pittsfield, Massachusetts

Citizens Financial operates the 10th largest depository institution in the market, controlling deposits of \$19.5 million, which represent approximately 1.2 percent of market deposits. Charter One opened a *de novo* branch in the market on August 28, 2003, and Citizens Financial has four branches. FDIC deposit data reflecting the deposits of Charter One's branch are not yet available. After the proposed merger, ten depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branch. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Pittsfield banking market. The HHI would remain unchanged at 1,569.

Boston, Massachusetts

Citizens Financial operates the second largest depository institution in the market, controlling deposits of \$18.3 billion, which represent approximately 14.2 percent of market deposits. Charter One opened a *de novo* branch in the market on July 18, 2003, and Citizens Financial has 192 branches. FDIC deposit data reflecting the deposits of Charter One's branch are not yet available. After the proposed merger, 172 depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branch. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Boston banking market. The HHI would remain unchanged at 1,307.

Erie, Pennsylvania

Citizens Financial operates the fourth largest depository institution in the market, controlling deposits of \$310 million, which represent approximately 12.4 percent of market deposits. Charter One opened two *de novo* branches in the market on September 19, 2003, and Citizens Financial has 11 branches. FDIC deposit data reflecting the deposits of Charter One's branches are not yet available. After the proposed merger, nine depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branches. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Erie banking market. The HHI would remain unchanged at 1,739.

*Highly Concentrated Banking Markets**Brattleboro, Vermont*

Citizens Financial operates the sixth largest depository institution in the market, controlling deposits of \$11.7 million, which represent approximately 2.6 percent of market deposits. Charter One operates the third largest depository institution in the market, controlling deposits of \$46.8 million, which represent approximately 10.5 percent of market deposits. After the proposed merger, Citizens Financial would operate the third largest depository institution in the market, controlling deposits of \$58.5 million, which represent approximately 13.1 percent of market deposits. Six depository institutions would remain in the banking market. The HHI would increase by 55 points to 2,625.

Hartford, Connecticut

Citizens Financial operates the seventh largest depository institution in the market, controlling deposits of \$653 million, which represent approximately 3.3 percent of market deposits. Charter One has opened five *de novo* branches in the market since January 20, 2004, and Citizens Financial has 11 branches. FDIC deposit data reflecting the deposits of Charter One's branches are not yet available. After the proposed merger, 34 depository institutions would remain in the banking market. The Board has considered Citizens Financial's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of Charter One's branches. As noted, the Board concludes that consummation of the proposal would have a *de minimis* effect in the Hartford banking market. The HHI would remain unchanged at 2,490.

Appendix C

CRA Performance Evaluations of Citizens Financial

| Subsidiary Bank | CRA Rating | Date | Supervisor |
|--|-------------|---------------|------------------------|
| 1. Citizens Bank of Massachusetts, Boston, Massachusetts | Outstanding | February 2000 | FDIC |
| 2. Citizens Bank of Rhode Island, Providence, Rhode Island | Outstanding | February 2000 | FDIC |
| 3. Citizens Bank of New Hampshire, Manchester, New Hampshire | Outstanding | February 2000 | FDIC |
| 4. Citizens Bank of Pennsylvania, Philadelphia, Pennsylvania | Outstanding | February 2000 | FDIC |
| 5. Citizens Bank of Connecticut, Hartford, Connecticut | Outstanding | February 2000 | FDIC |
| 6. Citizens Bank of Delaware, Wilmington, Delaware | Outstanding | February 2000 | FDIC |
| 7. Boston Trust & Management Investment Company, Boston, Massachusetts | Outstanding | February 2000 | State of Massachusetts |

Orders Issued Under Section 4 of the Bank Holding Company Act

*Associated Banc-Corp
Green Bay, Wisconsin*

Order Approving the Acquisition of a Savings Association

Associated Banc-Corp ("Associated"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y to acquire First Federal Capital Corporation ("First Federal Capital") and its wholly owned subsidiary, First Federal Capital Bank ("FFCB"), a federally chartered savings association, both in La Crosse, Wisconsin.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (69 *Federal Register* 39,935 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act.

Associated, with total consolidated assets of \$15.6 billion, is the 64th largest depository organization in the United States, controlling deposits of \$9.7 billion.² Associated operates depository institutions in Illinois, Wisconsin, and Minnesota. Associated is the third largest depository organization in Wisconsin, controlling deposits of \$6.1 billion.

First Federal Capital, with total consolidated assets of approximately \$3.8 billion, is the eighth largest depository organization in Wisconsin and operates one depository institution in the state, FFCB, that controls deposits of \$2.7 billion. FFCB also has branches in Illinois and Minnesota.

On consummation of the proposal, Associated would have consolidated assets of approximately \$19.4 billion and would control deposits of \$12.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Associated would remain the third largest depository organization in Wisconsin, controlling deposits of approximately \$8.1 billion, which represent 8.4 percent of the total amount of deposits of insured depository institutions in Wisconsin.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.³ The Board requires that savings associations acquired by bank holding companies

conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. Associated has committed to conform all the activities of FFCB to those permissible under section 4(c)(8) of the BHC Act and Regulation Y.⁴

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposed acquisition of First Federal Capital and FFCB "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."⁵ As part of its evaluation of the 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.⁶ In acting on notices 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").⁷

Competitive Considerations

As part of the Board's consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record. Associated's subsidiary banks and FFCB compete directly in 18 banking markets.⁸ The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions controlled by Associated's subsidiary banks and FFCB in the market ("market deposits"),⁹ the concentration level of market deposits and

4. FFCB also engages through its subsidiaries in credit insurance activities and investing and trading activities that are permissible nonbanking activities under sections 225.28(b)(11)(i) and 225.28(b)(8)(ii) of Regulation Y. 12 CFR 225.28(b)(11)(i) and 225.28(b)(8)(ii).

5. 12 U.S.C. § 1843(j)(2)(A).

6. See 12 CFR 225.26; see, e.g., *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

7. 12 U.S.C. § 2901 *et seq.*

8. These banking markets are defined in Appendix A.

9. Deposit and market share data are based on annual branch reports filed as of June 30, 2003, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). Because the Board has analyzed the competitive factors in this case as if Associated WI and FFCB were a combined entity, the deposits of FFCB are included at 100 percent in the calculation of *pro forma* market share. *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990).

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

2. Asset data are as of March 31, 2004, and nationwide ranking data are as of May 31, 2004. Statewide deposit and ranking data are as of June 30, 2003. In this context, the term "insured depository institution" includes insured commercial banks, savings associations, and savings banks.

3. 12 CFR 225.28(b)(4)(ii).

the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the markets.

On consummation of the proposal, Associated’s market share in the Green Bay, Wisconsin, banking market (“Green Bay Market”) would increase by a small percentage to slightly more than 35 percent of market deposits. Associated’s largest subsidiary bank, Associated Bank, National Association, also in Green Bay (“Associated WI”), is the largest depository organization in the market, controlling approximately \$1.5 billion in deposits, which represents 33.7 percent of market deposits. FFCB is the 16th largest depository organization in the market, controlling deposits of approximately \$42.8 million, which represent approximately 1 percent of market deposits. On consummation of the proposal, Associated WI would remain the largest depository organization in the market, controlling deposits of \$1.5 billion, representing approximately 35.4 percent of market deposits.

The Green Bay Market, however, would remain moderately concentrated. The HHI would increase 103 points to 1652, which is consistent with the DOJ Guidelines. In addition, 21 other depository institutions would remain in the market, including one large banking organization with a market share of more than 10 percent and a larger branch network than Associated WI’s network. The Green Bay Market also has been attractive for entry. Five commercial banks have entered the market *de novo* since 2000. Factors also indicate that the Green Bay Market would remain attractive for entry. For example, since 2000, total market deposits in the Green Bay Metropolitan Statistical Area (“MSA”) have increased by an annual average rate of more than 25 percent, which exceeds the average rates for all Wisconsin MSAs by 9.5 percentage points.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of the other 17 banking markets.¹¹ Moreover, in each of the banking markets, the change in market concentration would be relatively small and numerous competitors would remain.

The Department of Justice has reviewed the proposal and advised the Board that consummation is not likely to have a significantly adverse effect on competition in the Green Bay Market or in any other relevant banking market. The other federal banking agencies also have been afforded

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

11. The effects of the proposal on the concentration of banking resources in these banking markets are described in Appendix B.

an opportunity to comment on the proposal and have not objected.

Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effect on competition or on the concentration of banking resources in the Green Bay Market or in any other relevant banking market.

Financial and Managerial Resources

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of Associated and First Federal Capital and their subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record. The Board’s review of these factors has considered reports of examination, other confidential supervisory information received from the primary supervisors for each subsidiary depository institution, and information provided by Associated.

Associated and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. The acquisition would be effected by an exchange of shares and a cash purchase. Associated has represented that it would not incur debt to fund the acquisition.

The Board also has considered the managerial resources of Associated, First Federal Capital, and their subsidiary depository institutions, particularly the supervisory experience and assessments of management by the organizations’ primary federal supervisors and the organizations’ records of compliance with applicable banking laws. In addition, the Board has reviewed the examination records of Associated and its subsidiary depository institutions, including assessments of their risk management. The Board also has considered Associated’s plans to implement the proposed acquisition, including its available managerial resources.

Based on these and all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

CRA Performance Records

As previously noted, the Board considers the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire a savings association. The CRA requires the Board to assess each institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, consistent with the institution’s safe and sound operation, and to take this record into account in evaluating bank expansionary proposals.¹²

The Board has considered carefully the CRA performance records of the subsidiary insured depository institutions of Associated and First Federal Capital in light of all the facts of record, including comments received on the

12. 12 U.S.C. § 2903.

proposal. A commenter alleged that Associated WI had a low level of home mortgage lending to LMI borrowers in La Crosse and an insufficient amount of community development investments in LMI census tracts throughout Wisconsin.¹³ The commenter also expressed concern about possible branch closings that would result from the proposal.

Associated has indicated that on consummation of the proposal, it would evaluate the best practices for CRA-related lending programs of Associated WI and FFCB, with the goal of using the institutions' combined resources to meet the credit and banking needs of LMI individuals and neighborhoods.

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.¹⁴ At its most recent CRA evaluation by the Office of the Comptroller of the Currency ("OCC"), Associated WI, which is Associated's largest subsidiary bank in terms of assets and deposits, received a "satisfactory" rating, as of November 10, 2003. Associated's other two subsidiary banks that are evaluated under the CRA also received "satisfactory" ratings at their most recent CRA performance evaluations.¹⁵ FFCB received an "outstanding" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of November 12, 2002.¹⁶

13. The commenter also expressed concern that Associated WI did not extend any loans in the La Crosse MSA that were sponsored or guaranteed by the federal government, such as the Department of Veterans Affairs, and made few loans in the La Crosse MSA that were administered by the Wisconsin Housing and Economic Development Authority ("WHEDA"). Associated represented that it does participate in government loan programs throughout Wisconsin, including programs administered by WHEDA. In 2003, Associated represented that it funded 147 WHEDA loans, totaling more than \$13 million. Although the Board recognizes that banks help serve the credit needs of communities by participating in government lending programs, the CRA does not require an institution to participate in any specific loan program or to provide any specific types of products and services in its assessment areas.

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

15. Associated Bank of Chicago, Chicago, Illinois, received a "satisfactory" rating from the Federal Deposit Insurance Corporation ("FDIC"), as of December 1, 2003; Associated Bank Minnesota, National Association, Minneapolis, Minnesota (formerly Signal Bank, National Association, Eagan, Minnesota), received a "satisfactory" rating from the OCC, as of October 2, 2000. Associated Trust Company, National Association, Milwaukee, Wisconsin, is a limited-purpose trust company that is not examined under the CRA. See 12 CFR 25.11(c)(3).

16. The commenter expressed concern that the proposed acquisition would negatively affect FFCB's CRA performance.

B. CRA Performance of Associated WI

As noted above, Associated WI received an overall "satisfactory" rating for performance under the CRA from the OCC. Associated WI received "high satisfactory" ratings under the lending and investment tests and a "low satisfactory" rating under the service test.¹⁷ Examiners reported that the total volume of Associated WI's housing-related and small business loans demonstrated excellent responsiveness to the credit needs across the bank's assessment areas.¹⁸ For example, examiners noted favorably that the bank's market share percentage for all home mortgage loan products (home purchase, home improvement, and home refinance loans) was greater than the bank's deposit market share percentages in the Milwaukee and Green Bay MSAs and the non-MSA assessment areas of Wisconsin.

Examiners also stated that the bank demonstrated good loan distribution among borrowers of different geographies and income levels. For example, examiners noted that in the non-MSA assessment areas of Wisconsin, the percentage of the bank's home purchase loan originations in LMI areas was greater than both the percentage of owner-occupied units and the bank's overall market share for home purchase loans in these areas.¹⁹ In addition, examiners noted favorably that the bank's market share of home purchase loans to low-income areas was greater than its overall market share in the Milwaukee MSA.

17. Examiners evaluated Associated WI's CRA performance in its 12 assessment areas in Wisconsin and took into consideration the home mortgage lending of the bank's subsidiary, Associated Mortgage, Inc., De Pere, Wisconsin. The majority of the bank's deposits, loans, and branches were in the Milwaukee and Green Bay MSAs and in the non-MSA areas of Wisconsin. These areas were selected for full-scope reviews. The evaluation period for home mortgage loans and loans to small businesses and farms was January 1, 1999, through December 31, 2002. The evaluation period for community development loans and the investment and service tests was March 8, 1999, to November 10, 2003.

18. The commenter expressed concern that Associated lagged its competitors in lending to LMI individuals and to borrowers in LMI census tracts in the La Crosse MSA. Loan data reported by Associated under the Home Mortgage Disclosure Act ("HMDA") (12 U.S.C. § 2801 *et seq.*) for Associated WI and Associated Mortgage, Inc. on a combined basis indicate that Associated's overall volume of HMDA-reportable loans originated to borrowers in LMI census tracts in the Wisconsin portion of the La Crosse MSA increased from 2002 to 2003, and its percentage of total HMDA-reportable loans originated to borrowers in LMI census tracts was comparable to or exceeded the percentage for the aggregate of lenders ("aggregate lenders") in those years. In this context, the lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given area. Associated's overall HMDA lending to LMI individuals decreased slightly in 2003, and its percentage of total HMDA-reportable loans originated to LMI individuals modestly lagged the percentage for the aggregate lenders in 2002 and 2003. However, examiners performed a limited-scope review of Associated WI's performance under the lending test in the La Crosse MSA and found that the bank's performance was consistent with its overall high satisfactory performance under the lending test.

19. The commenter also asserted that a significant portion of Associated's HMDA loans in LMI census tracts has been to non-occupant borrowers. Associated represented that it receives few applications for owner-occupied home purchases in the La Crosse MSA, due in part to a large student population in need of temporary housing.

Examiners characterized Associated WI's distribution of small loans to businesses as excellent in the Green Bay MSA and in the non-MSA assessment areas of Wisconsin and as adequate in the Milwaukee MSA.²⁰ In the Green Bay MSA and the non-MSA assessment areas of Wisconsin, examiners noted favorably that the percentage of Associated WI's small loans to businesses was greater than the bank's overall market share of business loans.

Examiners reported that the bank's level of qualified investments and grants was good, considering the needs and opportunities available to the bank and its size and financial capability. During the evaluation period, the bank's qualified investments in Wisconsin totaled more than \$14 million. Examiners stated that Associated WI's responsiveness to credit and community development needs in the Milwaukee MSA was excellent and that the bank was responsive to those identified needs of the community.

With respect to retail services, examiners reported that Associated WI had an adequate level of community development services. Examiners also determined that the bank's delivery systems were reasonably accessible to geographies and individuals of different income levels.

C. CRA Performance Record of FFCB

As previously noted, FFCB received an overall "outstanding" rating for performance under the CRA.²¹ Examiners also rated the thrift's performance under the lending test as "outstanding" based on its level of HMDA-reportable loans in LMI geographies. They characterized the thrift's record of lending to borrowers of different income levels and its geographic distribution of loans as excellent.

Examiners reported that FFCB originated more than 22,500 HMDA-reportable loans totaling \$2.2 billion in its assessment areas during the evaluation period, noting that the thrift was among the top three lenders by loan volume in six of its assessment areas. Examiners also praised FFCB for its loan distribution, noting that its lending to LMI borrowers and the geographic distribution of loans in LMI areas were excellent. In addition, examiners commended the thrift for its participation in grant programs administered by the Wisconsin Public Housing Department and the Department of Housing and Urban Development, which provided down-payment and closing-cost assistance to LMI residents in FFCB's assessment areas.²²

20. Small loans to businesses are loans that are originated in amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans. A small business is a business with gross annual revenues of \$1 million or less.

21. The review period was from January 1, 2001, through June 30, 2002. FFCB's assessment areas included the Minneapolis MSA and the following areas in Wisconsin: Madison MSA, La Crosse MSA, Janesville MSA, Eau Claire MSA, and the non-MSA areas of Wisconsin.

22. The commenter urged Associated to discontinue selling single-premium credit insurance on unsecured loans. Associated has represented that it ceased offering single-premium credit insurance in

September 2003 and that FFCB would discontinue offering single-premium credit insurance on consummation of the proposal.

Although FFCB's investment test performance was rated "low satisfactory," examiners characterized the thrift's performance under this test as adequate. The institution's qualified community development investments included financing for affordable housing for LMI individuals and grants to 48 organizations that provided community development services in its assessment areas.

Examiners rated FFCB's performance under the service test as "outstanding." Examiners commended the institution for expanding its branch network during the review period and offering extended weekday and Sunday hours in its new in-store supermarket branches. Examiners noted that the thrift tailored its services to the customer base of the institution's combined assessment areas by providing consumers the ability to apply for consumer loans and to receive loan decisions by phone within 24 hours. In addition, examiners stated that the thrift's personnel provided numerous community development services in the assessment area, including homebuyer seminars, workshops on financial management, savings account ownership, and credit management.

D. Branch Closings

The Board has considered the commenter's concerns about potential branch closings in light of all the facts of record. The Board has considered Associated's branch closing policy for its subsidiary banks and the banks' record of opening and closing branches. This policy includes procedures to address concerns of LMI communities. For example, the policy provides that before closing any branch in a LMI or minority area, the bank will meet with neighborhood representatives to discuss ways to keep the branch open or to mitigate the impact of the branch's closure. In addition, examiners did not note any adverse information concerning Associated WI's record of opening or closing branches in its the most recent CRA evaluation.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.²³ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisor before closing a branch. Associated has represented that if it decides to close, relocate, or consolidate any branch of its subsidiary banks or FFCB in connection with this proposal, it will comply with all applicable federal and state law requirements. The Board also notes that the OCC, FDIC, and OTS, the appropriate federal supervisors of the depository institutions involved in this proposal, will continue to review

September 2003 and that FFCB would discontinue offering single-premium credit insurance on consummation of the proposal.

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

each institution's branch closing record in the course of conducting CRA performance evaluations.

E. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Associated, comments received on the proposal, and confidential supervisory information. 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 depository institutions are consistent with approval.²⁴

Public Benefits

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has reviewed carefully the other public benefits and possible adverse effects of the proposal.²⁵ The record indicates that consummation of the proposal would result in benefits to consumers and businesses currently served by FFCB by expanding the number of available branches and providing customers with greater access to the trust management, commercial, and retail banking services of Associated WI, in addition to drawing on Associated WI's focus on commercial lending and FFCB's focus on mortgage lending. Based on these and other matters discussed in this order, as well as all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh possible adverse effects under the standard of review set forth in section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice 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 Associated with the conditions imposed in this order and the commitments made to the Board in connection with

24. The commenter requested that the Board condition its approval on a commitment by Associated to take affirmative steps to increase Associated WI's lending and qualified investments. The Board focuses on the 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 CRA. *See, e.g., J.P. Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004). For the reasons discussed above, the CRA performance records of the subsidiary depository institutions of Associated and First Federal Capital and their current programs for serving the credit needs of their communities are consistent with approval, without the imposition of any conditions related to future CRA performance.

25. The commenter also expressed concern that the proposal would result in job losses. The effect of a proposed transaction on employment in a community is outside the limited factors that the Board is authorized to consider under the BHC Act. *See, e.g., J.P. Morgan & Co. Inc.*, 87 *Federal Reserve Bulletin* 77, 88 (2001).

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) (12 CFR 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 16, 2004.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

Banking Markets in which Associated's Subsidiary Banks and First Federal Capital Bank Compete Directly

Appleton, Wisconsin

Outagamie County, excluding Oneida township; the townships of Winchester, Clayton, Neenah, and Menasha in Winnebago County; and the townships of Harrison, Woodville, Brillion, and Rantoul in Calumet County.

Beloit-Janesville, Wisconsin

Rock County.

Eau Claire, Wisconsin

Chippewa, Dunn, and Eau Claire Counties; Pepin County, excluding the townships of Stockholm and Pepin; the townships of Mondovi, Naples, Gilmanton, Dover, and Montana in Buffalo County; the townships of Albion, Unity, Sumner, Chimney Rock, Hale, Burnside, and Pigeon in Trempealeau County; and the townships of Garfield, Cleveland, Northfield, Garden Valley, and Alma in Jackson County.

Fond du Lac, Wisconsin

Fond du Lac County, excluding the townships of Ashford, Auburn, and Calumet.

Green Bay, Wisconsin

Brown and Kewaunee Counties; the townships of Morgan, Abrams, Pensaukee, Chase, and Little Suamico in Oconto County; the townships of Angelica and Maple Grove in Shawano County; Oneida township in Outagamie County; and Cooperstown township in Manitowoc County.

Jefferson, Wisconsin

The townships of Oakland, Jefferson, Sullivan, Sumner, Koshkonong, Hebron, Cold Springs, and Palmyra in Jefferson County; the townships of York, Medina, Deerfield, Christiana, and Albion in Dane County.

Kenosha–Racine, Wisconsin

Kenosha County, excluding the townships of Wheatland and Randall; the townships of Caledonia, Mount Pleasant, Yorkville, Dover, and Rochester in Racine County.

La Crosse, Wisconsin

Wisconsin portion: La Crosse County; Glencoe township in Buffalo County; Arcadia, Preston, Ettrick, and Gale in Trempealeau County; the townships of Curran, Springfield, Franklin, North Bend, and Melrose in Jackson County.

Minnesota portion: the townships of Houston County; Honier, Richmond, Pleasant Hill, New Hartford, and Dresbach in Winona County.

Madison, Wisconsin

Dane County, excluding the townships of York, Medina, Deerfield, Christiana, and Albion; the townships of Dekorra, Lowville, Otsego, Fountain Prairie, Columbus, Hampden, Leeds, Arlington, Lodi, and West Point in Columbia County.

Manitowoc–Two Rivers, Wisconsin

Manitowoc County, excluding the townships of Schleswig, Eaton, and Cooperstown.

Minneapolis–St. Paul, Minnesota

Minnesota portion: Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota Counties; the townships of Lent, Chisago Lake, Shafer, Wyoming, and Franconia in Chisago County; the townships of Blue Hill, Baldwin, Orrock, Livonia, and Big Lake and the city of Elk River in Sherburne County; the townships of Monticello, Otsego, Buffalo, Frankfort, Rockford, and Franklin in Wright County; and Lanesburgh township in Le Sueur County.

Wisconsin portion: Hudson township in St. Croix County.

Oshkosh, Wisconsin

Winnebago County, excluding the townships of Winchester, Clayton, Menasha, and Neenah.

Rochester, Minnesota

Olmsted and Fillmore Counties; the townships of Wanamingo, Minneola, Zumbrota, Cherry Grove, Roscoe, and Pine Island in Goodhue County; Wabasha County, excluding the townships of Mount Pleasant, Lake, Pepin, Glasgow, Greenfield, Watopa, and Minneiska and the city of Wabasha; Dodge County, excluding the townships of Ellington, Claremont, Ripley, and Westfield.

Rockford, Illinois

Winnebago and Boone Counties; the townships Byron, Marion, Scott, and Monroe in Ogle County.

Sheboygan, Wisconsin

Sheboygan County, excluding the townships of Russell and Rhine.

Walworth, Wisconsin

Walworth County, excluding East Troy township; Burlington township in Racine County; and the townships of Wheatland and Randall in Kenosha County.

Wausau, Wisconsin

The townships of Corning, Harding, Rock Falls, Birch, Russell, Merrill, Schley, Scott, and Pine River in Lincoln County; Marathon County, excluding the townships of Holton, Hull, Brighton, Spencer, McMillan, and Day; the townships of Aniwa, Birnamwood, Wittenberg, and Germania in Shawano County.

Wood, Wisconsin

Wood County; the townships of Spencer, McMillan, and Day in Marathon County.

Appendix B

Market Data¹*Unconcentrated Banking Markets**Appleton, Wisconsin*

Associated operates the second largest depository institution in the market, controlling deposits of \$357 million, which represent approximately 13.8 percent of market deposits. First Federal Capital operates the 16th largest depository institution in the market, controlling deposits of \$44 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Associated would continue to operate the second largest depository institution in the market, controlling deposits of

1. The pre-consumption deposits of FFCB are weighted at 50 percent, and the post-consumption deposits are weighted at 100 percent.

\$445 million, which represent approximately 16 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase by 62 points to 925.

Eau Claire, Wisconsin

Associated operates the 17th largest depository institution in the market, controlling deposits of \$49 million, which represent approximately 2 percent of market deposits. First Federal Capital operates the 18th largest depository institution in the market, controlling deposits of approximately \$43 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Associated would operate the seventh largest depository institution in the market, controlling deposits of approximately \$136 million, which represent approximately 6 percent of market deposits. Thirty-one depository institutions would remain in the banking market. The HHI would increase by 5 points to 552.

Walworth, Wisconsin

Associated operates the seventh largest depository institution in the market, controlling deposits of \$118 million, which represent approximately 8 percent of market deposits. First Federal Capital operates the 18th largest depository institution in the market, controlling deposits of approximately \$13 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the third largest depository institution in the market, controlling deposits of approximately \$144 million, which represent approximately 9 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase by 12 points to 975.

Wood, Wisconsin

Associated operates the second largest depository institution in the market, controlling deposits of \$168 million, which represent approximately 14 percent of market deposits. First Federal Capital operates the 17th largest depository institution in the market, controlling deposits of \$10 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the largest depository institution in the market, controlling deposits of approximately \$188 million, which represent approximately 16 percent of market deposits. Sixteen depository institutions would remain in the banking market. The HHI would increase by 33 points to 969.

La Crosse, Wisconsin

Associated operates the 11th largest depository institution in the market, controlling deposits of \$66 million, which represent approximately 4 percent of market deposits. First Federal Capital operates the second largest depository institution in the market, controlling deposits of \$197 million,

which represent approximately 11 percent of market deposits. After the proposed acquisition, Associated would operate the largest depository institution in the market, controlling deposits of approximately \$461 million, which represent approximately 23 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase by 287 points to 988.

Madison, Wisconsin

Associated operates the seventh largest depository institution in the market, controlling deposits of \$303 million, which represent approximately 4 percent of market deposits. First Federal Capital operates the eighth largest depository institution in the market, controlling deposits of approximately \$298 million, which represent approximately 4 percent of market deposits. After the proposed acquisition, Associated would operate the third largest depository institution in the market, controlling deposits of approximately \$898 million, which represent approximately 12 percent of market deposits. Thirty-six depository institutions would remain in the banking market. The HHI would increase by 54 points to 796.

Rochester, Minnesota

Associated operates the 16th largest depository institution in the market, controlling deposits of \$44 million, which represent approximately 2 percent of market deposits. First Federal Capital operates the 15th largest depository institution in the market, controlling deposits of \$45 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Associated would operate the fourth largest depository institution in the market, controlling deposits of \$135 million, which represent approximately 6 percent of market deposits. Thirty-one depository institutions would remain in the banking market. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 871.

Moderately Concentrated Banking Markets

Rockford, Illinois

Associated operates the fourth largest depository institution in the market, controlling deposits of \$503 million, which represent approximately 10 percent of market deposits. First Federal Capital operates the 14th largest depository institution in the market, controlling deposits of \$64 million, which represent approximately 1 percent of market deposits. After the proposed acquisition, Associated would operate the third largest depository institution in the market, controlling deposits of approximately \$631 million, which represent approximately 12 percent of market deposits. Twenty-two depository institutions would remain in the banking market. The HHI would increase by 12 points to 1621.

Wausau, Wisconsin

Associated operates the fourth largest depository institution in the market, controlling deposits of \$193 million, which represent approximately 10 percent of market deposits. First Federal Capital operates the 14th largest depository institution in the market, controlling deposits of \$38 million, which represent approximately 2 percent of market deposits. After the proposed acquisition, Associated would operate the third largest depository institution in the market, controlling deposits of approximately \$269 million, which represent approximately 14 percent of market deposits. Twenty depository institutions would remain in the banking market. The HHI would increase by 47 points to 1145.

Sheboygan, Wisconsin

Associated operates the fifth largest depository institution in the market, controlling deposits of \$110 million, which represent approximately 7 percent of market deposits. First Federal Capital operates the 15th largest depository institution in the market, controlling deposits of \$13 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the fourth largest depository institution in the market, controlling deposits of approximately \$135 million, which represent approximately 8 percent of market deposits. Sixteen depository institutions would remain in the banking market. The HHI would increase by 8 points to 1080.

Oshkosh, Wisconsin

Associated operates the fourth largest depository institution in the market, controlling deposits of \$114 million, which represent approximately 13 percent of market deposits. First Federal Capital operates the eighth largest depository institution in the market, controlling deposits of \$23 million, which represent approximately 3 percent of market deposits. After the proposed acquisition, Associated would operate the second largest depository institution in the market, controlling deposits of approximately \$159 million, which represent approximately 18 percent of market deposits. Eleven depository institutions would remain in the banking market. The HHI would increase by 89 points to 1411.

Kenosha–Racine, Wisconsin

Associated operates the 15th largest depository institution in the market, controlling deposits of \$22 million, which represent less than 1 percent of market deposits. First Federal Capital operates the 13th largest depository institution in the market, controlling deposits of \$31 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the 11th largest depository institution in the market, controlling deposits of approximately \$85 million, which represent approximately 3 percent of market deposits. Fifteen depository institutions would remain in the banking mar-

ket. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 1412.

Jefferson, Wisconsin

Associated operates the tenth largest depository institution in the market, controlling deposits of \$12 million, which represent approximately 2 percent of market deposits. First Federal Capital operates the ninth largest depository institution in the market, controlling deposits of \$15 million, which represent approximately 3 percent of market deposits. After the proposed acquisition, Associated would operate the seventh largest depository institution in the market, controlling deposits of approximately \$43 million, which represent approximately 8 percent of market deposits. Ten depository institutions would remain in the banking market. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 1485.

Fond du Lac, Wisconsin

Associated operates the ninth largest depository institution in the market, controlling deposits of \$38 million, which represent approximately 3 percent of market deposits. First Federal Capital operates the 13th largest depository institution in the market, controlling deposits of \$15 million, which represent approximately 1 percent of market deposits. After the proposed acquisition, Associated would operate the seventh largest depository institution in the market, controlling deposits of approximately \$67 million, which represent approximately 6 percent of market deposits. Thirteen depository institutions would remain in the banking market. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 1744.

Beloit–Janesville, Wisconsin

Associated operates the 12th largest depository institution in the market, controlling deposits of \$25 million, which represent approximately 2 percent of market deposits. First Federal Capital operates the sixth largest depository institution in the market, controlling deposits of \$63 million, which represent approximately 4 percent of market deposits. After the proposed acquisition, Associated would operate the fourth largest depository institution in the market, controlling deposits of approximately \$152 million, which represent approximately 10 percent of market deposits. Eighteen depository institutions would remain in the banking market. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 1270.

*Highly Concentrated Banking Markets**Minneapolis–St. Paul, Minnesota*

Associated operates the fifth largest depository institution in the market, controlling deposits of \$1 billion, which

represent approximately 2 percent of market deposits. First Federal Capital operates the 21st largest depository institution in the market, controlling deposits of \$218 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the fourth largest depository institution in the market, controlling deposits of approximately \$1.4 billion, which represent approximately 3 percent of market deposits. One hundred and twenty-six depository institutions would remain in the banking market. The resulting HHI for this market, which would not increase after consummation of the proposal, would be 1980.

Manitowoc—Two Rivers, Wisconsin

Associated operates the second largest depository institution in the market, controlling deposits of \$205 million, which represent approximately 21 percent of market deposits. First Federal Capital operates the ninth largest depository institution in the market, controlling deposits of \$14 million, which represent approximately 1 percent of market deposits. After the proposed acquisition, Associated would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$234 million, which represent approximately 24 percent of market deposits. Eleven depository institutions would remain in the banking market. The HHI would increase by 76 points to 1896.

Barclays Bank PLC London, England

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

Barclays Bank PLC (“Barclays”), a foreign bank that is treated as a financial holding company (“FHC”) for purposes of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 4 of the BHC Act (12 U.S.C. § 1843) and the Board’s Regulation Y (12 CFR Part 225) to engage in physical commodity trading in the United States. Barclays currently conducts physical commodity trading outside the United States.

Regulation Y authorizes bank holding companies (“BHCs”) to engage as principal in derivative contracts based on financial and nonfinancial assets (“Commodity Derivatives”). Under Regulation Y, a BHC may conduct Commodity Derivatives activities subject to certain restrictions that are designed to limit the BHC’s activity to trading and investing in financial instruments rather than dealing directly in physical nonfinancial commodities.¹ Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

1. Commodity Derivatives permissible for BHCs under Regulation Y are hereinafter referred to as “BHC-permissible Commodity Derivatives.”

The BHC Act, as amended by the Gramm–Leach–Bliley Act (“GLB Act”), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.² The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.³ Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.⁴

In addition, the BHC Act permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.⁵ This authority is intended to allow the Board to permit FHCs to engage on a limited basis in an activity that appears to be commercial rather than financial in nature, but that is meaningfully connected to a financial activity such that it complements the financial activity.⁶ The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board’s prior approval under section 4(j) of the BHC Act.⁷

Barclays regularly engages as principal in BHC-permissible Commodity Derivatives based on a variety of commodities, including natural gas and electricity. Barclays has requested that the Board permit it to purchase and sell these and other physical commodities in the spot market and take and make delivery of physical commodities to settle Commodity Derivatives (“Commodity Trading Activities”). The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in BHC-permissible Commodity Derivatives based on that commodity.⁸ In light of the foregoing and all other facts of record, the Board believes that Commodity Trading Activities are complementary to the Commodity Derivatives activities of Barclays.

To authorize Barclays to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of deposi-

2. 12 U.S.C. § 1843(c)(8).

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

4. 12 U.S.C. § 1843(k)(1)(A).

5. 12 U.S.C. § 1843(k)(1)(B).

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

7. 12 U.S.C. § 1843(j).

8. See *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in BHC-permissible Commodity Derivatives based on Brent crude oil.

tory institutions or the U.S. financial system generally.⁹ In addition, the Board must determine that the performance of Commodity Trading Activities by Barclays “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.”¹⁰

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

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

To limit the potential safety and soundness risks of Commodity Trading Activities, as a condition of this order, the market value of commodities held by Barclays as a result of Commodity Trading Activities must not exceed 5 percent of Barclays’ consolidated tier 1 capital (as calculated under its home country standard).¹¹ Barclays also must notify the Federal Reserve Bank of New York if the market value of commodities held by Barclays as a result of its Commodity Trading Activities exceeds 4 percent of its tier 1 capital.

In addition, Barclays may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission (“CFTC”) (unless specifically excluded by the Board) or that have been specifically approved by the Board.¹² This

requirement is designed to prevent Barclays from becoming involved in dealing in finished goods and other items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of Barclays to additional risks, including storage risk, transportation risk, and legal and environmental risks, Barclays would not be authorized to (i) own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) process, refine, or otherwise alter commodities. In conducting its Commodity Trading Activities, Barclays will be expected to use appropriate storage and transportation facilities owned and operated by third parties.¹³

Barclays and its Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the anti-fraud and anti-manipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

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

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

Based on all the facts of record, including the representations and commitments made to the Board by Barclays in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board’s determination is subject to all the conditions set

9. 12 U.S.C. § 1843(k)(1)(B).

10. 12 U.S.C. § 1843(j)(2)(A).

11. Barclays would be required to include in this 5 percent limit the market value of any commodities held by Barclays as a result of a failure of its reasonable efforts to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y.

12. The particular commodity derivative contract that Barclays takes to physical settlement need not be exchange-traded, but (in the

absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of the CFTC-authorized commodity contracts. See *Commodity Futures Trading Commission, FY 2003 Annual Report to Congress* 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

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

forth in Regulation Y, including those in section 225.7 (12 CFR 225.7), and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective July 22, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Popular, Inc.
San Juan, Puerto Rico

Popular International Bank, Inc.
San Juan, Puerto Rico

Popular North America, Inc.
Mt. Laurel, New Jersey

Banco Popular North America
New York, New York

Order Approving the Acquisition of a Savings Association, the Merger of Depository Institutions, and the Establishment of Branches

Popular, Inc. and its wholly owned subsidiaries, Popular International Bank, Inc. and Popular North America, Inc., each a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act") (collectively, "Popular"), have requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act¹ to acquire Quaker City Bancorp, Inc. ("Quaker City"), and its wholly owned subsidiary, Quaker City Bank ("Quaker City Bank"), a federally chartered savings association, both in Whittier, California.

In addition, Popular's subsidiary bank, Banco Popular North America ("Banco Popular"), a state member bank, has requested the Board's approval to merge with Quaker City Bank pursuant to section 18(c) of the Federal Deposit Insurance Act ("FDI Act") ("Bank Merger Act") and section 5(d)(3) of the FDI Act, with Banco Popular as the

surviving entity.² Banco Popular also has applied under section 9 of the Federal Reserve Act ("FRA")³ to retain and operate branches at the locations of Quaker City Bank's main office and branches.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (69 *Federal Register* 24,602 (2004)) and in accordance with the Bank Merger Act and the Board's Rules of Procedure.⁴ As required by the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and other applicable statutes.

Popular, with total consolidated assets of \$38.1 billion, is the 35th largest depository organization in the United States, controlling deposits of \$18.6 billion.⁵ Popular operates depository institutions in California, Florida, Illinois, New York, New Jersey, Texas, Puerto Rico, and the U.S. Virgin Islands. Popular is the 102nd largest depository organization in California, controlling deposits of \$398 million. Quaker City, with total consolidated assets of approximately \$1.8 billion, is the 47th largest depository organization in California and operates one depository institution in the state that controls deposits of \$1.1 billion.

On consummation of the proposal, Popular would have consolidated assets of approximately \$40 billion and would control deposits of \$19.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Popular would become the 36th largest depository organization in California, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is 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 conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. Popular has committed to conform all the activities of Quaker City to those permissible under section 4(c)(8) of the BHC Act and Regulation Y.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of Quaker City by Popular "can reasonably be

1. 12 U.S.C. §§ 1843(c)(8) and (j).

2. 12 U.S.C. § 1828(c); 12 U.S.C. § 1815(d)(3).

3. 12 U.S.C. § 321 ("FRA"). These branches are listed in the Appendix.

4. See 12 CFR 262.3(b).

5. Asset data are as of March 31, 2004, and nationwide ranking data are as of May 31, 2004. Statewide deposit and ranking data are as of June 30, 2003. In this context, the term "insured depository institution" includes insured commercial banks, savings associations, and savings banks.

6. 12 CFR 225.28(b)(4)(ii).

expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”⁷ As part of its evaluation of the public interest factors, the Board reviews the financial and managerial resources of the companies involved, as well as the effect of the proposal on competition in the relevant markets.⁸ In acting on notices 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”).⁹

Competitive Considerations

As part of the review under the Bank Merger Act and consideration of the public interest factors under section 4 of the BHC Act, the Board has considered the competitive effects of the proposal in light of all the facts of record.¹⁰ Banco Popular and Quaker City Bank compete directly in the Los Angeles banking market.¹¹ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions controlled by Banco Popular and Quaker City Bank in the market (“market deposits”),¹² the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹³ and other characteristics of the markets.

7. 12 U.S.C. § 1843(j)(2)(A).

8. See 12 CFR 225.26.

9. 12 U.S.C. § 2901 *et seq.*; see, e.g., *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

10. See *First Hawaiian, Inc.*, 79 *Federal Reserve Bulletin* 966 (1993).

11. The Los Angeles banking market is defined as the Los Angeles Ranally Metro Area and the towns of Acton in Los Angeles County, Rancho Santa Margarita in Orange County, and Rosamond in Kern County, all in California.

12. Deposit and market share data are based on annual branch reports filed as of June 30, 2003, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). Because the Board has analyzed the competitive factors in this case as if Quaker City and Popular were a combined entity, the deposits of Quaker City Bank are included at 100 percent in the calculation of *pro forma* market share. *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990).

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

of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Los Angeles banking market. Popular would operate the 39th largest depository institution in the market, controlling deposits of \$1.4 billion, which represent less than 1 percent of market deposits. After consummation of the proposal, the HHI for the Los Angeles banking market would continue to be moderately concentrated at 1081, and numerous competitors would remain in the market.

The Department of Justice has reviewed the proposal and advised the Board that consummation is not likely to have a significantly adverse effect on competition in the Los Angeles banking market. The other federal banking agencies also have been afforded an opportunity to comment on the proposal and have not objected.

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

Financial and Managerial Resources and Future Prospects

In reviewing the proposal under section 4 of the BHC Act, the Bank Merger Act, and the FRA, the Board has carefully considered the financial and managerial resources and future prospects of Popular and Quaker City and their respective subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record. The Board’s review of these factors has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, publicly reported and other financial information provided by Popular and Quaker City, and public comments. In addition, the Board has consulted with the relevant supervisory agencies, including the Office of Thrift Supervision (“OTS”).

Popular proposes to acquire Quaker City primarily by issuing trust preferred securities and debt securities. Popular, Banco Popular, and its other subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.

The Board also has considered the managerial resources of Popular and Quaker City, particularly the supervisory experience and assessments of management by the organizations’ primary federal supervisors and their records of compliance with applicable banking and thrift laws. In addition, the Board has carefully reviewed the examination records of Popular and its subsidiary depository institutions, including assessments of their risk-management

of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

systems and other policies. The Board also has considered Popular's plans for implementing the proposed acquisition, including its available managerial resources, and Popular's record of successfully integrating recently acquired institutions into its existing operations.

Based on these and all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved as well as their future prospects are consistent with approval under section 4 of the BHC Act, the Bank Merger Act, and the FRA.

Convenience and Needs and CRA Performance Considerations

In acting on this proposal under the Bank Merger Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of performance of the relevant insured depository institutions under the CRA. In addition, the Board must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire an insured savings association. The CRA requires the Board to assess each institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, consistent with the institution's safe and sound operation, and to take this record into account in evaluating a proposal to acquire an insured depository institution.¹⁴

The Board has considered carefully the CRA performance records of the subsidiary insured depository institutions of Popular and Quaker City in light of all the facts of record, including public comments on the proposal. Three commenters opposed the proposal. One commenter noted that Banco Popular received a rating of "low satisfactory" under the lending test at its most recent CRA performance evaluation. Commenters expressed concern that the acquisition would negatively affect Quaker City Bank, which received an "outstanding" rating at its most recent CRA performance evaluation. All three commenters asserted that Banco Popular had not served the needs of Hispanics in LMI communities in its California assessment areas because the bank had not adequately promoted its remittance program for international money transfers or the use of the *Matricula Consular*, an identity card for Mexican nationals living outside Mexico, as an acceptable form of identification for opening a bank account.¹⁵ Commenters also expressed concerns about Popular Cash Express ("PCE"), a nonbanking subsidiary of Popular that provides check-cashing services. Specifically, commenters

alleged that Banco Popular relies on PCE's check-cashing outlets to provide "second-tier" financial products to the "unbanked" Hispanic population in California, while it uses Banco Popular's full-service branches to serve the needs of higher income consumers in its California assessment areas.¹⁶

Popular has indicated that on consummation of the proposal, it plans to evaluate both banks' CRA compliance measures and integrate some of Quaker City Bank's community-related policies and programs. Banco Popular expects to maintain Quaker City Bank's community-related policies and programs and its strong record of multifamily home lending. Banco Popular also plans to continue to operate Quaker City Bank's branches in retail stores that serve many LMI residents.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁷ At its most recent CRA evaluation by the Federal Reserve Bank of New York, Banco Popular received a "satisfactory" rating, as of October 28, 2002 ("2002 Evaluation").¹⁸ Quaker City Bank received an "outstanding" rating at its most recent CRA performance evaluation by the OTS, as of September 13, 2003.

B. CRA Performance of Banco Popular

Although Banco Popular received "low satisfactory" rating under the lending test, the bank received an overall "satisfactory" CRA performance rating. Moreover, the bank received "outstanding" ratings under the investment and service tests, based on its nationwide and California-

14. 12 U.S.C. § 2903.

15. Popular stated that Banco Popular accepts the *Matricula Consular* identification card as valid identification for a variety of services offered by the bank. Customers may use the identification card to open a Banco Popular "Acceso Checking" account, which has no minimum balance requirement and offers free check-writing privileges and ATM transactions, or an "Acceso Savings" account, which offers a low-minimum-balance requirement and free ATM transactions.

16. PCE operates 77 offices in California, with 74 of those offices in LMI census tracts. PCE primarily cashes checks, transmits money, and sells money orders. PCE does not engage in "payday lending." Neither the CRA nor other law requires a banking organization to offer its retail banking products and services through its nonbanking subsidiaries. The Board notes that 64 percent of Banco Popular's branches in its California assessment areas are in LMI census tracts (11 of its 17 branches), and Banco Popular would operate three additional branches in LMI areas on consummation of the proposal.

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

18. Popular operates two additional subsidiary banks, Banco Popular de Puerto Rico, San Juan, Puerto Rico ("BPPR"), and Banco Popular, National Association, Orlando, Florida ("BPNA"). BPPR, Popular's largest subsidiary bank, received an "outstanding" CRA performance rating from the Federal Reserve Bank of New York, as of June 3, 2003. BPNA received a "satisfactory" rating for CRA performance from the Office of the Comptroller of the Currency, as of July 7, 2003.

based activities.¹⁹ Examiners reported that the Banco Popular's total volume of housing-related and small business loans demonstrated adequate responsiveness to the credit needs in its California and other assessment areas during the evaluation period.²⁰ They also reported that the bank's overall distribution of loans among individuals of different income levels and businesses of different sizes by revenue was good. Examiners commended Banco Popular's overall levels of both community development lending and qualified investments in its California and other assessment areas. In addition, examiners found that, overall, Banco Popular's retail delivery systems were readily accessible to geographies and individuals of different income levels in all the bank's assessment areas.

In its California assessment areas, examiners determined that Banco Popular demonstrated adequate responsiveness to housing-related credit needs and that the bank's overall geographic distribution of housing-related loans reflected excellent loan penetration in LMI geographies. Examiners reported that, compared with the level of owner-occupied housing units in LMI areas of Los Angeles, the bank's overall distribution of home purchase and refinance loans across geographies of different income levels was excellent.²¹

Banco Popular has provided a substantial proportion of its housing-related loans to minority individuals. Examiners found that a majority of the number and dollar amount of Home Mortgage Disclosure Act ("HMDA")²² loans that Banco Popular made in California were extended to minority borrowers, including Hispanics. In 2003, approximately 70 percent of the number and 67 percent of the dollar amount of Banco Popular's total HMDA loans in California were made to minority borrowers, and approximately 51 percent of the number and 57 percent of the dollar amount of the bank's total HMDA loans in California were made to Hispanic borrowers. The percentages of Banco Popular's HMDA loans to minority borrowers, particularly Hispanics, were even higher in the Los Angeles Primary Metropolitan Statistical Area ("PMSA"). During 2003,

approximately 70 percent of the total number and dollar amount of the bank's HMDA loans in the Los Angeles PMSA were extended to minority borrowers, and approximately 60 percent of the dollar amount of its total HMDA loans was to Hispanic borrowers.²³

With respect to small loans to businesses,²⁴ examiners reported that the bank's distribution of such loans to businesses of different sizes in the bank's Los Angeles CMSA was adequate when compared with the number of businesses with gross annual revenues of \$1 million or less and the performance of the aggregate of lenders in the market ("aggregate lenders"). For the year 2003, more than 50 percent of the number and dollar amount of Banco Popular's total loans in California were to small businesses.²⁵ In addition, examiners noted that the bank's overall geographic distribution of small loans to businesses in LMI geographies in the Los Angeles PMSA was excellent and exceeded the aggregate lenders' performance in those geographies. In 2003, Banco Popular increased its total amount of small loans to businesses in the Los Angeles area by \$26 million to a total of approximately \$98 million.²⁶

Examiners also characterized the bank's community development lending in California as excellent, with more than \$11 million in community development loans extended during the examination period in response to assessment-area credit needs. Examples of Banco Popular's community development loans included a \$3.4 million loan to a small business in a low-income census tract in Los Angeles to provide 90 jobs for LMI individuals and a \$1.5 million construction loan for 12 units of affordable housing in the City of Commerce as part of a program to improve the community's residential housing.

In the bank's California assessment area, examiners noted that Banco Popular had an excellent level of qualified investments and grants that exhibited strong responsiveness to credit and community development needs. During the evaluation period, the bank's qualified investments in California totaled \$1.3 million. Examiners reported that Banco Popular's investments showed excellent responsiveness to the most pressing credit and community develop-

19. Examiners evaluated Banco Popular's CRA performance in its nine assessment areas in New York, New Jersey, Illinois, California, Florida, and Texas. The bank's California assessment areas included the San Diego Metropolitan Statistical Area ("MSA") and the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area ("Los Angeles CMSA"). The Los Angeles CMSA contained 94 percent of the bank's branches and 93 percent of its deposits in the California assessment areas.

20. The evaluation period was January 1, 2000, through October 28, 2002. Loan products reviewed included home purchase, home refinance, home improvement, multifamily, small business loans, and other loans qualifying as community development lending.

21. One commenter maintained that Banco Popular's lending performance for home refinancings for low-income borrowers was described in the 2002 Evaluation as "weak." However, examiners qualified this description by stating that the bank's lending was adequate given the large disparity between incomes and housing prices in the Los Angeles area and that the aggregate performance of Banco Popular's competitors also was weak. Examiners also noted that the low level of refinancings to low-income borrowers generally reflected the low level of homeownership by low-income families.

22. 12 U.S.C. § 2801 *et seq.*

23. In 2003, Banco Popular made 2,863 HMDA loans totaling approximately \$303 million nationwide. Eighty-three percent of the number and approximately 70 percent of the dollar amount of the bank's HMDA loans were to minority borrowers, with the highest percentage of those loans to Hispanic borrowers.

24. Small loans to businesses are loans that are originated in amounts of \$1 million or less and are either secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans.

25. A small business is a business with gross annual revenues of \$1 million or less.

26. Nationwide, Banco Popular increased the dollar value of its small loans to businesses approximately 15 percent, from approximately \$310 million to approximately \$356 million. Banco Popular represented that it is a nationwide leader in providing Small Business Administration ("SBA") loans and is a leading participant in the SBA 504 Program in California, which provides long-term, fixed-rate loans with low down payments to "certified development companies." Popular also participates in the SBA's Preferred Lenders Program, which simplifies loan closing and administration for borrowers.

ment needs in the bank's assessment areas, which included substantial investments directed to agencies that support affordable housing development. Examiners also favorably noted that more than 25 percent of Banco Popular's lending activity was directed to economic development to help provide small business credit, identified as an important need in the California assessment areas.

With respect to retail services, examiners reported that delivery systems were readily accessible to geographies and individuals of different income levels in the bank's Los Angeles assessment area. In addition, examiners noted favorably that 11 of Banco Popular's 17 branches were in LMI geographies. Examiners determined that the bank's record of opening and closing branches in California improved the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. In addition, they noted that the bank opened two branches in moderate-income census tracts and closed two branches in a non-LMI area during the evaluation period. Examiners also found that the bank's branch products and services were consistent across all portions of the bank's assessment areas, including LMI geographies and to LMI individuals. Banco Popular reported that 67 percent of its branches nationwide and 83 percent of its branches in California are in LMI census tracts. Examiners found that Banco Popular provided a relatively high level of community development services in the Los Angeles assessment area. Banco Popular stated that it promotes and markets all its banking services in Spanish and English.

C. CRA Performance of Quaker City Bank

As previously noted, Quaker City Bank received an overall "outstanding" rating for performance under the CRA.²⁷ Examiners characterized the thrift's responsiveness to the credit needs of "highly disadvantaged" persons as excellent and commended the thrift for its flexible and innovative loan products.

Examiners rated the thrift's performance under the lending test as "outstanding" based on its excellent level of HMDA-reportable lending in LMI geographies, which significantly exceeded the percentages for the aggregate lenders, and its record of housing-related lending to small businesses. Examiners also praised Quaker City Bank for its loan distribution, noting that the thrift's market share for HMDA-reportable loans in LMI census tracts was double its total market share for such lending in its assessment area. In addition, examiners characterized Quaker City Bank as having a good record of HMDA loan distribution among residential borrowers of different income levels.

27. This review period covered January 1, 1999, through March 31, 2001. Loan products reviewed include home mortgage loans, small business loans, and nonresidential mortgage loans. During the review period, the principal lending activity of the institution was the origination or purchase of residential and commercial mortgage loans, with the majority of the institution's loan portfolio secured by real estate. Quaker City delineated its assessment area as Los Angeles, Orange, and Riverside Counties.

Quaker City Bank's investment test performance was rated "high satisfactory." The institution's qualified community development investments totaled \$1.4 million and included financing for affordable housing for LMI individuals and grants to a number of organizations that provide community development services in the bank's assessment area. In particular, examiners commended the thrift for its grant to fund housing for the developmentally handicapped in Whittier.

Examiners rated the institution's performance under the service test as "outstanding." The institution expanded its branch network by seven during the review period and offered extended hours in its new in-store Wal-Mart branches. Examiners noted that the thrift tailored its services to the customer base of the institution's combined assessment area by providing a "totally free" checking account. In addition, Quaker City Bank's employees provided numerous community development services in the assessment area, such as offering affordable housing workshops for senior citizens and home-buyer seminars for other community members in its assessment area.

D. Conclusion on Convenience and Needs and CRA Performance Considerations

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 Popular, public comment on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability of banking products to the customers of Banco Popular and Quaker City, drawing on Banco Popular's focus on commercial lending and Quaker City Bank's focus on mortgage lending. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.²⁸

28. One commenter also requested that the Board condition its approval on Banco Popular's committing to provide a definitive plan that outlines Popular's goals for CRA performance, philanthropic contributions, and contracting with minority suppliers. The Board focuses on the 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. *See, e.g., J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004).* The CRA performance records of Banco Popular and Quaker City Bank and their current programs for serving the credit needs of their communities are consistent with approval and do not warrant any conditions related to CRA performance in the future. In addition, the Board notes that neither the CRA nor the agencies' implementing rules require that financial institutions engage in any type of philanthropy. The Board also notes that concerns related to an institution's contracting with minority suppliers for products and services are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, e.g., Bank of America Corporation, 90 Federal Reserve Bulletin 217, 223 n.31 (2004); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).*

Public Benefits

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has reviewed carefully the other public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses currently served by Quaker City Bank by expanding the number of available branches and providing customers with greater access to the expertise of Banco Popular in such areas as commercial lending and international transactions. Based on the foregoing and all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any possible adverse effects under the standard of review set forth in section 4(j)(2) of the BHC Act.

Other Considerations

As previously noted, Banco Popular also has applied under section 9 of the FRA to establish branches at the locations listed in the Appendix. The Board has considered the factors it is required to consider when reviewing an application under section 9 of the FRA and, for the reasons discussed in this order, finds those factors to be consistent with approval. The Board has also concluded that the factors it must review under section 5(d)(3) of the FDI Act are consistent with approval.²⁹

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice and applications should be, and hereby are, approved.³⁰ In reaching its

29. The record in this case shows that:

- (1) The transaction would not result in the transfer of any federally insured depository institution's federal deposit insurance from one federal deposit insurance fund to another;
- (2) Popular and Banco Popular currently meet, and on consummation of the proposed transaction would continue to meet, all applicable capital standards; and
- (3) The proposed transaction would comply with the interstate banking provisions of the BHC Act if Quaker City Bank were a state bank that Popular was applying to acquire. *See* 12 U.S.C. § 1815(d)(3).

30. Several commenters requested that the Board hold a public meeting or hearing on the proposal. Neither the Bank Merger Act nor the BHC Act requires the Board to hold a public hearing or meeting on an application. Under its regulations, the Board may, in its discretion, hold a public meeting or hearing on an application. *See* 12 CFR 262.3(i). The Board's regulations provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other matter. 12 CFR 225.25(a)(2). The Board has considered carefully the commenters' requests in light of all the facts of record. The Board has accumulated a substantial record in this case that includes examination information, supervisory information, public records, and information submitted by Popular. The public has had ample opportunity to submit comments on the proposal and, in fact, commenters have submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written

conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Popular with the conditions imposed in this order, including compliance with state law, and the commitments made to the Board in connection with the applications process. 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) (12 CFR 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective August 5, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix

Quaker City Bank's Branches in California to be acquired by Banco Popular

Anaheim

8160 East Santa Ana Canyon Road South

Brea

220 South State College Boulevard

Chino

3943 Grand Avenue

comments do not present their views adequately. The commenters' requests also fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

Corona

479 McKinley Street
1290 East Ontario Avenue

Foothill Ranch

26502 Towne Centre Drive

Fullerton

1701 North Euclid Street

Hacienda Heights

3160 South Colima Road

Huntington Beach

8230 Talbert Avenue

La Habra

401 East Whittier Boulevard
1201 West Imperial Highway

La Mirada

12333 South La Mirada Boulevard

La Quinta

79-295 Highway 111

Lakewood

2770 Carson Street

Lancaster

1731 East Avenue J

Long Beach

151 East 5th Street

Murrieta

41200 Murrieta Hot Springs Road

Northridge

19821 Rinaldi Street

Palmdale

37140 47th Street East

Pico Rivera

8500 Washington Boulevard

Placentia

870 North Rose Drive

Rowland Heights

18220 Colima Road

San Marcos

732 Center Drive

Santa Fe Springs

13310 Telegraph Road

Temecula

32225 Highway 79 South Street

Whittier

7021 Greenleaf Avenue
7355 Greenleaf Avenue
13120 Philadelphia Street
15175 Whittier Boulevard

*National City Corporation
Cleveland, Ohio*

Order Approving the Acquisition of a Bank Holding Company

National City Corporation (“National City”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire Wayne Bancorp, Inc., Wooster (“Wayne”), and its subsidiary banks, The Wayne County National Bank of Wooster, Wooster (“Wayne Bank”), and Savings Bank & Trust (“SB&T”), Wadsworth, all in Ohio. National City also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.28(b)(1) of the Board’s Regulation Y to acquire a nonbanking subsidiary of Wayne and thereby engage in permissible lending activities (12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 CFR 225.28(b)(1)).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 34,675 (2004)). 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 sections 3 and 4 of the BHC Act.

National City, with total consolidated assets of \$130.7 billion, is the ninth largest depository organization in the United States, controlling \$88.3 billion in deposits, which represents approximately 1.4 percent of the total amount of deposits of insured depository institutions in the United States.¹ National City is the largest depository organization in Ohio, controlling \$34 billion in deposits,

1. Total asset and deposit data are as of March 31, 2004; nationwide ranking data are as of December 31, 2003; and statewide deposit and ranking data are as of June 30, 2003. Data reflect subsequent merger activity through August 11, 2004.

which represents approximately 16.1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”). National City also operates subsidiary insured depository institutions in Illinois, Indiana, Kentucky, Michigan, Missouri, and Pennsylvania.

Wayne, with total consolidated assets of approximately \$812.2 million, is the 16th largest depository organization in Ohio, controlling \$689.8 million in deposits, which represents less than 1 percent of state deposits. Wayne operates subsidiary insured depository institutions only in Ohio.

On consummation of this proposal, National City would remain the ninth largest depository organization in the United States, with total consolidated assets of approximately \$131.5 billion, and would control approximately 1.5 percent of the total amount of deposits of insured depository institutions in the United States.² National City would remain the largest depository organization in Ohio, controlling approximately \$34.7 billion in deposits, which represents approximately 16.5 percent of state deposits.

Competitive Considerations

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

National City and Wayne compete directly in the Akron, Canton, Cleveland, and Dover–New Philadelphia banking markets, all in Ohio.⁴ The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by National City and Wayne,⁵ the con-

centration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁶ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets.⁷ After consummation, the Akron, Canton, and Dover–New Philadelphia banking markets would remain moderately concentrated, and the Cleveland banking market would remain highly concentrated. The change in market shares would be small and numerous competitors would remain in all these banking markets.

The Department of Justice also has conducted a detailed review of the proposal’s competitive effects and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in the four banking markets discussed above or in any other relevant banking market and that competitive considerations relating to this proposal 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 carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information received from the primary federal banking agency that supervises each institution, publicly reported and other financial information, and information provided by National City.

National City is well capitalized and will remain so on consummation of the proposal. Moreover, National City has indicated that the transaction would be funded from available liquid resources.

2. The data for National City include consummations of proposals by National City to acquire Allegiant Bancorp, Inc., St. Louis, Missouri (“Allegiant proposal”), which the Board approved on March 15, 2004; and Provident Financial Group, Inc., Cincinnati, Ohio (“Provident proposal”), which the Board approved on June 8, 2004. See *National City Corporation*, 90 *Federal Reserve Bulletin* 236 (2004) (“Allegiant Order”); *National City Corporation*, 90 *Federal Reserve Bulletin* 352 (2004) (“Provident Order”).

3. 12 U.S.C. § 1842(c)(1).

4. These banking markets are described in Appendix A.

5. Market share data are as of June 30, 2003, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Board* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted

basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

7. The effects of the proposal on the concentration of banking resources in the banking markets are described in Appendix B.

The Board also has considered the managerial resources of National City and Wayne and the banks to be acquired, including the assessments of management by the relevant bank supervisory agencies and the organizations' records of compliance with applicable banking laws. In addition, the Board has reviewed the examination records of National City, Wayne, and their subsidiary depository institutions, including assessment of their risk management systems. The Board also has considered National City's plans to integrate Wayne and its subsidiaries after consummation of the proposal and the proposed management of the resulting organization.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of National City, Wayne, Wayne Bank, and SB&T 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").⁸ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of National City and Wayne in light of all the facts of record, including a public comment received on the proposal. The Board recently considered the convenience and needs factor in National City's proposals to acquire Allegiant and Provident. In those proposals, the Board conducted detailed reviews of the CRA performance records of the insured depository institutions controlled by National City and the lending records of all of National City's subsidiary banks and nonbank lending subsidiaries, including analyses of data reported by National City under the Home Mortgage Disclosure Act ("HMDA")⁹ and the branch closing policies of National City. The Board found the records in each proposal to be consistent with approval.¹⁰

The commenter reiterated the concerns it expressed in the Allegiant and Provident proposals about National City's home mortgage lending operations, including the subprime lending activities of First Franklin Financial Corporation, San Jose, California ("First Franklin"), a subsid-

ary of National City Bank of Indiana, Indianapolis, Indiana ("NC Indiana"). In commenting on this proposal, the commenter asserted, based on its analysis of data reported by National City under HMDA for the Canton, Ohio, Metropolitan Statistical Area ("MSA") ("Canton MSA"), that National City engages in discriminatory treatment of minorities in its home mortgage lending operations.

A. CRA Performance Evaluations

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

As noted, the Board has recently reviewed the CRA performance records of the subsidiary insured depository institutions of National City.¹² At their most recent CRA evaluations by the Office of the Comptroller of the Currency ("OCC"), National City Bank, Cleveland ("NC Bank"), National City's largest subsidiary bank as measured by total deposits, received an "outstanding" rating, and NC Indiana, National City's largest subsidiary bank as measured by total assets, received a "satisfactory" rating.¹³ In addition, The Provident Bank, Cincinnati, Ohio, which National City recently acquired, received an "outstanding" rating by the Federal Reserve Bank of Cleveland ("Reserve Bank") at its most recent CRA evaluation.¹⁴ National City's five other subsidiary banks received either "outstanding" or "satisfactory" ratings at their most recent CRA evaluations.¹⁵

The most recent CRA evaluations of NC Bank and NC Indiana were discussed in the Allegiant and Provident Orders. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in those orders concerning National City's CRA performance record.

As discussed in the previous orders, the most recent CRA evaluation of NC Bank characterized the bank's overall record of home mortgage and small business lending as excellent and commended its level of community development lending.¹⁶ Examiners noted favorably the use

8. 12 U.S.C. §2901 *et seq.*

9. 12 U.S.C. §2801 *et seq.*

10. *See Allegiant Order and Provident Order.*

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

12. *See Allegiant Order and Provident Order.*

13. Both ratings are as of February 22, 2000.

14. The rating was as of March 29, 2004.

15. Appendix C lists the most recent CRA ratings of National City's subsidiary banks, including the recently acquired Allegiant Bank, St. Louis, and Provident Bank.

16. *See Allegiant Order and Provident Order.* In evaluating the records of performance under the CRA of NC Bank and NC Indiana, examiners considered home mortgage loans by certain affiliates in the banks' assessment areas. The loans reviewed by examiners included

of several flexible lending products designed to address affordable housing needs of LMI individuals and commended the bank's level of qualified investments. In addition, examiners reported that NC Bank's community development services were excellent and praised the distribution of the bank's branches.

At NC Indiana's most recent CRA performance evaluation, examiners commended the bank's record of home mortgage lending to borrowers of different income levels and its community development lending. NC Indiana's most recent evaluation also commended the bank's strong level of qualified investments and characterized the distribution of the bank's branches throughout its assessment area, including LMI geographies, as excellent.

The Board also carefully reviewed the CRA performance records of Wayne's subsidiary banks at their most recent CRA performance evaluations. Wayne Bank received a "satisfactory" rating by the OCC, and SB&T received an "outstanding" rating by the Reserve Bank.¹⁷ Examiners stated that Wayne Bank's level of overall lending reflected excellent responsiveness to the credit needs of the bank's assessment area. In addition, examiners characterized as excellent Wayne Bank's distribution of home purchase and home improvement loans to LMI borrowers and the bank's geographic distribution of home mortgage loans and small loans to businesses and farms.¹⁸ Examiners also determined that Wayne Bank's level of community development lending and investment was adequate, and they noted favorably the number of branches the bank had in moderate income geographies.

Examiners of SB&T characterized the distribution of the bank's consumer, home mortgage, and small business loans to borrowers of different income levels as excellent throughout its assessment areas.¹⁹ They commented that the bank's geographic distribution of loans in different census tracts was more than reasonable, as was its lending distribution among individuals of different income levels

loans reported by National City Mortgage Corporation, Miamisburg, Ohio ("NC Mortgage") (a subsidiary of NC Indiana); National City Mortgage Services, Kalamazoo, Michigan ("NC Mortgage Services") (a subsidiary of National City Bank of the Midwest, Bannockburn, Illinois); and other bank and nonbank affiliates of NC Bank.

17. Wayne Bank was evaluated as of February 24, 2003. SB&T, the former Chippewa Valley Bank, Wadsworth ("Chippewa"), was evaluated as of April 7, 2003. On May 31, 2003, Wayne acquired Banc Services, Inc. and its subsidiary bank, Savings Bank & Trust, both in Orville, Ohio ("Old SB&T"). On July 1, 2003, Old SB&T was merged into Wayne's subsidiary bank, Chippewa, with Chippewa as the surviving bank, and renamed as Savings Bank & Trust. Old SB&T received a "satisfactory" rating from the Reserve Bank at its last CRA performance evaluation, as of April 9, 2001.

18. Small loans to businesses are loans with originated amounts of \$1 million or less that are either secured by nonfarm or nonresidential real estate or classified as commercial and industrial loans. Small loans to farms are loans with originated amounts of \$500,000 or less that are either secured by farmland or classified as loans to finance agricultural production and other loans to farmers.

19. The commenter criticized Old SB&T for denying 100 percent of its applications for home purchase loans by borrowers in LMI census tracts in the Canton MSA in 2002. As noted, Wayne did not acquire Old SB&T until 2003 and Wayne's subsidiary banks did not have branches in the Canton MSA in 2002.

and among businesses and farms of different annual revenue levels.

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

The Board has carefully considered the lending record and HMDA data reported by National City in light of the public comment received on this proposal. Based on a review of National City's HMDA data in the Canton MSA for 2002, the commenter reiterated its contentions in the Allegiant and Provident proposals that National City's lending operations were organized to direct First Franklin's higher-priced loans disproportionately to minority and LMI borrowers and in LMI and predominantly minority communities, as compared with the other subsidiaries of National City engaged in home mortgage lending, including National City's subsidiary banks, NC Mortgage, and NC Mortgage Services (collectively, "National City Lenders").²⁰

As noted in the *Allegiant* and *Provident Orders*, the Board reviewed HMDA data reported by all of National City's subsidiary bank and nonbank lending subsidiaries in the MSAs that comprise the banks' major assessment areas. The analyses included a comparison of the HMDA data of First Franklin with combined data submitted by the National City Lenders.²¹ The Board concluded that the 2002 HMDA data did not support the contention that National City disproportionately directed First Franklin's loans to minority and LMI borrowers or in LMI and predominantly minority communities as compared with the National City Lenders. Moreover, the Board concluded that denial disparity ratios of the National City Lenders for African-American and Hispanic applicants for total HMDA-reportable loans were generally comparable with or lower than those of aggregate lenders in a majority of the MSAs reviewed.²² Based on its review of the record in this case, the Board hereby reaffirms and adopts the HMDA analyses detailed in the *Allegiant Order* and the *Provident Order*.

The Board's review of the final 2003 HMDA data of First Franklin, the National City Lenders, and the aggregate

20. The commenter asserted that First Franklin made more home purchase loans to African Americans in the Canton MSA than NC Bank or NC Mortgage. The commenter also criticized National City for the number of denials of home improvement loan applications by African Americans in the Canton MSA by NC Bank compared to the number of home purchase loans originated by First Franklin in the same area.

21. In evaluating the Allegiant and Provident proposals, the Board analyzed HMDA data for 2001 and 2002 for the National City Lenders, First Franklin, and the aggregate of lenders ("aggregate lenders") in the areas reviewed and preliminary 2003 HMDA data for the National City Lenders. In this context, the lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given area.

22. The total HMDA-reportable loans include home purchase, home refinance, home improvement, and multifamily residential loans. The denial disparity ratio equals the denial rate for a particular racial category (for example, African Americans) divided by the denial rate for whites.

gate lenders in the MSAs previously reviewed and in the Canton MSA supports the Board's conclusions in those orders. The National City Lenders made more HMDA-reportable loans to African-American borrowers than did First Franklin in the Canton MSA. In addition, the percentage of total HMDA-reportable loans that the National City Lenders made to African-American borrowers in the Canton MSA was comparable with the aggregate lenders. Furthermore, the denial disparity ratios of the National City Lenders for African-American and Hispanic applicants for total HMDA-reportable loans in the Canton MSA approximated or were lower than those of the aggregate lenders in 2003.

The Board recognizes that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by National City's banks and their lending subsidiaries, including First Franklin.

As noted in the *Allegiant* and *Provident Orders*, examiners found no evidence of prohibited discrimination or other illegal credit practices at any of National City's subsidiary banks or the banks' lending subsidiaries at their most recent CRA performance evaluations.

The record also indicates that National City has taken several affirmative steps to ensure compliance with fair lending laws. National City has a centralized compliance function and has implemented corporate-wide compliance policies and procedures to help ensure that all National City business lines, including those of First Franklin, comply with all fair lending and other consumer protection laws and regulations. It employs compliance officers and staff responsible for compliance training and monitoring, and conducts file reviews for compliance with federal and state consumer protection rules and regulations for all product lines and origination sources, including First Franklin. National City also regularly performs self-assessments of its compliance with fair lending law and provides training in fair lending policy for its employees.²³

The Board also has considered the HMDA data in light of other information, including the CRA performance records of National City's and Wayne's subsidiary banks. These records demonstrate that National City and Wayne

are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by National City, a public comment on the proposal, and confidential supervisory information.²⁴ The Board notes that the proposal would allow National City to provide a broader range of products and services to Wayne's customers. Moreover, Wayne's customers would have access to an expanded network of branch offices and automated teller machines. Based on a review of the entire record, and for the reasons discussed above and in the *Allegiant* and *Provident Orders*, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Nonbanking Activities

National City also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Access Financial, Massillon, Ohio, a Wayne subsidiary that engages in consumer lending activities. The Board has determined by regulation that making, acquiring, brokering, or servicing loans is permissible for bank holding companies under the Board's Regulation Y,²⁵ and National City has committed to conduct this activity in accordance with the Board's regulations and orders for bank holding companies engaged in these activities.

To approve the notice, the Board must determine that National City's acquisition of Access Financial and the performance of the proposed activities "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."²⁶ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of National City, its subsidiaries, and the company to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval of the notice.

23. The commenter also reasserted criticisms raised in the *Allegiant* and *Provident* proposals that National City pays loan brokers yield-spread premiums and does not have a program for referring to the National City Lenders loan applicants of First Franklin who qualify for credit from those affiliates. As noted in the *Provident Order*, National City has represented that all loan applicants are evaluated individually on their credit qualifications and the loans they receive are based on those qualifications. Moreover, National City has a substantial compliance program in place to ensure that First Franklin and the National City Lenders do not engage in abusive lending practices. The Board also notes that the payment of yield-spread premiums to brokers is not a prohibited practice.

24. The commenter voiced again a criticism it raised in the *Provident* proposal about National City's funding of third-party consumer lending operations, including payday lenders, pawn shop operators, and rent-to-own businesses. National City has represented that its credit evaluations of these types of lenders include, as applicable, the customer's reputation and adherence to applicable law, including the Fair Debt Collection Practices Act. Moreover, National City has represented that it monitors those borrowers' compliance with industry best practices through due diligence, including "blind shopping" programs and interviews with management.

25. See 12 CFR 225.28(b)(1).

26. See 12 U.S.C. § 1843(j)(2)(A).

The Board also has considered the competitive effects of National City's proposed acquisition of Access Financial in light of all the facts of record. Access Financial engages in consumer lending through one office in the Akron banking market, and National City engages in consumer lending through its subsidiary banks in that market. The record in this case indicates that there are numerous providers of consumer lending services in the Akron banking market and that the market for this service is unconcentrated. Accordingly, the Board concludes that National City's acquisition of Access Financial would not have a significantly adverse effect on competition in any relevant market.

The Board also has reviewed carefully the public benefits of the proposed acquisition of Access Financial. The proposal would allow National City to provide an expanded array of consumer loan products and services to customers of Access Financial. Based on these and other matters discussed in this order, as well as all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh possible adverse effects under the standard of review set forth in section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by National City with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice, including compliance with state law. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 CFR 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of these actions, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The acquisitions of Wayne Bank and SB&T shall not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal shall be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 31, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

Ohio Banking Market Definitions

Akron

Summit County, excluding the townships of Sagamore Hills, Northfield Center, Twinsburg, Richfield, Boston, and Hudson; Portage County, excluding the townships of Aurora, Streetsboro, Mantua, Hiram, Nelson, Shalersville, Freedom, and Windham; the townships of Homer, Harrisville, Westfield, Guilford, Wadsworth, and Sharon in Medina County; Lawrence township and the western half of Lake township in Stark County; and the townships of Milton and Chippewa in Wayne County.

Canton

Stark County, excluding Lawrence township and the western half of Lake township; Carroll County; the township of Smith in Mahoning County; and the townships of Lawrence and Sandy in Tuscarawas County.

Cleveland

Cuyahoga, Lake, Lorain, and Geauga Counties; the townships of Sagamore Hills, Northfield Center, Twinsburg, Richfield, Boston, and Hudson in Summit County; Medina County, excluding the townships of Homer, Harrisville, Westfield, Guilford, Wadsworth, and Sharon; the townships of Aurora and Streetsboro in Portage County; and the city of Vermillion in Erie County.

Dover–New Philadelphia

Tuscarawas County, excluding the townships of Lawrence and Sandy; the townships of Monroe, North, Franklin, Stock, Washington, Nottingham, Freeport, and Moorefield in Harrison County; and the townships of Salt Creek, Paint, Berlin, Walnut Creek, and Clark in Holmes County.

Appendix B

Ohio Banking Markets in which National City and Wayne Compete Directly

Akron

National City operates the third largest depository institution in the Akron banking market, controlling \$1 billion in deposits, which represents 13 percent of market deposits. Wayne operates the 12th largest depository institution in the market, controlling \$138 million in deposits, which

represents 1.8 percent of market deposits. On consummation of the proposal, National City would remain the third largest depository institution in the market, controlling deposits of \$1.1 billion, which represent approximately 14.7 percent of market deposits. The HHI would increase 46 points to 1,436. Twenty-six bank and thrift competitors would remain in the market.

Canton

National City operates the seventh largest depository institution in the Canton banking market, controlling \$226 million in deposits, which represents 4.7 percent of market deposits. Wayne operates the 13th largest depository institution in the market, controlling \$41 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, National City would remain the seventh largest depository institution in the market, controlling deposits of \$267 million, which represent approximately 5.6 percent of market deposits. The HHI would increase 8 points to 1,432. Eighteen bank and thrift competitors would remain in the market.

Cleveland

National City operates the second largest depository institution in the Cleveland banking market, controlling

\$15.2 billion in deposits, which represents 25.6 percent of market deposits. Wayne operates the 31st largest depository institution in the market, controlling \$16 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, National City would remain the second largest depository institution in the market. The HHI would increase 2 points to 1,933. Thirty-five bank and thrift competitors would remain in the market.

Dover–New Philadelphia

National City operates the sixth largest depository institution in the Dover–New Philadelphia banking market, controlling \$67 million in deposits, which represents 5.6 percent of market deposits. Wayne operates the 18th largest depository institution in the market, controlling \$7 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, National City would remain the sixth largest depository institution in the market, controlling deposits of \$73 million, which represent 6.2 percent of market deposits. The HHI would increase 6 points to 1,208. Twenty bank and thrift competitors would remain in the market.

Appendix C

CRA Performance Evaluations of National City

| Subsidiary Bank | CRA Rating | Date | Supervisor |
|---|--------------|---------------|-----------------------------------|
| 1. National City Bank, Cleveland, Ohio | Outstanding | February 2000 | OCC |
| 2. National City Bank of Indiana, Indianapolis, Indiana | Satisfactory | February 2000 | OCC |
| 3. The Madison Bank & Trust Company, Madison, Indiana | Outstanding | May 1999 | FDIC |
| 4. National City Bank of Kentucky, Louisville, Kentucky | Satisfactory | February 2000 | OCC |
| 5. National City Bank of the Midwest, Bannockburn, Illinois | Outstanding | February 2000 | OCC |
| 6. National City Bank of Pennsylvania, Pittsburgh, Pennsylvania | Outstanding | February 2000 | OCC |
| 7. National City Bank of Southern Indiana, New Albany, Indiana | Satisfactory | February 2000 | OCC |
| 8. The Provident Bank, Cincinnati, Ohio | Outstanding | March 2004 | Federal Reserve Bank of Cleveland |

*North Fork Bancorporation, Inc.
Melville, New York*

*Order Approving the Acquisition of a Bank Holding
Company*

North Fork Bancorporation (“North Fork”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act to acquire GreenPoint Financial Corp. (“GreenPoint”) and its subsidiary bank, GreenPoint Bank, both in New York, New York.¹ North Fork also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.28(b)(12) of the Board’s Regulation Y to acquire a nonbanking subsidiary of GreenPoint and thereby engage in permissible community development activities.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 21,833 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments in light of the factors set forth in sections 3 and 4 of the BHC Act.

North Fork, with total consolidated assets of approximately \$25.6 billion, operates insured depository institutions³ in New York, Connecticut, and New Jersey that control deposits totaling approximately \$18 billion, which represents less than 1 percent of total deposits in insured depository institutions in the United States.⁴ North Fork is the seventh largest depository organization in New York, controlling deposits of \$14 billion, which represents approximately 2.4 percent of total deposits in depository institutions in the state (“state deposits”).⁵ GreenPoint, with total consolidated assets of approximately \$23.8 billion, is the eighth largest insured depository organization in New York, controlling deposits of \$12.6 billion, which represents approximately 2.2 percent of state deposits.

On consummation of the proposal, North Fork, with total consolidated assets of \$54.1 billion,⁶ would control deposits of approximately \$31.6 billion, which represents less than 1 percent of total deposits in insured depository institutions nationwide. North Fork would become the fifth largest depository organization in New York, controlling deposits in the state of \$26.6 billion, which represents approximately 4.5 percent of state deposits.

1. 12 U.S.C. § 1842.

2. 12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 CFR 225.28(b)(12).

3. In this context, the term “insured depository institution” includes insured commercial banks, savings associations, and savings banks.

4. Asset and national deposit data are as of March 31, 2004, and have been adjusted to account for the merger of The Trust Company of New Jersey, Jersey City, New Jersey (“TCNJ”), into North Fork’s lead subsidiary bank, North Fork Bank, Mattituck, New York (“North Fork Bank”), on May 15, 2004.

5. Statewide deposit and ranking data are as of June 30, 2003.

6. This amount includes approximately \$5.4 billion in one-time balance sheet adjustments.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁷

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

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. On consummation of the proposal, North Fork would become the fifth largest depository organization in this market, controlling \$30 billion in deposits, which represents approximately 4.7 percent of market deposits.¹⁰ The HHI would increase by only 11 points to

7. 12 U.S.C. § 1842(c)(1).

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

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

10. Market share data are as of June 30, 2003, adjusted to include North Fork’s acquisition of TCNJ, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

982, the market would remain unconcentrated, and numerous competitors would remain in the market.

The Department of Justice also has conducted a review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in the New York banking market or any other relevant banking market. 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 banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information received from the primary federal supervisors for the subsidiary depository institutions of North Fork and GreenPoint, information provided by North Fork, and public comment on the proposal. In addition, the Board has consulted with the Federal Deposit Insurance Corporation ("FDIC"), the primary federal supervisor of North Fork's subsidiary banks, concerning the proposal.

North Fork is well capitalized and will remain so on consummation of the proposal. Moreover, the proposal is structured as a share exchange and involves no acquisition debt.

The Board also has considered the managerial resources and the examination records of North Fork, GreenPoint, and GreenPoint Bank, including their risk management systems and other policies; North Fork's record of integrating past merger proposals; and the proposed management after consummation, including management of each of its current and proposed subsidiaries.¹¹ Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of North Fork, GreenPoint, and GreenPoint Bank are consistent with approval, as are the other supervisory factors under the BHC Act.¹²

11. A commenter criticized North Fork's management of its mortgage operations by referencing an administrative action brought by the New York Attorney General's Office ("NYAG's Office") against North Fork that involved escrow fees improperly charged to 30 accounts. The NYAG's Office confirmed that this matter was resolved in May 2003, when North Fork corrected the alleged errors, reimbursed the escrow fees it charged the customers involved, and paid a small fine.

12. The commenter also expressed concern that GreenPoint Bank's subsidiary, GreenPoint Mortgage Funding, Inc. ("GPMF"), might be outsourcing certain back-office services to vendors in foreign countries and questioned whether customers' financial information was

Convenience and Needs Considerations

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

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of North Fork and GreenPoint in light of all the facts of record, including public comment on the proposal. A commenter opposing the proposal asserted, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),¹⁴ that North Fork and GreenPoint engage in discriminatory treatment of African-American and Hispanic individuals in their home mortgage lending operations. The commenter also contended that the banks do not make their products and services available in low-income and predominantly minority areas, particularly in the Bronx, and instead provide financial support to "fringe banking" businesses, such as check cashers and pawn shops, in those areas. In addition, the commenter expressed concern about potential branch closures resulting from this proposal.¹⁵

being properly safeguarded. Many U.S. financial institutions use service providers to perform various functions, such as data processing. The use of service providers, whether domestic or foreign-based, is a common business practice and is not prohibited by federal banking laws. The Board expects U.S. financial institutions to manage effectively the risks associated with their outsourcing arrangements and to comply with all applicable legal and regulatory requirements, regardless of whether these arrangements are with domestic or foreign firms. U.S. financial institutions have various obligations under federal law to protect the privacy and security of information about their customers, including information transferred or transmitted to a foreign-based service provider. In supervising financial institutions with outsourcing arrangements, the federal financial supervisory agencies focus on the ability and obligation of the financial institutions to maintain controls over the privacy and security practices of their service providers that have custody or access to customer information. The Board has consulted with the FDIC and reviewed information submitted by North Fork and GreenPoint about the banks' controls over service providers.

13. 12 U.S.C. § 2901 *et seq.*

14. 12 U.S.C. § 2801 *et seq.*

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

A. CRA Performance Evaluations

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

North Fork Bank received an "outstanding" rating at its most recent CRA evaluation by the FDIC, as of August 19, 2002.¹⁷ GreenPoint Bank also received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of January 28, 2002. North Fork has indicated that GreenPoint Bank would be merged into North Fork Bank after consummation of the proposal.¹⁸ North Fork stated that it would identify the best products and services currently offered by both institutions and endeavor to make them available to all customers.

B. CRA Performance of North Fork Bank

North Fork Bank's most recent CRA evaluation characterized its overall record of home mortgage and small business lending as excellent and praised the bank's level of community development lending. Examiners noted favorably the use of several flexible lending products designed to address affordable housing needs of LMI individuals and commended the bank's level of qualified investments. In addition, examiners commended North Fork Bank's community development services and the distribution of the bank's branches.

North Fork Bank also received an "outstanding" rating under the lending test at its most recent CRA performance evaluation.¹⁹ Examiners commended North Fork Bank for its responsiveness to the assessment areas' credit needs and excellent level of lending activity.

Examiners also commended North Fork Bank for the excellent overall geographic distribution of its lending and good distribution of its home mortgage loans to borrowers throughout the assessment areas and noted North Fork's use of Modification, Extension, and Consolidation Agreements ("MECAs") in addition to HMDA-reportable

loans.²⁰ Examiners found that North Fork Bank's home purchase lending in LMI census tracts exceeded the percentage of owner-occupied housing units and the aggregate lending data. For example, examiners noted that North Fork Bank made approximately 24 percent of its total home purchase loan originations during the assessment period to borrowers in LMI census tracts, which was more than double the percentage of owner-occupied housing units in LMI census tracts in the bank's assessment areas.²¹ Examiners also noted that approximately 29 percent of North Fork Bank's 2000 home purchase loans were made to borrowers in LMI census tracts, compared with the approximately 16 percent originated by the lenders in the aggregate ("aggregate lenders").²²

Examiners commended North Fork Bank for developing flexible lending products and programs, such as the North Fork Subsidy Program, which provides borrowers who meet certain income guidelines and purchase homes in predominantly minority communities with closing-cost grants of up to \$3,000; and the North Fork Bank Affordable Housing Program, which combines low down-payment requirements, below market interest rates, and reduced loan costs for applicants with total household income of \$65,000 or less. In addition, examiners reported that North Fork Bank participated in several government-sponsored programs that offered flexible underwriting for home mortgages through secondary market providers, such as Fannie Mae, and worked with the State of New York

20. A MECA is an agreement under which a lender and a borrower agree to modify the terms of an existing loan by, for example, extending the final repayment date. MECAs do not involve lending additional money and are not reported under HMDA, but achieve the same results as a loan purchase or loan refinancing and may be considered in evaluating an institution's CRA performance. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* at 36,632 (2001).

21. The commenter asserted that North Fork Bank failed to originate adequate numbers of mortgage loans in LMI areas of Brooklyn, the Bronx, and Manhattan. Although the Board has recognized that banks help serve the banking needs of communities by making a variety of products and services available, the CRA does not require an institution to participate in any specific loan programs or provide any specific types of products or services in its assessment area. Examiners noted that data from the 2000 Census show that a majority of the housing units in the bank's assessment areas are renter-occupied. In light of these demographic data, examiners praised North Fork Bank's lending in LMI communities and noted North Fork's leadership in responding to the credit needs of economically disadvantaged areas, in part through the bank's multifamily lending activities. Examiners found that during the evaluation period, North Fork Bank originated or purchased 265 multifamily loans (including MECAs) on properties in LMI census tracts, totaling approximately \$345 million, which represented approximately 47 percent of the number and 41 percent of the dollar amount of North Fork Bank's total multifamily lending activities in its assessment areas during the evaluation period. Examiners stated that the majority of the bank's LMI multifamily loans were originated in the counties of Kings (Brooklyn), Bronx, and New York (Manhattan). Examiners also determined, after a sampling of the rent rolls for these properties, that all the bank's LMI multifamily loans involve affordable housing and meet the definition of community development lending.

22. The lending data of the lenders in the aggregate represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

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

17. North Fork's other subsidiary depository institution, Superior Savings of New England, National Association, Branford, Connecticut ("Superior"), received a "satisfactory" CRA performance rating from the Office of the Comptroller of the Currency ("OCC"), as of September 30, 2002. The OCC has designated Superior as a wholesale bank. As of March 31, 2004, Superior reported assets of \$462 million, representing approximately 2.1 percent of North Fork's total assets.

18. The FDIC has approved the Bank Merger Act (12 U.S.C. § 1828(c)) application related to this transaction.

19. The evaluation period for the lending test was January 1, 2000, through June 30, 2002; the evaluation period for the investment test and service test was October 1, 1999, through June 30, 2002.

Mortgage Association to offer loan programs focused on first-time homebuyers or LMI borrowers. North Fork also provides loan products with special terms to promote cooperative housing opportunities for LMI borrowers.

Examiners characterized North Fork Bank's willingness to serve the credit needs of small- and medium-sized businesses as impressive particularly given the size of the bank. During the evaluation period, North Fork Bank originated more than 15,000 small loans to businesses in its assessment areas,²³ totaling more than \$1.4 billion.²⁴ Examiners reported that the bank exhibited excellent geographic distribution of small loans to businesses in its assessment areas compared with the aggregate lenders.²⁵ North Fork stated that North Fork Bank made almost \$800 million in small loans to businesses in 2002, including 280 small loans to businesses totaling more than \$21 million in the Bronx, which made North Fork Bank the fourth largest small business lender in the Bronx in that year.²⁶ North Fork also stated that, in 2003, North Fork Bank substantially increased the number of small loans to businesses and loans to small businesses in the Bronx.

Examiners commended North Fork Bank for its leadership in making community development loans and in responding to the credit needs of economically disadvantaged areas, individuals, and small businesses. During the evaluation period, North Fork Bank originated more than 30 community development loans totaling more than \$83 million in its assessment areas. These loans included \$4 million in credit for a retail development in an LMI neighborhood in Bronx County, a \$14 million loan for renovations and a permanent mortgage for an industrial

warehouse in an LMI area in the Hunts Point section of Bronx County, more than \$5 million in credit to fund the rehabilitation of a 48-unit apartment building in an LMI neighborhood in Harlem, and loans to improve healthcare facilities for low-income individuals and families. In 2003, North Fork Bank originated 23 new community development loans totaling more than \$76 million.

North Fork Bank received an "outstanding" rating under the investment test at its most recent CRA performance evaluation. Examiners commended North Fork Bank for its excellent commitment to the community development organizations in its assessment areas and noted the bank's leadership in investing in innovative and complex qualified investments. During the evaluation period, North Fork Bank made 100 community development investments totaling more than \$34 million in its assessment areas. North Fork Bank's total community development investments in its assessment areas, including grants, totaled more than \$66 million. These investments included a \$5 million investment in multifamily housing revenue bonds issued by the New York City Housing Development Corporation, a \$15 million investment in an industrial revenue bond supporting the creation of a 147-unit rental facility for low-income senior citizens in Central Islip, and a \$2.3 million investment through the CRA Fund in securities financing the mortgage of a Section 8 housing project in the Bronx.²⁷ Since the evaluation period, North Fork Bank's level of qualified community development investments has increased to \$89.5 million.

North Fork Bank also received an "outstanding" rating under the service test. Examiners reported that North Fork Bank offered an excellent level of support to its community and commended North Fork Bank for offering community development services not provided by other area financial institutions, such as the bank's financial literacy programs. Examiners stated that North Fork Bank offered a full range of banking services at its branches and that its branches and delivery systems provided access to financial products and services for consumers of different income levels and in LMI geographies, noting that North Fork Bank had increased the accessibility of its products and services.²⁸ In addition, examiners reported that the bank's distribution of 28 branches and 49 automated teller machines ("ATMs") among LMI census tracts was reasonable. They also noted that 42 additional branches were adjacent to LMI census tracts, increasing the combined percentage of branches in or nearby LMI census tracts from approximately 17 percent to 42 percent of the bank's total number of branches.

23. Small loans to business are loans that are originated in amounts of \$1 million or less and are either secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans.

24. The commenter expressed concern that some of North Fork's small business lending financed retail check cashers or other nontraditional providers of financial services. According to information provided by North Fork, North Fork Bank has depository and lending relationships with entities engaged in retail check-cashing and money-transmittal activities. North Fork takes steps to ensure that such companies are appropriately licensed and supervised and that their principals meet background requirements. North Fork stated that it has no role in the implementation of the policies or procedures of its retail check-cashing customers and that it has refused to lend to, or terminated relationships with, nontraditional product providers that North Fork believed were engaged in questionable practices. The Board notes that North Fork Bank owns a check-cashing affiliate, CBMC, Inc., that it acquired as part of a prior bank merger. This affiliate is licensed and supervised by the New York State Banking Department ("NYSBD") and examined by the FDIC. The Board has consulted with the FDIC and the NYSBD regarding their most recent reviews of the company's activities.

25. Examiners noted that, in 2000, North Fork Bank originated 25 percent of its small loans to businesses in LMI census tracts, comparing favorably with the aggregate lenders, which originated approximately 17 percent of their small loans to businesses in LMI census tracts. During the evaluation period, North Fork Bank also originated 24 percent of its small loans to businesses in LMI census tracts, which compared favorably to the fact that approximately 21 percent of the businesses were in LMI census tracts.

26. The commenter asserted that North Fork Bank's level of small business lending in the Bronx was inadequate.

27. The Section 8 program provides rent subsidies directly to landlords on behalf of very low-income families, the elderly, and the disabled. The program is administered by local public housing agencies using funds from the Department of Housing and Urban Development.

28. The commenter expressed concerns about North Fork Bank's branch distribution in LMI and minority areas in Bronx County. North Fork has five branches and six free-standing ATMs in LMI and predominantly minority census tracts in the Bronx.

C. CRA Performance of GreenPoint Bank

As previously noted, GreenPoint Bank received an overall “outstanding” rating for CRA performance from the FDIC, as of January 28, 2002.²⁹ GreenPoint Bank also received an “outstanding” rating under the lending test.³⁰ Examiners commended GreenPoint Bank for its excellent responsiveness to the credit needs of the assessment area and its excellent level of lending activity. They noted that GreenPoint Bank ranks among the top 1 percent of all HMDA lenders that reported loans in LMI census tracts in its assessment area. In addition, examiners commended GreenPoint Bank for its innovative and flexible mortgage loan products and for its high level of community development loans, which totaled almost \$100 million during the assessment period.

GreenPoint Bank received a “high satisfactory” under the investment test and examiners reported that GreenPoint Bank had a significant level of qualified community development investments and grants. During the evaluation period, the bank made new qualified investments and grants totaling almost \$12 million. GreenPoint Bank also added \$25 million in funding to the bank’s charitable foundation, which provides college tuition scholarships and grants to organizations that provide affordable housing, health, senior citizen, and other community development services. Examiners reported that GreenPoint Bank’s investments and grants reflected a good responsiveness to the community’s economic needs, often through the use of innovative or complex investment vehicles.

GreenPoint Bank also received a “high satisfactory” rating under the service test. Examiners characterized GreenPoint Bank’s branch distribution among LMI census tracts as reasonable, reporting that more than 21 percent of the bank’s 74 branches were in LMI areas. The commenter expressed concern that GreenPoint Bank’s lack of branches in the Bronx limited its ability to provide basic banking services to the area’s LMI individuals. Examiners reported, however, that GreenPoint Bank provided meaningful community development investments, loans, and services in the Bronx even though it did not maintain a branch there. GreenPoint Bank has opened three branches in the Bronx since its 2002 CRA performance evaluation.

Examiners reported that GreenPoint Bank continued to be innovative and proactive in responding to its communities’ needs and opportunities for community development services. In addition, examiners noted that the bank offered many home ownership seminars, mortgage fairs, and home-buying counseling sessions, and noted its participa-

tion in various community development services, such as Habitat for Humanity.

D. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of North Fork and GreenPoint in light of comments on the HMDA data reported by their subsidiaries.³¹ The commenter alleged that 2002 HMDA data indicated that North Fork Bank disproportionately denied home mortgage loan applications from African Americans and Hispanics as compared with applications from nonminorities in the New York City Metropolitan Statistical Area (“MSA”), and that GreenPoint disproportionately denied home mortgage loan applications from African Americans and Hispanics relative to applications from nonminorities in certain other markets where it operates.

The 2002 HMDA data indicate that North Fork’s percentage of total HMDA-reportable loan originations, which include home purchase, refinance, home improvement, and multifamily loans, to borrowers in predominantly minority census tracts³² generally was comparable with or lagged the percentage for the aggregate lenders in the areas reviewed. However, North Fork Bank’s percentage of home purchase loans, a subcategory of its total HMDA-reportable lending, to borrowers in predominantly minority census tracts exceeded the percentage for the aggregate lenders. North Fork’s denial disparity ratios³³ for African-American and Hispanic applicants for total HMDA-reportable loans generally were comparable with or higher than those ratios for the aggregate lenders in the areas reviewed. However, a significant volume of North Fork Bank’s HMDA-reportable multifamily loans and MECAs, which are not reported under HMDA, were for properties in predominantly minority census tracts.³⁴ North Fork Bank also has purchased a number of home mortgage loans to minority individuals and for properties in predominantly minority census tracts.³⁵

29. The evaluation period was January 1, 1999, through December 30, 2001; the community development activities were considered from May 24, 1999, through January 28, 2002.

30. In evaluating GreenPoint Bank’s record of performance under the CRA, examiners considered home mortgage loans by GPMF, the bank’s subsidiary mortgage lender. The commenter expressed concern that GPMF engaged in subprime lending, but provided no evidence that it had originated or purchased “predatory” loans or otherwise engaged in abusive lending practices. North Fork stated that neither North Fork nor GreenPoint offers subprime mortgage products.

31. The Board analyzed HMDA data from 2001 through 2003 for North Fork and GreenPoint and HMDA data for 2001 and 2002 for the aggregate lenders in the New York City and Nassau-Suffolk MSAs. The 2003 HMDA data are preliminary, and 2003 data for the aggregate lenders are not yet available.

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

33. The denial disparity ratio equals the denial rate of a particular racial category (e.g., African Americans) divided by the denial rate for whites.

34. As noted above, a MECA loan does not involve lending additional money and is not reported under HMDA, but achieves the same results as a loan purchase or loan refinancing. In 2002, North Fork Bank originated 175 total multifamily loans and MECAs, including 65 in predominantly minority census tracts totaling \$143.4 million. In addition, almost all the multifamily loans and MECAs originated by the bank from 2001 to 2003 were in Bronx, Kings, and New York Counties, the three counties with the highest percentage of minority residents in the bank’s assessment areas.

35. In 2002, North Fork Bank purchased 330 HMDA-reportable loans in its New York City MSA assessment area. More than 125 of these loans were to African-American borrowers. The commenter

The 2001 and 2002 HMDA data indicate that GreenPoint's percentage of total HMDA-reportable loan originations to borrowers in minority census tracts in its assessment area generally exceeded or was comparable with the percentage for the aggregate lenders. In addition, the bank's denial disparity ratios for African-American and Hispanic applicants for HMDA-reportable loans in the markets reviewed generally were comparable with or lower than those ratios for the aggregate lenders.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that North Fork or GreenPoint is excluding any race or income segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.³⁶ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance by the subsidiary depository institutions of North Fork and GreenPoint with fair lending laws. The Board has reviewed carefully the examination data and findings of the NYSBD and FDIC. Examiners noted no fair-lending-law issues or concerns in the CRA performance evaluations of the depository institutions controlled by North Fork or GreenPoint.

criticized North Fork Bank's practice of purchasing rather than originating a substantial number of home mortgage loans to LMI and minority borrowers. The commenter argued that North Fork Bank should not receive CRA credit for loan purchases and urged North Fork to increase its loan originations to LMI and minority borrowers. The federal regulatory agencies' regulations implementing the CRA do not differentiate between loan originations and purchases for purposes of evaluating an institution's CRA lending performance because both involve funding the purchase of housing. *See, e.g.*, 12 CFR 228.22.

36. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

The record also indicates that North Fork has taken steps to ensure compliance with fair lending laws. North Fork has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Both North Fork's and GreenPoint's compliance programs include regular internal reviews and audits of HMDA data to ensure that all prospective loan applicants are treated fairly regardless of race, ethnicity, gender, or age. North Fork has stated that its policies and programs will generally apply to the combined organization, but that it would seek to integrate best business practices from GreenPoint, especially those pertaining to its mortgage lending activities.

The Board also has considered the HMDA data in light of the programs described above, such as the banks' use of MECAs in their multifamily lending operations, and the overall performance record of the subsidiary banks of North Fork and GreenPoint under the CRA. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

E. Branch Closings

The commenter expressed concern about the effect of potential branch closings that might result from this proposal. The Board has considered these comments in light of all the facts of record. North Fork has represented that it is in the process of determining whether it will close branches in markets where there is overlap and that it will close or consolidate any branches in accordance with North Fork's Branch Closing Policy and Procedures. Under these policies, North Fork must review a number of factors before closing or consolidating a branch, including an assessment of the branch, a profile of the community where the branch is located, and the effect of the proposed action on customers. In addition, examiners reviewed North Fork Bank's branch closing policy as part of its most recent CRA evaluation and found that it complied with federal law.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.³⁷ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of North Fork Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

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

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by North Fork, public comments on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability of banking products and services to the customers of North Fork and GreenPoint, drawing on North Fork's focus on commercial lending and GreenPoint's focus on mortgage lending. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Nonbanking Activities

North Fork also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire GreenPoint Community Development Corp., also in New York ("CDC"), which engages in community development activities. The Board has determined by regulation that this activity is permissible for bank holding companies under the Board's Regulation Y.³⁸

To approve the notice, the Board must determine that the acquisition of GreenPoint's nonbanking subsidiary and the performance of the proposed activities by North Fork "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."³⁹ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of North Fork and its subsidiaries and the company to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of North Fork's proposed acquisition of CDC in light of all the facts of record. North Fork and GreenPoint both engage in community development activities. The market for this activity is local in scope and unconcentrated, and there are no significant barriers to entry. The record also indicates that there are numerous providers of these services in the New York City area. Accordingly, the Board concludes that North Fork's acquisition of CDC would not have a significantly adverse effect on competition in any relevant market.

In addition, the Board has reviewed the public benefits of the proposed acquisition of CDC. North Fork's proposal to continue CDC's community development activities would benefit the communities served by North Fork and

GreenPoint by providing investments in corporations or projects designed to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

Based on all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of section 4(j) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.⁴⁰ The Board's approval is specifically conditioned on compliance by North Fork with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 CFR 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of these actions, the commitments and conditions noted above 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.

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

38. See 12 CFR 225.28(b)(12).

39. See 12 U.S.C. § 1843(j)(2)(A).

The acquisition of GreenPoint Bank may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 20, 2004.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

SunTrust Banks, Inc.
Atlanta, Georgia

SunTrust Bank Holding Company
Orlando, Florida

Order Approving the Merger of Bank Holding Companies

SunTrust Banks, Inc. and SunTrust Bank Holding Company (collectively "SunTrust"), 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 Bank Holding Company Act ("BHC Act") to merge with National Commerce Financial Corporation ("National Commerce") and to acquire its subsidiary bank, National Bank of Commerce, both in Memphis, Tennessee ("NBC").¹ In addition, SunTrust has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y to acquire the nonbanking subsidiaries of National Commerce, including National Commerce's subsidiary savings associations, NBC Bank, FSB ("NBC FSB") and First Market Bank, FSB ("First Market FSB"), both in Memphis.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 35,627 (2004)). 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.

SunTrust, with total consolidated assets of approximately \$128.1 billion, is the tenth largest depository organization in the United States,³ controlling deposits of approximately \$85.8 billion, which represent approximately 1.4 percent of the total amount of deposits of

insured depository institutions in the United States.⁴ SunTrust operates subsidiary depository institutions in Alabama, Florida, Georgia, Maryland, South Carolina, Tennessee, Virginia, and Washington, D.C. and engages in numerous nonbanking activities that are permissible under the BHC Act.

National Commerce, with total consolidated assets of approximately \$24 billion, is the 43rd largest depository organization in the United States, controlling deposits of \$17.1 billion. National Commerce operates depository institutions in Arkansas, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

On consummation of the proposal, and after accounting for the proposed divestitures discussed in this order, SunTrust would become the ninth largest depository organization in the United States, with total consolidated assets of approximately \$152.1 billion, and would control deposits of approximately \$103 billion, which represent approximately 1.6 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 home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of SunTrust is Georgia,⁵ and National Commerce's subsidiary bank is located in Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.⁶

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case. SunTrust currently is adequately capitalized and adequately managed, as defined by applicable law, and would remain so on consummation of this proposal.⁷ National Commerce's subsidiary bank has been in existence and operated continuously for at least the period of time required by applicable state law.⁸ On consummation of the proposal, SunTrust and its affiliates would control less than 30 percent, or the appropriate percentage established by applicable state law, of the total amount of deposits of insured

4. Deposit data are as of June 30, 2004, and reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports for June 30, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

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

6. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B). Although National Commerce's savings association, NBC FSB, also has offices in Mississippi, it is not a bank subject to section 3(d) of the BHC Act.

7. See 12 U.S.C. § 1842(d)(1)(A).

8. See 12 U.S.C. § 1842(d)(1)(B).

1. 12 U.S.C. § 1842.

2. 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24. All the nonbanking subsidiaries of National Commerce and activities for which SunTrust has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act are listed in Appendix A.

3. Asset and national ranking data are as of June 30, 2004, and reflect consolidations through August 31, 2004.

depository institutions in each state in which the subsidiary banks of both organizations currently are located.⁹ All other requirements of section 3(d) would be met in this case. Accordingly, based on 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 proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.¹⁰ The Board also must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4 of the BHC Act.

SunTrust competes directly with National Commerce's subsidiary bank and savings associations in 15 banking markets in Georgia, Tennessee, and Virginia.¹¹ The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including public comment on the proposal.¹² In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by SunTrust and National Commerce,¹³ the concentration level of mar-

ket deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹⁴ other characteristics of the markets, and commitments made by SunTrust to divest certain branches.

A. Banking Markets without Divestitures

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in 14 of the banking markets where SunTrust and National Commerce's subsidiary bank and savings associations compete directly.¹⁵ One banking market would remain unconcentrated¹⁶ and thirteen banking markets would remain moderately concentrated, as measured by the HHI, with only modest increases in concentration in each market.¹⁷ Numerous competitors would remain in all 14 banking markets.

B. Banking Market with Divestiture

In the Lawrence County, Tennessee, banking market ("Lawrence County Market"), SunTrust is the third largest depository organization, controlling deposits of \$104 million, which represent 22.1 percent of market deposits. National Commerce is the fourth largest depository organization in the market, with three branches that control deposits of \$62.9 million, which represent 13.3 percent of market deposits. To reduce the potential for adverse effects on competition in the Lawrence County Market, SunTrust

9. See 12 U.S.C. § 1842(d)(2)(A) and (B). See Ga. Code Ann. § 7-1-622.2, S.C. Code Ann. §§ 34-25-50, Tenn. Code Ann. § 45-2-1404, Va. Code Ann. § 6.1-399.

10. See 12 U.S.C. § 1842(c)(1).

11. These banking markets are described in Appendix B and include the markets in which First Market FSB competes directly with SunTrust Bank.

12. One commenter expressed general, unspecified concerns about the competitive effects of this proposal. Another commenter, National Commerce's joint-venture partner in First Market FSB, expressed concern that the proposed transaction would hamper First Market FSB's ability to compete with SunTrust in the three banking markets in which they directly compete: the Richmond, Newport News–Hampton, and Fredericksburg banking markets in Virginia. First Market FSB is a joint venture between National Commerce, which owns 49 percent of the thrift's voting securities, and Ukrop's Super Markets, Inc., which owns 51 percent. The Board has reviewed the competitive effects in these three banking markets, taking into account that under well-established principles of banking law, First Market FSB is a subsidiary of National Commerce and would become a subsidiary of SunTrust on consummation of the proposal.

13. Deposit and market share data are based on annual branch reports as of June 30, 2003, adjusted to reflect mergers and acquisitions through June 17, 2004, and on calculations in which the deposits of thrift institutions are included at 50 percent, except as noted below. The Board previously has indicated that thrift institutions have

become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). The deposits of First Market FSB and NBC FSB are weighted at 100 percent because the thrifts are owned by a commercial banking organization. See, e.g., *Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992).

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

15. The effects of the proposal on the concentration of banking resources in these banking markets are described in Appendix C.

16. The Morristown–Newport, Tennessee, banking market would remain unconcentrated.

17. The moderately concentrated markets are the Atlanta, Dalton, Rome, and Savannah banking markets, all in Georgia; the Chattanooga, Cleveland, Knoxville, and Nashville banking markets, all in Tennessee; and the Fredericksburg, Newport News–Hampton, Pulaski–Radford, Richmond, and Roanoke banking markets, all in Virginia.

has committed to divest to an out-of-market banking organization all three National Commerce branches.¹⁸

After accounting for the proposed divestitures, consummation of the merger would be consistent with the DOJ Guidelines and Board precedent. Although the Lawrence County Market would remain highly concentrated, market concentration would not be increased by this proposal, and the HHI would remain at 2062. Five competitors would remain in the market, including two institutions that each would have a market share greater than SunTrust's market share on consummation of the proposal.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The Department of Justice also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 15 banking markets where SunTrust and National Commerce compete directly or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, 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 SunTrust and National Commerce, and their subsidiaries, and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information from the primary federal supervisors for the subsidiary depository institutions of SunTrust and National Commerce, publicly reported and other financial information, comments received on the proposal, and information provided by SunTrust. In addition, the Board

18. SunTrust has committed that it will execute, before consummation of the proposed merger, a sales agreement with an out-of-market banking organization. SunTrust also has committed that, if it is unsuccessful in completing the proposed divestiture with a purchaser determined by the Board to be competitively suitable within 180 days of consummation of the National Commerce proposal, SunTrust will transfer the unsold branches to an independent trustee and will instruct the trustee to sell such branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable by the Board. See *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

has consulted with the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision ("OTS"), the primary federal supervisors of NBC and National Commerce's subsidiary savings associations, respectively, on the proposal.¹⁹

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. SunTrust, National Commerce, and their subsidiary depository institutions currently are well capitalized and would remain so on consummation of the proposal.²⁰ The proposed transaction is structured primarily as a share exchange, but National Commerce's shareholders may elect to receive cash instead of SunTrust shares. The cash portion of the compensation would be funded by SunTrust through the issuance of senior notes and from other available resources. The Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of SunTrust, National Commerce, and the banking and nonbanking subsidiaries to be acquired and the effect of the proposal on these resources. The Board has reviewed available assessments of management and evaluations of risk-management systems by relevant supervisors. In addition, the Board has considered SunTrust's plans for implementing the proposal, including its proposed management after consummation, and the company's record of successfully integrating acquired institutions into its existing operations.²¹

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

19. SunTrust's lead subsidiary bank, SunTrust Bank, Atlanta, is a state member bank supervised by the Federal Reserve System.

20. A commenter alleged that the compensation for National Commerce's senior management under severance agreements is excessive. The Board notes that the severance agreements have been disclosed to shareholders and that SunTrust would remain well capitalized on consummation.

21. Some commenters criticized National Commerce's record of diversity among its suppliers and asserted that the Board should encourage SunTrust to commit to implement a supplier-diversity program and to provide representation by Florida residents in its management (including its board of directors) that is commensurate with SunTrust's percentage of total deposits in the state. Commenters also contended that the Board should encourage SunTrust to report publicly the level of minority employees in its middle management. Although the Board fully supports programs designed to promote equal economic opportunities for all members of society, the comments about diversity among suppliers and employment are beyond the factors the Board is authorized to consider under the BHC Act. See, e.g., *Deutsche Bank AG*, 85 *Federal Reserve Bulletin* 509, 513 (1999). The Board also notes that federal banking laws do not impose residency requirements on the management of bank holding companies. As described above, the Board has carefully considered the competence and experience of SunTrust's management in its review of the proposal.

Convenience and Needs and CRA Performance Consideration

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).²² The Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire an insured savings association.²³ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating depository institutions’ expansionary proposals.²⁴ The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of SunTrust and National Commerce in light of all the facts of record, including public comments received on the proposal.

A. Summary of Public Comments on Convenience and Needs

In response to the Board’s request for public comment on this proposal, 48 commenters submitted their views.²⁵ Twenty-nine commenters commended SunTrust for the financial and technical support provided to their community development organizations or related their favorable experiences with specific programs or services offered by SunTrust. Many of these commenters also expressed their support for the proposal.

Nineteen commenters opposed the proposal and collectively expressed concern about the CRA performance and fair lending records of SunTrust or National Commerce. Many commenters alleged that SunTrust provided a low level of home mortgage lending to LMI borrowers or in LMI communities and should provide more small business lending and community development lending and investment in various communities. In addition, many commenters asserted that National Commerce should engage in more community development and reinvestment activity in underserved communities. Several commenters also criticized National Commerce’s record of small business lending, including lending to businesses owned by minorities. Some commenters contended, based on data reported

under the Home Mortgage Disclosure Act (“HMDA”),²⁶ that SunTrust and National Commerce underserved minority borrowers and communities and engaged in disparate treatment of minority individuals in their home mortgage lending operations in certain markets.²⁷ Several commenters expressed concerns about possible branch closures and reductions in services resulting from the proposed merger.

B. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of both organizations. An institution’s most recent CRA performance evaluation is a particularly important consideration 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.²⁸

SunTrust Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta, as of October 21, 2002 (“2002 Evaluation”). National Commerce’s lead bank, NBC, also received an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2001 (“NBC 2001 Evaluation”).²⁹ In addition, the OTS rated both First Market Bank FSB and NBC Bank FSB “satisfactory” at their most recent CRA performance evaluations, as of October 30, 2003, and February 4, 2003, respectively. SunTrust has represented that it would implement its program for managing community reinvestment activities at National Commerce’s subsidiary depository institutions on consummation of the proposal.

C. CRA Performance of SunTrust

Overview. As noted above, SunTrust Bank received an overall “outstanding” rating for CRA performance in the

26. 12 U.S.C. § 2801 *et seq.*

27. Some commenters criticized SunTrust’s relationships with unaffiliated payday lenders, car-title lending companies, and other nontraditional providers of financial services. SunTrust noted that SunTrust Bank and National Commerce lend to a small number of such companies that are engaged in lawful businesses governed by state law and regulated and licensed by the states. SunTrust, however, stated that it was voluntarily revising its credit policies to prohibit future loans to any business that engages in payday or car-title lending and that this policy would apply to National Commerce businesses after the merger. Furthermore, SunTrust stated that it does not make subprime loans, either directly or through subsidiaries. Under SunTrust’s alternative lending programs in its consumer lending and mortgage lending units, applications that have been determined not to meet SunTrust’s own criteria might be referred to unaffiliated lenders. Those lenders may offer subprime loans and underwrite the loans under their own criteria. SunTrust affirmed that the alternative credit programs represent a small fraction of SunTrust’s overall lending business.

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

29. In addition, SunTrust’s other subsidiary bank, SunTrust BankCard, National Association, Atlanta (“SunTrust BankCard”),

22. 12 U.S.C. § 2901 *et seq.*

23. See, e.g., *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767 (2000).

24. 12 U.S.C. § 2903.

25. Included in this total is one comment that was submitted by 32 community groups.

2002 Evaluation.³⁰ Examiners reported that SunTrust Bank exhibited a good level of responsiveness to the credit and community development needs of its overall assessment areas, and they commended the bank for an excellent record of serving the credit needs of low-income individuals and communities.

SunTrust Bank received an overall “high satisfactory” rating under the lending test. Examiners found that SunTrust Bank originated or purchased more than 198,300 HMDA-reportable loans totaling approximately \$24.5 billion within its assessment areas during the evaluation period. They noted that SunTrust made more than 28 percent of its HMDA-reportable home purchase loans to LMI borrowers. In addition, examiners commended SunTrust Bank for its use of flexible lending products. During the evaluation period, SunTrust Bank made more than 32,700 loans totaling approximately \$3.5 billion through these products. In its Georgia assessment area, examiners particularly commended the bank for its good distribution of loans to individuals of different income levels and to businesses of different annual revenue levels.

Since the 2002 Evaluation, SunTrust has maintained a high level of home mortgage lending. In 2003, SunTrust Bank and SunTrust Mortgage made HMDA-reportable loans totaling approximately \$16 billion. SunTrust continued to make more than 28 percent of its home purchase loans to LMI borrowers, for a total of \$2.6 billion in 2003. SunTrust stated that the percentage of SunTrust Bank’s HMDA-reportable loans to borrowers in LMI census tracts in its assessment areas totaled approximately \$1.3 billion in 2003.

In the 2002 Evaluation, examiners also found that the bank exhibited a good record of lending to small businesses.³¹ SunTrust Bank originated approximately 83,110 small loans to businesses totaling \$9.2 billion within its assessment areas.³² Examiners commended the bank for originating approximately 60 percent of its total number of small loans to businesses to small businesses. They also favorably noted that more than 49 percent of the bank’s small loans to businesses in the Atlanta assessment area were to small businesses.³³

received a “satisfactory” rating from the OCC, as of October 16, 2002.

30. The evaluation period was July 1, 2000, through June 30, 2002. At the time of the 2002 evaluation, SunTrust had 74 assessment areas in six states (Alabama, Florida, Georgia, Maryland, Tennessee, and Virginia) and Washington, D.C., including 13 that received a full-scope review. The review also included home mortgage lending data from SunTrust Bank’s mortgage subsidiary, SunTrust Mortgage, Inc., Richmond, Virginia (“SunTrust Mortgage”).

31. Small businesses are businesses with gross annual revenues of \$1 million or less.

32. Small loans to businesses include loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans.

33. Examiners noted that SunTrust Bank’s level of lending to small businesses exceeded the performance by the aggregate of lenders (“aggregate lenders”) in the bank’s Atlanta assessment area in 2001. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular market.

SunTrust has remained an active small business lender since the 2002 Evaluation. SunTrust reported that its loans to small businesses had increased to more than 64 percent of its total small loans to businesses by the end of the first quarter of 2004. Based on small business data reported by SunTrust in 2002 and 2003 in its assessment areas in Florida, Georgia, and North Carolina, SunTrust’s small business lending compared favorably with the performance by the aggregate lenders in these markets.³⁴ In 2003, the percentages of SunTrust’s small loans to businesses in Florida, Georgia, and North Carolina that were to small businesses substantially exceeded the percentages for the aggregate lenders. Although SunTrust’s percentage of small loans to businesses in predominantly minority census tracts³⁵ in 2003 somewhat lagged the percentage for the aggregate lenders in Florida, its percentage matched the percentage for the aggregate lenders in North Carolina and exceeded that percentage in Georgia. In 2003, the percentage of SunTrust’s total number of small loans to businesses in Florida, Georgia, and North Carolina that were in LMI census tracts was comparable with or exceeded the percentage for the aggregate lenders.

In the 2002 Evaluation, examiners reported that SunTrust Bank made a relatively high level of community development loans, totaling \$1.2 billion during the evaluation period. They particularly commended the bank for being a leader in making community development loans in its Nashville, Tennessee, assessment area, where the bank’s community development loans totaled more than \$52 million. Examiners also noted that Fannie Mae recognized the bank for its innovative lending involvement with two major redevelopment projects in the Atlanta assessment area that provided more than 1,000 mixed-income housing units.

SunTrust has continued a high level of community development lending since the 2002 Evaluation. It represented that SunTrust Bank made community development loan commitments totaling more than \$751 million in 2003 and the first quarter of 2004. In 2003, SunTrust Bank’s community development loans totaled more than \$270 million in Florida and more than \$145 million in Georgia. These loans included a community development loan of \$3 million to finance a project to build 116 single-family, affordable housing units in Miami, Florida.

SunTrust Bank received an “outstanding” rating under the investment test in the 2002 Evaluation. Examiners determined that the bank had an excellent level of qualified community development investments and grants. The bank’s portfolio of qualified community development investments totaled approximately \$620 million, as of June 30, 2002. The new qualified investments during the evaluation period totaled more than \$161 million in Georgia, \$118 million in Virginia, and \$83 million in Washington, D.C. In addition, examiners favorably noted

34. The 2002 and 2003 SunTrust small business data include data reported by SunTrust Bank and SunTrust BankCard.

35. In this context, “predominantly minority census tracts” means census tracts with a minority population of 80 percent or more.

that the bank often acted as a leading investor in or grantor to various community development initiatives that did not routinely receive private funding. Examiners also reported that SunTrust Bank provided \$6.5 million in charitable contributions during its evaluation period.³⁶

SunTrust represented that it made more than \$190 million in new community development investments in 2003 and the first quarter of 2004. Most of these investments were made through SunTrust Community Development Corporation and financed affordable housing projects across SunTrust Bank's assessment areas, such as \$15 million in qualified community development investments in an apartment development for LMI residents in Atlanta. As of March 31, 2004, SunTrust Bank's portfolio of qualified community development investments had increased to more than \$850 million.

SunTrust Bank also received an "outstanding" rating under the service test in the 2002 Evaluation. Examiners reported that the bank's delivery systems, including its branches and ATMs, were readily accessible to all portions of the assessment areas. They found that the bank provided a relatively high level of community development services and that these services were highly responsive to affordable housing needs. In addition, examiners noted that the bank's personnel used their expertise to provide financial services that benefited residents in the bank's assessment areas. Since the 2002 Evaluation, SunTrust reported that it has continued to provide many community services, especially through its employees' service as board members, fundraisers, advisors, and volunteers for numerous community-based organizations.

Florida. SunTrust Bank received an overall "outstanding" rating for its CRA performance in Florida³⁷ and a "high satisfactory" under the lending test.³⁸ Examiners reported that SunTrust achieved a good distribution of loans to borrowers of different income levels and to businesses of different annual revenue levels. Examiners found that approximately 24 percent of the bank's HMDA-reportable home purchase loans were to LMI individuals. In addition, examiners reported that almost 60 percent of the bank's small loans to businesses in the state were to small businesses.

Since the 2002 Evaluation, SunTrust has originated more than 8,100, or 21 percent, of its total number of HMDA-

reportable loans in Florida to LMI individuals and more than 12,900, or 65 percent, of its small loans to businesses in Florida to small businesses.

Examiners reported a high level of community development lending by SunTrust Bank in the Miami and Orlando assessment areas. They specifically commended the Bank for being a leader in the Miami assessment area by originating almost \$178 million in community development loans. Since the 2002 Evaluation, SunTrust has made more than \$300 million in community development loans in Florida, including a \$7 million loan to a project in Ft. Lauderdale, which provided more than 100 new affordable housing units in a moderate-income census tract.

Examiners rated SunTrust Bank's performance as "outstanding" under the investment test in its Florida assessment areas, noting that the bank made community development investments of more than \$91 million in the state during the evaluation period. They found that SunTrust Bank exhibited excellent responsiveness to credit and community development needs through its investment activities. In 2003, SunTrust Bank's community development investments in Florida totaled more than \$30 million.

Examiners rated SunTrust Bank's performance as "outstanding" under the service test in its Florida assessment areas. Examiners also commended the bank's level of service to its communities in Florida, reporting that its delivery systems, including ATMs and branch offices, were considered readily accessible to essentially all portions of the Florida assessment areas. Examiners commended the bank's leadership in providing a high level of community development services that benefited Florida residents.

D. CRA Performance of National Commerce

1. *NBC.* As noted above, NBC received an "outstanding" rating for its overall CRA performance from the OCC in the NBC 2001 Evaluation.³⁹ Examiners also rated NBC as "outstanding" under the lending test.⁴⁰ During the evaluation period, NBC originated more than 10,600 HMDA-reportable loans totaling approximately \$977 million. Examiners noted favorably that the borrower distribution of housing, small business, and small farm loans was excellent or good in assessment areas that represented more than 99 percent of the bank's deposits. In particular,

36. Some commenters requested that SunTrust increase its philanthropic activities in general. Commenters also suggested that the Board should encourage or require SunTrust to become the regional leader for lending to and investing in underserved individuals, communities, and small businesses, particularly in North Carolina and Florida. The Board notes that neither the CRA nor the agencies' implementing rules require that financial institutions engage in any type of philanthropy or be the regional leader for any type of activity.

37. Approximately 10 percent of SunTrust Bank's total bank deposits were in Florida during the evaluation period. In evaluating SunTrust Bank's Florida assessment areas, examiners conducted full-scope reviews in the bank's assessment areas in Miami and Orlando and limited-scope reviews in the bank's other Florida assessment areas.

38. Some commenters expressed concern about SunTrust's CRA performance in Florida.

39. At the time of the 2001 performance evaluation, NBC had ten assessment areas in five states (Arkansas, Georgia, Tennessee, Virginia, and West Virginia), including seven that received a full-scope review. The evaluation period was January 1, 2000, to December 31, 2001.

40. A commenter criticized National Commerce's lending record in North Carolina. NBC merged with Central Carolina Bank and Trust Company, Durham, North Carolina ("Central Carolina Bank"), in 2000, thereby expanding its operations into North and South Carolina for the first time. See *National Commerce Bancorporation*, 86 *Federal Reserve Bulletin* 597 (2000). Examiners did not include the acquired locations in these states in the NBC 2001 Evaluation. The Board notes, however, that before the merger, the FDIC rated Central Carolina Bank as "satisfactory" at its most recent CRA exam, as of January 24, 2000.

examiners commended NBC's lending performance in the Knoxville and Nashville Metropolitan Statistical Areas ("MSAs"). Approximately 36 percent of the bank's HMDA-reportable loans in the Knoxville MSA, and more than 42 percent of those loans in the Nashville MSA, were to LMI borrowers.

Since the NBC 2001 Evaluation, National Commerce reported that in 2002, more than 24 percent of NBC's HMDA-reportable loans in its assessment areas were to LMI borrowers. In 2003, that amount increased to approximately 28 percent. More than 10 percent of the bank's total HMDA-reportable loans were originated to borrowers in LMI census tracts in 2002, and by the first quarter of 2004 the percentage had increased to more than 12 percent.⁴¹

NBC originated approximately 2,300 small loans to businesses during the evaluation period. The examiners particularly commended NBC for its distribution of loans to small businesses in Georgia and Virginia. They also favorably noted NBC's distribution of small loans to business among businesses of different annual revenue levels in Georgia and Tennessee. In the Nashville MSA, examiners noted that 75 percent of its small loans to business were to small businesses during the evaluation period.

Since the NBC 2001 Evaluation, National Commerce reported that the percentage of the bank's small loans to businesses that were made to businesses in LMI census tracts increased from more than 16 percent in 2002 to approximately 23 percent in 2003. In addition, the bank's business loans with originated amounts of \$100,000 or less represented approximately 78 percent of its total small loans to businesses in the first quarter of 2004.

41. In connection with NBC's acquisition of Central Carolina Bank in 2000, Central Carolina Bank entered into an agreement with North Carolina-based community organizations to improve its lending to LMI and minority households and neighborhoods. Commenters alleged that National Commerce failed to meet the terms of the agreement. Some commenters also expressed interest in SunTrust entering into a new agreement or setting new CRA-related objectives. SunTrust asserted that NBC met the letter and spirit of this agreement by increasing the proportions of its residential, small business, and community development loans to LMI and minority borrowers and in LMI and predominantly minority neighborhoods in North Carolina. SunTrust also represented that NBC's community development lending in North Carolina increased from \$5 million in 1999 to more than \$20 million in 2002 and that the bank originated \$49 million in community development loans from 2002 through June 2004. Moreover, NBC has made 54 percent of its total community development loans and 68 percent of its total community development investments in North Carolina since the NBC 2001 Evaluation. SunTrust also represented that it plans to designate community reinvestment managers in various North Carolina communities to serve as the bank's primary points of contact for community groups, local government agencies, and other parties.

The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with community organizations. Moreover, the Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA. *See, e.g., J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Bank of America Corporation, 90 Federal Reserve Bulletin 217 (2004)*. The Board further notes that the CRA does not authorize the Board to direct SunTrust's CRA-related activities towards specific groups, individuals, or projects.

In the NBC 2001 Evaluation, examiners commended NBC's community development lending and noted favorably that NBC originated community development loans in greater amounts than projected. They reported that the bank's \$8 million in community development loans in Tennessee reflected an excellent level of responsiveness to the community's needs.⁴² Examiners also characterized as excellent NBC's level of community development lending in Georgia, where the bank originated \$2.4 million of these loans. Since the NBC 2001 Evaluation, the bank made almost \$77 million in community development loan commitments during 2002 and 2003.

NBC also received an "outstanding" rating under the investment test. According to examiners, NBC's investment activity reflected an excellent level of responsiveness to its assessment areas. NBC made community development investments totaling more than \$11.5 million during the evaluation period. Examiners commended specific qualified investments of NBC that significantly benefited its assessment areas, such as the financial support provided to the Senior Housing Crime Prevention Foundation that serves LMI senior citizens in Tennessee. In addition, examiners noted that NBC made qualified investments totaling \$1.4 million in the Knoxville MSA and \$3.5 million in the Nashville MSA during the evaluation period.

In 2002 and 2003, NBC's community development investments totaled approximately \$42 million, which primarily funded various affordable housing initiatives. As of March 31, 2004, NBC's portfolio of qualified community development investments totaled \$63 million.

The bank received a "high satisfactory" rating under the service test in the NBC 2001 Evaluation. Examiners concluded that NBC provided an excellent level of community development services. They found that the accessibility of the bank's retail service systems was generally good and that its hours and services were typically tailored to the convenience and needs of the bank's communities.⁴³

42. Approximately 20 percent of NBC's total bank deposits were in Tennessee during the evaluation period.

43. One commenter expressed concern about National Commerce's branching arrangements with Wal-Mart, under which National Commerce provides banking services through its branches in certain Wal-Mart retail stores. NBC currently operates 25 in-store branches in Georgia and Tennessee and plans to open 70 additional in-store branches in Georgia and Florida, for a total of 95 branches in Wal-Mart stores. SunTrust stated that NBC runs the operations of each branch, but that the two parties jointly market the program under the trade name, "Wal-Mart Money Center, by National Bank of Commerce." The branches provide traditional banking services to customers and are subject to examination by the appropriate federal banking agency in the same manner as any bank branch. The Board notes that the OCC concluded that NBC's operation of branches under this trade name was consistent with the Interagency Statement on Branch Names. *See* Comptroller of the Currency, Interpretive Letter #977, December 2003. *See also* Board of Governors of the Federal Reserve System, Supervision and Regulation Letter 98-14, June 3, 1998.

In addition, the commenter noted general concerns about Wal-Mart's treatment of its employees. Employees of the NBC branches at Wal-Mart locations are bank employees, not Wal-Mart employees. Moreover, such concerns involving employment practices are outside the limited statutory factors that the Board is authorized to

In addition, examiners noted that NBC's record of opening and closing branches did not adversely affect the accessibility of delivery systems, particularly in LMI census tracts. Examiners also commended NBC for its service to a number of organizations pursuing affordable housing, small business development, and community service initiatives targeted at LMI areas and individuals.

2. *First Market FSB.* As noted above, First Market FSB received a "satisfactory" CRA rating from the OTS at its most recent CRA performance evaluation, as of October 30, 2003. Under the lending test, First Market FSB received a "high satisfactory" rating. Examiners noted that the institution's record of mortgage lending to LMI borrowers was good and its geographic distribution of loans was reasonable. Examiners reported that First Market FSB enhanced its lending performance through the use of programs and products designed for LMI borrowers. These programs included First Market FSB's CRA Home Improvement Loan Program, an alternative to higher-cost personal loans, and its Affordable Mortgage Product, which requires a nominal down payment of \$500, allows loan-to-value ratios up to 100 percent, and uses flexible underwriting guidelines. Examiners also noted that First Market FSB originated a significant number of business loans and community development loans.⁴⁴

Examiners rated First Market FSB's performance under the investment test as "outstanding." Examiners reported that the institution's level of qualified investments was excellent. These investments included a targeted mortgage-backed security, a housing development bond, participation in a loan consortium, and financial donations.

Under the service test, First Market FSB received a "high satisfactory" rating. Examiners reported that the institution's delivery system was accessible to essentially all portions of its assessment area.

3. *NBC FSB.* As noted above, NBC FSB received an overall "satisfactory" CRA performance rating from the OTS at its most recent performance evaluation, as of February 4, 2003. The institution received a "high satisfactory" rating under the lending test and a "low satisfactory" rating under the investment test. Examiners noted that NBC FSB's lending levels reflected a good responsiveness to the community's credit needs and its lending to borrowers of different income levels was excellent. Examiners also favorably noted NBC FSB's use of two special loan

consider when reviewing an application under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). The commenter also criticized Wal-Mart's attempts to enter the banking system. The Board notes that Wal-Mart does not control any insured depository institution and, consequently, is not deemed to be a bank holding company. In addition, National Commerce's branching agreement with Wal-Mart does not cause the store to control a depository institution and, therefore, does not make Wal-Mart subject to the BHC Act.

44. During the review period, First Market FSB originated 387 business loans totaling \$48 million, including \$27 million in loans to small businesses, and 6 community development loans totaling \$2 million.

programs for LMI borrowers through which it originated 25 loans totaling almost \$800,000. They noted that NBC FSB's performance under the investment test was mitigated by its lending performance and limited investment authority.

Under the service test, NBC FSB received a "high satisfactory" rating. Examiners noted that NBC FSB's delivery system was readily accessible to essentially all portions of the assessment area through its two full-service, in-store supermarket branches and that the institution's extended business hours were tailored to meet the convenience and needs of the areas served.

E. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of SunTrust and National Commerce in light of comments received on the HMDA data for 2001 and 2002 reported by the organizations' subsidiary banks and their lending subsidiaries.⁴⁵ Some commenters alleged that SunTrust and National Commerce disproportionately excluded or denied applications for HMDA-reportable loans by minorities.⁴⁶

The HMDA data for 2002 and 2003 indicate that the percentages of total HMDA-reportable loans originated by SunTrust Bank⁴⁷ to African Americans and Hispanics generally lagged the performance of the aggregate lenders in the markets reviewed.⁴⁸ In addition, SunTrust Bank's

45. Some commenters alleged that SunTrust Mortgage had pre-screened applicants and inappropriately directed African-American applicants to SunTrust Bank. To support this claim, commenters asserted that SunTrust Bank reported significantly higher denial rates than SunTrust Mortgage. SunTrust represented that SunTrust Mortgage and SunTrust Bank do not offer different residential mortgage products to which customers could be directed and that applications are processed through the same lending channel, regardless of which SunTrust affiliate received the applications. SunTrust further asserted that SunTrust Bank performed origination services on behalf of SunTrust Mortgage in certain markets in 2002.

46. In addition, some commenters expressed concerns that NBC's tiered-pricing program for mortgage loans has resulted in a disparate impact on African-American borrowers and, thus, violated fair lending laws. Under the tiered-pricing system, the bank charges a higher interest rate for loans of \$75,000 or less. Commenters asserted that through this program, NBC engaged in a pattern and practice that had an adverse and disparate impact on African Americans, who disproportionately apply for mortgage loans in amounts of less than \$75,000. SunTrust responded that NBC's pricing structure was not discriminatory and that the bank's pricing based on loan amount was applied neutrally and without regard to any prohibited factor. SunTrust stated that it does not have a tiered-pricing practice and that on consummation of the proposal, mortgage loans originated by all its subsidiaries, including NBC, would be priced in accordance with SunTrust policies and practices. The commenters' fair lending allegations have been forwarded to the OCC, the primary federal supervisor of NBC and the agency responsible for enforcing fair lending laws at the bank.

47. For purposes of this review, SunTrust Bank's HMDA data include data reported by SunTrust Mortgage.

48. The Board analyzed HMDA data for 2002 and 2003 reported by SunTrust Bank in MSAs and statewide in Alabama, Florida, Georgia, Maryland, Tennessee, Virginia, and Washington, D.C. The statewide data include the relevant data from the MSAs in SunTrust Bank's assessment areas in a particular state or Washington, D.C.

denial disparity ratios⁴⁹ for African-American and Hispanic applicants in 2002 and 2003 were generally higher than the ratios for the aggregate lenders in the markets reviewed.

The HMDA data indicate, however, that the percentages of SunTrust Bank's total HMDA-reportable loans to African Americans and Hispanics increased modestly from 2002 to 2003 in most of the markets reviewed. Moreover, the bank's denial disparity ratios for African-American and Hispanic applicants decreased from 2002 to 2003 in most of the markets reviewed.⁵⁰ SunTrust Bank increased the number of loans to African-American and Hispanic individuals and to borrowers in predominantly minority census tracts in all but one of the markets reviewed during this time period.

The HMDA data for 2003 indicate that the percentages of National Commerce's total HMDA-reportable loans that were originated to African-American borrowers lagged the percentages for the aggregate lenders in most of the markets reviewed, but exceeded the percentages for the aggregate lenders in West Virginia and Arkansas.⁵¹ However, National Commerce's percentages of HMDA-reportable loan originations to Hispanic borrowers in 2003 exceeded or were comparable with the percentages for the aggregate lenders in all but one of the states reviewed. In addition, National Commerce's denial disparity ratios in 2003 were lower than or comparable with the ratios for the aggregate lenders in the majority of the markets reviewed.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials

among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that SunTrust or National Commerce excluded any race or income segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.⁵² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository and lending institutions of SunTrust and National Commerce. Examiners noted no substantive fair lending issues or concerns in the consumer compliance examinations of the depository institutions controlled by SunTrust or National Commerce.

The record also indicates that SunTrust and National Commerce have taken various measures to help ensure compliance with fair lending laws. National Commerce has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. In addition, National Commerce has a Compliance Department with 12 full-time professionals and each mortgage division has a full-time compliance officer.

SunTrust Bank has taken various steps to increase its mortgage lending to minorities. To market its mortgage loan products more effectively to minorities, SunTrust entered into a one-year agreement in 2001 with Fannie Mae, called the Multicultural Homeownership Initiative, under which SunTrust agreed to provide up to \$1 billion in Fannie Mae mortgage loans to homebuyers who are immigrants or minorities ("multicultural homebuyers"). SunTrust represented that it met this goal before the agreement expired and entered into a new two-year agreement with Fannie Mae in June 2002 to originate \$2.5 billion in loans to underserved borrowers, primarily multicultural homebuyers. SunTrust further represented that it met that

SunTrust Bank's percentages of HMDA-reportable loan originations to African Americans in 2003 were comparable with the percentages for the aggregate lenders in Alabama, Georgia, Maryland, Virginia, and Washington, D.C., but lagged the percentages for the aggregate in Florida and Tennessee. SunTrust Bank's percentages of HMDA-reportable loans to Hispanic applicants lagged the percentages for the aggregate lenders in Georgia, Florida, and Virginia, but were comparable with or exceeded the aggregate lenders in Alabama, Tennessee, and Washington, D.C. SunTrust Bank's percentages of HMDA-reportable loans to borrowers in minority census tracts exceeded or were comparable with the performance of aggregate lenders in Maryland, Virginia, Tennessee, and Washington, D.C., but lagged in Alabama, Georgia, and Florida.

49. The denial disparity ratio equals the denial rate for a particular racial category (for example, African American) divided by the denial rate for whites.

50. In August 2003, SunTrust purchased and assumed most of the assets and liabilities of Sun America Mortgage, Inc., Richmond, Virginia ("Sun America Mortgage"), which were transferred to SunTrust Mortgage. Some commenters asserted, based on data from Sun America Mortgage, that SunTrust disproportionately denied or excluded African-American and Hispanic applicants. In addition, one commenter submitted a complaint that SunTrust had not provided him Sun America Mortgage's HMDA data as he requested. The Sun America Mortgage HMDA data cited by these commenters covered a period before SunTrust Bank acquired any assets or liabilities from Sun America Mortgage and are not part of SunTrust Bank's HMDA data records.

51. The Board analyzed HMDA data for 2002 and 2003 reported by NBC, NBC FSB, and First Market FSB in MSAs in Arkansas, Georgia, North Carolina, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia and the institutions' statewide data in these states.

52. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

goal in June 2004 and that it is currently negotiating with Fannie Mae to extend the commitment. In addition, SunTrust stated that from 2001 to 2004, it offered educational and training programs on multicultural homeownership opportunities to realtors and loan officers throughout its assessment areas. SunTrust represented that these initiatives have resulted in the improvement noted above in its overall lending to minorities in 2003.

SunTrust's compliance programs include the implementation of fair lending policies and procedures, self-assessments and transactional testing, complaint-monitoring processes, and employee training. SunTrust Bank and SunTrust Mortgage operate a consolidated consumer compliance function that is under the direction of SunTrust's Corporate Compliance Manager. This compliance function is divided into five units focused on mortgage loans, consumer loans, commercial loans, deposit products, and fair lending compliance. SunTrust stated that it expects to implement its compliance structure, policies, and processes throughout the resulting organization.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of the subsidiary depository institutions of SunTrust and National Commerce. These records demonstrate that SunTrust and National Commerce are active in helping to meet the credit needs of their entire communities.

F. Branch Closings

Some commenters expressed concerns that the proposal would result in possible branch closings. The Board has carefully considered these comments in light of all the facts of record. SunTrust represented that as a result of the merger, branches might be closed in those markets where branches of SunTrust Bank overlap with those of NBC, but that it has not made any decisions about specific branches to be closed, relocated, or consolidated.⁵³ SunTrust indicated that branch closings would be made in accordance with SunTrust's branch closing policy, which requires, among other factors, consideration of the proposal's effects on LMI communities. In the 2002 Evaluation, examiners reported that the bank's record of closing branches did not adversely affect accessibility to its services, particularly with respect to LMI areas and individuals. Examiners also reviewed SunTrust's corporate branch closing policy and determined that it met all regulatory requirements. In addition, examiners found that NBC's record of opening and closing branches did not adversely affect the accessibility of its delivery systems for banking services, particularly in LMI geographies.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing

branch closings.⁵⁴ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Board, the OTS, and the OCC, as the appropriate federal supervisors of SunTrust Bank and National Commerce's subsidiary depository institutions, will continue to review each depository institution's branch closing record in the course of conducting CRA performance evaluations.

G. 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 SunTrust and National Commerce, comments on the proposal, confidential supervisory information, and SunTrust's plans to implement its CRA-related policies, procedures, and programs at NBC, First Market FSB, and NBC FSB.⁵⁵ The Board notes that the proposal would expand the availability and array of banking products and services to the customers of SunTrust and National Commerce, including access to expanded branch and ATM networks and internet banking services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Nonbanking Activities

As noted above, SunTrust also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire the nonbanking subsidiaries of National Commerce, including, among others, NBC FSB and First Market FSB.⁵⁶ In addition to operating savings associations, SunTrust would engage in a number of other nonbanking activities that are permissible for bank holding companies under Regulation Y, including real and personal property leasing, financial and investment advisory services, trust company activities, community development, and data processing.⁵⁷ SunTrust has committed that it will conduct these nonbanking activities in accordance with the Board's regula-

53. One commenter expressed concern that SunTrust may target rural branches in North Carolina for closure. SunTrust currently has no branches in North Carolina and has indicated that this acquisition is motivated in part by its intent to expand into new markets.

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

55. One commenter alleged improprieties regarding his mortgage from Sun America Mortgage. SunTrust stated that no SunTrust entity is or was a party to this loan, and that the loan was sold before the SunTrust/Sun America transaction.

56. See Appendix A.

57. 12 CFR 225.28(b)(3), (4)(ii), (5), (6), (12), (14).

tions and orders approving the activities for bank holding companies.

To approve this notice, the Board also must determine that the proposed acquisition of National Commerce's nonbanking subsidiaries by SunTrust "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."⁵⁸ As part of its evaluation of these factors, the Board has considered the financial condition and managerial resources of SunTrust, its subsidiaries, and the companies to be acquired, as well as the effect of the proposed transaction on those resources. For the reasons discussed above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval.

The Board also has reviewed the competitive effects of SunTrust's proposed acquisition of National Commerce's nonbanking depository subsidiaries. For the reasons stated earlier, and based on all the facts of record, consummation of this proposal would be consistent with Board precedent and DOJ Guidelines in the Richmond, Newport News-Hampton, and Fredericksburg banking markets where SunTrust Bank and First Market FSB compete directly.

In addition, SunTrust and National Commerce compete directly in trust company, data processing, investment advisory, and community development activities. The markets for each of these nonbanking activities are regional or national in scope, except the market for community development, which is local. The record in this case indicates that there are numerous providers of each of these services and that SunTrust and National Commerce's levels of participation are relatively small. Based on all the facts of record, the Board concludes that consummation of the proposed nonbanking acquisitions is not likely to have any significantly adverse competitive effects.

The Board also has reviewed carefully the public benefits of the proposed acquisition of National Commerce's nonbank subsidiaries. SunTrust has indicated that the expanded geographic scope of SunTrust's nonbanking operations would provide added convenience to current and future customers of SunTrust and National Commerce, and that customers of both institutions would have access to a broader array of products and services.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public benefits factor that it must consider under section 4(j)(2) of the BHC Act is consistent with approval of SunTrust's notice.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.⁵⁹ In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.⁶⁰ The Board's approval is specifically conditioned on compliance by SunTrust with the conditions in this order and with all the commitments made to the Board in connection with this proposal, including the branch divestiture commitments discussed above, and receipt of all other regulatory approvals. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, and to the Board's authority to require such

59. A number of commenters requested that the Board deny the proposal, delay action on the proposal, or extend the comment period until SunTrust enters into various agreements proposed by the commenters. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and considerable public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting an extension of the comment period, or denying the proposal on the grounds discussed above is not warranted.

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

58. 12 U.S.C. § 1843(j)(2)(A).

modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the 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 bank acquisition shall not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 14, 2004.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

Nonbanking Activities of National Commerce¹

- (1) Extending credit, servicing loans, and factoring, in accordance with section 225.28(b)(1) of Regulation Y (12 CFR 225.28(b)(1)), through TransPlatinum Service Corp., Nashville ("TransPlatinum");
- (2) Leasing personal and real property, in accordance with section 225.28(b)(3) of Regulation Y (12 CFR 225.28(b)(3)), through USI Alliance Corp., Memphis ("USI");
- (3) Operating savings associations, in accordance with section 225.28(b)(4)(ii) of Regulation Y (12 CFR 225.28(b)(4)(ii)), through First Market FSB and NBC FSB;
- (4) Operating a nondepository trust company, in accordance with section 225.28(b)(5) of Regulation Y (12 CFR 225.28(b)(5)), through First Mercantile Trust Company, Memphis ("Trust Company");
- (5) Providing financial and investment advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 CFR 225.28(b)(6)), through FMT Capital Management, Inc., Commerce Capital Management, Inc., both in Memphis, Trust Company, and Brooks, Montague & Associates, Inc., Chattanooga;
- (6) Engaging in community development activities, in accordance with section 225.28(b)(12) of Regulation Y (12 CFR 225.28(b)(12)), through Senior Housing Crime Prevention Foundation Investment Corporation, Memphis, and USI; and
- (7) Providing data processing and data transmission services, in accordance with section 225.28(b)(14) of Regulation Y (12 CFR 225.28(b)(14)), through TransPlatinum.

Appendix B

Banking Markets where SunTrust Bank and National Commerce's Subsidiary Depository Institutions Compete Directly

Georgia Banking Markets

Atlanta

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

Dalton

Murray and Whitfield Counties.

Rome

Rome and Polk Counties.

Savannah

Bryan, Chatham, and Effingham Counties.

Tennessee Banking Markets

Chattanooga (Tennessee and Georgia)

The Chattanooga MSA, excluding the town of Monteagle in Marion County, Tennessee.

Cleveland

Bradley County and the towns of Benton and Ocoee in Polk County.

Knoxville

Anderson, Knox, Loudon, Roane, and Union Counties; the portion of Blount County northwest of Chilhowee Mountain; the towns of Harriman and Oliver Springs in Morgan County; the towns of Seymour and Kodak in Sevier County; and the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs in Grainger County.

1. All the named subsidiaries are in Tennessee and include organizations controlled by them.

Lawrence County

Lawrence County.

Morristown–Newport

Cocke and Hamblen Counties; the towns of Baneberry, Jefferson City, Jefferson Estates, Leadvale, Talbot, and White Pine in Jefferson County; and Grainger County, excluding the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs.

Nashville

Cheatham, Davidson, Robertson, Rutherford, Sumner, Williamson, and Wilson Counties.

*Virginia Banking Markets**Fredericksburg*

Caroline, King George, and Spotsylvania Counties; Stafford County, excluding the portion in the Washington, DC–MD–VA Rationally Metropolitan Area (“RMA”); the independent city of Fredericksburg; the town of Lake Anna in Louisa County; and the towns of Colonial Beach, Leedstown, Oak Grove, and Potomac Beach in Westmoreland County.

Newport News–Hampton

The Newport News–Hampton RMA; the non-RMA portions of James City and Matthews Counties; and the independent cities of Hampton, Newport News, Poquoson, and Williamsburg.

Pulaski–Radford

Montgomery and Pulaski Counties and the independent city of Radford.

Richmond

The Richmond RMA; the non-RMA portions of Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince George Counties; Charles City, King and Queen, King William, and New Kent Counties; and the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond.

Roanoke

The Roanoke RMA; the non-RMA portions of Botetourt and Roanoke Counties; the town of Boones Mill in Franklin County; and the independent cities of Roanoke and Salem.

Appendix C

Market Data for Banking Markets without Divestitures

*Unconcentrated Banking Market**Morristown–Newport, Tennessee*

SunTrust operates the fifth largest depository institution in the market, controlling deposits of \$142.7 million, which represent approximately 10.5 percent of market deposits. National Commerce operates the 11th largest depository institution in the market, controlling deposits of \$36.5 million, which represent approximately 2.7 percent of market deposits. After the proposed merger, SunTrust would operate the second largest depository institution in the market, controlling deposits of approximately \$179.2 million, which represent approximately 13.1 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase by 56 points to 984.

*Moderately Concentrated Banking Markets**Georgia Banking Markets**Atlanta*

SunTrust operates the second largest depository institution in the market, controlling deposits of \$13.8 billion, which represent approximately 19.1 percent of market deposits. National Commerce operates the 13th largest depository institution in the market, controlling deposits of \$549.4 million, which represent less than 1 percent of market deposits. After the proposed merger, SunTrust would remain the second largest depository institution in the market, controlling deposits of approximately \$14.4 billion, which represent approximately 19.9 percent of market deposits. Eighty-seven depository institutions would remain in the banking market. The HHI would increase by 29 points to 1317.

Dalton

SunTrust operates the 14th largest depository institution in the market, controlling deposits of \$4.4 million, which represent less than 1 percent of market deposits. National Commerce operates the 11th largest depository institution in the market, controlling deposits of \$22.1 million, which represent approximately 1.3 percent of market deposits. After the proposed merger, SunTrust would operate the tenth largest depository institution in the market, controlling deposits of approximately \$26.5 million, which represent approximately 1.6 percent of market deposits. Thirteen depository institutions would remain in the banking market. The HHI would increase by 1 point to 1390.

Rome

SunTrust operates the largest depository institution in the market, controlling deposits of \$289.2 million, which represent approximately 20.3 percent of market deposits. National Commerce operates the tenth largest depository institution in the market, controlling deposits of \$40.4 million, which represent approximately 2.8 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$329.6 million, which represent approximately 23.1 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase by 11 points to 1359.

Savannah

SunTrust operates the third largest depository institution in the market, controlling deposits of \$702.7 million, which represent approximately 19.3 percent of market deposits. National Commerce operates the sixth largest depository institution in the market, controlling deposits of \$137.2 million, which represent approximately 3.8 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of approximately \$839.9 million, which represent approximately 23.1 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase by 146 points to 1684.

*Tennessee Banking Markets**Chattanooga (Tennessee and Georgia)*

SunTrust operates the largest depository institution in the market, controlling deposits of \$1.2 billion, which represent approximately 21 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$141.7 million, which represent approximately 2.5 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$1.3 billion, which represent approximately 23.6 percent of market deposits. Twenty-three depository institutions would remain in the banking market. The HHI would increase by 106 points to 1448.

Cleveland

SunTrust operates the sixth largest depository institution with four branches in the market, controlling deposits of \$102.7 million, which represent approximately 8.9 percent of market deposits. National Commerce opened a *de novo* branch in the market on January 21, 2004. FDIC deposit data reflecting the deposits of National Commerce's branch are not yet available. After the proposed merger, nine depository institutions would remain in the market. The

Board has considered SunTrust's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of National Commerce's branch. The HHI would remain unchanged at 1579. Based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect in this banking market.

Knoxville

SunTrust operates the third largest depository institution in the market, controlling deposits of \$1.3 billion, which represent approximately 14.4 percent of market deposits. National Commerce operates the eighth largest depository institution in the market, controlling deposits of \$310.1 million, which represent approximately 3.4 percent of market deposits. After the proposed merger, SunTrust would operate the second largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which represent approximately 17.8 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase by 92 points to 1215.

Nashville

SunTrust operates the third largest depository institution in the market, controlling deposits of \$3.3 billion, which represent approximately 16.9 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$619.4 million, which represent approximately 3.2 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of approximately \$3.9 billion, which represent approximately 20.1 percent of market deposits. Thirty-five depository institutions would remain in the banking market. The HHI would increase by 107 points to 1214.

*Virginia Banking Markets**Fredericksburg*

SunTrust operates the seventh largest depository institution in the market, controlling deposits of \$95.2 million, which represent approximately 4.5 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$38.3 million, which represent approximately 1.8 percent of market deposits. After the proposed merger, SunTrust would operate the sixth largest depository institution in the market, controlling deposits of approximately \$133.5 million, which represent approximately 6.3 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase by 16 points to 1793.

Newport News–Hampton

SunTrust operates the largest depository institution in the market, controlling deposits of \$847.9 million, which represent approximately 22.1 percent of market deposits. National Commerce operates the 13th largest depository institution in the market, controlling deposits of \$31.3 million, which represent less than 1 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$879.2 million, which represent approximately 22.9 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase by 36 points to 1406.

Pulaski–Radford

SunTrust operates the seventh largest depository institution in the market, controlling deposits of \$98.3 million, which represent approximately 6.4 percent of market deposits. National Commerce operates the tenth largest depository institution in the market, controlling deposits of \$21.5 million, which represent approximately 1.4 percent of market deposits. After the proposed merger, SunTrust would operate the fourth largest depository institution in the market, controlling deposits of approximately \$119.7 million, which represent approximately 7.8 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase by 18 points to 1789.

Richmond

SunTrust operates the fifth largest depository institution in the market, controlling deposits of \$2.4 billion, which represent approximately 10.2 percent of market deposits. National Commerce operates the sixth largest depository institution in the market, controlling deposits of \$813.7 million, which represent approximately 3.5 percent of market deposits. After the proposed merger, SunTrust would operate the fourth largest depository institution in the market, controlling deposits of approximately \$3.2 billion, which represent approximately 13.7 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase by 71 points to 1619.

Roanoke

SunTrust operates the third largest depository institution in the market, controlling deposits of \$608.3 million, which represent approximately 13.6 percent of market deposits. National Commerce operates the fourth largest depository institution in the market, controlling deposits of \$445.2 million, which represent approximately 9.9 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of approximately \$1 billion, which represent approximately 23.5 percent of market deposits.

Fifteen depository institutions would remain in the banking market. The HHI would increase by 269 points to 1491.

*ORDERS ISSUED UNDER BANK MERGER ACT**Gateway Bank & Trust Co.
Elizabeth City, North Carolina**Order Approving the Acquisition and Establishment of
Branches*

Gateway Bank & Trust Co. (“Gateway”), a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to assume certain liabilities and acquire certain assets of three branches of Provident Bank of Maryland, Baltimore, Maryland (“Provident”).¹ These branches are in Elizabeth City, North Carolina (“Elizabeth City Branch”), and Emporia and Suffolk, both in Virginia (collectively, “Virginia Branches”).²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Bank Merger Act and the Board’s Rules of Procedure (12 CFR 262.3(b)). As required by the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General and the other federal banking agencies. 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 Bank Merger Act.

Gateway, with total consolidated assets of \$353 million, is the 43rd largest insured depository institution in North Carolina, controlling deposits of \$184.2 million. The Elizabeth City Branch controls deposits of \$52 million. On consummation of the proposal, Gateway would remain the 43rd largest insured depository institution in North Carolina, controlling deposits of \$236.2 million, which represent less than 1 percent of total deposits of insured depository institutions in the state.³

Gateway is the 119th largest insured depository institution in Virginia, controlling state deposits of approximately \$48 million. The Virginia Branches control deposits of \$90.8 million. On consummation of the proposal, Gateway would become the 81st largest insured depository institution in Virginia, controlling deposits of \$139.6 million, which represent less than 1 percent of total deposits of insured depository institutions in the state.

1. 12 U.S.C. §1828(c).

2. See 12 U.S.C. §1831u. The branches are at 400 West Ehringhaus Street in Elizabeth City, 520 S. Main Street in Emporia, and 2825 Godwin Boulevard in Suffolk. Provident will continue to operate branches in Maryland, Virginia, Pennsylvania, and the District of Columbia.

3. Asset data are as of March 31, 2004. Deposit data and ranking data are as of June 30, 2003, and reflect merger and acquisition activity through April 20, 2004.

Interstate Analysis

Gateway is in North Carolina and proposes to acquire two branches in Virginia, as well as a branch in North Carolina. Section 102 of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle–Neal Act”) authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.⁴ Virginia and North Carolina have enacted legislation allowing interstate mergers between banks in their states and out-of-state banks pursuant to the provisions of the Riegle–Neal Act.⁵ Gateway has complied with state law requirements, and the proposal meets all other requirements of the Riegle–Neal Act.⁶ Accordingly, the Riegle–Neal Act authorizes the proposed interstate branch acquisitions.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking.⁷ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.⁸

Gateway proposes to acquire a Provident branch in each of the following markets where Gateway and Provident compete directly: the Norfolk–Portsmouth, Virginia–North Carolina, banking market (“Norfolk–Portsmouth Market”) and the Elizabeth City, North Carolina,⁹ banking market (“Elizabeth City Market”). The Board has carefully reviewed the competitive effects of the proposal in these banking markets in light of all the facts of record, including the number of competitors that would remain and the relative shares of total deposits in depository institutions in

each market (“market deposits”) they would control,¹⁰ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) and the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹¹ and other characteristics of the markets.

After consummation of the proposal, the Norfolk–Portsmouth Market would remain moderately concentrated, and the post-merger HHI would be consistent with the DOJ Guidelines and Board precedent. Numerous competitors would remain in the banking market.¹²

In the Elizabeth City Market, however, the HHI would exceed DOJ Guidelines on consummation. Gateway is the second largest insured depository institution in the market, controlling deposits of \$143.3 million, which represent 21.9 percent of market deposits. Provident is the sixth largest depository institution with deposits of \$52 million, which represent approximately 8 percent of market deposits. On consummation of the merger, Gateway would become the largest depository institution in the market, controlling deposits of \$195.3 million, which represent approximately 29.9 percent of market deposits. The HHI would increase by 349 points to 2014.

Several factors indicate that the proposal is not likely to have a significant adverse effect on competition in the market. Nine commercial banking organizations would remain in the market after consummation. Four of Gateway’s largest commercial bank competitors each would control more than 9 percent of market deposits and the two largest competitors would control more than 22 percent and 16 percent of market deposits, respectively. Although there has been no *de novo* entry in recent years, the Elizabeth City Market has economic characteristics that

4. Pub. L. No 103-328, 108 Stat. 2338 (1994); see 12 U.S.C. § 1831u.

5. See Va. Code Ann. 6.1-44.1 *et seq.* (effective March 16, 1995); 1999 N.C. Sess. Laws 53-224(11) (effective May 21, 1999).

6. Gateway is adequately capitalized and the resulting bank would continue to be adequately capitalized and adequately managed on consummation of this proposal. Gateway and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Virginia. See 12 U.S.C. § 1831u.

7. 12 U.S.C. § 1828(c)(5)(A).

8. 12 U.S.C. § 1828(c)(5)(A) and (B).

9. The Norfolk–Portsmouth Market is defined as the independent cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach in Virginia; and Currituck County, North Carolina. The Elizabeth City Market is defined as the counties of Camden, Pasquotank, and Perquimans in North Carolina.

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

11. 49 *Federal Register* 26,823 (1984). Under these guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

12. Gateway operates the 14th largest depository institution in the market, controlling deposits of approximately \$48 million or less than 1 percent of market deposits. Provident operates the 22nd largest depository institution in the market, controlling deposits of \$42 million. On consummation of the proposal, Gateway would remain the 14th largest depository institution in the market, controlling deposits of \$90 million or less than 1 percent of market deposits. The HHI would increase by 1 point to 1,325 and 21 institutions would remain in the market.

suggest it is modestly attractive for new entry. The market has experienced above-average population growth relative to the average of nonmetropolitan areas in North Carolina, and per capita income and deposits per banking office exceed the average for nonmetropolitan counties in the state. In addition, recent rates of increase in population and bank deposits in the market are higher compared with national rates.

The Board also has considered that the market has a large and active credit union that offers a full range of retail banking products. North Carolina's State Employees' Credit Union ("SECU") is the second largest credit union in the United States, with more than \$10 billion in total deposits. Approximately 75 percent of the residents in the market are eligible to become members of SECU. In addition, SECU operates street-level branches and multiple automated teller machines that are easily accessible to residents in the market. SECU controls approximately \$68 million in deposits in the Elizabeth City Market. The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.¹³

The Board concludes that the foregoing considerations, including the number and size of competitors that would remain in the Elizabeth City Market after consummation, the presence of a large, accessible credit union, the structure and attractiveness for entry of the market, and other factors, mitigate the transaction's potential anticompetitive effects. The Department of Justice has advised the Board that consummation of the proposal is not likely to have a significantly adverse competitive effect in the Elizabeth City Market. The Board also has received no objections to the proposal from the other federal banking agencies. Based on all the facts of record, the Board concludes that consummation of the proposed transaction would not likely result in a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial and Managerial Resources and Future Prospects

In reviewing the proposal under the Bank Merger Act, the Board has also carefully considered the financial and managerial resources and the future prospects of Gateway and the Provident branches to be acquired. The Board has reviewed these factors in light of all the facts of record, including confidential reports of examination assessing the financial and managerial resources of Gateway and information provided by Gateway. The Board notes that Gate-

way currently is well capitalized and is expected to remain so after consummation of the proposal. In addition, the Board has considered Gateway's plans to implement the proposal, including its available managerial resources. Gateway has sufficient financial and managerial resources to consummate the proposal. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of the institutions involved are consistent with approval of the proposal.

Convenience and Needs Considerations

In acting on the proposal, the Board also must consider its effects on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁴

The Board has carefully considered the effects of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including Gateway's CRA performance record and other information from the bank. Gateway received an overall rating of "satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of April 1, 2001.¹⁵ Provident also received a satisfactory overall rating at its most recent CRA performance evaluation by the FDIC, as of October 1, 2001. In addition, the Board notes that the three branches to be acquired are somewhat remote from Provident's main operations in Maryland and Northern Virginia. With their proximity to Gateway's branches, the bank plans for these branches to play a central role in expanding its community banking services in northeastern North Carolina and the Tidewater region of Virginia.

Based on these and all the facts of record, the Board has concluded that considerations relating to the convenience and needs of the communities to be served, including the CRA performance records of the institutions involved, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on the commitments that Gateway made to the Board in connection with the application, including a commitment to comply with state law. These

13. With deposits of SECU included at 50 percent, Gateway would be the largest of eleven depository institutions in the market, with 20.8 percent of market deposits, and Provident would be the sixth largest depository institution in the market, controlling 7.6 percent of market deposits. On consummation of the proposal, Gateway would remain the largest depository institution in the market with deposits of \$211.3 million or 28.4 percent of market deposits. The HHI would increase by 315 points to 1844.

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

15. Gateway became a state member bank on October 1, 2001.

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

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

By order of the Board of Governors, effective August 3, 2004.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Banco de Chile
Santiago, Chile

Order Approving Establishment of a Branch

Banco de Chile (“Bank”), Santiago, Chile, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA (12 U.S.C. §3105(d)) to establish a branch in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami, Florida (*The Miami Herald*, October 2, 2003). The time for filing comments has expired, and all comments have been considered.

Bank, with total assets of \$15.3 billion, is one of the largest banks in Chile.¹ Three Chilean entities, LQ Inversiones Financieras S.A., Sociedad Matriz del Banco de Chile S.A., and Sociedad Administradora de la Obligación Subordinada, directly own 20.2 percent, 18.5 percent, and 42 percent, respectively, of the Bank’s shares.² These three entities are directly or indirectly controlled by Quiñenco S.A., Santiago, Chile, which, in turn, is indirectly controlled by the Luksburg Foundation (“Luksburg”), Vaduz, Liechtenstein, Bank’s ultimate parent.³ Bank provides a wide variety of financial services, including retail and corporate banking, insurance and brokerage services, fund management, financial advisory services, securitization,

1. Asset data are as of December 31, 2003.

2. No other shareholder owns directly more than 10 percent of Bank’s shares.

3. Mr. Andronico Luksic Abaroa indirectly controls 56 percent of the shares of Quiñenco through Luksburg. Two other members of the Luksic family each indirectly control approximately 13.2 percent of Quiñenco’s shares. The remainder of Quiñenco’s shares are publicly traded on the New York and Chilean Stock Exchanges and no other shareholder owns more than 5 percent of those shares.

and trade-related financing. Bank operates approximately 240 branches in Chile, as well as representative offices in Argentina, Brazil, and Mexico. Luksburg and Bank are qualifying foreign banking organizations pursuant to Regulation K.

In the United States, Bank operates a branch office in New York, New York, and an agency in Miami, Florida. New York is Bank’s home state. Bank proposes to establish a branch outside of its home state by upgrading its Miami agency into a branch pursuant to section 5(a)(7)(B) of the IBA (12 U.S.C. §3103(a)(7)(B)). The proposed branch would continue the business of Bank’s Miami agency, but would also enable Bank to accept at its Miami office wholesale and other limited deposits from U.S. residents.

In order to approve an application by a foreign bank to establish a branch in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant 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. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. §3105(d)(2); 12 CFR 211.24).⁴ The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. §3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined that Bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor, the Superintendencia de Bancos e Instituciones Financieras (“SBIF”).⁵ Bank continues to be supervised by the SBIF on substan-

4. In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors:

- (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide;
- (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise;
- (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic;
- (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis;
- (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

5. See *Banco de Chile*, 80 *Federal Reserve Bulletin* 179 (1994); See also, *Banco de Crédito e Inversiones S.A.*, 85 *Federal Reserve Bulletin* 446 (1999).

tially the same terms and conditions. Based on all the facts of record, it has been determined that Bank continues to be subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.⁶

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)) have also been taken into account. SBIF has no objection to the establishment of the proposed branch.

Chile's risk-based capital standards are consistent with those established by the Basle Capital Accord ("Accord"). Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Chile is a member of GAFISUD (Financial Action Task Force for South America), which is an observer organization to the Financial Action Task Force. Chile has enacted laws and adopted regulations to deter money laundering. Money laundering is a criminal offense in Chile, 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. Bank's compliance with applicable laws and regulations is monitored by its auditors and SBIF.

With respect to access to information about 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 its ultimate parent, Luksburg, have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank and its ultimate parent 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, SBIF may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

In order to approve a proposal to establish a branch in a state outside a foreign bank's home state by upgrading an agency pursuant to section 5(a)(7)(B) of the IBA (12 U.S.C. § 3103(a)(7)(B)), the Board is required to determine that

- (i) the establishment of such branch is permitted by the state where the branch is to be established; and
- (ii) the agency to be upgraded was in operation in that state on the day before September 29, 1994, or has been in operation in that state for a period of time that meets the state's minimum age requirement permitted under 12 U.S.C. § 1831u(a)(5).

These requirements have been met in this case.

On the basis of all the facts of record, and subject to the commitments made by Bank and its ultimate parent, as well as the terms and conditions set forth in this order, Bank's application to establish a branch is hereby approved.⁷ Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank and its ultimate parent with the commitments made to the Board in connection with this application and with the conditions in this order.⁸ These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with this decision and, as such, may be enforced in proceedings under applicable law against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective July 27, 2004.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

6. In reaching this view, the oversight of Bank's parent companies has been considered. Under the Chilean General Banking Law, Bank's two immediate parent holding companies, Sociedad Matriz del Banco de Chile S.A. and Sociedad Administradora de la Obligación Saborinada, are subject to supervision by the SBIF. In addition, under the Chilean General Banking Law, the SBIF has authority to request that Bank provide information to the SBIF concerning any of its parent holding companies. The Chilean General Banking Law and the Chilean Corporations Law also contain restrictions on transactions with affiliates.

7. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

8. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida to license the proposed office of Bank in accordance with any terms or conditions that it may impose.