Legal Developments: First Quarter, 2009

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued under Section 3 of the Bank Holding Company Act

Protective Life Corporation Birmingham, Alabama

Order Approving Formation of Bank Holding Company

Protective Life Corporation (''Protective Life'') 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 acquiring all the shares of Bonifay Holding Company, Inc. (''BHCI'') and its subsidiary bank, the Bank of Bonifay (''Bank''), both of Bonifay, Florida.

Notice of the proposal under section 3 of the BHC Act, affording interested persons an opportunity to submit comments, has been published (73 *Federal Register* 69,663 (2008)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Protective Life, with total consolidated assets of $41.1 billion, is an insurance and financial services firm engaged principally in the business of underwriting life and property insurance.[2] Protective Life also offers annuity and other investment products and related services.

Bank, which is the primary asset of BHCI, has total consolidated assets of $220.0 million and is the 143rd largest depository institution in Florida. It controls deposits of approximately $209.4 million in the state, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.[3]

1. 12 U.S.C. § 1842.
2. Asset data for Protective Life are as of September 30, 2008.
3. Asset data for Bank are as of September 30, 2008, and deposit and ranking data are as of June 30, 2008.

Factors Governing Board Review of the Proposed Bank Holding Company

The BHC Act sets forth the factors the Board must consider when reviewing the formation of a bank holding company or the acquisition of a bank. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (''CRA'')[4] of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.[5]

Competitive Considerations

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

The proposal involves the acquisition of a bank by Protective Life, which does not own a commercial bank or savings association. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors are consistent with approval of the proposal.

4. 12 U.S.C. § 2901 et seq.
5. In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.
6. 12 U.S.C. § 1842(c)(1).

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal and certain other supervisory factors.[7] The Board has carefully considered these factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal, publicly reported and other available financial information, and information provided by Protective Life. In addition, the Board has consulted with the Federal Deposit Insurance Corporation (''FDIC''), the primary federal supervisor of Bank, about the proposal's effect on the financial and managerial resources and future prospects of Bank.

In evaluating financial factors, the Board consistently has considered capital adequacy to be an especially important aspect. Protective Life is well capitalized, and all entities of Protective Life that are subject to regulatory capital requirements currently have capital levels that exceed those relevant minimum requirements. Although Bank reports capital ratios that meet the well-capitalized standards under applicable federal guidelines, Bank's capital level is not considered sufficient given its current risk profile.[8] Bank's financial position would be improved, however, through this transaction because a significant portion of Bank's assets to be chosen by Protective Life would be retained by BHCI's existing shareholders. Protective Life would remain well capitalized on consummation of the proposal. Based on its review of the record, the Board finds that Protective Life has sufficient resources to effect the proposal and that all other financial factors are consistent with approval.

In addition, the Board has carefully considered the managerial resources of Protective Life in light of all the facts of record, including confidential supervisory and examination information and information provided by Protective Life. The Board has considered the supervisory experience of the relevant state supervisory agencies of Protective Life and considered information submitted by state insurance regulators in response to requests by the Board. The Board has likewise considered its supervisory experience with BHCI and the supervisory experience of the relevant federal and state supervisory agencies of Bank and Bank's record of compliance with applicable banking law and anti-money-laundering laws. In addition, the Board has carefully considered information from Protective Life about its business plans for BHCI and Bank, and the actions it is taking and proposing to take to strengthen the organization's risk-management infrastructure.

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

The Board notes further that a substantial proportion of Protective Life's activities are conducted in subsidiaries that are subject to functional regulation by state insurance commissions or by the Securities and Exchange Commission (''SEC''). The Board will, consistent with the provisions of section 5 of the BHC Act, as amended by the Gramm-Leach-Bliley Act, rely on the appropriate state insurance regulators and the SEC for examination and other supervisory information to the extent appropriate in fulfilling the Board's responsibilities as the holding company's supervisor.

Convenience and Needs and CRA Performance Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.[9] The Board has carefully considered the convenience and needs factor and the CRA performance records of Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[10] Bank received a ''satisfactory'' rating under the CRA at its most recent performance evaluation by the FDIC, as of October 1, 2004 (the ''FDIC Examination''). The FDIC Examination indicated that Bank's loans were reasonably dispersed among borrowers of different incomes and businesses of different sizes and that its average loan-to-deposit ratio was excellent in light of Bank's capacity and lending opportunities within the assessment area. Protective Life has represented that consummation of the proposal would permit Bank to continue its existing CRA programs and strengthen its ability to service low- and moderate-income communities. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance record of Bank are consistent with approval of the proposal.

Nonbanking Activities

Protective Life engages in insurance and securities activities that are only permissible for a bank holding company that elects to become a financial holding company[11] and in activities that may not conform to the requirements of the BHC Act. Section 4 of the BHC Act by its terms provides

7. 12 U.S.C. § 1842(c)(2) and (3).

8. Bank is subject to a cease and desist order from the Florida Office of Financial Regulation.

9. 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

10. The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. *See* 74 *Federal Register* 498 at 527 (2009).

11. *See* 12 U.S.C. § 1843(k).

any company that becomes a bank holding company two years within which to conform its existing nonbanking investments and activities to the section's requirements, with the possibility of three one-year extensions.[12] Protective Life must conform any impermissible nonfinancial activities to the BHC Act and investments that it currently conducts or holds, directly or indirectly, within the time requirements of the act. Protective Life should be able to conform the majority of its activities to the requirements of the BHC Act by filing an effective election to become a financial holding company under section 4(*l*) of the BHC Act.[13]

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application under section 3 of the BHC Act 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 the Board is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Protective Life with the conditions imposed in this order and all the commitments it 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 by the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 15, 2009.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Southern BancShares (N.C.), Inc. Mount Olive, North Carolina

Order Approving the Acquisition of Shares of a Bank Holding Company

Southern BancShares (N.C.), Inc. ("Southern"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to increase its ownership interest to 9.9 percent of the voting shares of ECB Bancorp, Inc. ("ECB") and thereby increase its indirect interest in ECB's subsidiary bank, The East Carolina Bank ("East Carolina Bank"), both of Engelhard, North Carolina. Southern currently owns 4.9 percent of ECB's voting shares.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (73 *Federal Register* 78,359 (2008)). 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.

Southern, with total banking assets of approximately $1.2 billion, controls one depository institution, Southern Bank and Trust Company ("Southern Bank"), Mount Olive, that operates only in North Carolina. Southern Bank is the 17th largest insured depository institution in North Carolina, controlling deposits of approximately $1.01 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state ("state deposits").[2]

East Carolina Bank, with total assets of approximately $738 million, is the 33rd largest insured depository institution in North Carolina. The bank operates only in North Carolina and controls deposits of approximately $588.9 million. If Southern were deemed to control ECB on consummation of the proposal,[3] Southern would become the seventh largest banking organization in North Carolina, controlling approximately $1.6 billion in deposits, which would represent less than 1 percent of state deposits.

Southern has stated that it does not propose to control or exercise a controlling influence over ECB and that its indirect investment in East Carolina Bank would also be a passive investment. In this light, Southern has agreed to abide by certain commitments on which the Board has previously relied in determining that an investing bank holding company would not be able to exercise a control-

12. *See* 12 U.S.C. § 1843(a)(2).
13. 12 U.S.C. 1843(*l*)(1); 12 CFR 225.82.

1. 12 U.S.C. § 1842.
2. Asset data are as of June 30, 2008; statewide deposit and ranking data are also as of June 30, 2008, and reflect merger and acquisition activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
3. Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks. *See* 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. *See, e.g., Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) (acquisition of up to 24.89 percent of the voting shares of a bank holding company); *S&T Bancorp Inc.*, 91 *Federal Reserve Bulletin* 74 (2005) (acquisition of up to 24.9 percent of a bank holding company); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

ling influence over another bank holding company or bank for purposes of the BHC Act (''Passivity Commitments'').[4] For example, Southern has committed not to exercise or attempt to exercise a controlling influence over the management or policies of ECB or any of its subsidiaries; not to have or seek to have any employee or representative of Southern or its affiliates serve as an officer, agent, or employee of ECB or any of its subsidiaries; and not to seek or accept representation on the board of directors of ECB or any of its subsidiaries. Southern has additionally committed not to enter into any agreement with ECB or any of its subsidiaries that substantially limits the discretion of ECB's management over major policies or decisions.

Based on these considerations and all the other facts of record, the Board has concluded that Southern would not acquire control of, or have the ability to exercise a controlling influence over, ECB or East Carolina Bank through the proposed acquisition of the ECB's voting shares. The Board notes that the BHC Act would require Southern to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of ECB or attempt to exercise a controlling influence over ECB or East Carolina Bank.[5]

Competitive Considerations

The Board has considered carefully the competitive effects of the proposal in light of all the facts of record. 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.[6]

Southern Bank and East Carolina Bank compete directly in six banking markets in North Carolina. The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in depository institutions in the markets (''market deposits'') controlled by Southern Bank and East Carolina Bank;[7] the concentration level of market deposits and the increase in the level as measured by the Herfindahl–Hirschman Index (''HHI'') under the Department of Justice Merger Guidelines (''DOJ Guidelines'');[8] other characteristics of the market; and the Passivity Commitments made by Southern with respect to ECB and East Carolina Bank.

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in five of the banking markets in which Southern Bank and East Carolina Bank directly compete.[9] On consummation of the proposal, four markets would remain highly concentrated, and one market would remain moderately concentrated, as measured by the HHI. The change in HHI in the four highly concentrated markets would be consistent with Board precedent and the thresholds in the DOJ Guidelines. In each of the five banking markets, a number of competitors would remain.

B. Banking Market Warranting Special Scrutiny

Southern Bank and East Carolina Bank compete directly in one banking market in North Carolina that warrants a detailed review: the Washington County banking market.[10] In this banking market, the concentration levels on consummation of the proposal would exceed the threshold levels in the DOJ Guidelines. Southern Bank is the fifth largest depository institution in the market, controlling $11.8 million in deposits, which represents 8.9 percent of market deposits. East Carolina Bank is the third largest depository institution in the market, controlling $24.2 million in deposits, which represents 18.3 percent of market deposits. If considered a combined organization on consummation of the proposal, Southern Bank and East Carolina Bank would be the second largest depository organization in the Washington County banking market, controlling $36 million in deposits, which would represent approximately 27.2 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Washington County banking market would increase 326 points to 2609.

4. The commitments made by Southern are set forth in Appendix A.

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

6. 12 U.S.C. § 1842(c)(1).

7. Deposit and market share data are as of June 30, 2008, 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). The Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

8. 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.

9. These banking markets and the effects of the proposal on their concentrations of banking resources are described in Appendix B.

10. The Washington County banking market includes Washington County, North Carolina.

The market indexes suggest that consummation of the proposal would raise competitive issues in the Washington County banking market. After careful analysis of the record, however, the Board has concluded that no significant reduction in competition is likely to result from Southern's proposed indirect investment in East Carolina Bank. Of particular significance in this case is the structure of the proposed investment and the commitments Southern has provided to the Board, which are designed to limit the ability of Southern to use its proposed investment to engage in any anticompetitive behavior.

The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control. In each case, the Board analyzes the specific facts to determine whether the minority investment in a competitor would result in significant adverse competitive effects in a banking market.[11]

The Board has concluded, after careful analysis of the entire record, that no significant reduction in competition will likely result from Southern's proposed minority investment in ECB. As noted, Southern has committed not to exercise a controlling influence over ECB or East Carolina Bank and not to seek or accept representation on the board of directors of ECB or East Carolina Bank. Southern also has committed not to acquire or seek to acquire nonpublic financial information from ECB or East Carolina Bank. These commitments are designed to prevent anticompetitive behavior that otherwise might occur through either influencing the behavior of ECB or East Carolina Bank or the coordination of Southern's activities with those of ECB or East Carolina Bank. In addition, there are no legal, contractual, or statutory provisions that would otherwise allow Southern to have any access to financial information of ECB or East Carolina Bank beyond the information already available to it as a shareholder with a less than 5 percent interest. These limitations restrict Southern's access to confidential information that could enable it to engage in anticompetitive behavior in the Washington County banking market with respect to East Carolina Bank.

The Board also has considered additional facts indicating that the proposal is not likely to have a significantly adverse effect on competition in the Washington County banking market. In addition to Southern Bank and East Carolina Bank, three other bank competitors, each with market shares of at least 15 percent, provide additional sources of banking services to the market. The Board also notes that the market includes one community credit union with broad membership criteria that include most of the residents in the market, offers a wide range of consumer banking products, and operates street-level branches with drive-up service lanes.[12]

C. Views of Other Agencies and Conclusion on Competitive Considerations

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

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

Financial, Managerial, and Supervisory Considerations

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

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

The Board has carefully considered the financial factors of the proposal. Southern and Southern Bank are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Southern has sufficient financial resources to effect the proposal and that the financial resources of Southern and its subsidiaries would not be adversely

11. *See, e.g., The Bank of Nova Scotia*, 93 *Federal Reserve Bulletin* C136 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006) ("Passumpsic"); *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985).

12. The Board previously has considered competition from certain active credit unions as a mitigating factor. *See Passumpsic* at C177; *Capital City Group, Inc.*, 91 *Federal Reserve Bulletin* 418 (2005); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004). If Southern Bank and East Carolina Bank were considered as a combined organization on consummation of the proposal, the HHI for the Washington County banking market would increase 263 points to 2209 when the deposits of the credit union are weighted at 50 percent.

affected by the proposal. The proposed transaction would be funded by a dividend from Southern Bank and by Southern's existing financial resources.

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

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

Convenience and Needs and CRA Performance Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act (''CRA'').[13] The Board has carefully considered the convenience and needs factor and the CRA performance records of Southern Bank and East Carolina Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[14] Southern Bank received an ''outstanding'' rating and East Carolina Bank received a ''satisfactory'' rating at their most recent examinations for CRA performance by the Federal Deposit Insurance Corporation, as of February 28, 2006, and October 3, 2006, respectively. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance records of Southern Bank and East Carolina Bank are consistent with approval of the proposal.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application under section 3 of the BHC Act should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Southern 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 9, 2009.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix A

Passivity Commitments

Southern BancShares (N.C.), Inc., Mount Olive, North Carolina (''Southern''), will not, without the prior approval of the Board or its staff, directly or indirectly

1. Exercise or attempt to exercise a controlling influence over the management or policies of ECB Bancorp, Inc., Engelhard, North Carolina (''ECB''), or any of its subsidiaries, including The East Carolina Bank, Engelhard, North Carolina;
2. Seek or accept representation on the board of directors of ECB or any of its subsidiaries;
3. Have or seek to have any employee or representative of Southern and its affiliates (the ''Southern Group'') serve as an officer, agent, or employee of ECB or any of its subsidiaries;
4. Take any action that would cause ECB or any of its subsidiaries to become a subsidiary of Southern;
5. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of the Southern Group own, control, or hold with power to vote) represent 25 percent or more of any class of voting securities of ECB or any of its subsidiaries;
6. Own or control equity interests that would cause the combined voting and nonvoting equity interests of the Southern Group and its officers and directors to equal or exceed 25 percent of the total equity capital of ECB or any of its subsidiaries;
7. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of ECB or any of its subsidiaries;
8. Enter into any agreement with ECB or any of its subsidiaries that substantially limits the discretion of ECB's management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers;

13. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

14. The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. *See* 74 *Federal Register* 498 at 527 (2009).

engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;

9. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of ECB or any of its subsidiaries;
10. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of ECB or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by ECB or any of its subsidiaries; or
11. Enter into any other banking or nonbanking transactions with ECB or any of its subsidiaries, except that the Southern Group may establish and maintain deposit accounts with The East Carolina Bank, provided that the aggregate balance of all such deposit accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with ECB.

The terms used in these commitments have the same meanings as set forth in the Bank Holding Company Act of 1956, as amended, and the Board's Regulation Y.

Appendix B

SOUTHERN AND ECB BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES

Bank	Rank	Amount of deposits (millions of dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Beaufort County, North Carolina—Beaufort County						
Southern Pre-consummation	4	58.8	8.5	2,303	59	5
ECB	7	24.0	3.5	2,303	59	5
Southern Post-consummation	4	82.8	12.0	2,303	59	5
Dare, North Carolina–Dare, Hyde, and Tyrrell counties						
Southern Pre-consummation	7	27.9	2.4	2,084	148	10
ECB	1	356.7	30.7	2,084	148	10
Southern Post-consummation	1	384.6	33.1	2,084	148	10
Greenville, North Carolina—Includes the Ranally Metro Area (RMA) and non-RMA portions of Pitt County						
Southern Pre-consummation	6	111.5	6.7	1,487	48	11
ECB	9	59.5	3.6	1,487	48	11
Southern Post-consummation	5	171.0	10.3	1,487	48	11
Martin County, North Carolina—Martin County						
Southern Pre-consummation	3	25.6	8.4	2,817	108	6
ECB	5	19.6	6.4	2,817	108	6
Southern Post-consummation	3	45.2	14.8	2,817	108	6
New Bern, North Carolina—Carteret County (excluding the Jacksonville RMA portion), Craven County, Pamlico County, and the eastern half of Jones County (excluding the Jacksonville RMA portion)						
Southern Pre-consummation	10	8.2	.4	2,223	1	11
ECB	9	29.9	1.3	2,223	1	11
Southern Post-consummation	9	38.2	1.7	2,223	1	11

NOTE: Data are as of June 30, 2008. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

Orders Issued under Section 4 of the Bank Holding Company Act

Allianz SE
Munich, Germany

Order Approving the Acquisition of Shares of a Savings Association

Allianz SE ("Allianz"), a company that is treated as a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to retain its interest in The Hartford Financial Services Group, Inc. ("The Hartford"), Hartford, Connecticut, on consummation of The Hartford's proposal to become a savings and loan holding company by indirectly acquiring all the shares of Federal Trust Bank ("Federal Trust"), Sanford, Florida, a federal savings association.

Section 4 of the BHC Act requires a bank holding company to obtain the Board's approval before acquiring more than 5 percent of the voting shares of a savings association, regardless of whether the acquisition would represent a controlling interest.[2] Allianz is subject to the BHC Act as a result of its ownership of Dresdner Bank AG ("Dresdner"), Frankfurt am Main, Germany, which operates a branch in New York, New York.[3] Allianz owns 23.7 percent of the voting shares of The Hartford, a diversified financial services company. On November 14, 2008, The Hartford applied to the Office of Thrift Supervision ("OTS") to acquire Federal Trust Corporation ("FTC"), the parent savings and loan holding company of Federal Trust, and thereby acquire control of Federal Trust.

Section 4(i)(4) of the BHC Act requires the Board to provide the director of OTS with notice of an application to acquire a savings association and to provide the director a period of time (normally 30 days) within which to submit views and recommendations on the proposal.[4] The BHC Act also authorizes the Board to reduce or eliminate this notice period under certain circumstances.[5]

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal in accordance with the provisions of the BHC Act and the Board's regulations.[6] The Board has provided notice to OTS, the primary federal supervisor of FTC and Federal Trust, and to the Department of Justice ("DOJ"). Those agencies have indicated they have no objection to approval of the proposal. For the same reasons, and because this transaction represents a minority, noncontrolling investment in The Hartford and its proposed subsidiary depository institution, the Board has waived public notice of the proposal.

Allianz, with total consolidated assets of approximately $1.4 trillion, provides insurance, banking, and asset-management products and services in more than 70 countries. Allianz's banking activities are conducted primarily through Dresdner. Dresdner also owns Dresdner Kleinwort Securities, LLC, a U.S. broker-dealer.

The Hartford, with total consolidated assets of $312 billion, is a diversified insurance and financial services company, with international operations in Japan, the United Kingdom, Canada, Brazil, and Ireland. FTC, with total consolidated assets of approximately $602 million, operates one insured depository institution, Federal Trust, which has offices only in Florida and controls deposits of approximately $415 million.[7]

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[8] The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act. Allianz has committed to conform or divest its interests in The Hartford if The Hartford, FTC, Federal Trust, or any of their subsidiaries engage in activities that are impermissible under the BHC Act.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposed acquisition of FTC and Federal Trust "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[9] As part of its evaluation of a proposal under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the public benefits of the proposal.[10] In acting on a notice to acquire a savings association, the Board also reviews the

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

2. *See* 12 U.S.C. §§ 1843(c)(8), 1843(i). As discussed more fully below, the Board has determined that Allianz would not control or exercise a controlling influence over The Hartford based on all the facts and circumstances of the investment, including commitments and representations provided by Allianz to the Board.

3. A foreign bank that operates a branch or agency in the United States (and any company that owns or controls such foreign bank) is subject to the BHC Act as if it were a bank holding company. 12 U.S.C. § 3106(a).

4. 12 U.S.C. § 1843(i)(4).

5. *Id*.

6. 12 U.S.C. § 1843(i)(4); 12 CFR 225.25(d) and 262.3(*l*).

7. Asset data are as of June 30, 2008. Deposit data are as of September 30, 2008.

8. 12 CFR 225.28(b)(4)(ii).

9. 12 U.S.C. § 1843(j)(2)(A).

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

records of performance of the relevant insured depository institutions under the Community Reinvestment Act (''CRA'').[11]

In reviewing the proposal under section 4 of the BHC Act, the Board has considered the financial resources of Allianz, The Hartford, FTC, and Federal Trust. The Board has also reviewed the effect that the transaction would have on those resources 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 Allianz.

Noncontrolling Investment

Allianz has stated that it does not propose to control or exercise a controlling influence over The Hartford and that as a result, its indirect investment in FTC and Federal Trust would be a passive investment. Allianz has provided certain commitments that are similar to commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another company for purposes of the BHC Act. For example, Allianz has committed not to exercise or attempt to exercise a controlling influence over the management or policies of The Hartford or any of its subsidiaries and has committed not to have more than one representative serve on the board of The Hartford or its subsidiaries. The commitments also include certain restrictions on the business relationships of Allianz with The Hartford, FTC, and Federal Trust.

Based on these considerations and all other facts of record, the Board has concluded that Allianz would not control The Hartford or its subsidiary depository institution solely by virtue of the proposed retention of its interest in The Hartford. The Board notes that the BHC Act would require Allianz to file an application and receive the Board's approval before it could directly or indirectly acquire additional shares of, or attempt to exercise a controlling influence over, The Hartford.[12]

Financial and Managerial Resources

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

The capital levels of Allianz exceed the minimum levels that would be required of a foreign bank under the Basel Capital Accord and are, therefore, considered to be equivalent to the capital levels that would be required of a U.S. banking organization. The Board has also consulted with the OTS about the financial resources of The Hartford, FTC, and Federal Trust, including those resources on consummation of the proposal. Based on its review of the record, the Board finds that Allianz has sufficient resources to retain its interest in The Hartford.

The Board also has considered the managerial resources of the organizations involved. The Board has considered available supervisory information concerning Dresdner's U.S. operations, FTC, and Federal Trust. 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. The Board has also consulted with the OTS about the managerial resources of, and its supervisory experiences with, FTC and Federal Trust.

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

Competitive Considerations and CRA Performance Records

As part of the Board's consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record. The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.[13] Dresdner, the subsidiary foreign bank of Allianz, however, does not compete directly with FTC in any relevant banking market. Based on all the facts record, the Board concludes that the consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market.

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

11. 12 U.S.C. § 2901 et seq.

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

13. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995).

appropriate federal supervisor.[14] Federal Trust received a ''satisfactory'' rating on June 26, 2006, its most recent CRA examination. Based on a review of the entire record and for the reasons stated above, the Board concludes that the CRA performance records of the relevant depository institutions are consistent with approval.

PUBLIC BENEFITS

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers currently served by FTC and Federal Trust by strengthening the financial and managerial resources available to Federal Trust and thereby enhancing Federal Trust's future prospects.

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

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Allianz with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[15] and to the Board's authority to require such modification or termination of the activities of Allianz or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

14. *See Interagency Questions and Answers Regarding Community Reinvestment*, 74 *Federal Register* 498 at 527 (2009).

15. 12 CFR 225.7 and 225.25(c).

By order of the Board of Governors, effective January 14, 2009.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER FEDERAL RESERVE ACT

ICE US Trust LLC
New York, New York

Order Approving Application for Membership

ICE US Trust LLC (''ICE Trust''), a de novo uninsured trust company organized under New York law,[1] has requested the Board's approval under section 9 of the Federal Reserve Act (''Act'')[2] to become a member of the Federal Reserve System.[3] ICE Trust proposes to operate as a central counterparty (''CCP'') and clearinghouse for credit default swap (''CDS'') transactions conducted by its participants.

ICE Trust will become a wholly owned subsidiary of ICE US Holding Company LP (''ICE LP''),[4] which will be controlled indirectly by Intercontinental-Exchange, Inc. (''ICE''),[5] an operator of futures exchanges and over-the-counter markets for commodities and derivative financial products.[6] ICE has entered into an agreement to acquire

1. Under New York law, a limited liability trust company may not accept deposits from the general public and must obtain an exemption from the general requirement under state law that New York-chartered banks and trust companies have federal deposit insurance. *See* New York Banking Law §§ 32, 102a. The New York State Banking Board (''NYSBB'') has approved ICE Trust's charter application and its exemption from the deposit insurance requirement. Letter from NYSBB to Bradley K. Sabel, Esq., December 4, 2008.

2. 12 U.S.C. § 321 et seq.

3. 12 U.S.C. §§ 221 and 321. ICE Trust is a bank for purposes of the Act and, therefore, is eligible for membership in the Federal Reserve System.

4. ICE LP is organized under the law of the Cayman Islands but has consented to the jurisdiction of United States courts and government agencies with respect to matters arising out of federal banking laws. ICE LP also has committed to make available to the Board such information on the operations of ICE Trust and its affiliates as the Board deems necessary to enforce compliance with the Act and other applicable federal law.

5. ICE's wholly owned subsidiary, ICE US Holding Company GP LLC (''ICE GP''), a Delaware limited liability company, will be the general partner of ICE LP. ICE, ICE GP, and ICE LP have committed that ICE LP will not, without the prior approval of the Board, engage in any activity or make any investment other than holding an interest in ICE Trust and TCC.

6. ICE Trust is not a bank as defined in the Bank Holding Company Act (''BHC Act'') (12 U.S.C. § 1841 et seq.). *See* 12 U.S.C. § 1841(c)(1). ICE LP, ICE GP, and ICE, therefore, would not be bank holding companies for purposes of the BHC Act. No bank holding

The Clearing Corporation (''TCC''), a derivatives clearinghouse.[7]

ICE Trust is being organized to reduce the risk associated with the trading and settlement of CDS transactions.[8] The CDS market as measured by the total notional amount of outstanding contracts has grown significantly, from approximately $6.4 trillion by year-end 2004 to approximately $57.3 trillion by mid-year 2008.[9] In the second half of 2008, however, dealers in CDS contracts were able to reduce the total notional amount of outstanding contracts by approximately $32 trillion through regular and frequent portfolio compression activity. CCPs interpose themselves between counterparties to financial contracts, becoming the buyer to the seller of the contract and the seller to the contract's buyer. In the absence of a CCP, each market participant bears the risk, known as counterparty credit risk, that one or more of its counterparties will default. By interposing itself between participants and thereby assuming counterparty credit risk, a CCP enables market participants to accept the best bids and offers without concern that a counterparty may default.

By assuming counterparty credit risk and enforcing participation standards and margin requirements, CCPs also can help diminish systemic risk in market settlement activities. In addition, establishment of a CCP can lower systemic risk by instituting procedures for the orderly close out of the positions of any participant who defaults and by mutualizing the cost of the close-out process.

Proposed Activities

ICE Trust would act as the CCP for its participating financial institutions by novating CDS contracts between participants. Through novation, ICE Trust would be positioned between the parties to a CDS contract, thereby becoming the counterparty to each party. ICE Trust would net out the overall positions of each participant and, accordingly, would receive payments from and make payments to each participant on a net basis. In this manner, ICE Trust would reduce the volume of settlement payments among participants and reduce the counterparty, credit, and other risks and the transaction costs associated with CDS contracts.

Initially, ICE Trust proposes to clear only contracts that are based on certain CDX North American indices and are submitted by the participants as principals.[10] Incidental to clearing such transactions, ICE Trust also would provide certain transaction-related administrative services to participants. ICE Trust proposes to charge a fee for its CDS clearing services to participants primarily on a per-transaction basis.

As a member of the Federal Reserve System, ICE Trust would be eligible to open an account with, and receive payment services from, the Federal Reserve Bank of New York. ICE Trust proposes to obtain a number of services from TCC and ICE. ICE Trust would use TCC's existing infrastructure for clearing operations and its risk-management services. ICE would provide internal audit functions for ICE Trust.

Factors Governing Board Review of the Proposal

In acting on an application for membership in the Federal Reserve System, the Board is required by the Act and Regulation H to consider the financial history and condition of the applying bank; the adequacy of its capital in relation to its assets and to its prospective deposit liabilities and other corporate responsibilities; its future earnings prospects; the general character of its management; whether its corporate powers are consistent with the purposes of the Act; and the convenience and needs of the community to be served.[11] Because ICE Trust's primary business would be acting as a CCP and clearinghouse for CDS transactions, the Board has reviewed the applicable financial and managerial factors in light of the Federal Reserve's Policy on Payments System Risk (''PSR Policy''), including its minimum standards for systemically important central counterparties.[12] These standards address, among other matters, financial resources, measurement and management of credit exposures, margin requirements, and default procedures.

Financial Considerations

In considering the financial history and condition, future earnings prospects, capital adequacy of ICE Trust, and other financial factors, the Board has reviewed its business plan and financial projections and has assessed the adequacy of ICE Trust's anticipated capital levels in light of

company will directly or indirectly control more than 5 percent of the voting shares of ICE Trust.

7. TCC also will become a wholly owned subsidiary of ICE LP. TCC will provide certain clearing services to ICE Trust.

8. In the simplest form of a CDS arrangement, the seller of a CDS agrees to pay the buyer the full principal amount of the debt obligation underlying the CDS in exchange for periodic payments to cover the cost of the credit-risk protection. The seller is then obligated to pay the buyer if the maker of the obligation defaults or declares bankruptcy. In index-based CDS contracts, the parties' payment obligations are based on an index of debt obligations of multiple companies, such as an index of U.S. investment-grade or emerging-market bonds, rather than on a single obligation.

9. *See* Bank for International Settlements, *OTS Derivatives Market Activity in the First Half of 2008* (November 2008); Bank for International Settlements, *OTS Derivatives Market Activity in the Second Half of 2005* (May 2006). The notional amount refers to the principal amount of obligations underlying CDS contracts.

10. These indices include certain investment-grade indices; investment-grade, high-volatility sub-indices; and high-yield indices.

11. 12 U.S.C. §§ 322 and 329; 12 CFR 208.3(b)(3).

12. *Federal Reserve Policy on Payments System Risk*, available at www.federalreserve.gov/paymentsystems/psr/default.htm. The PSR Policy incorporates the minimum standards for systemically important central counterparties in the *Recommendations for Central Counterparties* (''RCCP''), jointly issued in November 2004 by the Committee on Payment Settlement Systems of the Bank for International Settlements and by the Technical Committee of the International Organization of Securities Commissioners.

its proposed assets and liabilities.[13] ICE Trust would maintain capital that is adequate to cover its start-up costs, projected operational losses, and unanticipated losses and to allow for an orderly wind-down of positions if confronted with the need to cease operations.

In assessing the adequacy of ICE Trust's capital levels, the Board has taken into account the financial resources maintained by ICE Trust to enable it to withstand a default in extreme but plausible market conditions by the participant to which it has the largest exposure.[14] For ICE Trust, as for many CCPs, these resources include margin collateral posted by participants based on the value and risk associated with their open positions and participants' contributions to a guaranty fund. The Board expects ICE Trust at all times to maintain financial resources commensurate with the level and nature of the risks to which it is exposed.

If a participant defaults, ICE Trust would draw on margin collateral posted by the participant. If the margin collateral is insufficient, ICE Trust would then look to the defaulting participant's guaranty fund contribution. Should the defaulting participant's margin collateral and guaranty fund contribution be insufficient to cover any losses on the defaulted obligations, ICE Trust would be authorized to use, as needed, other participants' guaranty fund contributions to satisfy any remaining obligations of the defaulting party. If the guaranty fund in total is inadequate to cover losses on the defaulted obligations, ICE Trust would have the ability to assess additional guaranty fund contributions on nondefaulting participants.

To limit the risk of default by participants, ICE Trust proposes to establish strong and objective participant eligibility requirements. For example, only a firm with a net worth of $5 billion or more and a credit rating of "A" or better may become a participant. Among other criteria, each prospective participant also would be required to demonstrate that it has systems, management, and risk-management expertise with respect to CDS transactions.

Margin requirements for participants in ICE Trust would be comprised of two components: (1) initial margin collateral provided at the time of contract novation that is intended to cover losses from a defaulting participant's positions under normal market conditions; and (2) mark-to-market margin requirements that are calculated at the end of each day based on a participant's outstanding positions. ICE Trust plans to regularly perform stress testing on its calculations of credit exposure and margin requirements to determine the sufficiency of the financial resources needed to withstand participant defaults under a range of plausible market scenarios. To ensure its liquidity, margin collateral would be required to be in the form of cash or G7 government debt.

In addition to margin requirements, ICE Trust would require each participant to contribute a minimum of $20 million to the guaranty fund plus additional amounts based on the participant's expected level of position exposures. Additional contributions would be assessed at least quarterly.

The establishment of ICE Trust as a CCP for CDS contracts is expected to minimize the impact on financial markets of a failure by a single participant by collateralizing counterparty risk exposures through the standardized application of margin and guaranty fund requirements, by reducing exposures through the netting of CDS transactions on a multilateral basis, and by standardizing and centrally managing the close out of a defaulting participant's positions with the CCP.

After carefully considering all the facts of record, the Board has concluded that ICE Trust's financial condition, capital adequacy, future earnings prospects, and other financial factors are consistent with approval of the proposal.

Managerial Considerations

In reviewing ICE Trust's managerial resources, the Board has considered carefully the experience of ICE Trust's proposed management, as well as its planned risk-management systems, operations, and anti-money-laundering compliance program. In addition, because ICE Trust proposes to be a CCP, the Board has considered ICE Trust's plans for managing the counterparty credit risk, operational risk, legal risk, and other risks that CCPs commonly encounter.[15]

The most significant risk that a CCP for CDS transactions experiences is counterparty credit risk. The Board has carefully reviewed ICE Trust's risk-management framework and its ability to measure accurately its exposure to counterparty credit risk. ICE Trust proposes to measure its credit-risk exposures to clearing participants on a daily basis, using a value-at-risk methodology to calculate the appropriate level of margin, and to calculate the margin requirement and collect the required margin collateral from each participant daily. ICE Trust has conducted extensive validation of its models for each of the products it initially intends to clear. The Board also has reviewed independent assessments of ICE Trust's models. To manage concentration risk, ICE Trust will charge additional margin collateral for positions exceeding pre-set notional thresholds. To

13. 12 U.S.C. §§ 322 and 329; 12 CFR 208.3(b)(3). As required by its regulations, the Board has used the definition of capital in Appendix A to Regulation H in assessing ICE Trust's capital adequacy (12 CFR 208.4(a)). In light of the fact that ICE Trust would (1) take no deposits from the general public, (2) have no federal deposit insurance, (3) engage in no activities apart from serving as a CCP and clearinghouse, and (4) have assets and liabilities that reflect its status as a CCP and clearinghouse, the Board will not require ICE Trust to meet the risk-based capital requirements or the leverage requirements set forth in Appendices A, B, E, and F of Regulation H. The Board retains the authority, however, to specify capital requirements for ICE Trust and to require ICE Trust to increase its capital if the Board at any time concludes that ICE Trust's capital is inadequate in view of its assets, liabilities, and responsibilities (12 CFR 208.4(a)).

14. RCCP at 23.

15. ICE Trust has committed that it will provide the Federal Reserve System with a 60-day prior notice of material changes to its rules to provide time for an adequate review by the Federal Reserve System and the opportunity to raise any supervisory or regulatory objections.

address liquidity risk, ICE Trust will ensure that it has ready access to sufficient sources of liquidity to meet its payment obligations on a same-day basis.

The Board also has reviewed ICE Trust's other mechanisms for controlling counterparty credit risk, including the adequacy of its policies and procedures for identifying any instance of default by a participant and for the orderly close out of a defaulting participant's positions. The Board has carefully reviewed ICE Trust's plan to limit investment risk by investing cash margin it receives in certain highly liquid instruments. To address settlement risks associated with participants' payments of margin collateral, guaranty fund contributions, and other monies, ICE Trust will establish a program to monitor payment concentration among settlement banks, evaluate the impact of settlement-bank failure, and develop measures to mitigate associated risks.

The Board has also considered the legal framework within which ICE Trust would operate as a CCP, including the planned contractual arrangements and applicable governing statutes and regulations with respect to the novation process, netting arrangements, settlements, and procedures in the event of a participant default. The Board also has considered information regarding the legal implications of cross-border participation in ICE Trust. In addition, the Board has reviewed ICE Trust's proposed operational and information technology infrastructure, including its business continuity plans and the adequacy of its management controls.

Based on this review and all the facts of record, the Board has concluded that the general character of ICE Trust's management is consistent with approval of the proposal.

OTHER CONSIDERATIONS

In considering whether the corporate powers exercised by ICE Trust are consistent with the purposes of the Act, the Board notes that ICE Trust's proposed activities are permissible for a state member bank under the Act's applicable provisions.[16] Under Regulation H, ICE Trust would be required to obtain the Board's approval before changing the general character of its business or the scope of the corporate powers it exercises.[17] In addition, ICE Trust has provided the Board with several commitments intended to ensure that the Board will have adequate enforcement authority over ICE Trust as an uninsured state member bank.[18] For these reasons and based on a review of the entire record, the Board has concluded that this consideration is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served.[19] As noted, the establishment of ICE Trust as a CCP for CDS contracts is expected to benefit financial markets significantly, by reducing systemic risks associated with counterparty credit exposures in CDS transactions, and thereby enhance the stability of the overall financial system. In addition, ICE Trust would promote greater market transparency by making publicly available the closing settlement price and related volume and open interest data for each cleared product, on terms that are fair, reasonable, and not unreasonably discriminatory. For these reasons and based on a review of the entire record, the Board has concluded that the convenience and needs considerations are consistent with approval of the proposal.

CONCLUSION

Based on the foregoing and all the facts of record, including all the commitments, stipulations, and representations made in connection with the application, and subject to all the terms and conditions set forth in this order, the Board has determined that ICE Trust's proposed membership in the Federal Reserve System should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance with Regulation H,[20] with receipt of required authorizations from certain other agencies,[21] and with all the commitments, stipulations, and representations made in connection with the application, including the commitments and conditions discussed in this order. The commitments, stipulations, representations, and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

ICE Trust will become a member of the Federal Reserve System on its purchase of stock in the Federal Reserve Bank of New York (''Reserve Bank''). This transaction must occur not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors, effective March 4, 2009.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Duke, and Tarullo.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

16. *See* 12 U.S.C. §§ 330 and 335.

17. 12 CFR 208.3(d)(2).

18. ICE Trust has stipulated that it would be subject to the supervisory, examination, and enforcement authority of the Board under the Federal Deposit Insurance Act as if ICE Trust were an insured depository institution for which the Board is the appropriate federal banking agency under that act.

19. Because ICE Trust will not accept deposits or have federal deposit insurance, it will not be subject to the Community Reinvestment Act (12 U.S.C. § 2901 et seq.).

20. 12 CFR Part 208.

21. Those agencies are the NYSBB and the Securities and Exchange Commission.

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

DekaBank Deutsche Girozentrale Frankfurt am Main, Germany

Order Approving Establishment of a Representative Office

DekaBank Deutsche Girozentrale (''Bank''), Frankfurt am Main, Germany, a foreign bank within the meaning of the International Banking Act (''IBA''), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York (*The New York Times*, October 3, 2007). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately $198 billion,[2] is the 18th largest bank in Germany by asset size. Bank engages in wholesale banking and investment fund activities and provides investment fund management services to German savings banks and other financial service providers. Outside Germany, Bank has subsidiaries in Luxembourg, Switzerland, Ireland, and Grand Cayman and representative offices in Italy and Spain.

Deutscher Sparkassen- und Giroverband ö.K. (''DSGV''), Bonn, Germany, owns 50 percent of Bank.[3] GLB GmbH & Co. OHG (''GLB''), Frankfurt am Main, owns 49.2 percent of Bank. The remaining shares of Bank are owned by Niedersächsische Bank GmbH (''Nieba'').

Landesbank Baden-Württemberg (''LBBW''), Stuttgart, Germany, owns 30.05 percent of GLB.[4] LBBW is one of the largest savings banks in Germany. In the United States it operates through a New York branch and nonbanking subsidiaries. Both LBBW and its parent, SBW, are treated as financial holding companies. Norddeutsche Landesbank Girozentrale, directly and through its subsidiaries, Bremer Landesbank Kreditanstalt Oldenburg-Girozentrale and Nieba, controls 19.22 percent of GLB.[5]

The proposed representative office would market real estate credit and loan products on behalf of the Bank's head office in Germany. The office would perform representational and administrative functions, such as acting as a liaison between Bank's offices outside the United States and correspondent banks in the United States, and would engage in market research, business solicitation, loan production, and relationship-management activities.[6]

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board shall take into account whether the foreign bank and any parent foreign bank directly engages in the business of banking outside of the United States and whether the foreign bank has furnished to the Board the information it needs to assess the application adequately.[7] The Board shall also take into account whether the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home-country supervisor.[8] The Board also considers additional standards set forth in the IBA and Regulation K.[9]

As noted above, Bank and its parent bank, LBBW, engage directly in the business of banking outside the

1. 12 U.S.C. § 3107(a).

2. Unless otherwise indicated, data are as of September 30, 2008.

3. The 12 shareholders of DSGV, all of which are German regional savings banks associations, exercise their voting rights directly in Bank in proportion to their participation in DSGV. The seven savings banks associations that own an interest of 5 percent or more in DSGV are Sparkassenverband Baden-Württemberg, Rheinischer Sparkassen- und Giroverband, Westfälisch-Lippischer Sparkassen- und Giroverband, Sparkassen- und Giroverband Hessen-Thüringen, Sparkassenverband Bayern, Sparkassenverband Niedersachsen, and Sparkassen- und Giroverband Rheinland-Pfalz.

4. Sparkassenverband Baden-Württemberg (''SBW''), Stuttgart, owns 35.61 percent of LBBW.

5. Other shareholders that own an interest of more than 5 percent in GLB are HSH Nordbank AG, WestLB AG, Landesbank Hessen-Thüringen Girozentrale, and Bayerische Landesbank.

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

7. 12 U.S.C. § 3107(a)(2).

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

9. *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). These standards include (1) whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) 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; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) 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.

United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home-country authorities, the Board previously has determined that LBBW's predecessor, Südwestdeutsche Landesbank Girozentrale, was subject to comprehensive consolidated supervision and regulation in connection with its application to establish a branch office in the United States.[10] In addition, the Board has determined that other German banks are subject to home-country supervision on a consolidated basis by the Bundesanstalt Finanzdiestleistungsaufsicht (''BaFin''), the primary regulator of commercial banks in Germany.[11] Bank is supervised by BaFin on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is, and LBBW continues to be, subject to comprehensive supervision and regulation on a consolidated basis by their home-country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.[12] BaFin 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. 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.

Germany is a member of the Financial Action Task Force (''FATF'') and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Germany, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

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

On the basis of the foregoing and all the facts of record, and subject to the commitments made by Bank, GLB, and DSGV, and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.[13] 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 and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[14] For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its finding and decision and 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 January 13, 2009.

Robert deV. Frierson
Deputy Secretary of the Board

10. *See Südwestdeutsche Landesbank Girozentrale*, 83 *Federal Reserve Bulletin* 937 (1997).

11. *See e.g., Deutsche Genossenschafts-Hypothekenbank AG*, 92 *Federal Reserve Bulletin* C61 (2006).

12. *See supra* note 9.

13. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. *See* 12 CFR 265.7(d)(12).

14. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York or its agent, the New York State Banking Department, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

FINAL ENFORCEMENT DECISION ISSUED BY THE BOARD

In the Matter of

G. Craig Chupik, A former Institution-Affiliated Party of PlainsCapital Bank, Dallas, Texas

Docket Nos. 09-37-E-I, 09-37-CMP-I

Order of Prohibition and Order of Assessment of Civil Money Penalty Issued Upon Consent Pursuant to Sections 8(e) and 8(i) of the Federal Deposit Insurance Act, as Amended

WHEREAS, pursuant to sections 8(e), 8(i)(2) and 8(i)(3) of the Federal Deposit Insurance Act, as amended (the ''FDI Act''), 12 U.S.C. §§ 1818(e), (i)(2) and (i)(3), the Board of Governors of the Federal Reserve System (the ''Board of Governors'') issues this combined Order of Prohibition and Order of Assessment of Civil Money Penalty (the ''Order'') upon the consent of G. Craig Chupik, a former employee and institution-affiliated party, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), of PlainsCapital Bank (the ''Bank''), a state member bank;

WHEREAS, Chupik, while employed as a vice president and loan officer at the Bank, allegedly engaged in violations of law, unsafe and unsound banking practices, and breaches of fiduciary duty, including, inter alia, Chupik's (i) receipt of cash fees from prospective bank customers in exchange for recommending the approval of Bank loans to such customers; (ii) withdrawal of proceeds from a relative's line of credit at the Bank for Chupik's personal use; and (iii) check writing activities from his personal accounts.

WHEREAS, by affixing his signature hereunder, Chupik has consented to the issuance of this Order by the Board of Governors and has agreed to comply with each and every provision of this Order, and has waived any and all rights he might have pursuant to 12 U.S.C. § 1818, 12 CFR Part 263, or otherwise (a) to the issuance of a notice of intent to prohibit or notice of assessment of civil money penalty on any matter implied or set forth in this Order; (b) to a hearing for the purpose of taking evidence with respect to any matter implied or set forth in this Order; (c) to obtain judicial review of this Order or any provision hereof; and (d) to challenge or contest in any manner the basis, issuance, terms, validity, effectiveness, or enforceability of this Order or any provision hereof.

NOW THEREFORE, prior to the taking of any testimony or adjudication of or finding on any issue of fact or law implied or set forth herein, and without this Order constituting an admission by Chupik of any allegation made or implied by the Board of Governors in connection with this proceeding, and solely for the purpose of settlement of this proceeding without protracted or extended hearings or testimony:

IT IS HEREBY ORDERED, pursuant to sections 8(e), (i)(2) and (i)(3) of the FDI Act, 12 U.S.C. §§ 1818(e), (i)(2) and (3), that:

1. Chupik, without the prior written approval of the Board of Governors and, where necessary pursuant to section 8(e)(7)(B) of the FDI Act, 12 U.S.C. § 1818(e)(7)(B), another federal financial institutions regulatory agency, is hereby and henceforth prohibited from:
   (a) participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), including, but not limited to, any insured depository institution or any holding company of an insured depository institution;
   (b) soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A);
   (c) violating any voting agreement previously approved by any federal banking agency; or
   (d) voting for a director, or serving or acting as an institution-affiliated party, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), such as an officer, director or employee, in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A).

IT IS HEREBY FURTHER ORDERED, pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i), that:

2. Chupik shall forfeit and pay a civil money penalty in the amount of $20,000.
3. The civil money penalty paid by Chupik pursuant to this Order shall be remitted in full prior to the date this Order becomes effective, payable to ''the Board of Governors of the Federal Reserve System'' and forwarded with an executed copy of this Order to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC, 20551, or, alternatively, by Fedwire transfer to the Federal Reserve Bank of Richmond, ABA No. 05 1000033, beneficiary, Board of Governors of the Federal Reserve System. The Board of Governors or the Federal Reserve Bank of Richmond on its behalf shall remit the funds to the United States Treasury as required by statute.
4. No portion of the penalty paid pursuant to this Order shall be, directly or indirectly, paid, advanced, reimbursed or otherwise funded by Bank.
5. All communications regarding this Order shall be addressed to:
   (a) Richard M. Ashton, Esq.
   Deputy General Counsel
   Board of Governors of the Federal Reserve System
   20th & C Sts. N.W.,
   Washington, DC 20551
   (b) Mr. G. Craig Chupik
   5109 Birchman Ave.
   Fort Worth, TX 76107
   With a copy to:
   David Reed
   Meadows Collier Reed Cousins & Blau LLP
   3700 Bank of America Plaza
   901 Main Street
   Dallas, TX 75202

6. Any violation of this Order shall separately subject Chupik to appropriate civil or criminal penalties, or both, under sections 8(i) and (j) of the FDI Act, 12 U.S.C §§ 1818(i) and (j).
7. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, or any other federal or state agency or department, from taking any other action affecting Chupik; provided, however, that the Board of Governors shall not take any further action against Chupik relating to the matters addressed by this Order based upon facts presently known by the Board of Governors.
8. Each provision of this Order shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board of Governors.

By order of the Board of Governors of the Federal Reserve System, effective this 19th day of March, 2009.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

JENNIFER J. JOHNSON
Secretary of the Board

(signed)

G. Craig Chupik