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# Legal Developments: Second Quarter, 2010

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## ORDER ISSUED UNDER BANK HOLDING COMPANY ACT

### ORDER ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

*City Holding Company  
Charleston, West Virginia*

#### Order Approving the Acquisition of Additional Shares of a Bank Holding Company and Determination on a Financial Holding Company Election

City Holding Company (“City Holding”), 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<sup>1</sup> to increase its ownership interest from 4.9 percent to 7.5 percent of the voting shares of First United Corporation (“First United”) and thereby increase its indirect interest in First United’s subsidiary bank, First United Bank & Trust (“First Bank”), both of Oakland, Maryland. City Holding 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.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (74 *Federal Register* 69,109 (2009)). 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.

City Holding, with total banking assets of approximately \$2.6 billion, controls one depository institution, City National Bank of West Virginia (“City Bank”), Charleston, West Virginia, that operates in West Virginia, Ohio, and Kentucky. City Bank is the fifth largest insured depository institution in West Virginia, controlling deposits of approximately \$1.9 billion, which represent 6.7 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).<sup>3</sup>

First United, with total assets of approximately \$1.7 billion, is the 17th largest insured depository institution in Maryland. First Bank operates in Maryland and West Virginia and controls deposits of approximately \$267 million in West Virginia. If City Holding were deemed to control First United on consummation of the proposal, City Holding would become the third largest banking organization in West Virginia, controlling approximately \$2.2 billion in deposits, which would represent 7.7 percent of state deposits.

City Holding has stated that it does not propose to control or exercise a controlling influence over First United and that its indirect investment in First Bank also would be a noncontrolling investment. In this light, City Holding 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 controlling influence over another bank holding company or bank for purposes of the BHC Act (“Passivity Commitments”).<sup>4</sup> For example, City Holding has committed not to exercise or attempt to exercise a controlling influence over the management or policies of First United or any of its subsidiaries; not to have or seek to have any employee or representative of City Holding or its affiliates serve as an officer, agent, or employee of First United or any of its subsidiaries; and not to seek or accept representation on the board of directors of First United or any of its subsidiaries. City Holding also has committed not to enter into any agreement with First United or any of its subsidiaries that substantially limits the discretion of First United’s management over major policies or decisions.

Based on these considerations and all the other facts of record, the Board has concluded that City Holding would not acquire control of, or have the ability to exercise a controlling influence over, First United or First Bank through the proposed acquisition of the First United’s voting shares. The Board notes that the BHC Act requires City Holding to file an application and receive the Board’s approval before the company could directly or indirectly

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1. 12 U.S.C. § 1842.

2. 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

3. Asset data are as of June 30, 2009; statewide deposit and ranking data also are as of June 30, 2009, and reflect merger and acquisition

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activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. The commitments made by City Holding are set forth in the appendix.

acquire additional shares of First United or attempt to exercise a controlling influence over First United or First Bank.<sup>5</sup>

### 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.<sup>6</sup>

City Bank and First Bank compete directly in two banking markets: the greater Washington, D.C. area banking market (“Washington banking market”) and the Martinsburg, West Virginia banking market (“Martinsburg banking market”). The Board has reviewed carefully the competitive effects of the proposal in 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 market (“market deposits”) controlled by City Bank and First Bank;<sup>7</sup> 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”);<sup>8</sup> other characteristics of the market; and the Passivity Commitments that City Holding made to the Board with respect to First United and First Bank.

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, 2009, 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 less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice (“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 for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

### A. Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Washington banking market.<sup>9</sup> On consummation of the proposal, the market would remain moderately concentrated as measured by the HHI. The change in the HHI in the market would be consistent with Board precedent and the thresholds in the DOJ Guidelines, and a number of competitors would remain.<sup>10</sup>

### B. Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have on the Martinsburg banking market warrant a detailed review.<sup>11</sup> In this banking market, the concentration level on consummation of the proposal would exceed the threshold levels in the DOJ Guidelines. City Bank is the fourth largest depository institution in the market, controlling \$113.98 million in deposits, which represents 11.1 percent of market deposits. First Bank is the third largest depository institution in the market, controlling \$113.99 million in deposits, which also represents 11.1 percent of market deposits. If considered a combined organization on consummation of the proposal, City Bank and First Bank would be the second largest depository organization in the Martinsburg banking market, controlling \$228 million in deposits, which would represent approximately 22.2 percent of market deposits. The proposal would exceed the DOJ Guidelines because the HHI for the Martinsburg banking market would increase 246 points to 2046. In this light, consummation of the proposal would raise competitive issues in the Martinsburg banking market for the combined organization.

After careful analysis of the record, however, the Board has concluded that no significant reduction in competition is likely to result from City Holding’s proposed indirect investment in First Bank. Of particular significance in this case are the structure of the proposed investment and the Passivity Commitments that City Holding has provided to the Board, which are designed to limit the ability of City Holding to use its proposed investment to engage in any anticompetitive behavior. The structure of the Martinsburg banking market, the number of competitors in the market, and the market’s record of recent entry also indicate that

9. The Washington banking market is defined as the Washington, DC-MD-VA Rand McNally Area (RMA); the non-RMA portions of Calvert, Charles, Frederick, and St. Mary’s counties in Maryland; the non-RMA portions of Fauquier and Loudoun counties in Virginia; the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia; and Jefferson County, West Virginia.

10. If City Holding were deemed to control First United, City Holding would be the 45th largest depository institution in the market, controlling deposits of \$164 million, which would represent less than 1 percent of market deposits. The HHI would increase by less than 1 point to 1134.

11. The Martinsburg banking market is defined as Berkeley County, West Virginia, excluding the portion of that county included in the Hagerstown RMA.

the market concentrations, as measured by the HHI, overstate the competitive effects of the proposal.

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.

The Board has concluded, after careful analysis of the entire record, that no significant reduction in competition will likely result from City Holding's proposed minority investment in First United. As noted, City Holding has committed not to exercise a controlling influence over First United or First Bank and not to seek or accept representation on the board of directors of First United or First Bank. City Holding also has committed not to acquire or seek to acquire nonpublic financial information from First United or First Bank. These commitments are designed to prevent anticompetitive behavior that otherwise might occur through either influencing the behavior of First United or First Bank or the coordination of City Holding's activities with those of First United or First Bank. In addition, there are no legal, contractual, or statutory provisions that would otherwise allow City Holding to have any access to financial information of First United or First Bank beyond the information already available to it as a shareholder with less than a 10 percent interest. These limitations restrict City Holding's access to confidential information that could enable it to engage in anticompetitive behavior in the Martinsburg banking market with respect to First 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 Martinsburg banking market. In addition to City Bank and First Bank, ten other bank competitors, including two competitors with market shares of at least 20 percent each, provide additional sources of banking services to the market. The Board also notes that the market includes two community credit unions with broad membership criteria that include most of the residents in the market, offer a wide range of consumer banking products, and operate at least one street-level branch.<sup>12</sup> The market also appears relatively attractive for entry. There has been substantial recent entry into the Martinsburg banking market, with four banks entering the market within the last five years.

12. The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. See *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); *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 City Bank and First Bank were considered as a combined organization on consummation of the proposal, the HHI for the Martinsburg banking market would increase 236 points to 1966 if the deposits of the credit union are weighted at 50 percent.

### 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 City Holding.

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 considered carefully the financial factors of the proposal. City Holding and City Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction would be funded from City Holding's existing cash reserves. Based on its review of the record, the Board finds that City Holding has sufficient financial resources to effect the proposal and that the financial resources of City Holding and its subsidiaries would not be adversely affected by the proposal.

The Board also has considered the managerial resources of City Holding, First United, 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 bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws.

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”).<sup>13</sup> The Board has carefully considered the convenience and needs factor and the CRA performance records of City Bank and First 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.<sup>14</sup> City Bank and First Bank received “satisfactory” ratings at their most recent examinations for CRA performance by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, as of November 2, 2009, and July 6, 2009, 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 City Bank and First Bank are consistent with approval of the proposal.

### FINANCIAL HOLDING COMPANY ELECTION

As noted, City Holding has elected to become a financial holding company in connection with the proposal. City Holding has certified that City Bank is well capitalized and well managed and has provided all the information required under the Board’s Regulation Y.<sup>15</sup> Based on all the facts of record, the Board has determined that City Holding’s election is effective as of the date of this order.

### 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 City Holding with the conditions imposed in this order and the commitments made to the Board in connec-

tion 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 June 9, 2010.

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

ROBERT DEV. FRIERSON  
*Deputy Secretary of the Board*

## Appendix

### Passivity Commitments

City Holding Company (“City Holding”), Charleston, West Virginia, will not, without the prior approval of the Board of Governors of the Federal Reserve System (“Board”) or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of First United Corporation (“First United”), Oakland, Maryland, or any of its subsidiaries;
2. Have or seek to have a representative of City Holding serve on the board of directors of First United or any of its subsidiaries;
3. Have or seek to have any employee or representative of City Holding serve as an officer, agent, or employee of First United or any of its subsidiaries;
4. Take any action that would cause First United or any of its subsidiaries to become a subsidiary of City Holding;
5. Acquire or retain shares that would cause the combined interests of City Holding and its officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of First United or any of its subsidiaries;<sup>1</sup>
6. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of First United or any of its subsidiaries;
7. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of First United or any of its subsidiaries;
8. Attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities, including the location of any offices or branches or their hours of operation, etc.; or any similar activities or decisions of First United or any of its subsidiaries;
9. Dispose or threaten to dispose (explicitly or implicitly)

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 75 Federal Register* 11642 at 11665 (2009).

15. *See* 12 CFR 225.82(b).

1. City Holding is required to file an application and receive the Board’s approval pursuant to section 3(a)(3) of the BHC Act before increasing its ownership interest in First United above 7.5 percent.



- of shares of First United in any manner as a condition of or inducement to specific action or non-action by First United or any of its subsidiaries;
10. Enter into any other banking or nonbanking transactions with First United or any of its subsidiaries, except that City Holding may establish and maintain deposit accounts with First United, 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 First United; and
  11. Acquire or seek to acquire any nonpublic financial information of First United or any of its subsidiaries, beyond the information already available to it as a shareholder of First United. City Holding also confirms that there are no legal, contractual, or statutory provisions that would allow it or its subsidiaries to have any access to financial information of First United or its subsidiaries beyond the information available to shareholders.

The terms used in these commitments have the same meanings as the terms set forth in the BHC Act and the Board's Regulation Y.

## ORDER ISSUED UNDER BANK MERGER ACT

### *Banco Popular de Puerto Rico Hato Rey, Puerto Rico*

#### Order Approving the Merger of Banks and the Establishment of Branches

Banco Popular de Puerto Rico ("Banco Popular"),<sup>1</sup> Hato Rey, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> ("Bank Merger Act") to acquire assets and assume liabilities of Westernbank Puerto Rico ("Westernbank"), Mayagüez, both of Puerto Rico. Banco Popular also proposes to establish and operate branches at the locations of the acquired branches of Westernbank.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Westernbank and has scheduled the sale of certain assets and the transfer of certain liabilities, of Westernbank for April 30, 2010. The FDIC has recommended immediate action by the Board to prevent the probable failure of Westernbank. On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act<sup>3</sup> to safeguard the depositors of Westernbank. Accordingly, public notice of the application and opportunity for comment is not required by the Bank Merger Act.

1. Banco Popular is a subsidiary of Popular, Inc., San Juan, Puerto Rico.

2. 12 U.S.C. § 1828(c).

3. 12 U.S.C. § 1828(c)(3).

Banco Popular, with total assets of approximately \$23.3 billion, operates in Puerto Rico, the U.S. Virgin Islands, and New York.<sup>4</sup> Banco Popular is the largest insured depository institution in Puerto Rico, controlling deposits of approximately \$17 billion, which represent 27.4 percent of the total amount of deposits of insured depository institutions in the Commonwealth ("total deposits").

Westernbank operates only in Puerto Rico where it is the third largest insured depository institution, controlling deposits of approximately \$10.2 billion. On consummation of the proposal, Banco Popular would remain the largest insured depository institution in Puerto Rico, controlling deposits of approximately \$19.5 billion, which represent 31.4 percent of total deposits.<sup>5</sup>

### COMPETITIVE CONSIDERATIONS

The Board has considered carefully the competitive effects of the proposal in light of the facts of record. The Bank Merger 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 Bank Merger 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 transaction in meeting the convenience and needs of the community served.<sup>6</sup>

Banco Popular and Westernbank directly compete in all four banking markets in Puerto Rico. 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 financial condition of Westernbank and the fact that the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico ("Puerto Rico OCFI") has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Westernbank, has selected Banco Popular's bid for Westernbank in accordance with the least-cost resolution requirements in the Federal Deposit Insurance Act<sup>7</sup> and eliminated more costly proposals. The Board also has considered the resulting loss of Westernbank as an independent competitor in the banking markets if this transaction is

4. Asset data are as of December 31, 2009, and deposit and ranking data are as of June 30, 2009. For purposes of this order, insured depository institutions include commercial banks. No savings associations operate in Puerto Rico.

5. In the proposed transaction, Banco Popular would assume only \$2.5 billion of Westernbank's deposits.

6. 12 U.S.C. § 1828(c)(5).

7. The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC's expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the deposit insurance fund of all possible methods. See 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k).

not consummated, as well as various measures of competition and market concentration, and other characteristics of the markets.

Under the proposal, Banco Popular would purchase assets and assume liabilities of Westernbank and thereby merge Westernbank's businesses into a viable ongoing concern with demonstrated capital strength and management capability. Banco Popular's proposal would continue the availability of credit opportunities and banking services for the customers and communities that Westernbank served and avoid serious economic disruption in Puerto Rico. The FDIC actively solicited bids for Westernbank and selected Banco Popular's proposal under the procedures specified by Congress in the Federal Deposit Insurance Act for resolving failed banks.<sup>8</sup> The FDIC considered this proposal in light of competing proposals submitted by other bidders and determined that Banco Popular's bid represented the lowest cost to the Deposit Insurance Fund. On this basis, the Banco Popular proposal is the only means before the Board of achieving the public benefits discussed above.

Under these circumstances, and after careful consideration of all the facts of record, the Board concludes that the anticompetitive effects of this proposal in the relevant markets are clearly outweighed in the public interest by the probable effect of the Banco Popular proposal in meeting the convenience and needs of the communities to be served in Puerto Rico.

#### *FINANCIAL AND MANAGERIAL RESOURCES AND FUTURE PROSPECTS*

The Bank Merger 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 supervisory and examination information from the Puerto Rico OCFI and the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including substantial information provided by Banco Popular.

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 significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial resources of the organizations involved in the proposal.

Banco Popular is well capitalized and would remain so on consummation of the proposal. In addition, the parent holding company of Banco Popular, Popular Inc., recently raised in a public offering approximately \$1.1 billion in additional capital, of which a sufficient portion will be downstreamed to Banco Popular to effect this transaction. Based on its review of the record in this case, the Board finds that Banco Popular has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of assets and assumption of liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of Banco Popular. The Board has reviewed the examination records of Banco Popular, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organizations and their records of compliance with applicable banking law and anti-money-laundering laws. The Board also has considered Banco Popular's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Banco Popular are consistent with approval under the Bank Merger Act, as are the other statutory factors.

#### *CONVENIENCE AND NEEDS CONSIDERATIONS*

In acting on a proposal under the Bank Merger 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").<sup>9</sup> Banco Popular received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of September 15, 2008. Westernbank received a "satisfactory" rating at its most recent CRA performance evaluations by the FDIC, as of July 1, 2007. After consummation of the proposal, Banco Popular plans to implement its CRA policies at the branches and acquired consumer lending operations of Westernbank.

As noted, the Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Westernbank. Banco Popular has represented that consummation of the proposal would allow it to provide a broader range of financial products and services to the customers of Westernbank. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of

8. See 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k).

9. 12 U.S.C. §§ 2901 et seq.

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 facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act. The Board's approval is specifically conditioned on compliance by Banco Popular with the commitments made to the Board in connection with the application and the conditions imposed in this order. These commitments and conditions 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 transaction may be consummated immediately but in no event later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective April 30, 2010.

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

ROBERT DEV. FRIERSON  
*Deputy Secretary of the Board*

## ORDER ISSUED UNDER INTERNATIONAL BANKING ACT

### *National Agricultural Cooperative Federation Seoul, Republic of Korea*

#### Order Approving Establishment of a Representative Office

National Agricultural Cooperative Federation ("NACF"), Seoul, Korea, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA<sup>1</sup> 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 comment, has been published in a newspa-

per of general circulation in New York, New York (*New York Post*, March 8, 2010). The time for filing comments has expired, and all comments received have been considered.

NACF, with total consolidated assets of approximately \$251 billion, and banking business assets of approximately \$168 billion, is a special-purpose organization created by the Korean government that acts as an umbrella organization for Korean agricultural cooperatives.<sup>2</sup> NACF conducts a variety of financial and nonfinancial activities, including banking, insurance, agricultural marketing, agricultural supply, and education and support services. NACF conducts banking activities through an unincorporated banking unit, which would rank as one of the largest banks in Korea, by asset and deposit size. The proposed representative office would be NACF's only direct office outside Korea.<sup>3</sup> NACF offers a broad range of financial services, including the provision of specialized agricultural and general commercial credit and banking services and the sale of life insurance. NACF is entirely owned by its member agricultural cooperatives, which include 1,102 regional cooperatives and 82 commodity cooperatives, representing nearly all of the farmers in Korea. No shareholder, directly or indirectly, owns 5 percent or more of the voting shares of NACF.

The proposed representative office would act as liaison between NACF and its U.S. customers and would engage in other representational activities, including soliciting purchasers of loans, parties to contract with NACF for the servicing of NACF loans, and other banking business (except for deposits or deposit-type liabilities); and conducting research.<sup>4</sup> The proposed office would also solicit loans in principal amounts of \$250,000 or more and, in connection with those loans, would assemble credit information, make property inspections and appraisals of property, secure title information, prepare loan applications, and make recommendations.

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home-country

2. Asset and ranking data are as of March 31, 2010.

3. Through a Korean nonbanking subsidiary, NACF has a U.S. subsidiary that engages primarily in agricultural market research, marketing Korean agricultural products, and other nonbanking activities. NACF has similar establishments in Tokyo and Beijing.

4. 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)).

1. 12 U.S.C. § 3107(a).

supervisor.<sup>5</sup> The Board also considers additional standards set forth in the IBA and Regulation K.<sup>6</sup> The Board will consider that the supervision standard has been met if 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. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.<sup>7</sup> This application has been considered under the lesser standard.

As noted above, NACF engages directly in the business of banking outside the United States.<sup>8</sup> NACF has provided the Board with the information necessary to assess the application through submissions that address the relevant issues. At the proposed representative office, NACF may engage only in activities permissible for a representative office, which include the proposed customer-liaison, soliciting, marketing, and administrative activities noted above.<sup>9</sup>

With respect to supervision by home-country authorities, the Board has considered that the unincorporated banking unit of NACF is supervised by Korea's Financial Supervisory Service ("FSS"). The Board previously has determined that, in connection with applications involving other Korean banks, those banks were subject to comprehensive

supervision on a consolidated basis by the FSS.<sup>10</sup> The banking unit of NACF is supervised on substantially the same terms and conditions as those other financial institutions, with additional oversight of the banking unit and of NACF as a whole by other governmental bodies related to NACF's status as a specialized agricultural cooperative.<sup>11</sup> The FSS does not have supervisory responsibility for NACF as a whole. However, the FSS has authority to limit transactions by NACF's banking unit with other NACF business units and to obtain information from those units.<sup>12</sup>

Based on all the facts of record, it has been determined that NACF 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 and the supervision of NACF's banking unit by FSS.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.<sup>13</sup> The FSS has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of NACF, taking into consideration NACF's 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. NACF 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.

Korea became a member of the Financial Action Task Force ("FATF") on October 14, 2009, and subscribes to the FATF's recommendations regarding measures to combat money laundering and international terrorism. In accordance with those recommendations, Korea has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit

5. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision 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 the 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. No single factor is essential, and other elements may inform the Board's determination.

6. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank's home-country supervisor has consented to the establishment of the office; 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. See also *Standard Chartered Bank*, 95 *Federal Reserve Bulletin* B98 (2009).

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

8. Although not incorporated as a bank, NACF meets the definition of "foreign bank" in the IBA. Foreign bank is defined as "any company organized under the laws of a foreign country ... which engages in the business of banking ..." (12 U.S.C. § 3101(7)).

9. See *supra* note 4.

10. The FSS is the executive body of the Financial Services Commission ("FSC," formerly the Financial Supervisory Commission), which is responsible for promulgating supervisory regulations, making policy decisions about supervision, and imposing sanctions on Korean financial institutions. The FSS is responsible for the supervision of Korean financial institutions, including overseas offices, pursuant to regulations promulgated by the FSC. See *Shinhan Financial Group Co., Ltd.*, 90 *Federal Reserve Bulletin* 85 (2004); *Woori Finance Holdings Co., Ltd.*, 89 *Federal Reserve Bulletin* 436 (2003).

11. NACF is supervised by the Ministry for Food, Agriculture, Forestry and Fisheries, which inspects each NACF unit, other than the banking unit, over the course of a three-year schedule. Additionally, NACF is subject to periodic on-site examination of all its businesses by the Korean National Assembly's Committee of Agriculture, Forestry and Ocean in connection with its oversight of the Korean agricultural industry.

12. The Korean national legislature is considering a proposal to establish NACF's banking unit as a separate legal entity that would remain a subsidiary of NACF ("separation plan"). Under the separation plan, NACF's banking subsidiary would be subject, as a separate legal entity, to consolidated supervision by the FSS on substantially the same terms and conditions as other banks in Korea that the Board has determined to be subject to comprehensive supervision. NACF expects the separation plan to be implemented by the end of 2011.

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



activities. Money laundering is a criminal offense in Korea, and financial services businesses are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. NACF has policies and procedures to comply with those laws and regulations, and these policies and procedures are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about NACF's operations, the restrictions on disclosure in relevant jurisdictions in which NACF operates have been reviewed and relevant government authorities have been communicated with regarding access to information. NACF has committed to make available to the Board such information on the operations of NACF and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, NACF has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the FSS may share information on NACF'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 NACF has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, NACF's application to establish the proposed 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.<sup>14</sup> Should any restrictions on access to information on the operations or activities of NACF and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by NACF or its affiliates with applicable federal statutes, the Board may require termination of any of NACF's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by NACF with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>15</sup> For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with this decision and, as such, may be enforced in proceedings under applicable law.

14. 12 CFR 265.7(d)(12).

15. 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 NACF in accordance with any terms or conditions that it may impose.

By order, approved pursuant to authority delegated by the Board, effective June 29, 2010.

ROBERT DEV. FRIERSON  
*Deputy Secretary of the Board*

## FINAL ENFORCEMENT DECISION ISSUED BY THE BOARD

### IN THE MATTER OF

*Antonio Garcia-Adanez,*  
*A Former Institution-Affiliated Party of*

*Standard Chartered Bank International*  
*(Americas) Limited,*  
*An Edge corporation subsidiary of*

*Standard Chartered Bank,*  
*London, United Kingdom*

Docket No. 10-057-E-I

### Order of Prohibition Issued upon Consent Pursuant to Section 8(e) of the Federal Deposit Insurance Act, as Amended

WHEREAS, pursuant to sections 8(b)(3), 8(e) and 8(i)(3) of the Federal Deposit Insurance Act, as amended (the "FDI Act"), 12 U.S.C. §§ 1818(e) and (i)(3), the Board of Governors of the Federal Reserve System (the "Board of Governors") issues this Order of Prohibition (the "Order") upon the consent of Antonio Garcia-Adanez ("Garcia"), a former employee and institution-affiliated party, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), of Standard Chartered Bank International (Americas) Ltd. ("SCBI"), at all relevant times an Edge corporation organized under Section 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.);

WHEREAS, Garcia, while employed as a private banking relationship manager at SCBI in Miami, Florida, allegedly engaged in violations of law, unsafe and unsound banking practices, and breaches of fiduciary duty that have caused substantial losses to SCBI, including, *inter alia*, manipulating the account statements of SCBI clients to misrepresent client investments, obligations and authorizations.

WHEREAS, by affixing his signature hereunder, Garcia 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 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 Garcia 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(b)(3), 8(e) and (j)(3) of the FDI Act, 12 U.S.C. §§ 1818(b)(3), (e) and (j)(3), that:

1. Garcia, 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, any holding company of an insured depository institution, any subsidiary of such holding company, any foreign bank, or any Edge corporation organized under Section 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.);
  - 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.

2. 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 Streets NW  
Washington, DC 20551
  - b. Mr. Antonio Garcia-Adanez  
3162 Commodore Plaza  
Miami, Florida 33133  
With a copy to:  
Martin B. Goldberg, Esq.  
Lash & Goldberg LLP  
100 Southeast Second Street  
Suite 1200  
Miami, Florida 33131
3. Any violation of this Order shall separately subject Garcia 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).
4. 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 Garcia; provided, however, that the Board of Governors shall not take any further action against Garcia relating to the matters addressed by this Order based upon facts presently known by the Board of Governors.
5. 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 13th day of May, 2010.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

JENNIFER J. JOHNSON  
*Secretary of the Board*  
(signed)  
Antonio Garcia-Adanez