

Legal Developments: Second Quarter, 2007

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

1st Source Corporation South Bend, Indiana

Order Approving the Acquisition of a Bank Holding Company

1st Source Corporation (“1st Source”), 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 FINA Bancorp, Inc. (“FINA”) and its subsidiary bank, First National Bank, Valparaiso (“First National”), both of Valparaiso, Indiana.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (72 *Federal Register* 13,108 (2007)). 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.

1st Source, with total consolidated assets of approximately \$3.8 billion, operates one insured depository institution subsidiary, 1st Source Bank, with branches in Indiana and Michigan. 1st Source is the fifth largest depository organization in Indiana, controlling deposits of \$2.7 billion, which represent 3 percent of total deposits of insured depository institutions in Indiana (“state deposits”).³

FINA, with total consolidated assets of approximately \$611 million, operates one insured depository institution, First National, with branches only in Indiana. First National is the 34th largest depository organization in Indiana, controlling deposits of approximately \$526.7 million.

1. 12 U.S.C. § 1842.

2. 1st Source proposes to merge FINA with and into Hickory Acquisition, Inc. (“Hickory”), a wholly owned subsidiary of 1st Source organized solely to effect the proposed acquisition. Immediately following the merger of FINA with and into Hickory, Hickory would merge with and into 1st Source.

3. Asset data are as of March 31, 2007, and statewide deposit and ranking data are as of June 30, 2006, and reflect merger activity through May 9, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

On consummation of this proposal, and after accounting for the proposed divestiture, 1st Source would remain the fifth largest depository organization in Indiana, controlling deposits of approximately \$3.2 billion, which represent 3.6 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 any 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.⁴

1st Source and FINA compete directly in three banking markets: Gary-Hammond, Indiana; La Porte, Indiana-Michigan; and Starke, Indiana.

The Board has reviewed carefully the competitive effects of the proposal in each of the three banking markets where 1st Source and FINA 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 1st Source and FINA,⁵ 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”),⁶

4. 12 U.S.C. § 1842(c)(1).

5. Deposit and market share data are as of June 30, 2006, adjusted to reflect subsequent mergers and acquisitions through February 23, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (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).

6. 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 1st Source to divest one or more branches in the Starke banking market.

A. Banking Market with Divestiture

1st Source and FINA compete directly in one banking market, the Starke market, that warrants a detailed review of competitive effects.⁷ In this market, the concentration level on consummation of the proposal, after accounting for the proposed divestiture, would exceed the threshold levels in the DOJ Guidelines.

1st Source Bank is the largest depository institution in the Starke banking market, controlling deposits of approximately \$70 million, which represent approximately 31 percent of market deposits. First National is the fifth largest depository institution in the market, controlling deposits of approximately \$13 million, which represent approximately 6 percent of market deposits. On consummation and without the proposed divestiture, the HHI in this market would increase 369 points, from 2236 to 2605, and the pro forma market share of the combined entity would be 37 percent.

To reduce the potential adverse effects on competition in the Starke banking market, 1st Source has committed to divest at least one branch with no less than \$6.4 million in deposits to an out-of-market insured depository organization.⁸ On consummation of the proposed merger, and after accounting for the divestiture, 1st Source would remain the largest depository institution in the market, controlling deposits of approximately \$77 million, which represent 34.7 percent of market deposits. The HHI would increase no more than 237 points to 2473.

The Board carefully 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.⁹ In this market, the record indicates that the proposal would not have a significantly adverse impact on competition, despite the

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.

7. The Starke banking market is defined as Starke County, Indiana.

8. 1st Source has committed that, before consummation of the proposed merger, it will execute an agreement for the proposed divestiture in the Starke banking market with a purchaser that the Board determines to be competitively suitable. 1st Source also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, 1st Source 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. The trust agreement, 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).

9. 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 a banking market.

post-consummation increase in the HHI and market share. On consummation of the proposal and the proposed divestiture to a competitively suitable insured depository institution, at least five other insured depository institutions would continue to operate in the market. In addition, the concentration of deposits in the market has decreased since 2000.

B. Banking Markets without Divestiture

Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Gary-Hammond and La Porte banking markets.¹⁰ On consummation of the proposal, the Gary-Hammond banking market would remain moderately concentrated and the La Porte banking market would remain highly concentrated, as measured by the HHI. The change in the HHI measure of concentration in each of these markets would be small, however, 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 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 competitive effects of 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 three banking markets where 1st Source and FINA 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 federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by 1st Source.

10. These banking markets and the effects of the proposal on the concentration of banking resources in them are described in the appendix.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved both on a parent-only and on a consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organizations at consummation, including 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. 1st Source and its subsidiary depository institution, and First National, currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that 1st Source has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash payment. The cash portion would be funded from the proceeds of an issuance of trust preferred securities and a dividend from 1st Source Bank.

The Board also has considered the managerial resources of 1st Source, FINA, 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 laws and with anti-money-laundering laws. 1st Source, FINA, and their subsidiary depository institutions are considered well managed. The Board also has considered 1st Source's plans for implementing the proposal, including the proposed management after consummation, and has consulted the other relevant supervisory agencies concerning these plans.

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").¹¹ 1st Source Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of May 23, 2005. First National received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of December 5, 2003. After consummation of the proposal, 1st Source plans to implement its CRA policies at First National. 1st Source has represented that the proposal would provide greater convenience to customers through a larger network of branches and ATMs and a broader range of financial products and services over an expanded geographic area. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served 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 decision, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by 1st Source 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective May 15, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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

Appendix

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES WITHOUT DIVESTITURES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
INDIANA AND INDIANA-MICHIGAN BANKING MARKETS						
<i>Gary-Hammond—Lake County; Porter County, excluding Pine township; and New Durham, Clinton, Cass, Dewey, and Prairie townships in La Porte County, Indiana</i>						
1st Source Pre-Consummation	17	54.8 mil.	.7	1,108	8	27
FINA	7	499.2 mil.	6.1	1,108	8	27
1st Source Post-Consummation	6	554 mil.	6.8	1,108	8	27
<i>La Porte—La Porte County, excluding New Durham, Clinton, Cass, Dewey, and Prairie townships; Olive and Warren townships in St. Joseph County; and Pine township in Porter County, all in Indiana; and New Buffalo, Three Oaks, Galien, and Weesaw townships in Berrien County, Michigan</i>						
1st Source Pre-Consummation	3	142.8 mil.	10.0	2,063	20	13
FINA	12	14.1 mil.	1.0	2,063	20	13
1st Source Post-Consummation	3	156.9 mil.	11.0	2,063	20	13

NOTE: All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

The Bank of New York Mellon Corporation New York, New York

Order Approving the Formation of a Bank Holding Company and the Merger of Bank Holding Companies

The Bank of New York Mellon Corporation (“BNYMellon”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become a bank holding company by merging with The Bank of New York Company, Inc. (“BONY”), New York, New York, and Mellon Financial Corporation (“Mellon”), Pittsburgh,

Pennsylvania, and thereby acquiring The Bank of New York (“BONY Lead Bank”), New York, New York, Mellon Bank, N.A. (“Mellon Lead Bank”), Pittsburgh, Pennsylvania, and the other subsidiary banks of BONY and Mellon.² BNYMellon is a newly organized corporation formed to facilitate BONY’s acquisition of Mellon. BNYMellon also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of Regulation Y.³ BNYMellon

1. 12 U.S.C. § 1842. In addition, BONY and Mellon each has requested the Board’s approval to hold and exercise options to purchase up to 19.9 percent of each other’s common stock on the occurrence of certain events. Both options would expire on consummation of the merger of Mellon and BONY into BNYMellon.

2. BONY Lead Bank and Mellon Lead Bank are the largest subsidiary banks of their parent holding companies, as measured by both assets and deposits. BONY operates one other subsidiary bank, The Bank of New York (Delaware), Newark, Delaware. Mellon’s other subsidiary banks are: Mellon United National Bank, Miami, Florida; Mellon 1st Business Bank, National Association, Los Angeles, California; and Mellon Trust of New England, National Association, Boston, Massachusetts.

3. See 12 U.S.C. § 1843(k) and (l); 12 CFR 225.82. BNYMellon has certified that the subsidiary depository institutions of BONY and Mellon are well capitalized and well managed, and BNYMellon has

also proposes to acquire BNY International Financing Corporation, New York, New York, and Mellon Overseas Investment Corporation, Greenville, Delaware, both Edge Act corporations organized under section 25 of the Federal Reserve Act.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (72 *Federal Register* 12,800, 13,108, and 16,788 (2007)). 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.

BONY, with total consolidated assets of approximately \$99.9 billion, is the 18th largest depository organization in the United States, controlling deposits of approximately \$30.1 billion.⁵ BONY's subsidiary banks operate main offices or branches in Connecticut, Delaware, New Jersey, and New York, and BONY engages in numerous nonbanking activities that are permissible under the BHC Act.

Mellon, with total consolidated assets of approximately \$40.5 billion, is the 33rd largest depository organization in the United States, controlling deposits of approximately \$22.1 billion. Mellon's subsidiary banks operate main offices or branches in seven states,⁶ and Mellon engages in numerous nonbanking activities that are permissible under the BHC Act.

On consummation of the proposal, BNYMellon would become the 12th largest depository organization in the United States, with total consolidated assets of approximately \$154 billion. BNYMellon would control deposits of approximately \$52.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire

provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that the election to become a financial holding company will become effective on consummation of the proposal, if on that date all subsidiary depository institutions of BONY and Mellon remain well capitalized and well managed, and if each subsidiary insured depository institution of BONY and Mellon has received a rating of at least "satisfactory" at its most recent performance evaluation under the Community Reinvestment Act ("CRA") (12 U.S.C. § 2901 et seq.). BNYMellon proposes to acquire the nonbanking subsidiaries of BONY and Mellon in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

4. 12 U.S.C. § 601 et seq. As this acquisition is being made as part of a proposal requiring approval under section 3 of the BHC Act, separate approval under the Federal Reserve Act is not required (12 CFR 211.5(e)(iii)).

5. Nationwide asset data are as of March 31, 2007. Nationwide deposit and ranking data are as of March 31, 2007, and reflect merger activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. Mellon's subsidiary banks operate main offices and branches in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, and Pennsylvania.

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 BONY is New York.⁷ Mellon is located in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, and Pennsylvania.⁸

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

COMPETITIVE CONSIDERATIONS

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

BONY and Mellon have subsidiary depository institutions that compete directly in four banking markets: Los Angeles, California; Miami-Fort Lauderdale Area, Florida; Wilmington, in Delaware and Maryland; and Boston in Massachusetts and New Hampshire. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by BONY and Mellon,¹¹ the concentration levels of market deposits and

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

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

9. 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). BNYMellon is adequately capitalized and adequately managed, as defined by applicable law. All of Mellon's subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws. On consummation of the proposal, BNYMellon would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. The proposal also would comply with relevant state deposit caps, each of which is 30 percent. *See* Fla. Stat. § 658.2953(7)(b); Md. Code Ann., Fin. Inst. § 5-1013; Mass. Gen. Laws ch. 167, § 39; and N.J. Stat. Ann. § 17.9A-148(E). The other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

10. 12 U.S.C. § 1842(c)(1).

11. Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through March 31, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift

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

In delineating the relevant product market in which to assess the competitive effects of a bank acquisition or merger, the Supreme Court has determined that “commercial banking” is the appropriate line of commerce because the cluster of banking products and services provided by commercial banks is unique relative to other types of financial institutions.¹³ To measure the “cluster of products and services,” the Court has used bank deposits to measure the concentration and market shares in the relevant banking markets.

Based on deposit data, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of the four banking markets.¹⁴ On consummation of the proposal, the Los Angeles and Miami–Fort Lauderdale area markets would remain unconcentrated, and the Boston market would remain moderately concentrated, as measured by the HHI. Although the Wilmington market would remain highly concentrated, the increase in concentration would be minimal. Numerous depository institution competitors would remain in each of the four markets.

Although the subsidiary banks of BONY accept deposits, neither BONY nor Mellon engages in retail banking to a significant degree to support their banking operations,¹⁵ which makes the amount of deposits a less-reliable measure

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).

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. *See United States v. Phillipsburg National Bank*, 399 U.S. 350, 359 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 356 (1963).

14. These banking markets, and the effect of the proposal on the concentration of banking resources in the markets based on deposit data, are described in the appendix.

15. In October 2006, BONY Lead Bank sold its retail banking business, including 338 branches, and its regional middle market business, to JPMorgan Chase & Co., New York, New York. In December 2001, Mellon Lead Bank sold its consumer, small business, and regional banking businesses, including most of its branches, to Citizens Financial Group, Inc., Providence, Rhode Island. BONY Lead Bank and Mellon Lead Bank each currently maintains a small network of branches to serve private banking and private wealth-management clients.

of the competitive effects of the merger in this case. Significant business lines of the subsidiary banks of BONY and Mellon include custody services; clearing, corporate trust, and depository receipts services; securities lending; transfer agent services; fund administration and accounting services; and foreign exchange (collectively “securities services”).¹⁶ Accordingly, in analyzing the competitive effects, the Board has taken the additional step of considering measures of securities services that more closely reflect the effect of the proposal on competition.

Securities services are provided on a national basis, and most customers for these services are large corporations, institutions, and other financially sophisticated entities. An appropriate measure of these services is domestic assets under custody. BONY is the third largest provider of securities services, with a market share of approximately 18.2 percent, and Mellon is the fifth largest provider of these services, with a market share of approximately 6.7 percent.¹⁷ Together, BONY and Mellon would be the largest provider of these services, with a market share of 24.9 percent. This measure of the competitive effects of the proposal indicates that the overlapping market, as measured by the HHI, would remain moderately concentrated, with the HHI increasing 246 points from 1542 to 1788. After consummation, 21 other participants would remain in the market.

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the four banking markets where BONY and Mellon 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

16. BONY and Mellon also provide the following types of services through their subsidiary banks: asset management, private wealth management and private banking, and cash and treasury management.

17. These market shares are calculated as if State Street Corporation (“State Street”) has consummated its proposed acquisition of Investors Financial Services Corp. (“IFS”), both of Boston, Massachusetts. State Street has filed an application with the Board for approval to acquire IFS and that application is pending. State Street and IFS are also significant providers of securities services.

record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by BONY, 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. 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 considered carefully the proposal under the financial factors. BONY, Mellon, and their subsidiary banks currently are well capitalized, and BNYMellon and each bank that it would control would be well capitalized on consummation of the proposal. Based on its review of the record, the Board finds that BNYMellon has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. In addition, the Board has considered BNYMellon's plans for implementing the proposal, including the proposed management after consummation. In considering the managerial resources, the Board has reviewed the examination records of BONY and Mellon and their subsidiary banks, including assessments of their management, risk-management systems, and operations. Moreover, 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 ("AML") laws. Banking organizations operating in the United States are required to implement and operate effective AML programs. Accordingly, the Board has considered the existing AML programs at BONY's and Mellon's subsidiary banks, including recent enhancements at BONY Lead Bank.¹⁸ The Board expects that BNYMel-

lon will take all necessary steps to ensure that sufficient resources, training, and managerial efforts are dedicated to maintaining a fully effective compliance risk-management system to ensure compliance with AML statutes and regulations throughout its organization.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.¹⁹

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").²⁰ 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.²¹

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of BONY and Mellon, data reported by BONY under the Home Mortgage

In May 2007, a suit was filed against BONY Lead Bank by the Russian Federal Customs Service in a Russian court for damages allegedly resulting from money transfers that BONY Lead Bank had made to and from Russia from 1996 to 1999. These transactions were also considered in connection with the execution of the 2000 Written Agreement and were investigated by the U.S. Department of Justice, which entered into a Non-Prosecution Agreement with BONY Lead Bank on November 8, 2005. The Board will continue to monitor the suit by the Russian authorities and notes that neither Board action on this proposal nor any supervisory action by the Board under the BHC Act would interfere with the ability of a foreign court to resolve any litigation pertaining to this matter.

19. A commenter expressed concern about BONY's relationships with unaffiliated third parties engaged in subprime lending. BONY has represented that it provides corporate trust and custody services relating to some issuances backed by subprime loans or involving issuers who originate or securitize subprime loans. BONY also indicated that it provides commercial credit to some originators of subprime mortgages. In addition, BONY noted that it acts as a swap counterparty in connection with some subprime loan securitization transactions and that its proprietary treasury portfolio, and some funds for which BONY acts as investment manager, include securities that may be partially backed by subprime assets. BONY has represented that it does not play any role in the lending practices or credit review processes of its customers who engage in subprime lending. The Board expects all banking organizations to conduct their operations in a safe and sound manner with adequate systems to manage operational, compliance, and reputational risk.

20. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

21. 12 U.S.C. § 2903.

18. BONY Lead Bank entered into written agreements in February 2000 ("2000 Written Agreement") and April 2006 ("2006 Written Agreement"), with the Federal Reserve Bank of New York and the New York State Banking Department to address deficiencies in the bank's compliance with federal and state AML statutes and regulations. The written agreements included requirements that the bank develop and implement plans to strengthen independent testing of its AML program, enhance training of its personnel in suspicious-transaction identification and reporting, and improve its enhanced due-diligence program. The Board has reviewed carefully the progress made by the bank in implementing the 2006 Written Agreement's requirements and more broadly in enhancing its AML compliance.

Disclosure Act (“HMDA”),²² other information provided by BONY and Mellon, confidential supervisory information, and public comments received on the proposal. Two commenters expressed concerns about BONY’s record of serving the credit and investment needs of LMI communities in its assessment areas.²³ One commenter alleged, based on HMDA data, that BONY engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of BONY and Mellon. 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.²⁴

BONY Lead Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of May 16, 2005 (“2005 Evaluation”).²⁵ BONY’s other subsidiary bank, The Bank of New York (Delaware), received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of November 21, 2005. Mellon Lead Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”), as of May 15, 2005. Each of Mellon’s other subsidiary banks received an “outstanding” or “satisfactory” rating at its most recent CRA performance evaluation.²⁶ The existing CRA programs of BONY’s and Mellon’s subsidiary banks will continue after consummation of the proposal.²⁷

22. 12 U.S.C. § 2801 et seq.

23. The commenters also requested that BONY implement a number of CRA-related recommendations set forth in their comment letters. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See *Bank of America Corporation*, 93 *Federal Reserve Bulletin* C52, n. 27 (2007). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

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

25. Two commenters expressed concern over the “low satisfactory” ratings BONY Lead Bank received under the lending and service tests for its assessment area in the New York metropolitan area. The bank received an “outstanding” rating under the investment test for the assessment area, and examiners concluded that the bank’s record of CRA performance during the review period, when viewed as a whole, merited a rating of “satisfactory.”

26. Mellon 1st Business Bank, National Association received a “satisfactory” rating from the FDIC, as of February 11, 2003, when

BONY Lead Bank and Mellon Lead Bank have been designated as wholesale banks for purposes of evaluating their CRA performances.²⁸ Insured depository institutions designated as wholesale institutions are evaluated under the community development test, and examiners may consider the institution’s community development investments, loans, and services nationwide rather than only in the institution’s assessment areas.²⁹ BONY Lead Bank received its wholesale bank designation after the 2005 Evaluation, while Mellon Lead Bank was evaluated as a wholesale bank in its 2005 evaluation.

CRA Performance of BONY Lead Bank. As noted, BONY Lead Bank received an overall “satisfactory” rating in the 2005 Evaluation.³⁰ Under the lending test, examiners concluded that the bank demonstrated adequate responsiveness to the retail credit needs of its two rating areas, given the bank’s capacity to meet the areas’ credit needs and overall market conditions.³¹ They described the distribution of HMDA-reportable loans among borrowers of different income levels as good and reported that the bank’s geographic distribution of loans to small businesses was adequate.³²

In the interim between the 2005 Evaluation and the sale of its retail banking business in October 2006, BONY Lead Bank remained an active mortgage lender in its assessment areas. In 2005, BONY Lead Bank made more than \$1.7 billion of HMDA-reportable loans in its assessment areas. The bank’s percentages of home purchase loans and refinance loans originated in LMI geographies in the Bronx, Brooklyn, and Manhattan all exceeded the percentages for the aggregate of lenders in 2005.³³

In the 2005 Evaluation, examiners commended BONY Lead Bank’s community lending performance.³⁴ During

the bank was a state-chartered nonmember bank doing business as Mellon 1st Business Bank. Mellon United National Bank received an “outstanding” rating at its most recent CRA evaluation by the OCC, as of December 31, 2003; and Boston Safe Deposit and Trust Company, the predecessor of Mellon Trust of New England, National Association, received an “outstanding” rating at its last CRA evaluation by the Federal Reserve Bank of Boston, as of September 30, 2002.

27. BNYMellon has indicated that in the longer term, the CRA program of the merged organization will combine the best elements of the CRA programs of BONY and Mellon.

28. See 12 CFR 228.25; 12 CFR 25.25.

29. Two commenters questioned how, as a designated wholesale bank, BONY Lead Bank will serve the credit needs of the communities in which it operates.

30. Full-scope evaluations were conducted in BONY Lead Bank’s assessment areas in the New York multistate metropolitan area (CT-NJ-NY) (“New York metropolitan assessment area”) and in the nonmetropolitan portions of New York State.

31. Examiners noted that housing prices in the bank’s assessment areas were disproportionately high in comparison with income levels, which made homeownership very difficult for LMI borrowers, particularly for low-income borrowers.

32. In this context, small businesses are businesses with gross annual revenues of \$1 million or less.

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

34. One commenter asserted that BONY should provide community development loans with principal amounts of less than \$5 million.

the evaluation period, the bank made community development loans totaling \$724 million, which supported affordable housing construction, economic revitalization projects, and community development groups, including those serving persons with disabilities. Examiners reported that 64 percent of the community development lending by dollar volume helped develop affordable housing, which examiners described as a significant need in the bank's assessment areas.

BONY Lead Bank has continued its community development lending since the 2005 Evaluation. BONY represented that the bank extended more than 80 community development loans totaling \$612 million in its assessment areas in 2005 and 2006.

In the 2005 Evaluation, BONY Lead Bank received an "outstanding" rating under the investment test. The bank's new qualifying community development investments during the evaluation period totaled \$176 million and were primarily in the form of affordable housing initiatives. BONY Lead Bank also donated \$3 million during the evaluation period to community development organizations engaged in affordable housing development, social services, and neighborhood revitalization efforts in its New York metropolitan assessment area.³⁵

BONY Lead Bank represented that it made almost \$174 million in qualified community development investments during 2005 and 2006. These included investments totaling more than \$170 million in projects to create affordable housing through the low-income housing tax credit program. In addition, the bank made more than \$3 million in community development grants during 2005 and 2006 to a range of groups involved in affordable housing and community and economic development in the bank's assessment areas.

In the 2005 evaluation, BONY Lead Bank received a "low satisfactory" rating for the service test. Examiners noted that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels and reported that the bank provided an adequate level of community development services.³⁶ Examiners reported that bank employees conducted seminars on first-time home buying, provided financial education to LMI individuals, and served on the boards of community organizations that address the credit needs of LMI areas and individuals.

Although the Board has recognized that banks can help serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific type of product to consumers.

35. A commenter criticized the level of BONY Lead Bank's charitable contributions. The CRA does not require an institution to make any specific investment in, or contribution to, community groups.

36. As noted, BONY Lead Bank sold its retail banking business, including most of its branches, in October 2006 and has been designated a wholesale bank for purposes of the CRA. Accordingly, any future CRA evaluations of the bank will not include a review of its delivery of retail banking services but will consider the extent and level of innovation of the bank's community development services.

CRA Performance of Mellon Lead Bank. As noted, Mellon Lead Bank received an overall "outstanding" rating in its May 2005 evaluation. Mellon Lead Bank provides investment management, private banking, and fiduciary services to high-net-worth individuals and institutions and is designated as a wholesale bank for purposes of evaluating its CRA performance.

With respect to community development lending, examiners commended Mellon Lead Bank's responsiveness to the credit needs of its assessment areas. Examiners noted that during the evaluation period, Mellon Lead Bank made more than \$200 million in qualified community development investments. They indicated that the majority of Mellon Lead Bank's community development investments were mortgage-backed securities and collateralized mortgage obligations secured by properties in its combined assessment areas.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of BONY in light of public comment received on the proposal. A commenter alleged, based on 2006 HMDA data, that BONY made higher-cost loans more frequently to African American and Hispanic borrowers than to nonminority borrowers.³⁷ Since selling its retail banking business in October 2006, BONY no longer originates retail mortgage loans except in limited instances when requested to do so by its private banking clients. The Board has focused its analysis on the 2005 HMDA data reported by BONY and its subsidiary banks.³⁸

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not BONY is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³⁹ HMDA data, therefore, have limitations that make them an

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

38. The Board reviewed the 2005 HMDA data for BONY Lead Bank for 2005 in its assessment areas. The Board notes that 2006 HMDA data are preliminary and that final data will not be available for analysis until fall 2007.

39. 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.

inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by BONY and its subsidiaries. The Board also has consulted with the Federal Reserve Bank of New York about the fair-lending compliance record of BONY Lead Bank.

The record, including confidential supervisory information, indicates that BONY has taken steps to ensure compliance with fair lending and other consumer protection laws. BONY has a fair-lending compliance program that includes a second-review process, and periodic self-assessments involving statistical and regression analyses to identify any indicator of disparate treatment or disparate impact. In addition, BONY has a process for resolving fair lending complaints and requires employees to complete fair-lending training sessions. BNYMellon has represented that BONY's current fair-lending compliance program will remain in place after consummation of the proposal.⁴⁰

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

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BNYMellon, comments received on the proposal, and confidential supervisory information.⁴¹ BNYMellon has represented

40. BNYMellon has represented that in the longer term, the fair-lending compliance program of the merged organization would combine the best elements of the fair-lending compliance programs of BONY and Mellon.

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

that the proposal would provide customers of both organizations with increased credit availability and expanded access to products and services. Based on a review of 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.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴² 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 BNYMellon 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 commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective June 14, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

42. One commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.3(i)(2), 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix

BONY AND MELLON BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
WILMINGTON BANKING MARKET IN DELAWARE AND MARYLAND						
<i>Wilmington—includes New Castle County, Delaware, and Cecil County, Maryland</i>						
BONY Pre-Consummation	23	80,836	.08	1,949	0	36
Mellon	25	35,649	.03	1,949	0	36
BNYMellon Post-Consummation ...	21	116,485	.11	1,949	0	36
LOS ANGELES BANKING MARKET IN CALIFORNIA						
<i>Los Angeles—includes the Los Angeles Ranally Metro Area and the towns of Acton in Los Angeles County and Rosamond in Kern County</i>						
BONY Pre-Consummation	159	721	.00	799	0	174
Mellon	20	2,602,448	.98	799	0	174
BNYMellon Post-Consummation ...	20	2,603,169	.98	799	0	174
BOSTON BANKING MARKET IN MASSACHUSETTS AND NEW HAMPSHIRE						
<i>Boston—includes the Boston MA–NH Ranally Metro Area and the towns of Athol, Hubbardston, Orange, Petersham, Phillipston, Royalston, and Warwick in Massachusetts; and the towns of Antrim, Bennington, Deering, Dublin, Fitzwilliam, Frankestown, Greenfield, Hancock, Jaffrey, Lyndeborough, Peterborough, Rindge, Sharon, and Temple in New Hampshire</i>						
BONY Pre-Consummation	163	10	.00	1,123	0	167
Mellon	4	8,353,381	6.45	1,123	0	167
BNYMellon Post-Consummation ...	4	8,353,391	6.45	1,123	0	167
MIAMI–FORT LAUDERDALE AREA BANKING MARKET IN FLORIDA						
<i>Miami–Fort Lauderdale—includes Broward and Dade counties</i>						
BONY Pre-Consummation	99	4	.00	984	0	103
Mellon	14	1,371,208	1.37	984	0	103
BNYMellon Post-Consummation ...	14	1,371,212	1.37	984	0	103

NOTE: Data are as of June 30, 2006, and are adjusted to reflect mergers and acquisitions through March 31, 2007. All deposit amounts are in thousands of dollars. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

C-B-G, Inc.
West Liberty, Iowa

Order Approving the Acquisition of Shares
of a Bank Holding Company

C-B-G, Inc. (“C-B-G”), 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 additional shares, up to 35 percent of the voting shares of Washington Bancorp (“Washington”) and thereby acquire an additional interest in Washington’s subsidiary bank, Federation Bank, both of Washington, Iowa. At the time it filed this application, C-B-G owned 24 percent of Washington’s voting shares.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (72 *Federal Register* 8,161 (2007)). 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.

C-B-G, with banking assets of approximately \$193.1 million, is the 69th largest depository organization in Iowa, controlling deposits of \$164.9 million, which represent less than 1 percent of total deposits of insured depository institutions in Iowa (“state deposits”).³ Washington, with total banking assets of approximately \$105.5 million, is the 174th largest depository organization in Iowa, controlling \$70.2 million in deposits. On consummation of the proposal, C-B-G would become the 48th largest depository organization in Iowa, controlling approximately \$235.1 million in deposits, which represents less than 1 percent of state deposits.

The Board received comments objecting to the proposal from the management of Washington and from some of its directors and shareholders. 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.⁴ 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 future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.⁵

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.⁶ As explained below, the Board has carefully considered the statutory criteria in light of all the comments received and information submitted by C-B-G. The Board also has carefully considered all other available information, 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 C-B-G, the Board has reviewed financial information, including the terms and cost of the proposal and the resources that C-B-G proposes to devote to the transaction.

*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 from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by C-B-G.

Several commenters expressed concerns about the amount of leverage that C-B-G has reported on its balance sheet, and the size of C-B-G’s proposed investment in

1. 12 U.S.C. § 1842.

2. In April 2005, the Board approved an application by C-B-G to acquire up to 24.35 percent of Washington’s voting shares as a noncontrolling investment. *C-B-G, Inc.*, 91 *Federal Reserve Bulletin* 421 (2005) (“2005 Order”).

3. Asset data are as of March 31, 2007. Statewide deposit and ranking data are as of June 30, 2006, and reflect merger and acquisition activity as of April 27, 2007. Deposit data reflect the total deposits reported by each organization’s insured depository institution in their Consolidated Reports of Condition and Income or Thrift Financial Reports. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. See, e.g., *Juniata Valley Financial Corp.*, 92 *Federal Reserve Bulletin* C171 (2006) (“Juniata”); *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”).

5. In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not receive adequate assurances that it can obtain information on the activities or operations of the company and its affiliates. See 12 U.S.C. § 1842(c). One commenter asserted that the proposed transaction would have a negative impact on the local ownership and control of Washington. Such concerns are outside the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

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

Washington in relation to C-B-G's total assets. Commenters also contended that the proposal could imperil C-B-G's future financial condition.⁷

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

The Board has considered carefully the financial factors of the proposal. Both C-B-G's and Washington's subsidiary depository institutions currently are well capitalized and would remain so on consummation. Based on its review of the record, the Board also finds that C-B-G has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase of shares, and C-B-G would use existing resources to fund the purchase.

The Board also has considered the managerial resources of C-B-G, Washington, and their subsidiary depository institutions. 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 agencies with the organizations and their records of compliance with applicable banking laws, including anti-money-laundering laws.

Some commenters contended that the voting-rights restrictions on shareholders who own more than 10 percent of Washington's shares could prevent C-B-G from serving as a source of financial and managerial strength to Federation Bank, as required under the Board's Regulation Y.⁸ C-B-G has acknowledged that, if it does acquire control of 25 percent or more of Washington's shares, it will be required, if necessary, to serve as a source of financial and managerial strength to Federation Bank. The Board has carefully considered the capacity of C-B-G to serve as a source of financial and managerial strength to its subsidiary banks, including Federation Bank, on approval and consummation of the proposal.

Based on all the facts of record, including public comments, the Board has concluded that considerations relating to the financial and managerial resources and future pros-

pects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.⁹

COMPETITIVE AND CONVENIENCE AND NEEDS 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.¹⁰ C-B-G and Washington 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 have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

In addition, considerations relating to the convenience and needs of the communities to be served, including the records of performance of the institutions involved under the Community Reinvestment Act ("CRA"),¹¹ are consistent with approval of the application. Community Bank, C-B-G's sole subsidiary bank, received a "satisfactory" rating and Federation Bank received an "outstanding" rating at their most recent evaluations for CRA performance by the FDIC.¹² C-B-G has represented that the proposal will not result in any changes in the services or products offered by Federation Bank.¹³

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹⁴ In reaching its conclusion, the Board

9. Several commenters expressed concern that the proposal could subject Federation Bank to liability under the cross-guarantee provision of the Federal Deposit Insurance Act, 12 U.S.C. § 1815(e) ("FDI Act"), in the event that a subsidiary bank of C-B-G were to fail or require assistance from the Federal Deposit Insurance Corporation ("FDIC"). The Board notes that the application of this provision of the FDI Act is a matter that would be decided by the FDIC.

10. 12 U.S.C. § 1842(c)(1).

11. 12 U.S.C. § 2901 et seq.

12. The most recent CRA performance evaluations of Community Bank and Federation Bank were as of May 2004 and December 2004, respectively. Wilton Savings Bank, a subsidiary bank of C-B-G which was merged into Community Bank in January 2006, received a "satisfactory" rating at its last CRA evaluation, as of November 2003.

13. One commenter contended that the proposal would have a deleterious effect on the services Federation Bank provides to its local community.

14. In connection with the application that the Board approved in 2005, C-B-G made commitments to ensure that it would not control Washington or Federation Bank for purposes of the BHC Act. These

7. The commenters asserted that C-B-G would have only limited influence over Washington's operations due to a provision in Washington's articles of incorporation that restricts the voting rights of shareholders who own more than 10 percent of Washington's voting shares. The Board has analyzed the effect of the proposal on C-B-G's general financial condition more broadly.

8. See 12 CFR 225.4(a)(1).

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 C-B-G 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective May 24, 2007.

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

JENNIFER J. JOHNSON
Secretary of the Board

First Busey Corporation Urbana, Illinois

Order Approving the Merger of Bank Holding Companies

First Busey Corporation ("First Busey"), 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 Main Street Trust, Inc. ("Main Street") and thereby acquire its subsidiary bank, Main Street Bank & Trust, both of Champaign, Illinois.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 76,339 (2006)). The time for filing comments has expired, and the Board has

commitments are listed in the appendix to the 2005 Order and were modified by the Board's letter dated October 25, 2006. One commenter urged that the Board continue to require C-B-G to abide by those commitments if the Board approves C-B-G's current proposal. C-B-G proposes to own up to 35 percent of the voting shares of Washington and, thus, would be deemed to control Washington for purposes of the BHC Act without regard to the previous commitments considered. See 12 U.S.C. § 1841(a)(2)(A). Accordingly, the Board has determined in this case not to impose the restrictions contained in the commitments, and not to require compliance with the commitments on consummation of the proposal. For the reasons discussed in this order, the Board has concluded that C-B-G meets the statutory factors required to own more than 25 percent of Washington and to exercise the rights attendant to that level of ownership.

1. 12 U.S.C. § 1842.

considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

First Busey, with total consolidated assets of approximately \$2.5 billion, controls two subsidiary insured depository institutions that operate in Illinois, Indiana, and Florida: Busey Bank, also in Urbana, and Busey Bank, National Association, Port Charlotte, Florida. First Busey is the 33rd largest depository organization in Illinois, controlling deposits of \$1.5 billion, which represent less than 1 percent of total deposits of insured depository institutions in Illinois ("state deposits").²

Main Street, with total consolidated assets of approximately \$1.5 billion, controls one insured depository institution that operates only in Illinois. Main Street is the 36th largest depository organization in Illinois, controlling deposits of approximately \$1.2 billion.

On consummation of this proposal, and after accounting for the proposed divestiture, First Busey would become the 24th largest depository organization in Illinois, controlling deposits of approximately \$2.7 billion, which represent less than 1 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 any 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

First Busey and Main Street have subsidiary depository institutions that compete directly in three markets in Illinois: Bloomington-Normal, Champaign-Urbana, and Peoria.⁴ The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by First Busey and Main Street,⁵ the concentration level of market deposits and the increase in that level

2. Asset data are as of March 31, 2007, and statewide deposit and ranking data are as of June 30, 2006, and reflect merger activity through May 21, 2007. 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 below and in the appendix.

5. Deposit and market share data are as of June 30, 2006, adjusted to reflect subsequent mergers and acquisitions through May 21, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share

as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁶ other characteristics of the markets, and commitments made by First Busey to divest five branches of Main Street Bank & Trust in the Champaign-Urbana banking market.

A. Banking Market Warranting Special Scrutiny

First Busey and Main Street compete directly in one banking market, Champaign-Urbana,⁷ that warrants a detailed review of the competitive effects of the proposal. First Busey’s market share on consummation of the proposal, including proposed divestiture, would exceed 35 percent in this market.

Busey Bank is the largest depository institution in the Champaign-Urbana banking market, controlling deposits of approximately \$1.1 billion, which represent approximately 27 percent of market deposits. Main Street Bank & Trust is the second largest depository institution in the market, controlling deposits of approximately \$538.5 million, which represent approximately 13 percent of market deposits. To reduce the potential adverse effects on competition in the Champaign-Urbana banking market, First Busey has committed to divest five branches of Main Street Bank & Trust that have at least \$110.2 million in total deposits to another insured depository organization in the market.⁸ On consummation of the proposed merger, and after accounting for the proposed divestiture, First Busey

would remain the largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which would represent not more than 36 percent of market deposits. The HHI would not increase more than 506 points to 1561.⁹

The application raises special concerns because First Busey, the largest institution in the banking market, proposes to merge with the market’s second largest competitor. No other institution controls more than 6 percent of market deposits. The Board has previously recognized that merger proposals involving the largest depository institutions in markets structured like the Champaign-Urbana market warrant close review due to the size of those institutions relative to other market competitors.¹⁰ The Board, therefore, 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.¹¹

A number of factors indicate that the increase in concentration in the Champaign-Urbana banking market, as measured by the market share of the combined organization, overstates the potential competitive effects of the proposal in the market. After consummation, and taking into account the proposed divestiture, at least 39 other insured depository institutions would continue to compete in the market. In addition, the proposed divestiture to a banking organization operating in the Champaign-Urbana banking market would strengthen the competitive position of an in-market participant.

The Board notes that two community credit unions also exert a competitive influence in the Champaign-Urbana banking market.¹² Both institutions offer a wide range of consumer products, operate street-level branches, and have

calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

6. 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.

7. The Champaign-Urbana banking market is defined as Champaign County; Ford County, excluding Brenton, Mona, Pella, and Rogers townships; Artesia and Loda townships in Iroquois County; Butler, Middlefork, Pilot, Oakwood, and Vance townships in Vermilion County; Garret, Tuscola, Camargo, Murdock, and Newman townships in Douglas County; Piatt County, excluding Willow Branch and Cerro Gordo townships; Santa Anna township in De Witt County; and Bellflower township in McLean County, all in Illinois.

8. First Busey has committed that, before consummation of the proposed merger, it will execute an agreement for the proposed divestiture in the Champaign-Urbana banking market with a purchaser that the Board determines to be competitively suitable. First Busey also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Busey has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer any unsold branches to an independent trustee who will be instructed to sell the branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable by the Board. *See*

BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

9. The calculations of market share and concentration include the weighting at 100 percent of deposits controlled by two thrift institutions in the market. The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits if competition from the institution closely approximates competition from a commercial bank. *See, e.g., BankNorth Group, Inc. 75 Federal Reserve Bulletin 703 (1989).* The thrift institutions in the Champaign-Urbana banking market serve as significant sources of commercial loans and provide a broad range of consumer, mortgage, and other banking products. These thrift institutions have ratios of commercial and industrial loans to assets of approximately 6 percent and 8 percent, which are comparable to the national average for all commercial banks. Competition from these thrift institutions, therefore, closely approximates competition from commercial banks. *See First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).*

10. *See Firststar Corporation, 87 Federal Reserve Bulletin 236, 238 (2001).*

11. 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 a banking market. *See Nations-Bank Corp., 84 Federal Reserve Bulletin 129 (1998).*

12. The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. *See, e.g., Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006);*

memberships open to almost all the residents in the market. In this light, the Board concludes that their activities in this banking market exert sufficient competitive influence that mitigate, in part, the potential competitive effects of the proposal.¹³

Moreover, the record of recent entry into the Champaign-Urbana banking market evidences its attractiveness for entry. Since 2002, five depository institutions have entered the market de novo, and nine depository institutions have entered the market by acquisition. Other factors also indicate that the market remains attractive for entry. For example, from 2002 to 2005, the market's average annualized income growth exceeded the average annualized income growth for all metropolitan areas in Illinois.

Based on all the facts of record and for the reasons discussed above, the Board believes that competitive considerations in the Champaign-Urbana banking market are consistent with approval in this case. The Board continues to have concerns, however, about the structure of this banking market and believes that future mergers in the market involving First Busey or its successors in would warrant special consideration. The Board intends to scrutinize carefully any future acquisition proposal that would increase First Busey's market share in the Champaign-Urbana banking market.

B. Banking Markets within Established Guidelines

Consummation of the proposal in the remaining banking markets, Bloomington-Normal and Peoria, would be consistent with Board precedent and within the thresholds in the DOJ Guidelines without divestitures.¹⁴ On consummation of the proposal, the Bloomington-Normal banking market would remain highly concentrated, and the Peoria banking markets would remain unconcentrated. Numerous competitors would remain in both banking markets.

C. Agency Views 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 consummation of the proposal, taking into account the proposed divestiture, 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.

F.N.B. Corporation, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004).

13. The two community credit unions control approximately \$138.8 million in deposits in the market, which represent approximately 2 percent of market deposits on a 50 percent weighted basis. Accounting for the revised weightings of these deposits, First Busey would control approximately 36 percent of market deposits on consummation of the proposal, and the HHI would not increase more than 490 points to 1514.

14. The effects of the proposal on the concentration of banking resources in these markets are described in the appendix.

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 three banking markets where First Busey and Main Street 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 federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by First Busey.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved both on a parent-only and on a consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial 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 financial factors of the proposal. First Busey, Main Street, and their subsidiary depository institutions currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that First Busey has sufficient financial resources to effect the proposal. The proposed transaction is structured primarily as a share exchange.

The Board also has considered the managerial resources of First Busey, Main Street, and their subsidiary depository institutions. 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 laws and with anti-money-laundering laws. First Busey, Main Street and their subsidiary depository institutions are considered well managed. The Board also has considered First Busey'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”).¹⁵ Busey Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Insurance Deposit Corporation (“FDIC”), as of December 1, 2005.¹⁶ Main Street Bank & Trust received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of December 1, 2006. After consummation of the proposal, First Busey plans to maintain Main Street Bank & Trust’s CRA policies until Main Street Bank & Trust is merged into Busey Bank. First Busey has represented that consummation of the proposal would allow it to provide a broader range of financial products and services over a larger area. Based on all the facts of record, the Board concludes that 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.

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 First Busey 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 14, 2007.

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

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

16. Busey Bank, National Association was rated “satisfactory” by the Office of the Comptroller of the Currency, as of August 2, 2004, when it was doing business as Tarpon Coast National Bank and before its acquisition by First Busey.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

FIRST BUSEY AND MAIN STREET BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES WITHOUT DIVESTITURES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Increase in HHI	Remaining number of competitors
ILLINOIS BANKING MARKETS						
<i>Bloomington—Normal—McLean County; and El Paso, Kansas, Panola, and Minonk townships in Woodford County</i>						
First Busey Pre-Consummation	4	242.6 mil.	10.1	1,238	134	27
Main Street	5	158.5 mil.	6.7	1,238	134	27
First Busey Post-Consummation	2	401.1 mil.	16.8	1,238	134	27
<i>Peoria—Peoria and Tazewell Counties, and Woodford County, excluding El Paso, Kansas, Panola, and Minonk townships</i>						
First Busey Pre-Consummation	12	123.0 mil.	2.6	859	1	33
Main Street	32	10.7 mil.	.2	859	1	33
First Busey Post-Consummation	12	133.7 mil.	2.8	859	1	33

NOTE: Data are as of June 30, 2006, and reflect merger activity through May 21, 2007. Deposit amounts are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

*Huntington Bancshares Incorporated
Columbus, Ohio**Penguin Acquisition, LLC
Baltimore, Maryland***Order Approving the Merger of Bank Holding Companies and the Formation of a Bank Holding Company**

Huntington Bancshares Incorporated (“Huntington”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Sky Financial Group, Inc. (“Sky”), Bowling Green, and its subsidiary bank, Sky Bank, Salineville, both of Ohio.² In addition, Huntington’s wholly owned subsidiary, Penguin Acquisition, LLC, Baltimore, Maryland, has

requested the Board’s approval under section 3 of the BHC Act to become a bank holding company and merge with Sky.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 6242 (2007)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.³

Huntington, with total consolidated assets of approximately \$35.3 billion, is the 46th largest depository organization in the United States.⁴ Huntington controls one depository institution, The Huntington National Bank (“HNB”),⁵ also in Columbus, that operates in six states⁶ and engages in numerous nonbanking activities that are permissible under the BHC Act. Huntington is the fourth largest depository organization in Ohio, controlling deposits of approximately \$16.3 billion.

3. Three commenters expressed concerns about various aspects of the proposal.

4. Asset and ranking data are as of December 31, 2006.

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

6. Huntington operates branches in Ohio, Florida, Indiana, Kentucky, Michigan, and West Virginia.

1. 12 U.S.C. § 1842.

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

Sky, with total consolidated assets of approximately \$18 billion, controls Sky Bank, which operates in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia.⁷ Sky also engages in a broad range of permissible nonbanking activities. In Ohio, Sky is the seventh largest depository organization, controlling deposits of approximately \$8.6 billion.

On consummation of the proposal, Huntington would become the 34th largest depository institution in the United States, with total consolidated assets of approximately \$53 billion. Huntington would control deposits of approximately \$38.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Ohio, Huntington would become the third largest depository organization, controlling deposits of approximately \$24.9 billion, which represent approximately 11.9 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").

INTERSTATE ANALYSIS

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Huntington is Ohio,⁸ and Sky is located in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia.⁹

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

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

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

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

10. 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). Huntington is adequately capitalized and adequately managed, as defined by applicable law. Sky Bank has been in existence and operated for the minimum periods of time required by all applicable state laws, including Indiana state law (five years). See Burns Ind. Code Ann. § 28-2-17-20. On consummation of the proposal, Huntington would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. Huntington also would comply with the state deposit caps in all relevant states, including Ohio and West Virginia where it will control less than 25 percent of state deposits in each state. See O.R.C. § 115.05 and West Virginia Code § 31A-2-12a. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

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.¹¹

Huntington and Sky have subsidiary depository institutions that compete directly in the following 12 banking markets: Cleveland, Columbus, Dayton, Akron, Toledo, Canton, Lima, Dover-New Philadelphia, Fremont, and Logan banking markets in Ohio; the Indianapolis banking market in Indiana; and the Cincinnati multistate banking market in Ohio, Indiana, and Kentucky. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions controlled by Huntington and Sky in the markets ("market deposits"),¹² the concentration level of market deposits and the increases in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹³ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in all 12 banking markets.¹⁴ On consummation of the proposal, 11 markets would remain moderately concentrated and one market would remain highly concen-

11. 12 U.S.C. § 1842(c)(1).

12. Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through February 7, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

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

14. Those banking markets and the effects of the proposal on the concentration of banking resources therein are described in the appendix.

trated, as measured by the HHI. The change in the HHI in the highly concentrated market would be small. Moreover, numerous competitors would remain in each of the 12 banking markets.

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 12 banking markets where Huntington and Sky compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

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

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 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 considered carefully the proposal under the financial factors. Huntington, Sky, and their subsidiary depository institutions are currently well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Huntington has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase.¹⁵

15. Huntington will use existing resources to fund the 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 Huntington, Sky, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Huntington, Sky, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Huntington's plans for implementing the proposal, including the proposed management after consummation.

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

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁶

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁷

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of Huntington and Sky, data reported by Huntington and Sky under the Home Mortgage Disclosure Act ("HMDA"),¹⁸ other information provided by Huntington, confidential supervisory information, and public comments received on the proposal. One commenter alleged that Huntington and Sky made an insufficient number of mortgage loans in LMI census tracts, thereby diminishing residents' access to bank credit and encouraging predatory mortgage lending in those areas. All three commenters alleged that neither Huntington nor Sky had adequately served LMI communities due to an insufficient number of branches and services in those communities. They also asserted that this alleged insufficiency of branches had contributed to the growth of payday

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

17. 12 U.S.C. § 2903.

18. 12 U.S.C. § 2801 et seq.

lending in LMI areas. Two commenters also expressed concern that the proposal would lead to closings of the combined organization's branches in LMI areas.

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.¹⁹

HNB received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 31, 2003 ("2003 Evaluation").²⁰ Sky Bank received a "satisfactory" CRA performance rating by the Federal Reserve Bank of Cleveland, as of March 13, 2006 ("2006 Evaluation").²¹ Huntington has represented that it would continue its CRA program in the combined institution.

CRA Performance of HNB. In the 2003 Evaluation, HNB received a "high satisfactory" rating on each of the lending, investment, and service tests for its CRA performance overall and in Ohio.²² Examiners reported that the bank's overall distribution of loans to borrowers of different income levels was good and that its geographic distribution of loans was adequate. In addition, examiners noted that HNB provided a relatively high level of community development services and reported that its service-delivery systems were accessible to geographies and individuals of different income levels in its assessment areas.

In the bank's Cleveland and Columbus assessment areas, examiners concluded that the geographic distribution of HNB's home purchase loans and home refinance loans was adequate. Examiners characterized the bank's geographic distribution of its home improvement loans as excellent in the Cleveland assessment area and good in the Columbus assessment area. Examiners also rated HNB's distribution of loans by borrower income level for home purchase and home refinance as good in its Cleveland and Columbus assessment areas and as excellent for home improvement loans in its Cleveland assessment area. Moreover, examiners commended HNB for providing community development loans that were very responsive to community needs

in the Cleveland and Columbus assessment areas, including loans totaling \$12.26 million to developers of affordable housing. In addition, examiners noted that HNB's use of flexible loan programs contributed positively to the bank's lending performance, including its participation in affordable housing programs and its Community Access Mortgage product for borrowers in LMI tracts, under which borrowers with higher debt-to-income ratios could qualify for loans.

Since the 2003 Evaluation, HNB represented that it has introduced additional mortgage products to assist LMI borrowers, including a mortgage product offering up to 100 percent financing with no mortgage insurance on owner-occupied properties in LMI census tracts and on properties purchased by LMI borrowers in census tracts of any income level. Another new product, the "Welcome Home" program, offers a fixed-rate mortgage with no down-payment requirement and reduced mortgage insurance for those with slightly impaired credit and limited funds for closing costs. HNB has made loans totaling more than \$176 million through the "Welcome Home" program. A variation of this product is used in Cleveland's "Help Eliminate Loans that are Predatory" program, an initiative by Fannie Mae and local banking institutions, including HNB and Sky Bank, to create a fund to refinance mortgages for borrowers who have mortgages with problematic features, such as severe prepayment policies.²³

In the 2003 Evaluation, examiners characterized HNB's performance under the investment test as good in the Cleveland and Columbus assessment areas. Examiners concluded that the investments were responsive to identified needs in those areas for affordable housing, financial assistance for small business, and revitalization of LMI areas. Huntington made investments totaling \$73.5 million from 2004 through 2006.

Examiners rated HNB's performance under the service test in the Cleveland and Columbus assessment areas as good in the 2003 Evaluation. Although examiners noted that the percentages of branches in LMI geographies in those assessment areas were generally lower than the percentages of the population in those LMI geographies, they reported that the operational hours and services of the bank's branches were accessible to residents in LMI areas, with many branches offering services on Saturdays and making branch personnel available for appointments outside standard service hours. Examiners also noted that telephone banking services were offered in English and Spanish. Additionally, examiners commended HNB for providing a high level of community development services to numerous organizations serving the Cleveland and Columbus assessment areas, with bank representatives serving in leadership roles in such organizations. Some of these services included establishing and supervising student banking programs in elementary schools with students from primarily LMI areas, participation on a committee

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

20. The evaluation period for the 2003 Evaluation was January 1, 1999, through December 31, 2002, for the lending test and July 1, 1999, through December 31, 2002, for the service and investment tests.

21. Sky Trust, a special-purpose bank, is not subject to the CRA (12 CFR 228.11(3)).

22. HNB's statewide rating for Ohio was based primarily on full-scope evaluations conducted in HNB's Cleveland and Columbus assessment areas, the bank's major markets in Ohio. Limited-scope evaluations were conducted in HNB's 13 other Ohio assessment areas.

23. HNB participates in similar initiatives in Montgomery County, where Dayton is located, and Toledo.

formed by the City of Cleveland to address abusive lending practices that targeted LMI borrowers, and providing training for nonprofit organizations offering services to LMI individuals and families. HNB represents that since the 2003 Evaluation, it has provided more than 4,000 community development services, including financial literacy education for children and adults in both the Cleveland and Columbus metropolitan areas.

CRA Performance of Sky Bank. As noted, Sky Bank received an overall “satisfactory” rating in the 2006 Evaluation.²⁴ Examiners reported that taken as a whole, Sky Bank’s distribution of lending reflected a good penetration among customers of different income levels. Furthermore, examiners noted that Sky Bank was a leader in making community development loans and qualified investments and that it provided a relatively high level of community development services. Examiners found Sky Bank’s service-delivery systems to be reasonably accessible to all portions of, and to individuals of different income levels in, its assessment areas.

In its statewide assessment area in Ohio, Sky Bank received a “high satisfactory” rating on the lending test.²⁵ Overall geographic income distribution of loans was considered adequate by examiners, while lending distribution by borrower income was considered good. Although examiners reported weaker performance in Sky Bank’s Cleveland-Akron metropolitan statistical area (“MSA”) assessment area, they noted that Sky Bank’s presence in the Cleveland-Akron market was relatively new and that it faced significant competition from well-established financial institutions in that market. In addition, examiners stated that they considered Sky Bank’s operations in that market to be consistent with the overall operations of the institution. Examiners reported that the bank had a high level of community development lending in the Cleveland-Akron MSA assessment area.

Examiners rated Sky’s overall service performance in the Cleveland-Akron MSA assessment area as adequate. Examiners noted that retail office locations in LMI geographies in this assessment area were limited, but also noted that Sky Bank provided a relatively high level of community development services in that area.

24. The evaluation period for the 2006 Evaluation was January 1, 2003, through December 31, 2004, for home mortgage and home improvement loans under the lending test and October 1, 2003, to March 31, 2006, for community development loans and investments under the lending and investment tests and community development services under the service test.

25. This rating was based on the bank’s lending performance in its Ohio assessment areas where full-scope examinations were performed in the following areas: the Cleveland-Akron MSA, the Canton-Massillon MSA, and the Northwestern Ohio nonmetropolitan assessment areas. Examiners also reviewed the bank’s assessment areas in Ohio where limited-scope examinations were performed to ensure consistency with the overall lending activity. Sky’s assessment areas where limited-scope examinations were performed included its assessment areas in the Columbus and Toledo MSAs.

B. Branch Closings

Two commenters expressed concern about the proposal’s possible effect on branch closings. Huntington has represented that management is considering internal recommendations on branch closings, relocations, and consolidations in overlapping markets after consummation of the proposal but that no final decisions have been made. Huntington also represented that it would follow HNB’s branch closing policy with respect to any of those actions that are related to the proposal.

The Board has considered carefully HNB’s branch closing policy and its record of opening and closing branches. HNB’s branch closing policy requires the bank to ensure that its products and services meet the needs and convenience of the communities in which it does business, including LMI communities. In making a decision on whether to close a branch, bank management must review and assess any factors and potential changes that, if implemented, might reasonably improve the viability of an office and reduce the need to close that office. If a potential branch closing is in an LMI community, the policy also requires that HNB’s CRA experts assess the impact on the community and contact neighborhood representatives and interested community groups to discuss and evaluate ways to minimize adverse effects of the proposed closing on the community and local customers. If the bank decides to close a branch, its management must make every reasonable effort to facilitate the availability of its services and products to customers of the closed office. The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings that requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.²⁶

In the 2003 Examination, OCC examiners concluded that HNB’s record of opening and closing branches had a favorable or neutral impact on LMI census tracts in its full-scope Ohio assessment areas. The Board has consulted with the OCC on the bank’s record of branch openings and closings since the 2003 Evaluation. The OCC will continue to review the branch opening and closing record of HNB in the course of conducting CRA performance evaluations.

C. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Huntington and Sky in light of public

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

comments received on the proposal. Two commenters alleged, based on 2004 and 2005 HMDA data, that Huntington had denied the home mortgage loan applications of African-American borrowers more frequently than those of nonminority applicants in the Columbus metropolitan area. The Board has focused its analysis on the 2005 and preliminary 2006 HMDA data reported by HNB.²⁷

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Huntington is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.²⁸ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

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

The record, including confidential supervisory information, indicates that Huntington has taken steps to ensure compliance with fair lending and other consumer protection laws. Huntington has corporatewide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Ongoing monitoring by corporate compliance management is designed to ensure compliance with policies and procedures. Huntington's compliance program also includes quarterly assessments of fair-lending compliance for each line of business, routine reviews of loans, and regular testing to note areas of weakness and recommend action plans for improvement. With respect to mortgage lending, Hunting-

ton sells the majority of the mortgages that it originates on the secondary market, and its standard procedure is to submit applications through automated underwriting systems that only examine objective data concerning the loan applicant. In addition, Huntington represented that its compliance staff members frequently receive training on best compliance practices from industry and government experts. Huntington has stated that its fair lending policies will apply to the combined institution after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance record of HNB under the CRA. These established efforts and record of performance demonstrate that the institution is active in helping to meet the credit needs of its entire communities.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all of the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Huntington, comments received on the proposal, and confidential supervisory information. Huntington states that the proposal will result in greater convenience for Huntington and Sky customers through expanded delivery channels and a broader range of products and services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance record of the relevant insured depository institutions are consistent with approval of the proposal.

CONCLUSION

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved.²⁹

27. The Board reviewed HMDA data for Huntington in Ohio and in the Cleveland, Columbus, and Toledo MSAs where the bank's primary assessment areas are located. The Board notes that 2006 HMDA data are preliminary and that final data will not be available for analysis until fall 2007.

28. 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.

29. Three commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.3(i)(2), 262.25(d)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

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 Huntington with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of these transactions, those commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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

than three months after the effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 4, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
OHIO BANKING MARKETS						
<i>Cleveland—Cuyahoga, Geauga, Lake, and Lorain counties; Medina County, excluding the city of Wadsworth, the townships of Guilford, Sharon, and Wadsworth, and the village of Seville; the cities of Aurora and Streetsboro, the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham, and the villages adjoining these townships in Portage County; the cities of Hudson, Macedonia, and Twinsburg, the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg, and the villages adjoining these townships in Summit County; and the city of Vermilion in Erie County</i>						
Huntington Pre-Consummation	6	2.41 bil.	4.0	1,781	15	41
Sky	11	1.15 bil.	1.9	1,781	15	41
Huntington Post-Consummation	4	3.56 bil.	5.9	1,781	15	41
<i>Columbus—Franklin, Delaware, Fairfield, Hocking, Licking, Madison, Morrow, Pickaway, and Union counties; and Perry County, excluding Harrison township</i>						
Huntington Pre-Consummation	1	8.30 bil.	28.0	1,662	60	59
Sky	12	323.mil.	1.1	1,662	60	59
Huntington Post-Consummation	1	8.63 bil.	29.1	1,662	60	59
<i>Dayton—Montgomery, Greene, Miami, and Preble counties</i>						
Huntington Pre-Consummation	6	456 mil.	4.9	1,553	14	30
Sky	11	129 mil.	1.4	1,553	14	30
Huntington Post-Consummation	6	585 mil.	6.3	1,553	14	30

Appendix—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>Akron—Summit County, excluding the cities of Hudson, Macedonia, and Twinsburg, the townships of Boston, Northfield Center, Richfield, Sagamore Hills, and Twinsburg, and the villages adjoining those townships; Portage County, excluding the cities of Aurora and Streetsboro, the townships of Freedom, Hiram, Mantua, Nelson, Shalersville, and Windham, and the villages adjoining those townships; the city of Wadsworth, the townships of Guilford, Sharon, and Wadsworth, and the village of Seville in Medina County; the townships of Lake and Lawrence and the villages of Canal, Fulton, and Hartville in Stark County; the city of Rittman, the townships of Chippewa and Milton, and the villages adjoining those townships in Wayne County</i>						
Huntington Pre-Consummation	7	396 mil.	4.6	1,379	23	22
Sky	10	212 mil.	2.5	1,379	23	22
Huntington Post-Consummation	6	608 mil.	7.1	1,379	23	22
<i>Toledo—Lucas, Fulton, and Ottawa counties and Wood County, excluding the city of Fostoria</i>						
Huntington Pre-Consummation	4	969 mil.	10.9	1,666	319	20
Sky	3	1.29 bil.	14.5	1,666	319	20
Huntington Post-Consummation	1	2.26 bil.	25.5	1,666	319	20
<i>Canton—Stark County, excluding the townships of Lake and Lawrence; Carroll County; and the township of Smith and the village of Sebring in Mahoning County</i>						
Huntington Pre-Consummation	2	796 mil.	15.1	1,700	307	16
Sky	6	535 mil.	10.2	1,700	307	16
Huntington Post-Consummation	1	1.33 bil.	25.3	1,700	307	16
<i>Lima—Allen and Putnam counties; the townships of Clay, Duchouquet, Goshen, Logan, Moulton, Pusheta, Salem, Union, and Wayne in Auglaize County; the township of Liberty in Hardin County; and the township of Washington in Van Wert County</i>						
Huntington Pre-Consummation	2	317 mil.	12.7	1,390	276	16
Sky	5	273 mil.	10.9	1,390	276	16
Huntington Post-Consummation	1	591 mil.	23.6	1,390	276	16

Appendix—Continued

BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
<i>Dover—New Philadelphia—Tuscarawas and Harrison counties and the townships of Salt Creek, Paint, Berlin, Walnut Creek, and Clark in Holmes County</i>						
Huntington Pre-Consummation	1	363 mil.	25.7	1,377	191	18
Sky	9	53 mil.	3.7	1,377	191	18
Huntington Post-Consummation	1	415 mil.	29.4	1,377	191	18
<i>Fremont—Sandusky County</i>						
Huntington Pre-Consummation	7	39 mil.	6.0	1,977	78	10
Sky	6	43 mil.	6.5	1,977	78	10
Huntington Post-Consummation	2	82 mil.	12.5	1,977	78	10
<i>Logan—Logan County</i>						
Huntington Pre-Consummation	3	65 mil.	11.5	1,725	375	11
Sky	2	92 mil.	16.2	1,725	375	11
Huntington Post-Consummation	1	157 mil.	27.8	1,725	375	11
BANKING MARKET IN INDIANA						
<i>Indianapolis—Indianapolis MSA, consisting of Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby counties; and Green township in Madison County, all in Indiana</i>						
Huntington Pre-Consummation	9	617 mil.	2.6	1,283	44	49
Sky	4	2.01 bil.	8.5	1,283	44	49
Huntington Post-Consummation	3	2.62 bil.	11.1	1,283	44	49
CINCINNATI BANKING MARKET IN OHIO, INDIANA, AND KENTUCKY						
<i>Cincinnati—Hamilton, Brown, Butler, Clermont, and Warren counties in Ohio; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties in Kentucky; and Dearborn County in Indiana</i>						
Huntington Pre-Consummation	5	1.53 bil.	3.9	1,799	1	77
Sky	66	14 mil.	0.0	1,799	1	77
Huntington Post-Consummation	5	1.55 bil.	4.0	1,799	1	77

NOTE: Data are as of June 30, 2006. All amounts of deposits are un-weighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

ORDERS ISSUED UNDER FEDERAL RESERVE ACT

First State Bank Conway, Arkansas

Order Approving Establishment of a Branch

First State Bank (“Bank”), a state member bank, has requested the Board’s approval under section 9 of the Federal Reserve Act (“Act”)¹ to establish a branch at 6039 Heber Spring Road West, Quitman, Arkansas.

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

Bank is the 19th largest depository institution in Arkansas, controlling approximately \$390.5 million in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.³ Bank’s main office and ten branches are in Faulkner and White counties, Arkansas, and the proposed branch would be in neighboring Cleburne County.

Section 9(3) of the Act⁴ requires a state member bank to obtain Board approval before establishing a branch. The Board is required by section 9(4) of the Act to consider the financial condition of the applying bank, the general character of its management, and whether its corporate powers are consistent with the purposes of the Act, when acting on a branch application.⁵ Regulation H, which implements section 9(4),⁶ enumerates the factors that the Board must consider, including (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 competing bank in Quitman. The commenter asserted that the community’s demographic and economic characteristics would not support another profitable branch.

In considering the financial history and condition, future earnings prospects, and capital adequacy of Bank, the Board has reviewed reports of examination, other supervi-

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

In considering Bank’s managerial resources, the Board has reviewed the bank’s examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Bank and the bank’s record of compliance with applicable banking law,⁸ including anti-money-laundering laws. Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Bank’s management is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received, and the bank’s performance under the CRA. Bank received a “satisfactory” rating by the Federal Deposit Insurance Corporation at its most recent CRA performance evaluation, as of February 17, 2004.⁹ 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. Bank has represented that the proposed branch would provide residents of the Quitman area with another convenient source of banking services and offer extended service hours.¹⁰ For these reasons and based on a review of the entire record, the Board concludes that the convenience and needs considerations and Bank’s record of performance under the CRA are consistent with approval of the proposal.

8. The commenter also expressed concern about Bank’s construction of the proposed branch facility without obtaining regulatory approval to establish a branch. Bank established a loan production office in April 2007 at the proposed branch site in Quitman, which did not require the Board’s prior approval. The Bank has confirmed to the Board that the Quitman loan production office is not engaged in any activities that would cause the office to be a branch within the meaning of the Act or the Board’s implementing regulations. *See* 12 CFR 208.2(c).

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

10. In reviewing this proposal, the Board has considered the comments in light of Bank’s 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 relevant banking market, which includes all of Cleburne County. The data indicate modest increases in population from 2000 to 2006 and consistent moderate growth in deposits during the same time period.

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, 2006, and reflect mergers as of June 1, 2007.

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.

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 Bank's compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Federal Reserve Bank of St. Louis, acting under authority delegated by the Board.¹¹

By order of the Board of Governors, effective June 20, 2007.

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

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

The Royal Bank of Scotland plc Edinburgh, Scotland

Order Approving Establishment of a Branch

The Royal Bank of Scotland plc ("Bank"), Edinburgh, Scotland, 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 a branch in Greenwich, Connecticut. 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.

11. The commenter requested that the Board hold a public meeting or hearing on the proposal. The Act does not require the Board to hold a public hearing on an application to establish a branch. Under its rules, the Board may, in its discretion, hold a public meeting or hearing on an application if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 262.3(e), 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit his views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present his views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

1. 12 U.S.C. §§ 3103(a) and 3105(d).

Notice of the application, affording interested persons an opportunity to comment, has been published in newspapers of general circulation in Greenwich, Connecticut (*Greenwich Time*), and Stamford, Connecticut (*The Advocate*), on November 3, 2006. The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of \$1.6 trillion, is the second largest commercial bank in the United Kingdom.² Bank is wholly owned by The Royal Bank of Scotland Group plc ("RBS Group"), Edinburgh, Scotland. RBS Group's shares are widely held, with no shareholder or group of shareholders controlling more than 5 percent of shares. Bank provides a variety of banking services to retail and corporate customers in 27 countries, including the United States.³ In the United States, Bank operates an uninsured state branch in New York, New York; representative offices in Houston, Texas, and Los Angeles, California; and Greenwich Capital Markets, Inc. ("GCM"), Greenwich, Connecticut, a registered broker-dealer specializing in debt capital markets services. Bank also owns Citizens Financial Group, Inc. ("Citizens"), Providence, Rhode Island, a registered bank holding company with \$163 billion in consolidated assets.⁴ Bank is a qualifying foreign banking organization under Regulation K.⁵

The establishment of the Greenwich branch is the first component in a long-range plan to relocate Bank's U.S. branch and GCM to the same location. After completion of a new corporate headquarters in Stamford, Connecticut, in late 2008 or early 2009, Bank expects to move the Greenwich branch and GCM to Stamford.

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

2. Asset data are as of September 30, 2006.

3. Bank also conducts banking activities through its subsidiary, National Westminster Bank Plc, London, United Kingdom.

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

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, 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).

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 that Bank is subject to home-country supervision on a consolidated basis.⁸ There has been no material change in the manner in which Bank is supervised by the Financial Services Authority (“FSA”). Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K.⁹ The FSA has no objection to Bank’s establishment of the proposed branch.

The United Kingdom’s risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank’s capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. In addition, Bank has established controls and procedures for the proposed office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

The United Kingdom is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, the United Kingdom has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in the United Kingdom, 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 FSA.

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. RBS Group and Bank 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, RBS Group and Bank 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 RBS Group and Bank have provided adequate assurances of access to any necessary information that the Board may request.

With respect to the interstate aspect of this proposal, section 5(a)(2) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,¹⁰ authorizes a foreign bank to establish and operate a de novo state branch in a state outside its home state subject to certain requirements. The proposal complies with the requirements of section 5(a)(2) of the IBA.¹¹ The Board has determined that all the other criteria referred to in section 5(a)(3) of the IBA, including the criteria in section 7(d) of the IBA, have also been met.¹² Accordingly, the proposed transaction is consistent with the requirements of section 5 of the IBA. Based on the foregoing and all the facts of record, Bank’s application to establish the proposed branch is hereby approved by the

10. 12 U.S.C. § 3103(a)(2).

11. Section 5(a)(2) of the IBA authorizes a foreign bank to establish and operate a de novo state branch outside its home state to the extent that a state-chartered bank with the same home state as the foreign bank may do so under section 18(d)(4) of the Federal Deposit Insurance Act (“FDIA”). The Federal Deposit Insurance Corporation has authorized state nonmember banks to establish de novo state branches outside their home state, pursuant to section 18(d)(4) of the FDIA, when the two states involved permit de novo entry on a nationwide reciprocal basis. Connecticut and Rhode Island permit de novo entry on a nationwide reciprocal basis.

12. Section 5(a) of the IBA also requires that certain conditions in section 44 of the FDIA be met in order for the Board to approve an interstate branching 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 FDIA, 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. Bank was 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 FDIA. The Board also must take into account community reinvestment considerations, including the record of Bank’s domestic insured depository institutions, under the Community Reinvestment Act (“CRA”). See 12 U.S.C. § 3103(a)(3)(C); 12 U.S.C. § 1831u(b)(3). Bank’s domestic insured depository institutions, owned through Citizens, each received “outstanding” or “satisfactory” ratings at its most recent CRA performance evaluations by the appropriate federal regulators. Based on all the facts of record, the Board concludes that community reinvestment considerations are consistent with approval.

8. *The Royal Bank of Scotland Group plc*, 89 *Federal Reserve Bulletin* 386 (2003).

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

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 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.¹³ 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 April 26, 2007.

ROBERT DE V. FRIERSON
Deputy Secretary of the Board

Victoria Mutual Building Society Kingston, Jamaica

Order Approving Establishment of a Representative Office

Victoria Mutual Building Society ("Bank"), Kingston, Jamaica, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA¹ to establish a representative office in Miami, Florida. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Miami-Dade County, Florida (*The Miami Herald*, February 18, 2005). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately \$682 million,² is the fourth largest deposit-taking institution and second largest building society in Jamaica.³ Bank primarily engages in residential mortgage lending and retail banking activities through 15 offices in Jamaica. Bank's

domestic subsidiaries offer insurance, investment management, real estate brokerage, and property management services. Bank also operates representative offices and money-transmitter subsidiaries in the United Kingdom and Canada.

The proposed representative office would act as a liaison between Bank's head office and existing and prospective customers in the United States. The office would solicit business, market products and services of the head office and of Bank's real estate brokerage subsidiary in Jamaica, and provide information to customers concerning their accounts. In connection with Bank's mortgage lending operations, it also would solicit prospective borrowers, assemble credit information, arrange for property inspections and appraisals, assist in the preparation of loan applications, and transmit applications and supporting documentation to the head office.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether the foreign bank: (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁴ The Board also considers additional standards set forth in the IBA and Regulation K.⁵ The Board considers the supervision standard to have been when it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁶ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval

4. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

5. 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3).

6. See, e.g., *Banco Latinoamericano de Exportaciones S.A.*, *Federal Reserve Bulletin* C128 (2006); *Banco Financiera Comercial Hondureña, S.A.*, 91 *Federal Reserve Bulletin* 444 (2005); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002); *RHEINHYP Rheinische Hypothekenbank AG*, 87 *Federal Reserve Bulletin* 558 (2001); see also *Promstroybank of Russia*, 82 *Federal Reserve Bulletin* 599 (1996); *Komerčni Banka, a.s.*, 82 *Federal Reserve Bulletin* 597 (1996); *Commercial Bank "Ion Tiriac," S.A.*, 82 *Federal Reserve Bulletin* 592 (1996).

13. The Board's approval of this application does not supplant the authority of Connecticut to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. § 3107(a).

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

3. Bank is a mutual organization with more than 680,000 members. Each member is considered to be a shareholder and has one vote. No single shareholder controls the organization.

of representative-office applications because representative offices may not engage in banking activities.⁷

In connection with this application, Bank has provided certain commitments to the Board that limit the activities of the representative office. It has committed that the representative office would engage only in certain specified activities and would not make credit decisions; solicit or accept deposits; process or initiate transactions on behalf of Bank; or engage in activities related to securities trading, foreign exchange, or money transmission.

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

With respect to supervision by home-country authorities, the Board has considered the following information. The Bank of Jamaica (“BOJ”) is the licensing, regulatory, and supervisory authority for banks and all other financial institutions in Jamaica and, as such, is the home-country supervisor for Bank. The BOJ has pursued a program of reforms intended to update its regulatory and supervisory framework. The BOJ authorizes the establishment of foreign offices of Jamaican banks, regulates those offices, and reviews their operations in connection with annual on-site examinations of the head office.

The Board previously determined, in connection with an application involving another bank from Jamaica, that the bank was subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁸ Bank is supervised by the BOJ on substantially the same terms and conditions as that other Jamaican bank. Based on all the facts of record, including commitments provided by Bank limiting the activities of the proposed office, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.⁹ The BOJ has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration its record of operations in its home country, its overall financial resources, and its

standing with its home-country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Although Jamaica is not a member of the Financial Action Task Force, Jamaica is a member of the Caribbean Financial Action Task Force and subscribes to its measures on combating money laundering and terrorist financing. Jamaica also participates in other international fora that address the prevention of money laundering and terrorist financing.¹⁰ It has enacted laws and the BOJ has promulgated implementing regulations and guidelines aimed at preventing money laundering and terrorist financing. Money laundering and financing terrorism are criminal offenses in Jamaica. The laws, regulations, and guidelines require financial institutions, including building societies, to establish and implement policies, procedures, and controls for the purpose of preventing and detecting money laundering and terrorist financing and to report certain cash transactions and suspicious transactions to appropriate authorities. An institution’s compliance with applicable laws, regulations, and guidelines is monitored by the BOJ and the institution’s external auditors. Bank has policies and procedures to comply with these laws and regulations.

With respect to access to information on Bank’s operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed, and the Board has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the BOJ may share information on Bank’s operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and

7. 12 CFR 211.24(d)(2)).

8. *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002).

9. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation.

10. Jamaica is a member of the Organization of American States Inter-American Drug Abuse Control Commission Group of Experts for the Control of Money Laundering and the Inter-American Convention against Corruption. Jamaica is also party to the 1988 United Nations Convention against the Illicit Traffic of Narcotics and Psychotropic Substances and the United Nations International Convention against Transnational Organized Crime.

conditions set forth in this order, Bank's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹¹ 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 or recommend termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.¹² The commitments and conditions referred to above are conditions

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

12. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of Florida or its agent, the Florida Office of Financial Regulation, to

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 June 14, 2007.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

license the representative office in accordance with any terms or conditions that it may impose.