

Legal Developments: Third Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

*Fédération Nationale du Crédit Agricole
Paris, France*

*SAS Rue La Boétie
Paris, France*

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

Fédération Nationale du Crédit Agricole (“FNCA”) and SAS Rue La Boétie (“Boetie”) (together “Applicants”) have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become bank holding companies and thereby retain control indirectly of Espirito Santo Bank (“ES Bank”), Miami, Florida, through their subsidiary, Crédit Agricole S.A. (“Credit Agricole”), Paris, France, a foreign bank that is a bank holding company within the meaning of the BHC Act.²

Applicants filed to become bank holding companies in compliance with commitments made by Boetie in connection with a temporary exemption from certain filing requirements of the BHC Act granted under section 4(c)(9) of the BHC Act in 2003.³ The Board granted that exemption in conjunction with Credit Agricole’s proposed acquisition of Crédit Lyonnais (“Credit Lyonnais”), another French bank also in Paris, to allow Boetie and Credit Agricole to acquire Credit Lyonnais’s U.S. nonbanking subsidiaries subject to the condition that Boetie seek approval from the Board

under section 3 of the BHC Act to become a bank holding company. FNCA, an unincorporated association that became Boetie’s parent, later joined Boetie’s application.

Approximately 40 regional cooperative banks (“Regional Banks”) directly owned more than 90 percent of the shares of Credit Agricole before the formation of Boetie and the subsequent acquisition of Credit Lyonnais. Boetie was formed in connection with Credit Agricole’s public offering of shares undertaken, in part, to facilitate its acquisitions.⁴ In connection with the share issuance by Credit Agricole, the Regional Banks sought to consolidate their ownership interest in Credit Agricole and transferred their shares to Boetie.⁵ Boetie, which currently holds approximately 55 percent of Credit Agricole’s voting shares, votes the shares of Credit Agricole in order to maintain the Regional Banks’ control of Credit Agricole. FNCA acts as a consultative and representative body for the Regional Banks.

FNCA, Boetie, Credit Agricole, and Calyon, S.A. (“Calyon”),⁶ Paris, a wholly owned French bank subsidiary of Credit Agricole (jointly, “FHC electors”), have also filed elections to become and be treated as financial holding companies pursuant to section 4(k) and (l) of the BHC Act and section 225.82 and 225.91 of the Board’s Regulation Y.⁷

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (68 *Federal Register* 34,608). 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.

4. Credit Agricole was formerly known as Caisse Nationale de Credit Agricole.

5. Credit Agricole supports, coordinates, and supervises the operations of the Regional Banks and approximately 2600 local cooperative banks, which operate a retail branch network in France. FNCA, Boetie, Credit Agricole, and the regional and local cooperative banks together comprise the Credit Agricole Group. Boetie and FNCA engage in no activities in the United States except through Credit Agricole.

6. Calyon is the successor to Crédit Agricole Indosuez, S.A., Paris, France.

7. See 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82 and 225.91. FHC electors have provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that these elections to become and be treated as financial holding companies are effective as of the date of this order. ES Bank and applicable foreign banks are well capitalized and well managed in accordance with the applicable provisions of Regulation Y. See 12 CFR 225.90 and 225.2.

1. 12 U.S.C. § 1842.

2. Credit Agricole controls indirectly more than 25 percent of the voting shares of Banco Espirito Santo, S.A., Lisbon, Portugal.

3. 12 U.S.C. § 1843(c)(9). Section 4(c)(9) of the BHC Act provides that the Board may grant to foreign companies exemptions from the provisions of section 4 of the act, provided such exemptions are not substantially at variance with the purposes of the BHC Act and are in the public interest.

Credit Agricole, with total consolidated assets of approximately \$913 billion, is the largest bank in France.⁸ Credit Agricole conducts banking and nonbanking operations in the United States indirectly through Calyon and Credit Lyonnais, a wholly owned subsidiary of Credit Agricole. Calyon operates branches in New York, Chicago, and Los Angeles and representative offices in Houston and Dallas. Credit Lyonnais operates a representative office in New York and an agency in Miami. ES Bank, the U.S. subsidiary bank of Banco Espirito Santo, S.A., is an indirect subsidiary of Credit Agricole.⁹ Banco Espirito Santo, S.A. also operates a branch in New York. Calyon engages through subsidiaries in the United States in a broad range of permissible nonbanking activities, including securities and futures trading, leasing, financing, brokerage, and financial consulting activities.¹⁰

ES Bank has total assets of approximately \$409 million and has one office in Miami. ES Bank is the 87th largest insured depository organization in Florida, controlling deposits of approximately \$301 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.¹¹

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 confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by Applicants and public comment on the proposal. The Board also has consulted with the Commission Bancaire, which has primary responsibility for the supervision and regulation of French banks, including Credit Agricole.

In evaluating the financial factors in proposals involving new bank holding companies, the Board reviews the financial condition of the applicants and the target depository institutions. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the

8. French asset and ranking data are as of December 31, 2004, and these data are based on the exchange rate then in effect. Domestic assets are as of June 30, 2006, and deposit data and rankings are as of June 30, 2005.

9. Credit Agricole also is deemed to control indirectly Banca Intesa S.p.A., Milan, Italy, which operates a branch in New York.

10. Calyon Securities, Inc., New York, New York, a U.S. subsidiary of Calyon, engages in certain securities underwriting and dealing activities that are permissible for a bank holding company that has financial-holding-company status. Boetie and Credit Agricole have engaged in these activities indirectly under the temporary authority of section 4(c)(9) of the BHC Act described above.

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

impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of this proposal. France's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). The capital ratios of Credit Agricole and Applicants' foreign subsidiary banks with U.S. banking operations would continue to exceed the minimum levels that would be required under the Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization. In this regard, Applicants' subsidiary banks with U.S. banking operations are well capitalized. The Board also has considered the financial resources of Applicants and other organizations involved in the proposal. Based on its review of these factors, the Board finds that the financial factors of the proposal are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and the combined organization.¹² The Board has reviewed the examination records of ES Bank and the U.S. banking operations of the organizations involved in the proposal, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with ES Bank and the U.S. banking operations of organizations involved in the proposal and their records of compliance with applicable banking law, including compliance with anti-money-laundering laws.¹³ Furthermore, the Board has consulted with the Commission Bancaire about Applicants and about the managerial resources of Credit Agricole, including its compliance with applicable laws and regulations.¹⁴ Credit Agricole and

12. A commenter asserted that Boetie violated the BHC Act by acquiring the voting shares of Credit Agricole before submitting the proposal to the Board for approval. In addition, the commenter complained that Boetie and Credit Agricole violated the BHC Act through the acquisition of all the shares of Credit Lyonnais in 2003 without the Board's prior approval for the acquisition of Credit Lyonnais's nonbanking operations. The commenter asserted that the Board lacked authority to waive the BHC Act's application filing requirements with respect to such transactions and inappropriately shielded such transactions from comment. As noted above, Boetie and Credit Agricole have operated the U.S. subsidiaries under the temporary authority granted by the Board under section 4(c)(9) of the BHC Act, which does not provide for public notice.

13. A commenter cited various news and congressional reports from 2003 through 2005 regarding allegations that ES Bank concealed assets and money laundering in connection with accounts held for the benefit of certain international individuals, including former Chilean President Augusto Pinochet. According to those reports, ES Bank's relationship with the Pinochet family ended in January 2000. As noted above, the Board has considered the assessments of the Federal Deposit Insurance Corporation ("FDIC"), ES Bank's primary federal supervisor, of the bank's compliance with anti-money-laundering laws in confidential reports of examination.

14. Three commenters expressed concern about Credit Agricole's managerial record in light of past enforcement matters, including an enforcement action concerning alleged false representations by Credit Lyonnais in connection with its investment in Executive Life, a failed California insurer. The Board notes that there is no evidence or allegation that Credit Agricole was involved in any manner in the

Applicants' subsidiary banks with U.S. banking operations are considered to be well managed.¹⁵ Based on all the facts of record, the Board has concluded that considerations relating to the managerial resources¹⁶ and future prospects of the organizations involved in the proposal are consistent with approval.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.¹⁷ As noted, the Commission Bancaire is the primary supervisor of French banks, including Credit Agricole. The Board has previously determined in orders approving applications¹⁸ filed under the International Banking Act and the BHC Act involving Credit Agricole, that Credit Agricole is subject to comprehensive supervision on a consolidated basis by its home

country supervisor.¹⁹ Based on all the facts of record, the Board has concluded that Credit Agricole continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.²⁰

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.²¹ The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and have communicated with relevant government authorities concerning access to information.

In addition, Applicants have committed that, to the extent not prohibited by applicable law, each will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable their affiliates to make any such information available to the Board. In light of these commitments, the Board has concluded that Applicants have provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

matters that resulted in the issuance of the enforcement action against Credit Lyonnais. Moreover, this conduct occurred before Credit Lyonnais became a subsidiary of Credit Agricole in 2003. In January 2004, Credit Agricole and Credit Lyonnais agreed to a consent order that was jointly issued by the Board and the Commission Bancaire that called for the organization to enhance its global compliance programs and provided for close cooperation between the Board and the Commission Bancaire to ensure that the terms of the consent order were met. The Board has considered Credit Agricole's actions to comply with the consent order. *See* Order to Cease and Desist and Civil Money Penalty, December 18, 2003, between Credit Lyonnais and the Board; Order Issued upon Consent, January 8, 2004, among Credit Agricole, Credit Lyonnais, the Commission Bancaire, and the Board.

In addition, a commenter cited news reports about fines imposed by the Tokyo Stock Exchange and the Japanese Securities Dealers Association against Credit Agricole Indosuez's securities brokerage subsidiary in Japan in 2003. Credit Agricole subsequently implemented a Global Enhanced Compliance Program designed to ensure compliance with regulatory requirements in various jurisdictions in which Credit Agricole operates. As noted, the Board consulted with the Commission Bancaire about Credit Agricole's compliance with applicable laws and regulations.

15. *See* 12 CFR 225.90(c).

16. A commenter alleged Credit Agricole and Credit Lyonnais are signatories to international human rights and environmental agreements and that the organizations have exhibited a lack of environmental and human rights standards. The Board notes that such matters are not within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

17. *See* 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. *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 with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

18. *See Caisse Nationale de Crédit Agricole*, 86 *Federal Reserve Bulletin* 412 (2000); *Crédit Agricole Indosuez*, 83 *Federal Reserve Bulletin* 1025 (1997); *Caisse Nationale de Crédit Agricole*, 81 *Federal Reserve Bulletin* 1055 (1995).

COMPETITIVE CONSIDERATIONS

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

19. The Board has previously determined that Banco Espirito Santo, S.A. and Banca Intesa S.p.A. are subject to comprehensive supervision on a consolidated basis. *See E.S. Control Holding S.A. et al.*, 86 *Federal Reserve Bulletin* 418 (2000); *Banca Intesa S.p.A.*, 86 *Federal Reserve Bulletin* 433 (2000). Calyon has also been determined to be subject to comprehensive supervision on a consolidated basis. *See Calyon, S.A.*, 92 *Federal Reserve Bulletin* C197 (2006). Credit Lyonnais has not previously been determined to be subject to comprehensive supervision on a consolidated basis. Credit Lyonnais is supervised by the Commission Bancaire on substantially the same terms and conditions as Credit Agricole, Calyon, and other French banks previously reviewed by the Board. *See, e.g., BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (2005); *Société Générale*, 87 *Federal Reserve Bulletin* 353 (2001). Therefore, the Board has concluded that Credit Lyonnais is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

20. Boetie and FNCA are considered to be part of the Credit Agricole Group. Therefore, the Commission Bancaire has access to the financial statements of Boetie and FNCA and may monitor relationships between those entities and Credit Agricole.

21. *See* 12 U.S.C. § 1842(c)(3)(a).

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.²² The applications result from a reorganization of shareholder interests in Credit Agricole, which had no effect, adverse or otherwise, on competition in the marketplace. Based on all the facts of record, the Board concludes that 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.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).²³ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁴

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of ES Bank, data reported by ES Bank under the Home Mortgage Disclosure Act (“HMDA”),²⁵ other information provided by Applicants, confidential supervisory information, and public comment received on the proposal. A commenter criticized ES Bank’s responsiveness to the credit needs of LMI borrowers and communities. The commenter also expressed concern, based on 2001 and 2002 HMDA data, about the lack of home mortgage applications by African Americans to ES Bank.

A. CRA Performance Evaluation

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 perfor-

mance under the CRA by its appropriate federal supervisor.²⁶

ES Bank received a “satisfactory” rating at its most recent CRA performance evaluation from the FDIC, as of September 26, 2003 (“2003 Evaluation”).²⁷ Applicants have no plans to alter the CRA program of ES Bank.

ES Bank, the only subsidiary of Applicants that is subject to the CRA, is a wholesale bank for CRA evaluation purposes. Examiners noted in the 2003 Evaluation that as a wholesale bank, ES Bank does not have the business infrastructure to directly serve the credit and banking service needs of typical retail customers, including LMI individuals and small businesses, and that the bank must satisfy its CRA obligations through community development activities.

In the 2003 Evaluation, examiners characterized ES Bank’s community development lending as satisfactory overall. Examiners stated that during the evaluation period,²⁸ ES Bank exhibited a good record of community development lending and had been responsive in meeting the needs of its assessment area, including financing projects for affordable housing, revitalization, and social services to low-income people. During the evaluation period, ES Bank originated seven community development loans totaling \$5.1 million. Examiners described bank officers as proactive in identifying qualifying loans in a highly competitive environment for community development loans and noted that the officers had taken a leadership role in some loans. Examiners noted that ES Bank demonstrated flexibility during the evaluation period by helping to initiate a loan consortium to finance low-income housing acquisitions and construction in its assessment area.

ES Bank has represented that it continues to respond to the needs of its assessment area through community development lending activities since the 2003 Evaluation. From January 2004 through May 2006, ES Bank originated more than \$10.1 million in community development loans in its assessment area. As an example, ES Bank represented that the bank approved a \$4.5 million loan in 2006 to finance an apartment building in an LMI census tract, which will be converted into condominiums and sold at substantially lower prices than new construction units.

Examiners characterized ES Bank’s performance under the investment test in its assessment area as satisfactory. During the evaluation period, ES Bank made qualified investments and donations totaling more than \$2.6 million. Examiners noted that ES Bank’s investment and donation activities demonstrated a good effort by the bank to serve the needs of its assessment area, particularly in

22. 12 U.S.C. § 1842(c)(1).

23. 12 U.S.C. § 2901 et seq.

24. 12 U.S.C. § 2903.

25. 12 U.S.C. § 2801 et seq.

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

27. A commenter criticized ES Bank’s record of small business lending and home mortgage lending to LMI borrowers and in LMI communities. Examiners evaluate the record of community development of ES Bank and other wholesale banks through review of community development loans, qualified investments, or community development services. See 12 CFR 345.25(a).

28. The evaluation period was August 29, 2000, through September 26, 2003.

light of very strong competition for qualified investments in the assessment area. ES Bank represented that it has made more than \$1 million in qualified investments since the 2003 Evaluation.

In the 2003 Evaluation, examiners noted that ES Bank had provided community development services that were generally responsive in supporting community development needs. During the evaluation period, bank officers provided financial services education to a local school and technical assistance to nine nonprofit organizations. ES Bank has continued to provide community development services in its assessment area since the 2003 Evaluation.

B. HMDA Data and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of ES Bank in light of the public comments received on the proposal. A commenter expressed concern, based on 2001 and 2002 HMDA data, that ES Bank lacked home mortgage applications by African-American borrowers. The Board has reviewed the HMDA data from 2001 through 2005 that were reported by ES Bank in the Miami, Florida Metropolitan Statistical Area, which comprises the bank's assessment area.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not ES Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.²⁹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and has taken into account other information, including examination reports that provide on-site evaluations of compliance by ES Bank with fair lending laws. In the fair lending review conducted by the FDIC in conjunction with the bank's CRA evaluation in 2003, examiners

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

noted no substantive violations of provisions of applicable fair lending laws. The Board also consulted with the FDIC about the concerns expressed by commenters.³⁰

The record also indicates that ES Bank has taken steps designed to ensure compliance with fair lending and other consumer protection laws. Applicants represented that ES Bank has implemented fair lending policies, procedures, and training programs, including annual compliance training for all consumer lending department personnel on the prevention of illegal prescreening and on discouragement or exclusion of credit applicants. Formal lending policies address significant criteria for loan approvals by the bank's senior management or loan committee. Applicants also represented that ES Bank's fair lending policies and procedures are designed to ensure that loan officers price loans uniformly and avoid illegal discrimination and that current and proposed lending activities and customer complaints are reviewed. In addition, Applicants represented that ES Bank provides for an independent review of the lending activities of the bank to ensure all lending practices are in full compliance with all laws, regulations, and internal policies and procedures. Applicants further stated that an independent consulting firm audits these efforts annually and that those results are provided to the Internal Audit Committee of the Board of Directors and the bank's Compliance Department and Legal Department. Applicants do not plan to implement significant changes to ES Bank's compliance policies and programs.

The Board also has considered the HMDA data in light of other information, including ES Bank's CRA community development activities and the overall performance records of ES Bank under the CRA. These established efforts demonstrate that the institution is active in helping to meet the credit needs of its entire community.

C. Conclusion on Convenience and Needs and CRA Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the

30. A commenter questioned the veracity of ES Bank's reporting of no denials of home mortgage applications in 2001 and 2002 and generally alleged that the bank prescreened its home mortgage applications. Specifically, the commenter contended that ES Bank violated HMDA by not accurately reporting its home mortgage applications and violated the Equal Credit Opportunity Act ("ECOA") (15 U.S.C. § 1691 et seq.) by not providing adverse action notices when required. ES Bank has represented that it reported no denials because it is a wholesale bank engaged primarily in international private banking and that its residential mortgages are generally extended as an accommodation to private banking customers where a mortgage loan approval would be expected. The commenter also questioned ES Bank's characterization of loans generated by brokers as accommodation loans. Applicants represented that ES Bank began using two licensed mortgage brokers in 2001 in an effort to increase its loan portfolio during a period when internal referrals had slowed. Applicants also represented that ES Bank's brokers referred a small number of mortgage loans to the bank in 2005. The Board has consulted with the FDIC, the primary federal supervisor of ES Bank, about the bank's record of compliance with HMDA and ECOA in connection with this matter.

institutions involved, information provided by Applicants, 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 considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.³¹ 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.³² The Board's approval is specifically conditioned on compliance by Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this 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.

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

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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

32. A commenter also requested that the Board extend the comment period. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. In the Board's view, the commenter has had ample opportunity to submit its views and, in fact, has provided multiple 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 has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is warranted.

First National Bank Group, Inc. Edinburg, Texas

Order Approving the Acquisition of Shares of a Bank Holding Company

First National Bank Group, Inc. ("First National"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act¹ to acquire up to 9.9 percent of the voting shares of Southside Bancshares, Incorporated ("Southside"), Tyler, Texas, and thereby acquire an indirect interest in Southside Delaware Financial Corporation, Dover, Delaware, and Southside's subsidiary bank, Southside Bank, also of Tyler.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 28,865 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First National, with total consolidated assets of \$3.3 billion, is the 22nd largest depository organization in Texas, controlling deposits of \$2.4 billion, which represent less than 1 percent of total deposits of insured depository institutions in Texas ("state deposits").³ Southside, with total consolidated assets of \$1.8 billion, is the 36th largest depository organization in Texas, controlling deposits of \$1 billion. If First National were deemed to control Southside on consummation of the proposal, First National would become the 14th largest depository organization in Texas, controlling deposits of approximately \$3.4 billion, which would represent 1 percent of state deposits.

The Board received a comment from Southside questioning First National's stated intention to make a passive investment in Southside and expressing concerns about the management of First National. The Board has considered carefully Southside's comments in light of the factors it must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company.⁴ The requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank, however, suggests that Congress

1. 12 U.S.C. § 1842.

2. First National currently owns 4.91 percent of Southside's voting shares and proposes to acquire the additional voting shares through purchases on the open market.

3. Asset data are as of March 31, 2006, and statewide deposit and ranking data are as of June 30, 2005.

4. See, e.g., *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*") (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *GB Bancorporation*, 83 *Federal Reserve Bulletin* 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks.⁵ On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.⁶

First National has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over Southside or Southside Bank. In support of its stated intention, First National has agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.⁷ For example, First National has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Southside or any of its subsidiaries; not to seek or accept representation on the board of directors of Southside or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with Southside or any of its subsidiaries. First National also has committed not to attempt to influence the dividend policies, loan decisions, or operations of Southside or any of its subsidiaries. Moreover, the BHC Act prohibits First National from acquiring additional shares of Southside or attempting to exercise a controlling influence over Southside without the Board's prior approval.

The Board has adequate supervisory authority to monitor compliance by First National with the commitments and the ability to take enforcement action against First National if it violates any of the commitments.⁸ The Board also has authority to initiate a control proceeding against First National if facts presented later indicate that First National or any of its subsidiaries or affiliates in fact controls or exercises a controlling influence over Southside for purposes of the BHC Act.⁹ Based on these considerations and all other facts of record, the Board has concluded that First National would not acquire control of, or have the ability to exercise a controlling influence over, Southside through the proposed acquisition of voting shares.

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 considered carefully these factors in light of all the facts of record, including among other things, confidential reports of

examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, publicly reported and other financial information, information provided by First National, and public comment received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.¹⁰

Based on its review of the financial factors, the Board finds that First National has sufficient resources to effect the proposal. First National and its subsidiary bank are well capitalized and would remain so on consummation of this proposal. The proposed transaction is structured as a share purchase, and the consideration to be received by Southside's shareholders would be funded from First National's existing liquid assets.

The Board also has considered the managerial resources of the organizations involved in the proposed transaction. The Board has reviewed the examination records of First National, Southside, and Southside Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. First National, Southside, and Southside Bank are considered to be well managed.

Southside expressed concerns about the management of First National that relate to First National's proposal in 2004 to acquire a controlling interest in Alamo Corporation of Texas ("Alamo") (the "Alamo Proposal").¹¹ Southside has alleged that in the Alamo Proposal, First National

10. As previously noted, the proposal provides that First National would acquire only up to 9.9 percent of Southside. Under these circumstances, the financial statements of Southside and First National would not be consolidated.

11. In 2004, First National applied to the Board for prior approval to acquire up to 14.99 percent of the voting shares of Alamo and to control Alamo. See *First National Bank Group, Inc.*, 91 *Federal Reserve Bulletin* 71 (2005). Alamo claimed that First National, in conjunction with its president and a First National shareholder, acted together to acquire more than 5 percent of Alamo's shares without the Board's prior approval. *Id.* at 72. The Board reviewed all the facts of record and concluded that the shares of First National and its president should not be aggregated with the shareholder's shares. Accordingly, the Board determined that First National did not violate the BHC Act and approved the proposal. First National did not acquire up to 14.99 percent of Alamo's shares and subsequently divested its entire shareholding in Alamo.

5. See 12 U.S.C. § 1842(a)(3).

6. See, e.g., *Brookline; North Fork Bancorporation, Inc.*, 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.*, 59 *Federal Reserve Bulletin* 456, 457 (1973).

7. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). These commitments are set forth in the appendix.

8. See 12 U.S.C. § 1818(b)(1).

9. See 12 U.S.C. § 1841(a)(2)(C).

acquired shares of Alamo in violation of the BHC Act. Alamo made the same allegation in its comments on the Alamo Proposal. In approving the Alamo Proposal, the Board considered this allegation in light of the record and found no violation of the BHC Act. In considering Southside's reiteration of this claim, the Board has reviewed the information provided by Southside and First National and confidential supervisory information, and has found no new facts that would support modifying the Board's previous findings and determinations in the Alamo Proposal.¹²

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of First National, Southside, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 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 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.¹³

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

In this proposal, Southside alleges that the same shareholder identified by Alamo acted as a nominee purchaser for First National in acquiring the shares of Alamo and that the shareholder subsequently sold those shares to First National shortly after the Board approved the Alamo Proposal. First National denied Southside's allegations and stated that there was no agreement, oral or written, between First National's management and this shareholder to purchase his shares.

12. Southside also claimed that in connection with the Alamo Proposal, First National purchased shares of Alamo through a tender offer that did not comply with applicable federal securities laws. In addition, Southside alleged that First National made improper comments about Alamo and its management to Alamo shareholders in connection with the tender offer. First National commenced a tender offer for shares of Alamo stock on or about March 28, 2005. Southside alleged that First National made several stock purchases before the March 28 tender offer, that those purchases constituted a tender offer, and that First National did not comply with applicable federal securities laws in connection with those purchases. First National represented that the individuals who sold their shares to First National before March 28, 2005, approached First National and that all those transactions were individually negotiated. The Securities and Exchange Commission ("SEC") has the authority to investigate and adjudicate any violations of federal securities laws. The Board has consulted with the SEC regarding Southside's allegation.

13. 12 U.S.C. § 1842(c)(1).

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁴ The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of First National's and Southside's subsidiary banks, other information provided by First National, and confidential supervisory information. First National Bank received an "outstanding" rating at its most recent CRA evaluation by the Office of the Comptroller of the Currency, as of October 7, 2002. Southside Bank also received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of August 1, 2004. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all 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 First National with the conditions imposed in this order and the commitments made to the Board in connection with the application. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective September 11, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

In connection with its application to acquire up to 9.9 percent of Southside, First National committed that it will not:

14. 12 U.S.C. § 2901 et seq.

- (1) exercise or attempt to exercise a controlling influence over the management or policies of Southside or any of its subsidiaries;
- (2) seek or accept representation on the board of directors of Southside or any of its subsidiaries;
- (3) serve, have, or seek to have any employee or representative serve as an officer, agent, or employee of Southside;
- (4) take any action causing Southside to become a subsidiary of First National;
- (5) acquire or retain shares that would cause the combined interests of First National and its officers, directors, and affiliates to equal or exceed 25 percent of the outstanding shares of any class of voting securities of Southside;
- (6) propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Southside or any of its subsidiaries;
- (7) solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Southside;
- (8) attempt to influence the dividend policies; loan, credit, or investment decisions or policies of Southside; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or hours of operation, etc.); or any similar activities of Southside or its subsidiaries;
- (9) dispose or threaten to dispose of shares of Southside as a condition of specific action or nonaction by Southside; or
- (10) enter into any other banking or nonbanking transactions with Southside or any of its subsidiaries, except that First National may establish and maintain deposit accounts with any depository institution subsidiary of Southside, provided that the aggregate balance of all such accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Southside.

*Glacier Bancorp, Inc.
Kalispell, Montana*

Order Approving the Acquisition of a Bank Holding Company

Glacier Bancorp, Inc. (“Glacier”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Citizens Development Company (“Citizens”), Billings, and its subsidiary banks: First Citizens Bank of Billings, Billings; First National Bank of Lewistown, Lewistown; Western Bank of Chinook National Association, Chinook; First Citizens Bank, National Association, Columbia Falls; and Citizens State Bank, Hamilton, all of Montana.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 29,967 (2006)). The

1. 12 U.S.C. § 1842.

time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Glacier, with total consolidated assets of \$4 billion, is the second largest depository organization in Montana, controlling deposits of \$1.5 billion, which represent 11.8 percent of total deposits of insured depository institutions in Montana (“state deposits”).² Glacier operates ten subsidiary-insured depository institutions in Idaho, Utah, Washington, Wyoming, and Montana.

Citizens, a small bank holding company with banking assets of approximately \$411 million, operates five subsidiary-insured depository institutions in Montana. Citizens is the eighth largest depository organization in the state, controlling deposits of approximately \$349.8 million.

On consummation of this proposal, and after accounting for the proposed divestiture, Glacier would remain the second largest depository organization in Montana, controlling deposits of approximately \$1.8 billion, which represent approximately 14.6 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 would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a 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.³ The Board has carefully considered the competitive effects of the proposal in light of all the facts of record.

A. Geographic Banking Market

Glacier and Citizens compete directly in the Kalispell, Missoula, Lewistown, and Billings banking markets in Montana.⁴ Glacier contends that the Lewistown banking market, as delineated by the Federal Reserve Bank of Minneapolis (“Reserve Bank”),⁵ does not reflect the true nature of banking competition in Lewistown and that the relevant geographic market for analysis should be expanded to include the Great Falls banking market.⁶ Glacier bases its contention on the commercial interaction and ease of

2. Asset data are as of June 30, 2006, and statewide deposit and ranking data are as of June 30, 2005, and are adjusted for subsequent acquisitions. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. 12 U.S.C. § 1842(c)(1).

4. These banking markets are described in Appendix A.

5. The Lewistown banking market is defined as Fergus and Petroleum counties in Montana. Lewistown is in Fergus County.

6. The Great Falls banking market includes Teton, Cascade, Judith Basin, Glacier, Toole, and Pondera counties and the Fort Benton and Geraldine divisions of Chouteau County, all in Montana.

access between the cities of Lewistown and Great Falls.⁷

In defining the relevant geographic market, the Board and the courts have consistently found that the relevant geographic market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where customers can practicably turn for alternatives.⁸ In reviewing Glacier's contention, the Board has considered a number of factors to identify the economically integrated area that represents the appropriate local geographic banking market encompassing Lewistown for purposes of analyzing the proposal's competitive effects.⁹ Both Glacier and the Reserve Bank conducted surveys to ascertain whether the residents of Lewistown and Great Falls, the primary population centers in the two markets, would turn to the other for alternative banking services.¹⁰ The Board reviewed those surveys in light of all the evidence in the record, including information provided by local financial institutions, the state of Montana, and other publicly available information.

The Board reviewed the geographic proximity of Lewistown and Great Falls and the commuting data between those cities. The data, as Glacier acknowledged in its application, indicate that there is little commuting between Great Falls and Lewistown, cities that are approximately 100 miles apart. According to data collected by the U.S. Census Bureau in 2000, there is virtually no worker commuting between Great Falls and Lewistown. Moreover, the survey conducted by Glacier indicated that there is limited travel for shopping and other services between the two areas. According to its survey, although 37 percent of Lewistown residents surveyed travel to Great Falls at least once a month, only 9 percent travel to Great Falls twice a month or more. Additionally, the survey conducted by the Reserve Bank supports the conclusion that there is little travel between Lewistown and Great Falls.

7. Glacier argues that a substantial number of Lewistown residents travel to Great Falls to obtain consumer goods and services from large national retailers that are not available in Lewistown. Glacier also notes that Great Falls and Lewistown are included in the same telephone directory and that Lewistown is served by Great Falls television and radio stations. In addition, Glacier notes that Great Falls has a large airport, colleges, and medical facilities.

8. See *United States v. Phillipsburg National Bank*, 399 U.S. 350 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1970); *Brown Shoe Co. v. United States*, 370 U.S. 294, 336–337 (1962). See also *First York Ban Corp*, 88 *Federal Reserve Bulletin* 251, 251 (2002); *First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998); *First Union Corporation*, 83 *Federal Reserve Bulletin* 1012, 1013–14 (1997); *Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239, 241 (1996); and *Wyoming Bancorporation*, 68 *Federal Reserve Bulletin* 313, 314 (1982).

9. In delineating the relevant geographic market in which to assess the competitive effects of a bank merger or acquisition, the Board reviews population density; worker commuting patterns; the usage and availability of banking products; advertising patterns of financial institutions; the presence of shopping, employment, and other necessities; and other indicia of economic integration and transmission of competitive forces among banks. See, e.g., *First Security Corporation*, 86 *Federal Reserve Bulletin* 122 (2000); *Penn Bancorp*, 69 *Federal Reserve Bulletin* 548 (1983).

10. An independent market research company conducted Glacier's survey.

Relevant banking data also support the Reserve Bank's definition of the Lewistown banking market as the relevant geographic market. Of the Lewistown residents surveyed by Glacier, 95 percent had their primary banking relationship with a financial institution in Lewistown, and only 4 percent used any banking services in Great Falls. The survey also indicated that 65 percent of respondents believed it would be difficult or very difficult to bank in Great Falls and 79 percent indicated that they would not take advantage of better rates on banking products in Great Falls. In addition, lending information that financial institutions are required to report under the Community Reinvestment Act ("CRA")¹¹ and the Home Mortgage Disclosure Act¹² indicates that lending in Fergus County, where Lewistown is located, by financial institutions located outside the county was de minimis in comparison to lending by institutions with offices in the county.¹³ Based on the foregoing and a careful review of all the facts of record, the Board reaffirms that the relevant geographic market within which to evaluate the competitive effects of this proposal is the Lewistown banking market as currently defined by the Reserve Bank.¹⁴

B. Competitive Effects in Banking Markets

The Board has reviewed carefully the competitive effects of the proposal in the Lewistown banking market and in the other three banking markets where Glacier and Citizens compete directly in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by Glacier and Citizens,¹⁵ the concentration level of market deposits and the increase in that level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹⁶

11. 12 U.S.C. § 2901 et seq.

12. 12 U.S.C. § 2801 et seq.

13. A geographic market must represent a fair intermediate delineation, which avoids the indefensible extremes of drawing the market either too expansively or too narrowly based on the banking preferences of a few customers. *Philadelphia National Bank*, 374 U.S. at 320–21.

14. Glacier cites a previous determination by the Board to expand the Great Falls banking market by including several counties north of Great Falls to support its contention that Lewistown should be part of the Great Falls banking market. *Norwest Corporation*, 80 *Federal Reserve Bulletin* 455 (1994). The Board has reviewed the record of that application and notes that greater economic integration existed between the communities north of Great Falls and Great Falls than, on this application record, exists between Lewistown and Great Falls.

15. Deposit and market data are as of June 30, 2005. No thrift institutions operate in the Billings, Kalispell, Lewistown, or Missoula banking markets.

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

other characteristics of the markets, and commitments made by Glacier to divest its operations in the Lewistown banking market.

Banking Market with Divestiture. In the Lewistown banking market, Glacier is the fourth largest depository organization, controlling deposits of \$24 million, which represent 12.1 percent of market deposits. Citizens' subsidiary, First National Bank of Lewistown, is the largest depository institution in the market, controlling deposits of \$72.1 million, which represent 36.3 percent of market deposits. On consummation and without the proposed divestiture, the HHI in this market would increase 879 points, from 2564 to 3443, and the pro forma market share of the combined entity would be 48.4 percent.

To reduce the potential adverse effects on competition in the Lewistown banking market, Glacier has committed to divest the Lewistown branch of its subsidiary, Western Security Bank, to a purchaser that the Board determines to be competitively suitable.¹⁷ On consummation of the proposal and after accounting for the proposed divestiture, Glacier would become the largest depository institution in the market, controlling deposits of approximately \$72.1 million, which represent 36.3 percent of market deposits. The HHI would not increase more than 167 points to 2731, and such an increase would be within the DOJ Guidelines.

In reviewing the competitive effects of the proposal in the Lewistown banking market, the Board also has considered carefully whether other factors mitigate the competitive effects of the proposal.¹⁸ On consummation of the proposal and the proposed divestiture to a competitively suitable banking organization, at least four insured depository institutions would continue to operate in the market, and two institutions other than Glacier would each hold more than 10 percent of market deposits. Furthermore, the proposed divestiture would reduce the resulting increase in Glacier's market share by a substantial amount, approximately one-third, and would produce a new entrant or

significantly enhance the market share of a small in-market competitor.

Banking Markets without Divestitures. Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Billings, Kalispell, and Missoula banking markets where Glacier's and Citizens' subsidiary banks also compete directly.¹⁹ On consummation, all three banking markets would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in each banking market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ 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 divestiture, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the four banking markets where Glacier and Citizens compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

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

is at least 1800 and the merger increases the HHI more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

17. Glacier has committed that before consummation of the proposed acquisition, it will execute an agreement for the proposed divestiture in the Lewistown banking market, consistent with this order. Glacier also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Glacier has committed that if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branch to an independent trustee who will be instructed to sell the branch 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).

18. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in the market. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

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

be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial factors of the proposal with respect to Glacier, Citizens, and their subsidiary banks. In light of all the facts of record, the Board has concluded that the capital levels of the relevant organizations are consistent with the Board's Capital Adequacy Guidelines. Based on its review of the record, the Board also believes that Glacier has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and partial cash purchase that will be funded with the proceeds from issuances of common stock and trust preferred securities.

The Board also has considered the managerial resources of Glacier, Citizens, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. The Board also has considered Glacier's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA. All of Glacier's banks received "outstanding" or "satisfactory" ratings at their most recent CRA performance evaluations by the banks' primary federal supervisors. Citizens' banks all received "satisfactory" ratings at their most recent CRA performance evaluations. After consummation of the proposal, Glacier plans to implement its CRA policies at Citizens' banks. Glacier has represented that the proposal will expand lending capacity and the products and services available to consumers where the banks operate, while maintaining local decision making and a community focus. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

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

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

By order of the Board of Governors, effective September 14, 2006.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Appendix A

MONTANA BANKING MARKETS IN WHICH GLACIER AND CITIZENS COMPETE DIRECTLY

Billings

Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Treasure, Carbon, and Big Horn counties.

Kalispell

Lincoln and Flathead counties; Big Fork-Swan River division and the northern portion of Flathead division in Lake County that includes the communities of Polson, Finley Point, Big Arm, Elmo, and Dayton.

Lewistown

Fergus and Petroleum counties.

Missoula

Missoula County; Superior and Alberton divisions in Mineral County; Helmville and the western half of the Avon-Elliston division in Powell County; the southern half of Flathead division in Sanders County; the southern portion

of Flathead division in Lake County that includes the communities of Pablo, Ronan, Kicking Horse, Charlo, Post Creek, Moiese, St. Ignatius, Ravalli, and Arlee; Drummond division in Granite County; and Ravalli County, excluding the eastern portion of Sula-Edwards division.

Appendix B

MARKET DATA FOR MONTANA BANKING MARKETS

Billings

Glacier operates the sixth largest depository institution in the Billings banking market, controlling deposits of \$193.3 million, which represent 8.3 percent of market deposits. Citizens operates the seventh largest depository institution in the market, controlling deposits of approximately \$146 million, which represent 6.2 percent of market deposits. After consummation of the proposal, Glacier would become the second largest depository organization in the market, controlling deposits of approximately \$339.3 million, which represent approximately 14.5 percent of market deposits. The HHI would increase 103 points to 1454. Sixteen insured depository institutions would remain in the banking market.

Kalispell

Glacier operates the largest depository institution in the Kalispell banking market, controlling deposits of \$370.1 million, which represent 26.7 percent of market deposits. Citizens operates the ninth largest depository institution in the market, controlling deposits of approximately \$41.4 million, which represent 3 percent of market deposits. After consummation of the proposal, Glacier would remain the largest depository organization in the market, controlling deposits of approximately \$411.5 million, which represent approximately 29.7 percent of market deposits. The HHI would increase 160 points to 1684. Fifteen insured depository institutions would remain in the banking market.

Missoula

Glacier operates the second largest depository institution in the Missoula banking market, controlling deposits of \$345.1 million, which represent 17.8 percent of market deposits. Citizens operates the tenth largest depository institution in the market, controlling deposits of approximately \$62.6 million, which represent 3.2 percent of market deposits. After consummation of the proposal, Glacier would remain the second largest depository organization in the market, controlling deposits of approximately \$407.6 million, which represent approximately 21.0 percent of market deposits. The HHI would increase 115 points to 1276. Eighteen insured depository institutions would remain in the banking market.

Juniata Valley Financial Corp. Mifflintown, Pennsylvania

Order Approving the Acquisition of a Bank

Juniata Valley Financial Corp. ("Juniata"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act¹ to acquire 39.2 percent of the outstanding voting shares of The First National Bank of Liverpool ("Liverpool Bank"), Liverpool, Pennsylvania.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 28,335 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Juniata, with total consolidated assets of approximately \$410.6 million, operates one depository institution, The Juniata Valley Bank ("Juniata Bank"), also in Mifflintown. Juniata Bank is the 77th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$341.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").³

Liverpool Bank is the 236th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$30 million. On consummation of the proposal, Juniata would become the 70th largest depository organization in Pennsylvania, controlling deposits of approximately \$372 million, which represent less than 1 percent of state deposits.

The majority of Liverpool Bank's board of directors ("Commenters") opposes the proposal and has submitted comments to the Board urging denial on several grounds.⁴ 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, regardless of whether they are supported or opposed by the management of the institutions to be acquired.⁵ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the BHC Act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and

1. 12 U.S.C. § 1842.

2. Juniata entered into an agreement to acquire 39.2 percent of the bank's outstanding common shares from a trust that is the single largest shareholder of Liverpool Bank.

3. Asset and deposit data are as of June 30, 2005, and ranking data take into account mergers and acquisitions to July 25, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Three directors, one of whom represents the interest of the trust ("Selling Director"), did not join the comment.

5. See *Cathay General Bancorp*, 92 *Federal Reserve Bulletin* C19 (2006) ("Cathay"); *Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 94 (2004) ("Central Pacific"); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000) ("North Fork"); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 259 (1988) ("BONY").

future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.⁶

In considering these factors, the Board is mindful of the potential adverse effects that contested acquisitions might have on the financial and managerial resources of the company to be acquired and the acquiring organization. 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.⁷

As explained below, the Board has carefully considered the statutory criteria in light of all the comments and information provided by Commenters and the responses submitted by Juniata.⁸ The Board also has carefully considered all other information available, including information accumulated in the application process, supervisory information of the Board and other agencies, and relevant examination reports. In considering the statutory factors, particularly the effect of the proposal on the financial and managerial resources of Juniata, the Board has reviewed financial information, including the terms and cost of the proposal and the resources that Juniata proposes to devote to the transaction.

COMPETITIVE CONSIDERATIONS

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

6. 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).

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

8. Commenters expressed concern that Juniata would be able to control Liverpool Bank after consummation of the proposal and requested that the Board require Juniata to enter into passivity commitments if the Board approves the proposal. In cases when a bank holding company proposes to acquire between 5 percent and 25 percent of a class of voting shares of a bank or bank holding company without being deemed to control such entity, the Board has relied on certain commitments to ensure that the investing bank holding company would be unable to exercise a controlling influence over the bank or bank holding company involved in the proposal. See 12 U.S.C. § 1841(a)(2)(C); see also *S&T Bancorp, Inc.*, 91 *Federal Reserve Bulletin* 74 (2005); *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996). Providing such commitments is not appropriate in this case, however, because Juniata would own more than 25 percent of the voting shares of Liverpool Bank and, therefore, would be deemed by the BHC Act to control the bank. See 12 U.S.C. § 1841(a)(2)(A).

the convenience and needs of the community to be served.⁹

Juniata Bank and Liverpool Bank compete directly in the Harrisburg, Pennsylvania banking market ("Harrisburg banking market"), which is defined as Cumberland, Dauphin, Juniata, Lebanon, and Perry counties, all in Pennsylvania. Commenters contended that the relevant geographic market for reviewing this transaction should be Liverpool and the surrounding area that includes the portion of Perry County bordered by the Susquehanna River, the Juniata River, and Juniata County ("Proposed Market"). Commenters have asserted that the Proposed Market is the relevant market because the area is isolated from the rest of the Harrisburg banking market, particularly in the absence of a bridge near Liverpool to cross to the Dauphin County side of the Susquehanna River.

In reviewing this contention, the Board has considered the geographic proximity of the Harrisburg banking market's population centers and the worker commuting data from the 2000 census, which indicate that more than 60 percent of the labor force residing in Perry County commute to work in either Cumberland or Dauphin County. Residents of the Proposed Market also have highway access to Cumberland County and to Dauphin County over a bridge across the Susquehanna River.¹⁰ In addition, small-business lending data submitted by depository institutions in 2005 under the Community Reinvestment Act ("CRA") regulations of the federal supervisory agencies indicate that approximately 22 percent of the total volume of small-business loans made to businesses in Perry County were made by depository institutions without a branch in the county but with branches elsewhere in the Harrisburg banking market. These and a number of other factors indicate that the Harrisburg banking market, which includes Liverpool, is the appropriate local geographic banking market for purposes of analyzing the competitive effects of this proposal.

The Board has reviewed carefully the competitive effects of the proposal in the Harrisburg banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Juniata Bank and Liverpool Bank,¹¹ 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

9. 12 U.S.C. § 1842(c)(1).

10. The bridge is approximately 15 miles south of Liverpool.

11. Deposit and market share data are as of June 30, 2005, taking into account mergers and acquisitions as of July 25, 2006, and reflect 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).

Merger Guidelines (“DOJ Guidelines”),¹² other characteristics of the market, and public comment on the proposal.¹³

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Harrisburg banking market. On consummation, the Harrisburg banking market would remain unconcentrated, and numerous competitors would remain in the market.¹⁴

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Juniata and Liverpool Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the

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

13. Commenters asserted that the competitive factors the Board must consider should weigh against approval because consummation of the proposed transaction would not have a pro-competitive effect. In particular, Commenters expressed concern that the acquisition would eliminate the possibility of de novo expansion by Juniata into the Liverpool community. Section 3(c)(1) of the BHC Act, the provision applicable to the competitive considerations in this proposal, does not require evidence of pro-competitive effects as a condition for approval. Rather, it prohibits the Board from approving a proposal that would result in or would further a monopoly and permits the Board to approve a proposal that substantially lessens competition only if such effects are clearly outweighed by the convenience and needs of the community to be served.

14. Juniata operates the 13th largest depository institution in the Harrisburg banking market, controlling deposits of \$179.7 million, which represent 2 percent of market deposits. Liverpool Bank is the 28th largest depository institution in the market, controlling deposits of approximately \$30 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Juniata would operate the 11th largest depository institution in the market, controlling deposits of approximately \$209.7 million, which represent 2.3 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase 1 point to 787.

financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by the applicant, and public comments received on the proposal.¹⁵

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

The Board has considered carefully the proposal under the financial factors. Juniata, Juniata Bank, and Liverpool Bank are all well capitalized and would remain so on consummation of the proposal.¹⁶ Based on its review of the record, the Board also believes that Juniata has sufficient financial resources to effect the proposal. The proposed transaction initially would be funded with debt that is expected to be repaid by a dividend from Juniata Bank.

The Board also has considered the managerial resources of Juniata, Juniata Bank, and Liverpool Bank.¹⁷ The Board

15. Commenters expressed concern that by entering into an agreement to sell the shares, the Selling Director might not have properly discharged his fiduciary duties to shareholders of Liverpool Bank. Juniata represented that the trust offered to sell the shares to Liverpool Bank before offering the shares to Juniata but that the trust could not reach an agreement with the bank. In addition, Commenters expressed concern that both the proposed sale price for the shares and the size of Juniata’s proposed ownership would have a negative effect on the value of Liverpool Bank’s shares. The Board notes that the courts have concluded that the limited jurisdiction to review applications under the BHC Act does not authorize the Board to consider matters relating only to corporate governance and the proper compensation of shareholders. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). These matters involve state and federal securities laws and state corporate law that may be raised before a court with the authority to provide shareholders with adequate relief, if appropriate.

16. Commenters expressed concern that because the proposal would cause Liverpool Bank to lose its status as an “S-corporation,” the proposal would have a negative impact on Liverpool Bank’s capital. The Board notes that Liverpool Bank would remain well capitalized on consummation of the proposal.

17. Commenters have requested that the Board consider Pennsylvania Business Corporation Law, which discourages contested takeovers of Pennsylvania corporations, in evaluating this proposal. Liverpool

has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations.¹⁸ In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Juniata, Juniata Bank, and Liverpool Bank are all considered to be well managed.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁰

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 depository institutions, other information provided by Juniata, and public comment received on the proposal.²¹ An

Bank has not adopted the relevant provisions of Pennsylvania law as part of its corporate governance practices, and those provisions of state law, therefore, are not applicable in this case. In addition, Juniata has represented that it currently intends to hold the shares of Liverpool Bank for investment purposes only.

18. Commenters contended that this proposal would violate the Depository Institution Management Interlocks Act (12 U.S.C. § 3201 ("Interlocks Act")) because Juniata, which would be able to elect three directors to Liverpool Bank's board, operates a bank (Juniata Bank) in the same community as Liverpool Bank. Under the Interlocks Act and the Board's Regulation L (12 CFR 212 et seq.), the prohibition against interlocking management officials for banks in the same community does not apply to institutions that are affiliates. Juniata and Liverpool Bank would be affiliates under the Interlocks Act because Juniata would own more than 25 percent of the bank's voting shares, thereby making Liverpool Bank a subsidiary of Juniata. See 12 U.S.C. §§ 3201(3)(A) and 1841(d). Accordingly, a management official interlock between Juniata and Liverpool Bank would not be prohibited under the Interlocks Act.

19. 12 U.S.C. § 2901 et seq.

20. 12 U.S.C. § 2903.

21. Commenters contended that Juniata plans to acquire all of Liverpool Bank and expressed concern that the consequences of such an acquisition could include loss of services and local jobs as part of a cost-savings initiative. Juniata has represented that its ownership interest in Liverpool Bank would be for purposes of investment and

institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²²

Juniata Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Deposit Insurance Corporation, as of October 1, 2003. Liverpool Bank received an overall rating of "outstanding" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of July 29, 2002. Juniata has represented that its purchase of shares is for investment purposes and currently has proposed no changes to the CRA programs at Liverpool Bank.

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

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.²³ 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

has not indicated that it would attempt to change the services provided by Liverpool Bank. In addition, the Board notes that 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 and does not extend to the effect of a proposed acquisition on employment in a community. See, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996). Moreover, if Juniata proposes to acquire additional shares of Liverpool Bank in the future, Federal Reserve System approval would be required. In such a case, the Federal Reserve System would have to evaluate the effects of the proposal on the convenience and needs of the communities to be served at that time, as required by the BHC Act.

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

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

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

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

By order of the Board of Governors, effective August 11, 2006.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Passumpsic Bancorp St. Johnsbury, Vermont

Order Approving the Merger of Bank Holding Companies

Passumpsic Bancorp (“Passumpsic”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to merge with The Siwooganock Holding Company, Inc. (“Siwooganock”) and acquire its subsidiary bank, Siwooganock Bank (“Siwooganock Bank”), and Siwooganock’s ownership of 10 percent of the voting shares of The Lancaster National Bank (“Lancaster Bank”), all of Lancaster, New Hampshire.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 42,092 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Passumpsic, with total banking assets of approximately \$426 million, operates one depository institution, Passumpsic Bank, with branches in Vermont and New Hampshire. Passumpsic Bank is the 35th largest insured depository institution in New Hampshire, controlling deposits of approximately \$20 million, which represent less than 1 per-

cent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³

Siwooganock, with total banking assets of approximately \$78 million, operates one depository institution, Siwooganock Bank, in New Hampshire. Siwooganock Bank is the 31st largest insured depository institution in New Hampshire, controlling deposits of approximately \$64 million. On consummation of the proposed transaction, Passumpsic would be the 30th largest depository organization in New Hampshire, controlling \$84 million in deposits, which represent less than 1 percent of state deposits.

Lancaster Bank, with total assets of approximately \$56 million, is the 32nd largest insured depository institution in New Hampshire, controlling deposits of approximately \$51 million, which represent less than 1 percent of state deposits. If Passumpsic were deemed to control Lancaster on consummation of the proposal,⁴ Passumpsic would become the 28th largest banking organization in New Hampshire, controlling approximately \$135 million in deposits, which would represent less than 1 percent of state deposits.

Siwooganock’s investment in Lancaster Bank has been a passive investment, and Siwooganock has complied with certain commitments previously relied on by the Board in determining that an investing bank holding company would not exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act (“Passivity Commitments”). Passumpsic has stated that it does not propose to control or exercise a controlling influence over Lancaster Bank and that its indirect investment in Lancaster Bank would also be a passive investment. In this light, Passumpsic has provided the Passivity Commitments to the Board.⁵ For example, Passumpsic has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Lancaster Bank or any of its subsidiaries; not to seek or accept representation on the board of directors of Lancaster Bank or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with Lancaster Bank or any of its subsidiaries. Passumpsic also has committed not to attempt to influence the dividend policies, loan

3. Asset data are as of June 30, 2006; statewide deposit and ranking data are as of June 30, 2005, and reflect merger and acquisition activity through June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board’s approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

5. The commitments made by Passumpsic are set forth in the appendix.

1. 12 U.S.C. § 1842.

2. Passumpsic proposes to merge Siwooganock Bank into Passumpsic’s subsidiary bank, Passumpsic Savings Bank (“Passumpsic Bank”), St. Johnsbury, Vermont. Passumpsic has filed applications with the Federal Deposit Insurance Corporation (“FDIC”) for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) and with the bank commissioners of Vermont and New Hampshire for approval under applicable state laws.

decisions, or operations of Lancaster Bank or any of its subsidiaries.

Based on these considerations and all the other facts of record, the Board has concluded that Passumpsic would not acquire control of, or have the ability to exercise a controlling influence over, Lancaster Bank through the proposed indirect acquisition of the bank's voting shares. The Board notes that the BHC Act would require Passumpsic to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of Lancaster Bank or attempt to exercise a controlling influence over Lancaster Bank.⁶

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Passumpsic is Vermont,⁷ and Siwooganock is located in New Hampshire.⁸

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

COMPETITIVE CONSIDERATIONS

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

6. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991).

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

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

9. See 12 U.S.C. § 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Passumpsic is adequately capitalized and adequately managed, as defined by applicable law. Neither New Hampshire nor Vermont has any state age laws within the meaning of 12 U.S.C. § 1842(d)(1)(B). On consummation of the proposal, Passumpsic would control less than 10 percent of the total amount of deposits of insured depository institutions ("total deposits") in the United States and less than 30 percent of total deposits in New Hampshire. All other requirements of section 3(d) would be met on consummation of the proposal.

the convenience and needs of the community to be served.¹⁰

Passumpsic Bank, Siwooganock Bank, and Lancaster Bank compete directly in the Littleton 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. 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 Passumpsic Bank, Siwooganock Bank, and Lancaster Bank;¹² the concentration level of market deposits and the increase in the level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines");¹³ other characteristics of the market; and the Passivity Commitments made by Passumpsic with respect to Lancaster Bank.

Passumpsic Bank is the sixth largest depository institution in the market, controlling \$20 million in deposits, which represent 5.4 percent of market deposits. Siwooganock Bank is the second largest depository institution in the market, controlling \$64 million in deposits, which represent 17 percent of market deposits. Lancaster Bank is the fifth largest depository institution in the market, controlling \$51 million in deposits, which represent 14 percent of market deposits. If considered a combined organization on consummation of the proposal, Passumpsic, Siwooganock,

10. 12 U.S.C. § 1842(c)(1).

11. The Littleton banking market includes the towns of Bethlehem, Easton, Franconia, Landaff, Lisbon, Littleton, Lyman, Monroe, and Sugar Hill in Grafton County, New Hampshire; the towns of Carroll, Dalton, Groveton, Jefferson, Lancaster, Northumberland, Stratford, and Whitefield in Coos County, New Hampshire; and the towns of Brunswick, Granby, Guildhall, Lunenburg, and Maidstone in Essex County, Vermont.

12. Deposit and market share data are as of June 30, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, with one exception. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). The Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991). The deposits of one thrift in the banking market have been included at 100 percent because that thrift is actively engaged in commercial lending. The Board has previously stated that it may weigh the deposits of savings associations at 100 percent when competition from the savings association approximates that of a commercial bank. See, e.g., *Fifth Third Bancorp*, 87 *Federal Reserve Bulletin* 330, 334 (2001).

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

and Lancaster Bank would be the largest depository organization in the Littleton banking market, controlling \$135 million in deposits, which would represent approximately 37 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Littleton banking market would increase 343 points to 2509.¹⁴

Consummation of the proposal would raise competitive issues in the Littleton banking market if Passumpsic acquired control of Lancaster Bank. As discussed above, Passumpsic does not intend to control the bank, and the Board has concluded that the proposal, including the Passivity Commitments, would not result in Passumpsic controlling or exercising a controlling influence over Lancaster Bank. Such a conclusion, however, does not end the Board's inquiry under the competitive considerations in the BHC Act. The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.¹⁵ The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.¹⁶

The Board has concluded, after careful analysis of the record, that no significant reduction in competition is likely to result from Passumpsic's proposed investment in Lancaster Bank. The record shows that Passumpsic intends to be a passive investor and that there will be no officer or director interlocks between Passumpsic and Lancaster Bank. There is no evidence that Passumpsic, by virtue of holding 10 percent of the voting shares of Lancaster Bank, would have access to confidential information that would enable it to engage in anticompetitive behavior with respect to Lancaster Bank.¹⁷ Moreover, Passumpsic has committed not to exercise a controlling influence over Lancaster Bank and, therefore, may neither direct Lancaster Bank to act in coordination with Passumpsic nor acquire nonpublic financial information from Lancaster that would permit Passumpsic to act in a manner that reduces competition.

14. If only Passumpsic Bank and Siwooganock Bank were considered as a combined organization, the HHI for the Littleton banking market would increase 191 points to 1864. Although the banking market would become highly concentrated, the proposal would be consistent with Board precedent and DOJ Guidelines in this banking market. Passumpsic would become the second largest depository organization in this market, controlling \$84 million in deposits, which would represent 22.4 percent of market deposits.

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

16. See, e.g., *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995); *Sun Banks* at 244.

17. The Board recognizes that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In this case, no such information sharing currently takes place, and there are no legal, contractual, or statutory provisions that would allow any access to financial information of Lancaster Bank beyond the information already available to shareholders with a less than 5 percent interest.

The Board notes that additional factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Littleton banking market. In addition to Passumpsic, Siwooganock, and Lancaster Bank, five other bank and thrift competitors, including two competitors, each with market shares of at least 15 percent, provide additional sources of banking services to the market. The Board also notes that the market includes three community credit unions with broad fields of membership that include most of the residents in the market, offer a wide range of consumer banking products, and operate street-level branches with drive-up service lanes.¹⁸

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

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

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

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

18. The Board previously has considered competition from certain active credit unions as a mitigating factor. See *Capital City Group, Inc.*, 91 *Federal Reserve Bulletin* 418 (2005); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004). If Passumpsic, Siwooganock, and Lancaster Bank were considered as a combined organization on consummation of the proposal, the HHI for the Littleton banking market would increase 323 points to 2366 when three of the market's credit unions are weighted at 50 percent.

banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines.

The Board has carefully considered the financial factors of the proposal. Passumpsic Bank is well capitalized, and both Passumpsic and Passumpsic Bank would be well capitalized on consummation of the proposal. Based on its review of the record, the Board also finds that Passumpsic has sufficient financial resources to effect the proposal and that the financial resources of Passumpsic and its subsidiaries would not be adversely affected by the proposal. The proposed transaction would be funded by a dividend from Passumpsic Bank.

The Board also has considered the managerial resources of Passumpsic, Siwooganock, and their subsidiary banks. The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Passumpsic, Siwooganock, and their subsidiary banks are considered to be well managed.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁹ Passumpsic Bank and Siwooganock Bank received "satisfactory" ratings at their most recent examinations for CRA performance by the FDIC, as of September 7, 2004, and July 21, 2003, respectively. Lancaster Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 13, 2001. The proposal would allow Passumpsic to offer a broader array of financial products and services over an expanded geographic area, including affordable housing programs, accounts with low- or no-balance requirements, no-cost electronic banking services, and electronic transfer accounts. Based on all the facts of record, the Board concludes that the considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

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

CONCLUSION

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

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

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

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

Passumpsic Bancorp ("Passumpsic"), St. Johnsbury, Vermont, commits that Passumpsic will not, without the prior approval of the Federal Reserve, directly or indirectly:

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

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

Trustmark Corporation Jackson, Mississippi

Order Approving the Merger of Bank Holding Companies

Trustmark Corporation (“Trustmark”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to merge with Republic Bancshares of Texas, Inc. (“Republic”) and acquire its subsidiary bank, Republic National Bank (“Republic Bank”), both of Houston, Texas.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 30,680 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Trustmark, with total consolidated assets of approximately \$8.2 billion, is the 110th largest depository organization in the United States.³ Trustmark operates subsidiary-insured depository institutions in Florida, Mississippi, Tennessee, and Texas. In Texas, Trustmark is the 195th largest depository organization, controlling deposits of approximately \$139 million.

Republic, with total consolidated assets of approximately \$654 million, operates one subsidiary-insured de-

pository institution in Texas. Republic is the 64th largest depository organization in the state, controlling deposits of approximately \$541 million.

On consummation of this proposal, Trustmark would become the 104th largest insured depository organization in the United States, with total consolidated assets of approximately \$8.9 billion. In Texas, Trustmark would become the 54th largest depository organization, controlling deposits of approximately \$680 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

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 Trustmark is Mississippi,⁴ and Republic is located in Texas.⁵

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

COMPETITIVE CONSIDERATIONS

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

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 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)).

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

6. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). Trustmark is adequately capitalized and adequately managed, as defined by applicable law. Republic Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Trustmark 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 Texas. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

7. 12 U.S.C. § 1842(c)(1).

1. 12 U.S.C. § 1842.

2. Trustmark’s lead subsidiary bank, Trustmark National Bank (“Trustmark Bank”), also of Jackson, has filed an application with the Office of the Comptroller of the Currency (“OCC”) to merge Republic Bank into Trustmark Bank pursuant to the Bank Merger Act (12 U.S.C. § 1828(c)).

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

Trustmark and Republic compete directly in the Houston, Texas banking market (“Houston 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 Trustmark and Republic,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines. After consummation, the Houston Market would remain highly concentrated as measured by the HHI, with no increase in concentration, and numerous competitors would remain in the market.¹¹

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

8. The Houston Market is defined as the Houston-Sugar Land-Baytown Metropolitan Statistical Area (“MSA”), which includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties, all in Texas.

9. Deposit and market share data are as of June 30, 2005, reflect merger activity through May 5, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386, 387 (1989); National City Corporation, 70 Federal Reserve Bulletin 743, 744 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52, 55 (1991).*

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

11. In the Houston Market, Trustmark is the 50th largest depository organization, controlling deposits of \$139 million, which represent less than 1 percent of market deposits. Republic is the 22nd largest depository organization in the market, controlling deposits of \$541 million, which represent less than 1 percent of market deposits. On consummation of the proposed merger, Trustmark would become the 20th largest depository institution in the Houston Market, controlling deposits of approximately \$680 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2161, and 106 competitors would remain in the market.

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

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

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

The Board has considered carefully the proposal under the financial factors. Trustmark, both of its subsidiary banks, and Republic Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of these factors, the Board finds that Trustmark has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Trustmark, Republic, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Trustmark, Republic, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Trustmark’s plans for implementing the

proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

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

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Trustmark's and Republic's subsidiary banks, data reported by Trustmark under the Home Mortgage Disclosure Act ("HMDA"),¹⁴ other information provided by Trustmark, confidential supervisory information, and public comment received on the proposal. A commenter opposed the proposal and alleged, based on 2004 HMDA data reported by Trustmark for its Jackson, Mississippi, and Memphis, Tennessee assessment areas, that Trustmark engaged in discriminatory treatment of minority individuals in its home mortgage lending.¹⁵

A. CRA Performance Evaluations

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

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

13. 12 U.S.C. § 2903.

14. 12 U.S.C. § 2801 et seq.

15. The commenter expressed concern about Trustmark's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate when so required. Trustmark has stated that it makes loans to such nontraditional providers under the same terms, circumstances, and due diligence procedures as are applicable to Trustmark's other small business borrowers. Trustmark has represented that it does not play any role in the lending practices, credit review, or other business practices of these firms.

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

Trustmark Bank, Trustmark's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating from the OCC at its most recent CRA performance evaluation, as of November 2, 1998.¹⁷ Trustmark's other subsidiary bank, Somerville Bank & Trust Company ("Somerville Bank"), Somerville, Tennessee, received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC") at its most recent CRA evaluation, as of September 23, 2002. In addition, Republic Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of November 4, 2005. Trustmark has represented that its CRA and consumer compliance programs would be implemented at the operations acquired from Republic after the merger of Trustmark Bank and Republic Bank.

B. HMDA and Fair Lending Record

The Board has considered carefully the lending records of Trustmark's subsidiary banks in light of public comment about their records of lending to minorities. A commenter alleged, based on 2004 HMDA data, that Trustmark had disproportionately denied applications for HMDA-reportable loans by African-American and Hispanic applicants in the Memphis, Tennessee, MSA and African-American applicants in the Jackson, Mississippi, MSA. The commenter also asserted, based on 2004 HMDA data, that Trustmark made higher-cost loans¹⁸ in the Jackson MSA more frequently to African Americans than to nonminorities.¹⁹

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Trustmark or its subsidiaries are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis.²⁰ The Board recognizes that HMDA data alone, even with the recent addition of pricing information,

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

17. As of March 31, 2006, Trustmark Bank accounted for approximately 97.5 percent of the total domestic deposits of Trustmark's two subsidiary banks.

18. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

19. The comments have been forwarded to the OCC, the primary federal supervisor of Trustmark Bank, for its consideration in the context of evaluating the bank for compliance with fair lending laws and regulations.

20. The Board analyzed the 2004 and preliminary 2005 HMDA data reported by Trustmark Bank in the Jackson and Memphis MSAs and in

provide only limited information about the covered loans.²¹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Trustmark's subsidiary banks with fair lending laws.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of Trustmark's subsidiary banks. In addition, the record indicates that Trustmark has taken steps to ensure compliance with fair lending and other consumer protection laws. Trustmark employs an internal second-review process for home loan applications that would otherwise be denied and analyzes its HMDA data periodically. Furthermore, Trustmark monitors its compliance with fair lending laws by analyzing disparities in its rates of lending for select products and markets and by conducting a more extensive internal comparative file review when merited. Trustmark also provides annual fair lending training to all its lending personnel.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of Trustmark's subsidiary banks. Based on all the facts of record, the Board concludes that Trustmark's established efforts and record demonstrate that Trustmark is active in helping to meet the credit needs of all of its communities.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Trustmark, comments received on the proposal, and confidential supervisory information. Trustmark has represented that the proposed transaction would provide Republic's customers with expanded products and services. Based on a review of

its statewide assessment areas in Tennessee, Florida, Louisiana, Mississippi, and Texas.

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

the entire record and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.²²

CONCLUSION

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

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

By order of the Board of Governors, effective August 3, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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

ORDER ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Wachovia Corporation
Charlotte, North Carolina

Order Approving Acquisition of Savings Associations and Other Nonbanking Companies

Wachovia Corporation (“Wachovia”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act¹ and section 225.24 of the Board’s Regulation Y² to acquire Golden West Financial Corporation (“Golden West”), Oakland, California, and its subsidiary savings associations, World Savings Bank, FSB (“World Savings”), Oakland, California, and World Savings Bank, FSB (Texas) (“World Savings-TX”), Houston, Texas.³ In addition, Wachovia has requested the Board’s approval to acquire indirectly certain nonbanking subsidiaries of Golden West and World Savings and thereby engage in credit extension, trust company, investment advisory, and securities brokerage activities in accordance with section 4(c)(8) of the BHC Act and section 225.28(b) of the Board’s Regulation Y.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 40,122 (2006)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Wachovia, with total consolidated assets of approximately \$553.6 billion, is the third largest depository organization in the United States, controlling deposits of approximately \$308.7 billion, which represent approximately 4.8 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Wachovia operates two insured subsidiary depository institutions, Wachovia Bank, National Association (“Wachovia Bank”), Charlotte, North Carolina, and Wachovia Bank of Dela-

ware, National Association (“Wachovia Bank-DE”), Wilmington, Delaware, in 16 states and the District of Columbia.⁶

Golden West, with total consolidated assets of approximately \$128.8 billion, is the tenth largest depository organization in the United States, controlling deposits of approximately \$62.6 billion, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in the United States. Golden West operates World Savings and World Savings-TX in ten states.⁷

On consummation of this proposal, Wachovia would remain the third largest depository organization in the United States, with total consolidated assets of approximately \$682.4 billion. Wachovia would control deposits of approximately \$371 billion, which represent approximately 5.8 percent of the total amount of deposits of insured depository institutions in the United States.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company and the other nonbanking activities for which Wachovia has requested approval are closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁸ 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(c)(8) of the BHC Act.⁹ Wachovia has represented that Golden West already conducts its activities in accordance with the limitations set forth in Regulation Y and the Board’s orders governing the conduct of these activities by bank holding companies. Wachovia has committed that the activities of World Savings, World Savings-TX, and the other nonbanking subsidiaries that it proposes to acquire will be limited to those activities that are permissible for bank holding companies under section 4(c)(8).

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries “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.”¹⁰ As part of its evaluation under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the

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

2. 12 CFR 225.24.

3. Wachovia plans to merge Golden West into Wachovia, with World Savings and World Savings-TX each becoming a subsidiary savings association of Wachovia. World Savings-TX is currently a wholly owned subsidiary of World Savings, and Wachovia has committed to revise that structure so that World Savings-TX will not be a subsidiary of any insured depository institution.

4. See Appendix A for a listing of these subsidiaries and their activities. Wachovia also proposes to acquire Golden West’s subsidiary, World Savings Insurance Agency, Inc., San Leandro, California, in accordance with section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

5. Nationwide asset data are as of June 30, 2006. Nationwide deposit and ranking data are as of June 30, 2005, and reflect merger activity through August 9, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. Wachovia’s subsidiary banks operate in Alabama, California, Connecticut, Delaware, Florida, Georgia, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

7. Golden West’s subsidiary savings associations operate in Arizona, California, Colorado, Florida, Illinois, Kansas, Nevada, New Jersey, New York, and Texas.

8. 12 CFR 225.28(b)(1), (2), 4(ii), (5), (6), and (7)(i).

9. 12 CFR 225.28(b)(4)(ii). See, e.g., *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485, 486 (2002); *The Banc Corporation*, 85 *Federal Reserve Bulletin* 269, 270 (1999).

10. See 12 U.S.C. § 1843(j)(2)(A).

public benefits of the proposal.¹¹ In acting on notices to acquire savings associations, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹²

The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information, publicly reported financial information, and public comments submitted on the proposal.¹³ The Board also has consulted with, and considered information provided by, the Office of the Comptroller of the Currency (“OCC”), the primary federal supervisor of Wachovia’s subsidiary depository institutions, and the Office of Thrift Supervision (“OTS”), the primary federal supervisor of Golden West and its subsidiary savings associations.

COMPETITIVE CONSIDERATIONS

The Board has considered carefully the competitive effects of Wachovia’s acquisition of Golden West, including the acquisition of World Savings and World Savings-TX, and of the other Golden West nonbanking subsidiaries in light of all of the facts of record.

A. Acquisition of Savings Associations

Wachovia and Golden West have subsidiary depository institutions that compete directly in 26 banking markets in California, Florida, New Jersey, New York, and Texas.¹⁴ The Board has reviewed carefully the competitive effects of the proposal in each of these relevant banking markets in light of all the facts of record, including public comment on the proposal. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in each market (“market deposits”) controlled by Wachovia and Golden West,¹⁵ the concentration levels 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”),¹⁶ and other characteristics of the markets.

1. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 24 of the 26 banking markets.¹⁷ Of these 24 banking markets, 3 banking markets would remain unconcentrated; 20 markets would remain moderately concentrated; and 1 market would remain highly concentrated, without an increase in market concentration as measured by the HHI.¹⁸ Numerous competitors would remain in each of the 24 banking markets.

2. Two Banking Markets Warranting Special Scrutiny

Wachovia and Golden West compete directly in two banking markets that warrant a detailed review: Punta Gorda Area and Indian River County, both in Florida. In these markets, the concentration levels on consummation would exceed the DOJ Guidelines or the resulting market share would be significant.

For these markets, the Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.¹⁹ The Board has identified factors that indicate the proposal would not have a significantly adverse impact on competition, despite the post-consummation increases in the HHIs and market shares in both markets.

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

17. The effect of the proposal on the concentration of banking resources in these 24 markets is described in Appendix B. One commenter alleged that the proposal exceeded DOJ Guidelines in three of the 26 banking markets, including the two markets discussed in the order and the West Palm Beach Area, Florida banking market. As described in Appendix B, the competitive impact of the proposal in the West Palm Beach Area market is within the DOJ Guidelines.

18. In making these calculations, the Board weighted the current market deposits of savings associations, including World Savings and World Savings-TX, at 50 percent. In the post-consummation calculations, the market deposits of World Savings and World Savings-TX are weighted at 100 percent because they would be controlled by a commercial banking organization.

19. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

11. 12 CFR 225.26; see, e.g., *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

12. 12 U.S.C. § 2901 et seq.

13. The Board received more than 200 comments supporting the transaction and approximately ten comments expressing concern about various aspects of the proposal.

14. These banking markets are described in Appendix B.

15. State deposit and market share data are as of June 30, 2005, adjusted to reflect subsequent mergers and acquisitions through August 9, 2006, and are based on calculations in which the deposits of thrift institutions, including World Savings and World Savings-TX, are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

Punta Gorda Area. In the Punta Gorda Area banking market,²⁰ the HHI would slightly exceed the DOJ Guidelines on consummation. Wachovia is the largest depository institution in the market, controlling deposits of approximately \$780.5 million, which represent 25.5 percent of market deposits. Golden West is the eighth largest depository institution in the market, controlling deposits of approximately \$183.9 million, which on a 50-percent weighted basis represent 3 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository organization in the market, controlling deposits of approximately \$964.4 million, which represent approximately 30.6 percent of market deposits. The HHI would increase 222 points to 1836.

Several factors indicate that the increase in concentration in the Punta Gorda Area banking market, as measured by the HHI, overstates the potential anticompetitive effect of the proposal in the market. After consummation of the proposal, 14 other depository institution competitors would remain in the market. In addition, the second and third largest bank competitors in the market would control approximately 21 percent and 16 percent, respectively, of market deposits.

In addition, significant recent entries in the Punta Gorda Area banking market evidence the market's attractiveness for entry. The Board notes that two depository institutions have entered the market de novo since June 2005.²¹ Other factors indicate that the market remains attractive for entry. From 2002 to 2005, the annualized percentage increase in total deposits in the market exceeded both the annualized average percentage increase in total deposits statewide and the average annualized percentage deposit increase for all Florida metropolitan areas. Furthermore, during that time period, the annualized percentage increase in population in the market exceeded that of the state and its metropolitan areas.

Indian River County. In the Indian River County banking market,²² the HHI would also exceed the DOJ Guidelines on consummation. Wachovia is the largest depository institution in the market, controlling deposits of approximately \$1 billion, which represent 30.5 percent of market deposits. Golden West is the seventh largest depository institution in the market, controlling deposits of approximately \$367.6 million, which on a 50-percent weighted basis represent 5.6 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which represent approximately

39.4 percent of market deposits. The HHI would increase 538 points to 2041.

A number of factors indicate that the increase in concentration in the Indian River banking market, as measured by the HHI, overstates the potential anticompetitive effects in the market. After consummation of the proposal, 14 other depository institution competitors would remain in the market. In addition, the second and third largest bank competitors in the market would each control approximately 12 percent of market deposits.

The Board also has considered the competitive influence of an active community credit union that offers a wide range of consumer banking products. The Indian River Federal Credit Union ("Indian River FCU") controls approximately \$57 million in deposits in the Indian River County banking market. Almost all residents in the banking market are eligible for membership in this credit union, which operates street-level branches with drive-up service lanes.²³ The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

In addition, the record of significant recent entry into the Indian River County banking market evidences the market's attractiveness for entry. In particular, the Board notes that two depository institutions have entered the market de novo since June 2005.²⁴ Other factors indicate that the Indian River County banking market remains attractive for entry. For example, from 2002 to 2005, the annualized percentage increase in total market deposits in the Indian River County banking market exceeded the annualized average percentage increase in total deposits for Florida metropolitan markets and the annualized percentage increase in total deposits nationwide and for Florida statewide during that time period. The market's annualized percentage increase in

23. The Board previously has considered the competitive influence of certain active credit unions as a mitigating factor. See *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004). If the deposits of the Indian River FCU are weighted at 50 percent, Wachovia would be the largest of 17 depository institutions in the market, with approximately 30.2 percent of market deposits, and Golden West would be the seventh largest depository institution in the market, controlling approximately 5.5 percent of market deposits. On consummation of the proposal, Wachovia would remain the largest depository institution in the market with deposits of approximately \$1.4 billion or approximately 39.1 percent of market deposits. The HHI would increase 530 points to 2009.

24. For the reasons noted above, the deposits of these institutions have not been included in calculating market deposits.

The Board also notes that National City Corporation ("National City"), Cleveland, Ohio, is seeking Board approval to acquire Harbor Florida Bancshares Inc. and its subsidiary thrift, Harbor Federal Savings Bank ("Harbor FSB"), both of Fort Pierce, Florida. This transaction, if approved and consummated, would significantly reduce any potential anticompetitive effects of the transaction in the market. Harbor FSB controls \$352.9 million of deposits in the market, representing 5.3 percent of 50-percent weighted market deposits, making it the eighth largest depository institution in the market. If National City were to consummate its proposed acquisition of Harbor FSB before Wachovia acquires Golden West, the HHI in the market would increase 480 points to 1890 as a result of the Golden West acquisition.

20. The Punta Gorda Area banking market is defined as the portion of Charlotte County that is east of the harbor at the Myakka River and the portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte), all in Florida.

21. The deposit data used to calculate market deposits are as of June 30, 2005, and accordingly do not include these institutions.

22. The Indian River County banking market is defined as Indian River County, Florida.

population and per capita income exceeded the annualized percentage increase in population and the per capita income nationwide and for Florida statewide.

B. Other Nonbanking Activities

The Board also has carefully considered the competitive effects of Wachovia's proposed acquisition of Golden West's other nonbanking subsidiaries in light of all the facts of record. Wachovia and Golden West both engage in credit extension, trust company, investment advisory, and securities brokerage activities. The markets for these activities are regional or national in scope and unconcentrated, and there are numerous providers of these services. Accordingly, the Board concludes that Wachovia's acquisition of Golden West's other nonbanking subsidiaries would not have a significantly adverse effect on competition in any relevant market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also reviewed the probable competitive effects of the proposal, including the acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries of Golden West and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market, including the Punta Gorda Area and Indian River County banking markets, or in any relevant market for the other proposed banking activities. 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 proposed transaction, including the acquisition of World Savings, World Savings-TX, and the other nonbanking subsidiaries of the Golden West organization, would not have a significantly adverse effect on competition or on the concentration of resources in the Punta Gorda Area or Indian River County banking markets, in any other relevant banking market, or in any relevant market for the other proposed nonbanking activities. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND OTHER SUPERVISORY FACTORS

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of Wachovia, Golden West, and their subsidiaries. The Board also has reviewed the effect that the transaction would have on those resources in light of all facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Wachovia and Golden West, and public comments received on the proposal.

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

The Board has carefully considered the financial factors of the proposal. Wachovia, Golden West, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.²⁵ Based on its review of the record, the Board also finds that Wachovia has sufficient financial resources to effect the proposal. The proposed acquisition is structured as a combined cash purchase and share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Wachovia, Golden West, and their subsidiary depository institutions, including assessments of their management,²⁶ risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws.²⁷ Wachovia, Golden West, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Wachovia's plans

25. Several commenters expressed concern about the financial impact of World Savings' adjustable-rate and nontraditional mortgage lending activities on the combined organization, asserting that interest rate increases and other economic uncertainties would increase the probability of borrower default. The Board has reviewed the anticipated capital levels, financial resources, and risk-management systems of the combined organization and World Savings' record of managing its mortgage portfolio in its consideration of the financial and managerial factors of this proposal. The Board also has consulted with the OTS about World Savings' lending products and activities, including the institution's risk-management programs.

26. A commenter alleged that Wachovia's board of directors and management officials lacked ethnic diversity. The Board notes that the racial, ethnic, or gender compositions of a banking organization's management are not factors that the Board is permitted to consider under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

27. A commenter expressed concern about Wachovia's relationships with unaffiliated pawn shops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states in which they operate when so required. Wachovia stated that it makes loans to these types of nontraditional providers under terms, circumstances, and due-diligence procedures that are more stringent than those it applies to other borrowers.

for implementing the proposal, including the proposed management after consummation.

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

RECORDS OF PERFORMANCE UNDER THE CRA

The Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a proposed acquisition of any insured depository institution, including a savings association.²⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁹

In response to the Board's request for public comment on this proposal, several comments were submitted expressing concern about Wachovia's and Golden West's records of lending to LMI or minority individuals and in LMI or predominantly minority communities.³⁰ Some commenters who opposed the proposal alleged that Wachovia has not provided adequate banking services or products to minorities and communities in California and other areas.³¹ These commenters criticized Wachovia's proposed community development plan for California as too small relative to the size of similar commitments by other financial institutions.

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Wachovia's and Golden West's subsidiary depository institutions, data reported under the Home Mortgage Disclosure Act ("HMDA")³² by the subsidiaries of Wachovia and Golden West that engage in home mortgage

lending, other information provided by Wachovia and Golden West, confidential supervisory information, and public comment received on the proposal.³³

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed 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.³⁴

Wachovia Bank, Wachovia's lead subsidiary bank, received an "outstanding" rating from the OCC at its most recent CRA performance evaluation, as of June 30, 2003.³⁵ World Savings also received an "outstanding" rating at its most recent CRA performance evaluation by the OTS, as of August 15, 2005.³⁶

Wachovia has represented that it will generally continue the current CRA and consumer compliance programs of Wachovia's and Golden West's subsidiary depository institutions after consummation and will integrate successful programs and products from both organizations.

CRA Performance of Wachovia Bank. In addition to the overall "outstanding" rating that Wachovia Bank received at its most recent CRA performance evaluation,³⁷ the bank received separate overall "outstanding" or "satisfactory" ratings in all multistate metropolitan statistical areas ("MSAs") and states reviewed by the OCC.³⁸ The examiners reported that the bank had excellent levels of community development lending, investment, and services in most

28. 12 CFR 228.11(a)(3)(iv).

29. 12 U.S.C. § 2903.

30. Commenters expressed concerns about the appropriateness of adjustable-rate and "nontraditional" mortgage products currently offered by World Savings for certain LMI and minority borrowers. The commenters stated that consumers in California may not fully understand the consequences of these mortgage products and that these mortgage products increase chances of default. The Board has consulted with the OTS about World Savings' mortgage products. Additionally, the Board and the other federal bank supervisors have issued final guidance on these mortgage products, including disclosure of relevant information to customers. Interagency press release, "Federal Financial Regulatory Agencies Issue Final Guidance on Nontraditional Mortgage Product Risks" (September 29, 2006), www.federalreserve.gov/BoardDocs/Press/bcreg/2006/20060929/default.htm. The Board expects Wachovia to offer its products in a manner consistent with this guidance and any future guidance on this issue.

31. Wachovia began operations in California in March 2006, after its acquisition of Westcorp and its subsidiary savings association, Western Financial Bank, FSB, both of Irvine.

32. 12 U.S.C. § 2801 et seq.

33. The Board received more than 200 comments supporting the proposed transaction. These commenters stated that Wachovia and Golden West have been responsive to the needs of their communities through innovative mortgage products designed for LMI borrowers and have provided significant financial, technical, and personnel support for community development projects.

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

35. Wachovia's other subsidiary bank, Wachovia Bank-DE, also received an "outstanding" rating from the OCC at its most recent CRA evaluation, as of December 31, 2002.

36. Golden West's other subsidiary thrift, World Savings-TX, also received an "outstanding" rating at its most recent CRA evaluation by the OTS, as of August 15, 2005.

37. The evaluation period for home mortgage, small business, and small farm lending was January 1, 2001, through December 31, 2002. Community development activities were considered through June 30, 2003, and included community development lending from September 30, 2000, when Wachovia was doing business as First Union Corporation.

38. Full-scope evaluations were conducted in Wachovia Bank's assessment areas in the Augusta-Aiken (GA-SC), Charlotte-Gastonia-Rock Hill (NC-SC), Newburgh (NY-PA), Philadelphia (PA-NJ), and Washington (DC-MD-VA-WV) MSAs. Full-scope evaluations were also conducted in other select MSAs in Connecticut, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Limited-scope evaluations were conducted in other relevant MSAs in those states.

full-scope assessment areas and demonstrated creativity and innovation in its loan products, investments, and services.

Examiners rated Wachovia Bank “outstanding” or “high satisfactory” under the lending test in all MSAs and states reviewed, based on a review of the bank’s housing-related loans reported under HMDA, small loans to businesses and small loans to farms, and qualified community development loans.³⁹ Examiners stated that Wachovia Bank’s lending reflected adequate responsiveness to community credit needs and adequate distribution among different geographies and income levels throughout its assessment areas.⁴⁰ Examiners found that Wachovia Bank offered a variety of flexible mortgage loan products that addressed the credit needs of LMI geographies and individuals. They noted that Wachovia Bank enhanced its flexible mortgage product program by partnering with approximately 170 not-for-profit community organizations throughout its various assessment areas to provide homebuyer counseling for LMI loan applicants.

Examiners generally characterized Wachovia Bank’s distribution of small loans to businesses in each of its primary assessment areas as either excellent or good. In assessing the bank’s small loans to businesses, examiners focused on the distribution of loans among geographies of differing income levels and, in particular, on loans to businesses in LMI areas. For example, the examiners favorably noted that Wachovia Bank made small loans to businesses totaling approximately \$709 million in the Charlotte-Gastonia-Rock Hill MSA, with 22.7 percent of the total number of those loans to businesses in LMI geographies, and \$907 million in that type of loan in the Washington, D.C. MSA, with 19.8 percent of the total number of those loans to businesses in LMI geographies.

Examiners also noted that Wachovia Bank’s community development lending in its assessment areas often had a

39. “Small loans to businesses” are loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans. “Small loans to farms” are farm or agricultural loans with original amounts of \$500,000 or less that are secured by farmland or finance agricultural production, and other loans to farmers.

40. One commenter specifically criticized Wachovia Bank’s amount of lending to LMI individuals in Philadelphia. Examiners stated that Wachovia Bank’s lending levels reflected adequate responsiveness to the credit needs of the Philadelphia MSA. During the evaluation period, the bank originated more than 34 percent of its total number of home-purchase loans in the MSA to LMI individuals. In addition, the bank originated \$2 billion in home-mortgage loans, with 19 percent of the total number of those loans in the MSA’s LMI geographies. The bank also made \$2 billion in small loans to businesses in the Philadelphia MSA, with 12.7 percent of the total number of those loans to businesses in the MSA’s LMI geographies. Examiners specifically commended Wachovia Bank’s community development lending in the Philadelphia MSA, which totaled \$154 million during the evaluation period.

Wachovia also represented that in 2005, it provided more than \$160 million in investments that supported affordable housing and city schools and made \$6.4 million in community grants to nonprofit organizations in the Philadelphia MSA. The bank also originated \$193 million in home-mortgage loans to LMI borrowers in the Philadelphia MSA.

significant positive impact on its overall rating under the lending test in those areas. In commending the bank’s level of community development lending, examiners specifically noted that the bank’s community development loans during its evaluation period totaled \$27 million in the Augusta-Aiken MSA, \$181 million in the Charlotte-Gastonia-Rock Hill MSA, and \$114 million in the Washington, D.C., MSA.

Examiners rated Wachovia Bank “outstanding” or “high satisfactory” under the investment test in all but one of the MSAs and states reviewed in the performance evaluation. Examiners noted, for example, that Wachovia’s total qualified investments included \$46 million in North Carolina, \$114 million in Florida, and \$116 million in the Washington, D.C., MSA during the evaluation period. Examiners found that Low Income Housing Tax Credits (“LIHTCs”) were an integral part of the bank’s investment program in most of its assessment areas.

Examiners rated Wachovia Bank “outstanding” or “high satisfactory” under the service test in all MSAs and states reviewed. Examiners concluded that the bank’s distribution of branch offices and ATMs was satisfactory and easily accessible to geographies and individuals of different income levels. In addition, examiners noted several financial literacy programs that Wachovia offers customers, many of which were focused on LMI communities and individuals.

Wachovia represented that it has maintained a high level of community reinvestment activity since its last CRA performance evaluation. For example, Wachovia stated that, in its assessment areas in 2005, it provided approximately \$12 million in small loans to businesses, more than \$25 billion in community development loans and investments, and training for more than 22,000 low-income families and individuals in money-management and computer skills. Wachovia has actively participated in the New Market Tax Credit (“NMTC”) and LIHTC programs, receiving \$383 million in NMTC allocations since 2003 and investing \$3 billion in LIHTCs, as of May 2006. It also stated that it has made \$55 million in various direct investments in community and economic development partnerships and financial institutions in 2005.

CRA Performance of World Savings. As noted above, World Savings received an overall “outstanding” rating from the OTS at its last performance evaluation.⁴¹ Examiners stated that World Savings had an excellent record of meeting the credit and deposit needs of its assessment areas.⁴² The institution’s overall CRA rating was primarily based on its performance in California where the majority of deposit operations and lending activity were

41. The evaluation period was from July 1, 2001, through December 31, 2004.

42. Ratings were based on full-scope evaluations conducted in 41 assessment areas in California, Florida, Colorado, Texas, Arizona, New Jersey, Kansas, Illinois, and Nevada, and in the New York-Northern New Jersey-Long Island (NY-NJ-PA) MSA (“NYC MSA”), and on limited-scope evaluations of other assessment areas in the relevant states.

conducted during the evaluation period.⁴³

World Savings received an overall “outstanding” rating for its lending performance, and “outstanding” or “high satisfactory” ratings for lending in six of nine states reviewed, as well as in the NYC MSA.⁴⁴ It originated approximately \$99 billion in mortgage loans in its assessment areas during the evaluation period. Examiners noted that World Savings’ lending record reflected excellent geographic distribution throughout its assessment areas, particularly in California, and good distribution among borrowers of different income levels. World Savings originated approximately \$15 billion in mortgage loans in LMI geographies in its assessment areas. Examiners particularly commended the institution’s loan distribution to LMI areas in California, Colorado, Illinois, and Texas.

Examiners concluded that World Savings was a leader in making community development loans in California and Colorado. They noted that World Savings made significant contributions to the advancement of affordable housing through its direct multifamily lending as well as through its lending to affordable housing consortia. Examiners also stated that World Savings made extensive use of innovative loan programs and flexible lending practices to serve the credit needs of its assessment area. In addition to offering special loan programs and alternative underwriting guidelines tailored to LMI applicants, World Savings provided approximately \$25 million in interest-rate concessions and fee waivers to borrowers during the evaluation period.

Under the investment test, World Savings received an overall “outstanding” rating. At year-end 2004, World Savings held qualifying investments totaling more than \$400 million, primarily in mortgage-backed securities secured by loans to LMI borrowers.

World Savings received an overall “outstanding” rating under the service test. Examiners found that World Savings provided services that were tailored to the convenience and needs of its assessment areas, particularly LMI geographies and individuals. Examiners also noted that World Savings was a leader in providing community development services in its California assessment areas. These services include its participation in the Federal Home Loan Bank’s Affordable Housing Program Direct Subsidy grant program and the provision of technical, financial, and managerial expertise to housing and other organizations that are related to community development.

B. Community Development Plan

As part of the proposed merger, Wachovia announced a \$150 billion community development plan for California. Several commenters expressed concerns about the commu-

43. World Savings specializes in adjustable-rate, single-family residential mortgage originations, which are held in portfolio or securitized. Examiners based their review on World Savings’ 1–4 family residential and multifamily residential loan products.

44. World Savings received a “low satisfactory” rating for lending performance in Kansas, Nevada, and New Jersey, based on low levels of community development lending and the bank’s level of loan originations in LMI geographies in its assessment areas.

nity development plan, arguing that the size of the plan is too small relative to the size of similar commitments made by other financial organizations, and recommended approval only if the plan was subject to conditions suggested by the commenters. Some commenters who opposed the proposal also alleged that Wachovia’s plan did not address the diversity and community reinvestment needs of California communities.⁴⁵

The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.⁴⁶ As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.⁴⁷ Moreover, 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.⁴⁸

In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas. In reviewing future applications by Wachovia under this factor, the Board similarly will review Wachovia’s actual CRA performance record and the programs it has in place to meet the credit needs of its communities at the time of such review.

C. Conclusion on CRA Performance Records

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Wachovia, 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 has concluded that considerations relating to the CRA performance records of the relevant depository institutions are consistent with approval.

OTHER CONSIDERATIONS

In light of public comments received on the proposal, the Board has carefully considered the fair lending records and HMDA data of Wachovia Bank and World Savings in its evaluation of the public interest factors. Commenters alleged, based on 2005 HMDA data, that Wachovia Bank

45. Commenters also alleged that Wachovia has not been responsive to California community groups and has failed to work with local government in addressing California’s needs.

46. See, e.g., *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 233 (2004); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485, 488 n.18 (2002).

47. See *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005); *J.P. Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Bank of America Corporation*, *supra.*; *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 858 (1998).

48. See, e.g., *Fleet Financial Group, Inc.*, 85 *Federal Reserve Bulletin* 747 (1999).

and World Savings denied the home mortgage loan applications of African-American, Hispanic, and other minority borrowers more frequently than those of nonminority applicants in various states. A commenter also alleged that Wachovia Bank and World Savings made higher-cost loans⁴⁹ more frequently to African-American and Hispanic borrowers than to nonminority borrowers.⁵⁰ The Board reviewed the 2004 and 2005 HMDA data reported by Wachovia Bank and World Savings.⁵¹

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Wachovia Bank or World Savings is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.⁵² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only

safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by Wachovia Bank and World Savings with fair lending laws.

Examiners found no substantive violations of applicable fair lending laws during the fair lending reviews they conducted in conjunction with the most recent CRA performance evaluations of Wachovia Bank and World Savings. In addition, the record indicates that both institutions have taken steps to ensure compliance with fair lending and other consumer protection laws. Wachovia Bank monitors its compliance with fair lending laws through file reviews, mystery shopping programs, and call-monitoring activities. Wachovia Bank also employs an internal second-review process for home loan applications that would otherwise be denied and reviews its fair lending program quarterly to ensure effectiveness. World Savings employs similar compliance techniques, such as internal audits, file reviews, and statistical analyses of its lending activities.

Based on all the facts of record, the Board has concluded that considerations relating to the fair lending records and HMDA data of Wachovia and World Savings are consistent with approval under section 4 of the BHC Act.

PUBLIC BENEFITS

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers currently served by Golden West. Wachovia's proposed acquisition of Golden West would allow Wachovia to offer a wider array of mortgage and other banking products to the existing customers of Golden West, including LMI borrowers who currently have access only to the limited scope of World Savings' mortgage products. World Savings' customers who currently have limited ATM access will benefit from the combined organization's extensive network of more than 5,200 ATMs. Customers will also benefit from Wachovia's online banking functionalities not previously available to them, including bill payment, Spanish language capabilities, and online functions for loans and deposit accounts. Further, customers of Golden West's other nonbanking subsidiaries will benefit from the expanded range of products and services offered through Wachovia's nonbanking subsidiaries, such as trust services, securities brokerage, investment banking, and asset-management services, as well as a broad array of lending and credit instruments available to individual and corporate customers.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources,

49. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

50. One commenter also alleged that World Savings directs customers to low- or no-documentation loan products as a means to exaggerate the customer's income and places the customers in loan products that exceed their ability to repay, which ultimately results in foreclosures. According to information provided by Wachovia and Golden West, World Savings requires low- or no-documentation on 90 percent of the loan applications it processes and uses the same underwriting standards for all applications. As of June 30, 2006, publicly available data indicate that World Savings' nonperforming assets represented only 0.37 percent of its total assets, which compares favorably to the aggregate percentage of nonperforming assets to total assets of all savings institutions.

51. The Board reviewed the 2004 HMDA data reported by Wachovia Bank, Wachovia-DE; Wachovia Mortgage Company; and Wachovia's subsidiaries, SouthTrust Bank and SouthTrust Mortgage Company (acquired by Wachovia in January 2005), in their statewide assessment areas in California, Delaware, New Jersey, New York, North Carolina, Pennsylvania, and Texas. HMDA data reported by Wachovia Bank, Wachovia-DE, Wachovia Mortgage Company, and SouthTrust Mortgage Company in 2005 were reviewed for the same areas. In addition, the Board reviewed the 2004 and 2005 HMDA data reported by World Savings in its statewide assessment areas in New York and California.

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. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

decreased or unfair competition, conflicts of interest, or unsound banking practices. Based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the notice should be, and hereby is, approved.⁵³ 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 Wachovia with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),⁵⁴ and to the Board's authority to require such modification or termination of the activities of Wachovia or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the

53. Several commenters requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public hearing or meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing or meeting. In addition, the requests fail to demonstrate why the written comments do not present the commenters' views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

54. 12 CFR 225.7 and 225.25(c).

provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

This transaction shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 29, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

Other Nonbanking Subsidiaries of Golden West to Be Acquired under Section 4 of the BHC Act

- (1) World Mortgage Investors, Inc., Rockville, Maryland; World Mortgage Company, WLC Company, and GWFC, LP, all of Oakland, California; and World Loan Company, San Antonio, Texas; and thereby engage in extending credit and in activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, in accordance with sections 225.28(b)(1) and (2) of Regulation Y (12 CFR 225.28(b)(1) and (2));
- (2) Golden West Savings Association Service Company, Oakland, California, and thereby engage in activities performed by a trust company, in accordance with section 225.28(b)(5) of Regulation Y (12 CFR 225.28(b)(5)).
- (3) Atlas Advisers, Inc., San Leandro, California, and thereby engage in investment advisory activities, in accordance with section 225.28(b)(6) of Regulation Y (12 CFR 225.28(b)(6)); and
- (4) Atlas Securities, Inc., San Leandro, California, and thereby provide securities brokerage services, in accordance with section 225.28(b)(7)(i) of Regulation Y (12 CFR 225.28(b)(7)(i)).

Appendix B

OTHER WACHOVIA AND GOLDEN WEST BANKING MARKETS AND MARKET DATA

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
FLORIDA BANKING MARKETS						
<i>Beverly Hills Area—Citrus County excluding the town of Citrus Springs</i>						
Wachovia Pre-Consummation	8	61.3 mil.	3.2	1478	-25	12
Golden West	7	124.8 mil.	3.2	1478	-25	12
Wachovia Post-Consummation	5	186.1 mil.	9.3	1478	-25	12
<i>Brevard County—Brevard County</i>						
Wachovia Pre-Consummation	1	1.7 bil.	26.6	1559	83	19
Golden West	16	138 mil.	1.1	1559	83	19
Wachovia Post-Consummation	1	1.8 bil.	28.5	1559	83	19
<i>Daytona Beach Area—Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County</i>						
Wachovia Pre-Consummation	1	1.8 bil.	25.5	1667	68	22
Golden West	13	132.4 mil.	1.0	1667	68	22
Wachovia Post-Consummation	1	1.9 bil.	27.1	1667	68	22
<i>Fort Myers Area—Lee County excluding Gasparilla Island, and the town of Immokalee in Collier County</i>						
Wachovia Pre-Consummation	2	1.9 bil.	18.1	1191	89	32
Golden West	15	346.9 mil.	1.7	1191	89	32
Wachovia Post-Consummation	1	2.2 bil.	21.1	1191	89	32
<i>Fort Pierce Area—St. Lucie County and Martin County, excluding the towns of Indiantown and Hobe Sound</i>						
Wachovia Pre-Consummation	5	748.3 mil.	11.9	1425	101	18
Golden West	8	437.6 mil.	3.5	1425	101	18
Wachovia Post-Consummation	2	1.2 bil.	18.2	1425	101	18
<i>Fort Walton Beach Area—Okaloosa and Walton Counties and the town of Ponce de Leon in Holmes County</i>						
Wachovia Pre-Consummation	8	198.8 mil.	4.7	999	2	23
Golden West	17	91.4 mil.	1.1	999	2	23
Wachovia Post-Consummation	5	290.2 mil.	6.7	999	2	23
<i>Miami-Fort Lauderdale Area—Broward and Dade Counties</i>						
Wachovia Pre-Consummation	2	18 bil.	18.9	1048	48	97
Golden West	20	1.6 bil.	0.8	1048	48	97
Wachovia Post-Consummation	2	19.6 bil.	20.4	1048	48	97
<i>Naples Area—Collier County, excluding the town of Immokalee</i>						
Wachovia Pre-Consummation	3	1.2 bil.	13.3	1250	50	34
Golden West	12	281.4 mil.	1.5	1250	50	34
Wachovia Post-Consummation	3	1.5 bil.	16.1	1250	50	34

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>North Lake and Sumter Area—Sumter and Lake Counties, excluding the census-designated place of Astor and the cities of Clermont and Groveland, all in Lake County</i>						
Wachovia Pre-Consummation	4	461.9 mil.	12.3	1408	51	15
Golden West	10	145.8 mil.	1.9	1408	51	15
Wachovia Post-Consummation	3	607.7 mil.	15.8	1408	51	15
<i>Ocala Area—Marion County and the town of Citrus Springs in Citrus County</i>						
Wachovia Pre-Consummation	4	601.3 mil.	14.3	1463	86	20
Golden West	9	207 mil.	2.5	1463	86	20
Wachovia Post-Consummation	2	808.3 mil.	18.8	1463	86	20
<i>Sarasota Area—Manatee and Sarasota Counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); and the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West and Placido), and Gasparilla Island (the town of Boca Grande) in Lee County</i>						
Wachovia Pre-Consummation	2	2.4 bil.	15.4	1305	123	43
Golden West	8	873.6 mil.	2.8	1305	123	43
Wachovia Post-Consummation	2	3.3 bil.	20.5	1305	123	43
<i>Tampa Bay Area—Hernando, Hillsborough, Pinellas, and Pasco Counties</i>						
Wachovia Pre-Consummation	2	7.6 bil.	18.9	1540	109	65
Golden West	7	1.7 bil.	2.1	1540	109	65
Wachovia Post-Consummation	2	9.3 bil.	22.7	1540	109	65
<i>West Palm Beach Area—Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County</i>						
Wachovia Pre-Consummation	1	7.4 bil.	26.8	1697	306	62
Golden West	7	2 bil.	3.7	1697	306	62
Wachovia Post-Consummation	1	9.5 bil.	32.9	1697	306	62
TEXAS BANKING MARKETS						
<i>Austin—The Austin MSA (Bastrop, Caldwell, Hays, Travis, and Williamson Counties)</i>						
Wachovia Pre-Consummation	41	23.9 mil.	.2	1079	-26	62
Golden West	11	464.8 mil.	1.6	1079	-26	62
Wachovia Post-Consummation	7	488.7 mil.	3.2	1079	-26	62

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>Dallas—Dallas County; the southeastern quadrant of Denton County (including the cities of Denton and Lewisville); the southwestern quadrant of Collin County (including the towns of McKinney and Plano); Rockwall County; the communities of Forney and Terrell in Kaufman County; and the towns of Midlothian, Waxahachie, and Ferris in Ellis County</i>						
Wachovia Pre-Consummation	24	397.8 mil.	.6	1398	-19	121
Golden West	19	1 bil.	.8	1398	-19	121
Wachovia Post-Consummation	6	1.4 bil.	2.3	1398	-19	121
<i>Fort Worth—The Fort Worth-Arlington Metropolitan Division (Tarrant, Johnson, Parker, and Wise Counties)</i>						
Wachovia Pre-Consummation	16	159.7 mil.	1.1	978	-7	61
Golden West	28	155.4 mil.	.5	978	-7	61
Wachovia Post-Consummation	8	315.1 mil.	2.1	978	-7	61
<i>Houston—The Houston-Sugar Land-Baytown MSA, (Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties)</i>						
Wachovia Pre-Consummation	19	621.6 mil.	.7	2302	-63	85
Golden West	11	3 bil.	1.6	2302	-63	85
Wachovia Post-Consummation	5	3.6 bil.	3.9	2302	-63	85
<i>San Antonio—Bexar, Comal, Guadalupe, Kendall, and Wilson Counties</i>						
Wachovia Pre-Consummation	14	149.9 mil.	1.0	1358	-12	45
Golden West	20	166.8 mil.	.6	1358	-12	45
Wachovia Post-Consummation	9	316.7 mil.	2.1	1358	-12	45
CALIFORNIA BANKING MARKETS						
<i>Hesperia-Apple Valley-Victorville—The Hesperia-Apple Valley-Victorville RMA; the city of Helendale, the community of Lucerne Valley, the town of Phelan, and the census-designated place of Wrightwood, all in San Bernadino County</i>						
Wachovia Pre-Consummation	9	66.3 mil.	3.5	1374	-2	13
Golden West	7	169.8 mil.	4.5	1374	-2	13
Wachovia Post-Consummation	4	236.2 mil.	12.0	1374	-2	13
<i>Los Angeles—The Los Angeles RMA; the town of Acton in Los Angeles County; and the census-designated place of Rosamond in Kern County</i>						
Wachovia Pre-Consummation	24	2 bil.	.8	887	-17	153
Golden West	11	9 bil.	1.9	887	-17	153
Wachovia Post-Consummation	6	11 bil.	4.4	887	-17	153

Appendix B—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>Riverside-San Bernadino—The Riverside-San Bernadino Metropolitan Area, including the Riverside-San Bernadino RMA and the towns of Banning, Beaumont, and Nuevo in Riverside County</i>						
Wachovia Pre-Consummation	23	60.5 mil.	.5	1556	-25	36
Golden West	14	216.8 mil.	.9	1556	-25	36
Wachovia Post-Consummation	11	277.3 mil.	2.4	1556	-25	36
<i>San Diego—The San Diego RMA and the towns of Camp Pendleton and Pine Valley in San Diego County</i>						
Wachovia Pre-Consummation	19	214.5 mil.	.5	1072	-28	66
Golden West	10	1.7 bil.	2.1	1072	-28	66
Wachovia Post-Consummation	8	1.9 bil.	4.6	1072	-28	66
BANKING MARKETS IN CONNECTICUT, NEW JERSEY, NEW YORK, AND PENNSYLVANIA						
<i>Metropolitan New York-New Jersey—Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and the northern portions of Mercer County, all in New Jersey; Monroe and Pike County in Pennsylvania; Fairfield County and portions of Litchfield and New Haven Counties in Connecticut</i>						
Wachovia Pre-Consummation	6	32.9 bil.	4.4	1212	2	282
Golden West	39	2.8 bil.	.2	1212	2	282
Wachovia Post-Consummation	6	35.5 bil.	4.8	1212	2	282
<i>Philadelphia and South Jersey—Burlington, Camden, Gloucester, and Salem Counties, all in New Jersey; and Bucks, Chester, Delaware, Montgomery Counties, all in Pennsylvania</i>						
Wachovia Pre-Consummation	1	20.9 bil.	22.5	1064	5	120
Golden West	82	123.2 mil.	.1	1064	5	120
Wachovia Post-Consummation	1	21 bil.	22.6	1064	5	120

NOTE: Data are as of June 30, 2005. All amounts of deposits are un-weighted. All rankings, market deposit shares, and HHIs are based on thrift deposits, including those controlled by Golden West, weighted at 50 percent pre-consummation, but with Golden West's deposits weighted at 100 percent in the post-consummation figures.

Data for the Punta Gorda Area and Indian River County banking markets are discussed in the order.

ORDER ISSUED UNDER FEDERAL RESERVE ACT

Citizens First State Bank of Walnut Walnut, Illinois

Order Approving Establishment of a Branch

Citizens First State Bank of Walnut (“Citizens”), a state member bank, has requested the Board’s approval under section 9 of the Federal Reserve Act (“Act”)¹ to establish a branch at 9226 2125 North Avenue, Manlius, Illinois.

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

Citizens is the 455th largest depository institution in Illinois, controlling approximately \$49.8 million in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.³ Citizens currently operates three branches in Bureau County, Illinois, which includes Manlius.

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

The Board has carefully considered the application in light of these factors and public comment received from a bank holding company that competes with Citizens and owns the only existing branch in Manlius. The commenter asserted that the demographic and economic characteristics of the community would not support the profitable operation of another branch in the community, that the proposal might weaken the financial condition of one or both banks,

and that the proposal could ultimately diminish the banking options available to the citizens in the community.

In considering the financial history and condition, future earnings prospects, and capital adequacy of Citizens, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, and information provided by Citizens and the commenter. Citizens is well capitalized and would remain so on consummation of the proposal. The Board also has reviewed Citizens’ business plan and financial projections for the branch, including the projections for deposits, income, and costs. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Citizens are consistent with approval of the proposal.

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

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received, and the bank’s performance under the CRA. Citizens received a “satisfactory” rating by the Federal Reserve Bank of Chicago (“Reserve Bank”) at its most recent CRA performance evaluation, as of April 28, 2003.⁸ The Board generally considers the entry of a new competitor in a community to be a positive factor when assessing the effect of a proposal on the convenience and needs of the community because new entry provides additional alternatives to consumers and businesses. Citizens has represented that the proposed branch would provide residents of the Manlius area with another convenient source of banking services through extended service hours and the presence at the branch of an officer with loan approval authority.⁹ For these reasons and based on a review of the entire record, the Board concludes that the

8. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,640 (2001).

9. The commenter has speculated that consummation of this proposal could lead to one or both banks having to close its branch in Manlius, resulting in fewer banking services in the community. In reviewing this proposal, the Board has considered the comments in light of Citizens’ plans and projections for the proposed branch, as well as its financial and managerial resources. The Board also has reviewed the deposit and demographic data for the village of Manlius and for Bureau County. The data indicate modest declines in popula-

1. 12 U.S.C. § 321 et seq.

2. 12 CFR 262.3(b).

3. Statewide ranking and deposit data are as of June 30, 2005, and reflect mergers as of June 8, 2006.

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

5. 12 U.S.C. § 322.

6. 12 CFR 208.6(b).

7. 12 U.S.C. § 2901 et seq.

convenience and needs considerations and Citizens' record of performance under the CRA are consistent with approval of the proposal.

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

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

By order of the Board of Governors, effective August 9, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

Calyon, S.A.
Paris, France

Order Approving Establishment of a Branch

Calyon, S.A. ("Bank"),¹ 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 Los Angeles, California. 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. Bank previously received approval to file an application for approval of this branch after-the-fact.²

Notice of the application, affording interested persons an

tion from 2000–2005, but they also show consistent moderate growth in deposits during the same time period.

1. Calyon is the successor to Crédit Agricole Indosuez, S.A., Paris, France.

2. In May 2004, Bank acquired certain assets and liabilities of Crédit Lyonnais ("Credit Lyonnais"), also in Paris, including all the assets and liabilities of the Credit Lyonnais branch in Los Angeles. Bank received temporary authority to establish and operate the Los Angeles branch before an application was filed and acted on in accordance with section 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)). See Board letter dated April 15, 2004, to Michael Bradfield, Esq. With this application, Bank seeks permanent authority to establish and operate the branch in Los Angeles.

opportunity to comment, has been published in a newspaper of general circulation in Los Angeles (*Los Angeles Times*, November 1, 2004). The time for filing comments has expired, and all comments received have been considered.

Bank is a direct subsidiary of Crédit Agricole S.A. ("Credit Agricole"), Paris,³ the lead bank for the Crédit Agricole Group, which provides a wide range of banking and financial services to retail and corporate customers throughout the world and is the largest banking group in France with assets of approximately \$913 billion.⁴ SAS Rue La Boétie ("Boetie"), also in Paris, holds approximately 55 percent of the shares of Credit Agricole.⁵ The Fédération Nationale du Crédit Agricole ("FNCA"), also in Paris, controls Boetie.⁶ In the United States, Credit Agricole conducts banking operations through offices of Bank; through another French bank subsidiary, Credit Lyonnais; and through Espirito Santo Bank, Miami, Florida, the U.S. bank subsidiary of Banco Espirito Santo, S.A., Lisbon, Portugal.⁷ The Crédit Agricole Group also operates a number of nonbank subsidiaries in the United States. Bank is a qualifying foreign banking organization under Regulation K (12 CFR 211.23(b)).

Bank assumed the operations of the Los Angeles branch of Credit Lyonnais in connection with a corporate reorganization in which Bank also acquired Credit Lyonnais's branches in Chicago, Illinois, and New York, New York. No change in the activities of the branch occurred as a result of the reorganization. The branch markets Bank's commercial lending products and functions primarily as a loan production office for the bank's New York branch.

Bank's home state is New York, and Bank proposes to continue to operate its branch in California. Under section 5(a)(2) of the IBA (12 U.S.C. §3103(a)), a foreign bank, with the approval of the Board and the appropriate state banking supervisor, may establish and operate a state-licensed branch outside the home state of the foreign bank to the extent a state bank with the same home state as the foreign bank could do so under section 44 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. §1831u). Bank acquired all the assets and liabilities of the Credit Lyonnais branch in Los Angeles as part of its

3. Credit Agricole holds 95.3 percent of Bank's shares.

4. Asset data are as of December 31, 2004.

5. The remainder of Credit Agricole's shares are held by members of the public.

6. Credit Agricole supports, coordinates, and supervises the operations of approximately 40 regional cooperative banks (Caisses Régionales or "Caisses") and approximately 2600 local cooperative banks, which operate a retail branch network in France. FNCA, Boetie, Credit Agricole, and the regional and local cooperative banks together comprise the Crédit Agricole Group. In connection with a public offering of shares by Credit Agricole, the Caisses established a wholly owned holding company, Boetie, in 2001 and transferred their shares of Credit Agricole to it. Boetie holds and votes the shares of Credit Agricole to maintain the Caisses' control of Credit Agricole. FNCA, an unincorporated association, acts as a consultative and representative body for the Caisses. See also *Fédération Nationale du Crédit Agricole et al.*, 92 *Federal Reserve Bulletin* C159 (2006).

7. Credit Agricole also is deemed to control Banca Intesa S.p.A., Milan, Italy, which operates a branch in New York.

assumption of the wholesale business assets and liabilities of Credit Lyonnais under provisions of French commercial law. This transaction constituted an interstate merger transaction as defined in the FDI Act. Section 44(a) of the FDI Act permits the approval of a merger transaction under the Bank Merger Act between state banks with different home states, provided that neither state has elected to prohibit interstate merger transactions pursuant to section 44(a)(2) of the FDI Act. New York and California both permit interstate merger transactions. Accordingly, the proposed interstate merger transaction would be permitted under section 44 of the FDI Act, and the Board is permitted to approve the establishment by Bank of the branch outside its home state of New York if the remaining criteria of section 5(a) of the IBA are met. The Board has determined that the additional conditions specified in section 5(a)(3) of the IBA are satisfied.⁸

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1)).⁹ The Board also may consider additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined that Bank and Credit

Agricole are subject to comprehensive supervision or regulation on a consolidated basis by their home country supervisor, the Commission Bancaire.¹⁰ Bank and Credit Agricole remain supervised by the Commission Bancaire on substantially the same terms and conditions. Based on all the facts of record, it has been determined that Bank and Credit Agricole are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3)) have also been taken into account. The Commission Bancaire has no objection to the establishment of the proposed branch.

France's risk-based capital standards are consistent with those established by the Basel 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.

France is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with those recommendations, France has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in France, 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 Bank's internal auditors and the Commission Bancaire.

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, Boetie, and FNCA 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, Boetie, and FNCA 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, the Commission Bancaire may share information on Bank's operations with other supervisors, including the Board,

8. Section 5(a)(3) of the IBA requires that certain conditions of section 44 of the FDI Act be met in order for the Board to approve an interstate banking transaction. *See* 12 U.S.C. § 3103(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. §§ 1831u(b)(1), (b)(3), and (b)(4)). The Board has determined that Bank is in compliance with state filing requirements. Community reinvestment considerations are also consistent with approval. Bank and Credit Lyonnais were both adequately capitalized as of the date the application was filed, and Bank would continue to be at least adequately capitalized and adequately managed on consummation of this proposal. The Board has determined, after consultation with the Secretary of the Treasury, that the financial resources of Bank are equivalent to those required for a domestic bank to receive approval for interstate branching under section 44 of the FDI Act.

9. 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.

10. *See Caisse Nationale de Crédit Agricole*, 81 *Federal Reserve Bulletin* 1055 (1995). *See also, Crédit Agricole Indosuez*, 83 *Federal Reserve Bulletin* 1025 (1997); *Caisse Nationale de Crédit Agricole*, 86 *Federal Reserve Bulletin* 412 (2000).

subject to certain conditions. In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, the Board has determined that Bank's application to establish a branch should be, and hereby is, approved. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing 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 September 8, 2006.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

*The International Commercial Bank of
China Co., Ltd.
Taipei, Taiwan*

**Order Approving Establishment of U.S.
Branches**

The International Commercial Bank of China Co., Ltd. ("Bank"), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under sections 5(a) and 7(d) of the IBA¹ to establish branches in Los Angeles and San Jose, California, and New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers

11. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of California to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of California to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. §§ 3103(a), 3105(d).

of general circulation in New York, New York (*The New York Post*, May 10, 2006), Los Angeles, California (*Los Angeles Daily News*, May 10, 2006), and San Jose, California (*San Jose Mercury News*, May 10, 2006). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of \$36 billion, is the eighth largest commercial bank in Taiwan.² Bank is wholly owned by Mega Financial Holding Company ("Mega"), Taipei, Taiwan. Mega's largest shareholders are the national government and governmental agencies of Taiwan (controlling 18.3 percent of shares) and Chinatrust Financial Holding Company, Ltd., Taipei, Taiwan (controlling 18 percent of shares).³ Bank provides a variety of banking services to retail and corporate customers directly and through two subsidiary banks and branches in 15 countries.⁴ In the United States, Bank operates a limited federal branch in Los Angeles, California, a full-service state branch in Chicago, Illinois, and a state agency in New York, New York. Bank is a qualifying foreign banking organization under Regulation K.⁵

In addition to Bank, Mega wholly owns Chiao Tung Bank Co., Ltd. ("CTB"), Taiwan's 14th largest bank. CTB operates a full-service state branch in San Jose, California, and a state agency in New York, New York.

As part of a corporate reorganization of Mega, Bank and CTB will merge, with Bank as survivor. Bank would assume CTB's San Jose full-service branch and New York agency. In New York, Bank proposes to combine the operations of CTB's agency with the operations of Bank's existing New York agency and to upgrade the combined New York agency to a full-service branch. It also proposes to convert its Los Angeles limited branch from a federal to a state license and to upgrade it to a full-service branch. According to Bank, the full-service branches would enable it to better serve the needs of its customers who do business in the United States. The branches also would coordinate Bank's access to U.S. capital markets.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor.⁶ The Board also

2. Asset data are as of March 31, 2006.

3. Mega's remaining shares are widely held, with no shareholder or group of shareholders controlling more than 5 percent of shares.

4. Bank's subsidiary banks are International Commercial Bank of Cathay, Toronto, Canada, and The International Commercial Bank of China Public Co., Ltd., Bangkok, Thailand. In addition to the United States, Bank operates branches in Australia, France, Hong Kong, Japan, Malaysia, the Netherlands, Panama, the Philippines, Singapore, and Vietnam. Bank also maintains representative offices in the United Kingdom and Bahrain.

5. 12 CFR 211.23(b).

6. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive,

considers additional standards set forth in the IBA and Regulation K.⁷

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Taiwan, that those banks were subject to home country supervision on a consolidated basis.⁸ Bank is supervised by the Financial Supervisory Commission (“FSC”) on substantially the same terms and conditions as those other banks.⁹ Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.¹⁰

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K.¹¹ The FSC has no objection to Bank’s establishment of the proposed branches.

Taiwan’s risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank’s capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the

consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk-asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

7. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

8. See *SinoPac Holdings*, 88 *Federal Reserve Bulletin* 307 (2002); *Chinatrust Financial Holding Company, Ltd.*, 88 *Federal Reserve Bulletin* 303 (2002); *E. Sun Commercial Bank Limited*, 86 *Federal Reserve Bulletin* 238 (2000); *Chinatrust Commercial Bank, Ltd.*, 84 *Federal Reserve Bulletin* 1121 (1998); *Land Bank of Taiwan*, 83 *Federal Reserve Bulletin* 336 (1997); *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995).

9. The FSC, Taiwan’s umbrella supervisory agency for financial institutions, is composed of financial regulators formerly housed in the Ministry of Finance, Central Bank of China, and China Deposit Insurance Corporation. The FSC began operations in July 2004.

10. As a financial holding company under Taiwanese law, Mega is supervised by the FSC and is subject to prudential restrictions on capital adequacy and transactions with affiliates. The FSC may require the submission of consolidated financial statements, review transactions between the financial holding company and its subsidiaries, and send internal or outside independent auditors to audit and inspect the operations and the financial records of the financial holding company or any of its subsidiaries. The FSC also may take measures to ensure the safety and soundness of the organization.

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

proposed agency. In addition, Bank has established controls and procedures for the proposed offices to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Taiwan is a founding member of the Asia Pacific Group on Money Laundering and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Taiwan has enacted laws and regulations to deter money laundering. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank’s operations, the 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 Mega 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 Mega 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 light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and Mega have provided adequate assurances of access to any necessary information that the Board may request.

Establishment of an Interstate Branch. The IBA establishes criteria that must be met before the Board can approve the establishment of a branch outside the foreign bank’s home state. Bank’s home state is New York. Bank proposes to establish by merger a full-service branch in San Jose, California, CTB’s home state. Under section 5(a) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”),¹² a foreign bank, with the approval of the Board and the Office of the Comptroller of the Currency or the appropriate state banking supervisor, may establish and operate a branch in any state outside its home state to the extent that a bank with the same home state as the foreign bank could do so under section 44 of the Federal Deposit Insurance Act (“FDI Act”). Section 44 of the FDI Act permits approval of a merger transaction under the Bank Merger Act between banks with different home states, provided that neither state has elected to prohibit interstate

12. 12 U.S.C. § 3103(a).

merger transactions.¹³ New York and California statutes both permit interstate merger transactions. All other applicable requirements have been met by the proposal.¹⁴

The Board has determined that all of the other criteria referred to in section 5(a)(3) of the IBA,¹⁵ including the criteria in section 7(d) of the IBA, have been met. In view of all the facts of record, the Board is permitted to approve the establishment of an interstate branch by Bank under section 5(a) of the IBA.

Section 5(a)(7) of the IBA provides that a foreign bank may upgrade an existing limited branch outside its home state to a full-service branch if the limited branch has been in operation since September 28, 1994, and the host state permits the establishment of a full-service branch.¹⁶ As noted above, Bank's home state is New York. Bank's Los Angeles branch was established in 1984, and California law permits foreign banks to operate full-service wholesale branches.¹⁷ Accordingly, the Board has determined that Bank may upgrade the Los Angeles branch to a full-service wholesale branch, provided that the California Department of Financial Institutions approves the transactions.

Upgrade of the New York Agency to a Full-Service Branch. Bank currently operates an agency in New York. Because New York is Bank's home state, there is no federal restriction that would preclude the upgrading of that office to a full-service branch. Accordingly, the Board has determined that Bank may upgrade the New York agency to a full-service wholesale branch, provided that the New York State Banking Department approves the transactions.

Based on the foregoing and all the facts of record, Bank's application to establish the proposed branches is hereby approved by the director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. Should any restrictions on access to information on

13. 12 U.S.C. § 1831u.

14. Section 5(a) of the IBA requires that certain conditions of section 44 of the FDI Act be met in order for the Board to approve an interstate banking transaction. See 12 U.S.C. § 3103(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. §§ 1831u(b)(1), (b)(3), and (b)(4)). The Board has determined that Bank is in compliance with state filing requirements. Community reinvestment considerations are also consistent with approval. Both Bank and CTB were adequately capitalized as of the date the application was filed, and, on consummation of this proposal, Bank would continue to be adequately capitalized and adequately managed. The Board has determined, after consultation with the Secretary of the Treasury, that the financial resources of Bank are equivalent to those required for a domestic bank to receive approval for interstate branching under section 44 of the FDI Act.

15. The Riegle-Neal Act provides that a bank resulting from an interstate merger may, with Board approval and subject to certain requirements, retain and operate as a branch any office that any bank involved in the merger transaction was operating as a main office or branch immediately before the merger transaction. See 12 U.S.C. § 1831u(d)(1). In this case, all the applicable statutory requirements are met. Therefore, Bank may retain and operate the state-licensed branch outside New York currently being operated by CTB, provided the criteria in section 5(a)(3) of the IBA have been met.

16. 12 U.S.C. § 3103(a)(7).

17. Cal. Fin. Code §§ 1701, 1750 (West 2006).

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 the application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application and with the conditions in this order.¹⁸ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective August 18, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Taiwan Cooperative Bank Taipei, Taiwan

Order Approving Establishment of Branches

Taiwan Cooperative Bank ("TCB"), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to establish state-licensed branches in Los Angeles, California, and Seattle, Washington. 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.

TCB acquired the branches in connection with its merger with Farmers Bank of China ("Farmers"), also in Taipei, on May 1, 2006.² Regulation K defines the establishment of an office to include the assumption of the operations of an existing office through a merger with another foreign

18. The Board's authority to approve the establishment of the proposed branches parallels the continuing authority of California and New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of those states to license the proposed offices of Bank in accordance with any terms or conditions that they may impose.

1. 12 U.S.C. § 3105(d).

2. On April 28, 2006, the General Counsel, after consulting with the director of Banking Supervision and Regulation, approved under delegated authority TCB's request to use the after-the-fact application procedures outlined in section 211.24(a)(6) of Regulation K, 12 CFR 211.24(a)(6), to establish branch offices in the United States after TCB's merger with Farmers.

Farmers' application to establish the Los Angeles office was approved by the Board in 1995 as a limited branch. *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995). Accordingly, it is prohibited from accepting deposits from sources other than those permitted pursuant to section 5 of the IBA and section 25A of the Federal Reserve Act (12 U.S.C. § 3103). The Seattle office was established in 1990 as a federally licensed branch, and its conversion to a state license was approved on June 3, 2006.

bank.³ Accordingly, TCB, as the survivor of the merger, must obtain the approval of the Board to assume the operations of Farmers' existing U.S. offices.

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers of general circulation in Los Angeles and Seattle (*Los Angeles Times* and *Seattle Times*, March 29, 2006). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the IBA.

TCB, with total assets of \$74 billion, is the largest bank in Taiwan.⁴ The Taiwanese government partially privatized TCB in 2005 but remains the largest shareholder with 43.17 percent of its voting securities. TCB provides a broad range of banking, financial, and other services primarily in Taiwan. TCB maintains representative offices in Hong Kong and Beijing and operates several nonbank subsidiaries. Other than the branches that are the subject of this proposal, TCB does not have any operations in the United States. TCB would be a qualifying foreign banking organization under Regulation K.⁵

TCB has assumed the businesses and operations of Farmers' U.S. branches. The Los Angeles and Seattle branches' primary activities are providing commercial and real estate lending to the Taiwanese community in the United States and facilitating trade transactions between the United States and Asia.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor.⁶ The Board also considers additional standards set forth in the IBA and Regulation K.⁷

As noted above, TCB engages directly in the business of banking outside of the United States. TCB also has provided the Board with information necessary to assess the application through submissions that address the relevant

issues. With respect to supervision by home country authorities, the Federal Reserve previously has determined, in connection with applications involving other banks in Taiwan, including Farmers, that those banks were subject to home country supervision on a consolidated basis.⁸ TCB is supervised by the Financial Supervisory Commission ("FSC") on substantially the same terms and conditions as the other banking organizations approved.⁹ Based on all the facts of record, it has been determined that TCB is subject to comprehensive supervision on a consolidated basis by its home country supervisor. The FSC has no objection to the proposal.

Taiwan's risk-based capital standards are consistent with those established by the Basel Capital Accord. TCB's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of TCB also are considered consistent with approval, and TCB appears to have the experience and capacity to support the proposed branches. In addition, TCB has established controls and procedures for the proposed branches to ensure compliance with U.S. law and for its operations in general.

Taiwan is a founding member of the Asia/Pacific Group on Money Laundering and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Taiwan has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. TCB has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about TCB's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TCB operates and has communicated with relevant government authorities regarding access to information. TCB has committed to make available to the Board such information on the operations of TCB 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

3. 12 CFR 211.21(1)(2).

4. Asset data are as of June 30, 2006.

5. 12 CFR 211.23(b).

6. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk-asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

7. 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3).

8. See *SinoPac Holdings*, 88 *Federal Reserve Bulletin* 307 (2002); *Chinatrust Financial Holding Company, Ltd.*, 88 *Federal Reserve Bulletin* 303 (2002); *E. Sun Commercial Bank Limited*, 86 *Federal Reserve Bulletin* 238 (2000); *Chinatrust Commercial Bank, Ltd.*, 84 *Federal Reserve Bulletin* 1121 (1998); *Land Bank of Taiwan*, 83 *Federal Reserve Bulletin* 336 (1997); *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995).

9. The FSC, Taiwan's umbrella supervisory agency for financial institutions, is composed of financial regulators formerly housed in the Ministry of Finance, Central Bank of China, and China Deposit Insurance Corporation. The FSC began operations in July 2004.

such information to the Board may be prohibited by law or otherwise, TCB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that TCB has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, TCB's application to establish branches in Los Angeles and Seattle is hereby approved.¹⁰ Should any restrictions on access to information on the operations or activities of TCB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by TCB or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of TCB's direct or indirect activities in the United States. Approval of

10. 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.

this application also is specifically conditioned on compliance by TCB with the commitments made in connection with this application and with the conditions in this order.¹¹ The commitments and conditions referred to 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 12 U.S.C. § 1818 against TCB and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective August 15, 2006.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

11. The Board's authority to approve the establishment of the proposed branches parallels the continuing authority of California and Washington to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the California Department of Financial Institutions or Washington State Department of Financial Institutions to license the proposed branches of TCB in accordance with any terms or conditions that they may impose.