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Legal Developments: Fourth Quarter, 2012

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Mitsubishi UFJ Financial Group, Inc.
Tokyo, Japan

The Bank of Tokyo-Mitsubishi UFJ, Ltd.
Tokyo, Japan

UnionBanCal Corporation
San Francisco, California

Order Approving the Acquisition of a Bank Holding Company and the Merger of Bank Holding Companies
FRB Order No. 2012-12 (November 14, 2012)

Mitsubishi UFJ Financial Group, Inc. (“MUFG”) and its wholly owned subsidiaries, The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”) and UnionBanCal Corporation (“UnionBanCal” and, collectively with MUFG and BTMU, “Applicants”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Pacific Capital Bancorp (“Pacific Capital”) and thereby indirectly acquire its subsidiary bank, Santa Barbara Bank & Trust, N.A. (“SBBT”), both of Santa Barbara, California. In addition, UnionBanCal has requested the Board’s approval under section 3 of the BHC Act to merge with Pacific Capital.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*77 Federal Register* 23249 (April 18, 2012)). 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.

MUFG, with total consolidated assets of approximately \$2.8 trillion, is the largest banking organization in Japan.³ MUFG engages in banking activities in the United States through BTMU and Mitsubishi UFJ Trust and Banking Corporation (“MUTB”), also of Tokyo.⁴ BTMU controls UnionBanCal and operates branches, an agency, and representative offices

¹ 12 U.S.C. § 1842.

² After the transaction, Applicants plan to merge SBBT with and into UnionBanCal’s only subsidiary depository institution, Union Bank N.A. (“Union Bank”), San Francisco. The Office of the Comptroller of the Currency (“OCC”) has approved the proposed merger of SBBT with and into Union Bank, pursuant to the Bank Merger Act and the National Bank Act. 12 U.S.C. § 1828(c) and 12 U.S.C. § 215a.

³ National deposit, asset, and ranking data are as of June 30, 2012.

⁴ MUFG also owns a noncontrolling interest in Morgan Stanley, New York, New York.

in several states.⁵ MUTB operates a branch and controls Mitsubishi UFJ Trust & Banking Corporation (U.S.A.) (“MUTB USA”), both of New York, New York. MUFG controls deposits of approximately \$63.7 billion in the United States,⁶ which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ MUFG and BTMU are qualifying foreign banking organizations and on consummation of the proposal would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.⁸

UnionBanCal, with total consolidated assets of approximately \$87.9 billion, is the 20th largest depository organization in the United States, controlling deposits of approximately \$63.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Union Bank operates branches in California, Oregon, Texas, and Washington, and one branch in Illinois and in New York. Union Bank is the fourth largest insured depository organization in California, controlling deposits of approximately \$53.4 billion, which represent 6.0 percent of the total amount of deposits of insured depository institutions in the state.⁹

Pacific Capital, with total consolidated assets of approximately \$5.9 billion, controls SBBT, which operates only in California. SBBT is the 19th largest insured depository institution in California, controlling deposits of \$4.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

On consummation of the proposal, MUFG would control deposits of approximately \$68.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Union Bank would become the 17th largest depository organization in the United States, with consolidated deposits of approximately \$68.6 billion. In California, Union Bank would remain the fourth largest depository organization, controlling deposits of approximately \$58.1 billion, representing approximately 6.6 percent of deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰ The Board has considered the competitive effects of the proposal in light of all the facts of record. UnionBanCal and Pacific Capital compete directly in 10 banking markets in California.

⁵ BTMU operates branches in California, Illinois, and New York; an agency in Texas; and representative offices in California, the District of Columbia, Georgia, Kentucky, Minnesota, New Jersey, Texas, and Washington. In California, BTMU has a branch in Los Angeles and a representative office in San Francisco.

⁶ National deposit data include deposits controlled by MUFG’s depository institution subsidiaries that are insured by the Federal Deposit Insurance Corporation (“FDIC”). If deposits held in branches that are not insured by the FDIC are included, MUFG controls deposits of approximately \$132 billion in the United States.

⁷ MUFG also engages in nonbanking activities, including securities underwriting and dealing, in the United States through various subsidiaries.

⁸ 12 CFR 211.23(a).

⁹ State deposit, asset, and ranking data are as of June 30, 2011.

¹⁰ 12 U.S.C. § 1842(c)(1).

A. Competitive Effects in Banking Markets

The Board has reviewed the competitive effects of the proposal in those banking markets. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in the depository institutions in the markets (“market deposits”) controlled by UnionBanCal and Pacific Capital,¹¹ the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Competitive Review Guidelines (“DOJ Bank Merger Guidelines”),¹² and other characteristics of the markets.

Banking Markets within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the DOJ Bank Merger Guidelines in nine of the ten banking markets in which UnionBanCal and Pacific Capital’s subsidiary banks compete directly.¹³ On consummation of the proposal, two markets would remain highly concentrated and seven markets would remain moderately concentrated, as measured by the HHI. The change in HHI in the two highly concentrated markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In the seven moderately concentrated markets, the change in HHI also would be consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The structural effects of the proposal in the Lompoc, California banking market warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines.¹⁴ Union Bank is the fifth largest of eight depository institutions in the market and controls deposits of \$45.4 million, representing 11.7 percent of market deposits. SBBT is the largest depository institution in the market and controls deposits of \$111.9 million, representing 28.9 percent of market deposits. On consummation of the proposal, Union Bank would become the largest depository institution in the market, with deposits of \$157.3 million, representing 40.6 percent of market deposits. The HHI for the market would increase 676 points to 2429.

In evaluating the competitive effects of this proposal in the Lompoc banking market, the Board has considered the presence of a large and active credit union operating in the market. CoastHills Federal Credit Union (“CoastHills”), with more than \$540 million in total

¹¹ Deposit and market share data are as of June 30, 2011, adjusted to reflect mergers and acquisitions through April 16, 2012, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹² Under the DOJ Bank Merger 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 would not be challenged (in the absence of other factors indicating anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹³ These banking markets and the effects of the proposal on the concentration of banking resources in them are described in the appendix.

¹⁴ The Lompoc banking market is defined as the City of Lompoc, Mission Hills, Vandenberg Air Force Base, and Vandenberg Village.

deposits, offers open membership to all the residents in the market.¹⁵ It operates three street-level branches in the market, two of which are easily accessible to the general population.¹⁶ CoastHills offers a full range of retail banking products and offers a wide range of business loan products and other banking services. Accordingly, the Board has concluded that deposits controlled by the credit union should be included in market share calculations with a 50 percent weight. Accounting for these weighted deposits, UnionBanCal would control 30.95 percent of market deposits, and the HHI would increase 393 points to 1977 on consummation of the proposal.

A number of circumstances mitigate the potential anticompetitive effects of the transaction. The market would remain balanced and competitive, as evidenced by the number of competitors, the type of competitors, and the market structure.¹⁷ After consummation of the proposal, seven competitors, including CoastHills, would remain in the market. In addition to UnionBanCal, three competitors would each control more than 10 percent of market deposits. CoastHills would control 23.8 percent of market deposits, and two other competitors would control 13.1 percent and 11.7 percent of the market's deposits, respectively. Three other competitors would control between 5 percent and 10 percent of market deposits. In addition, the Lompoc banking market is relatively attractive for entry, as evidenced by recent bank entry and economic characteristics of the market. In 2005, a community bank entered Lompoc from a neighboring market. Since its entry into the Lompoc banking market, the community bank's deposits in the market have increased from \$1 million to \$29 million.

Economic characteristics of the Lompoc banking market also suggest that the market is reasonably attractive for entry. Several local economic development initiatives have recently been completed, are underway, or are proposed. For instance, the Lompoc Valley Medical Center, a 60-bed general acute-care hospital and a 110-bed skilled nursing facility, opened in 2010. In addition, a local community college is scheduled to complete a \$38 million expansion in Lompoc in 2013 that will host the college's police, fire, emergency medical services, and environmental technology programs.¹⁸ These initiatives suggest that the potential for employment growth in the Lompoc banking market is reasonably strong.

The Board concludes that the foregoing considerations, including the number and size of competitors that would remain in the Lompoc banking market after consummation, the structure of the market, and the market's attractiveness for entry, mitigate the transaction's potential for anticompetitive effects.

B. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addi-

¹⁵ CoastHills offers open membership to anyone who lives, works, worships, or attends school in San Luis Obispo County or northern Santa Barbara County, which includes the Lompoc banking market.

¹⁶ The third street-level branch is at the Vandenberg Air Force Base and accessible only to employees of the base.

¹⁷ In addition, an alternative measure of market concentration suggests that the increase in the concentration of the market for small business loans in the Lompoc banking market as a result of the proposal would be smaller than the increase in the concentration in the market for deposits.

¹⁸ The college serves all of northern Santa Barbara County, a portion of eastern San Luis Obispo County, and part of Ventura County and has approximately 1,300 employees. In addition, the Lompoc city council is negotiating the construction of a private space center on city-owned land that could create approximately 1,700 jobs and attract up to 500,000 visitors annually. See santamariatimes.com/news/local/article_00e58bda-5775-11e0-ab45-001cc4c03286.html.

tion, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the 10 banking markets where UnionBanCal and Pacific Capital compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications: financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the company and banks concerned; effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system. Section 3(c) of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁹

The Board has considered all these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comments received on the proposal. In addition, the Board has consulted with the Japanese Financial Services Agency (“JFSA”), the agency with primary responsibility for the supervision and regulation of Japanese banking organizations.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board 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 on the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. The capital levels of MUFG and BTMU exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.²⁰ In addition, UnionBanCal and Union Bank are

¹⁹ 12 U.S.C. § 1842(c)(3)(A).

²⁰ The Board considered the total and tier 1 risk-based capital ratios and the ratio of tier 1 capital to total consolidated assets of both MUFG and BTMU.

well capitalized and would remain so on consummation of the proposed acquisition. MUFG's reported asset-quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. MUFG's earnings performance also is consistent with approval.

The proposed transaction is structured as a cash purchase of shares for a total of approximately \$1.5 billion. UnionBanCal will use existing resources to fund the purchase of shares and has sufficient financial resources to effect the acquisition. Applicants appear to have adequate resources to absorb the costs of the proposal and the proposed integration of the institutions' operations.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, Union Bank, Pacific Capital, and SBBT, 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.²¹

Applicants and Union Bank are all considered to be well managed.²² Union Bank has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions, including its integrations of Frontier Bank and Tamalpais Bank in 2010. Applicants propose to devote significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Applicants would implement UnionBanCal's and Union Bank's risk-management policies, procedures, and controls at the combined organization. Applicants' management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board. Based on all facts of record, the Board has concluded that Applicants have provided adequate assurances of access to any appropriate information the Board may request.

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.

²¹ The Board has consulted with relevant state, federal, and international agencies regarding the assessments by those agencies of the Applicants' programs for compliance with anti-money-laundering laws and will continue to monitor those programs and agency assessments.

²² A commenter asserted that the Swiss Competition Commission ("SCC") is investigating possible manipulation of LIBOR and other rates by traders of various banks, including BTMU. Applicants acknowledged that BTMU has received a questionnaire from the SCC and is cooperating with its investigation. Along with other banks on the rate-setting panels for LIBOR and other interest rates, MUFG and BTMU are subject to investigations by various regulatory bodies in the United States and abroad that have responsibility and authority for investigating allegations of market manipulation activities. The Board is monitoring the course of the investigations and will consider, to the extent of the Board's authority, the findings in those investigations as they develop.

B. Supervision or Regulation on a Consolidated Basis

In evaluating this application and as required by section 3 of the BHC Act, the Board considered whether MUFG, BTMU, and any other foreign bank involved in the acquisition are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.²³

The JFSA is the supervisor of Japanese banking organizations, including holding companies such as MUFG. The Board previously has determined that MUFG, BTMU, and MUTB are subject to comprehensive supervision on a consolidated basis by their home country supervisor.²⁴ MUFG, BTMU, and MUTB continue to be supervised by the JFSA on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board has concluded that MUFG, BTMU, and MUTB continue to be subject to comprehensive supervision on a consolidated basis by their home country supervisor.

C. Convenience and Needs Considerations

Under section 3, 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”).²⁵ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁶ and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁷

The Board has considered all the facts of record, including reports of examination of the CRA performance records of Union Bank and SBBT, data reported by Union Bank and SBBT under the CRA and the Home Mortgage Disclosure Act (“HMDA”),²⁸ other information provided by Applicants, confidential supervisory information, and public comments received on the proposal. Fifteen community groups submitted comments in support of the proposal. Those commenters generally commended Union Bank’s performance under the CRA, particularly its support for community development and small business programs through loans, investments, grants, donated space, and corporate volunteers. Four commenters expressed concerns about Union Bank’s mortgage, small business, and consumer lending records. Those commenters generally asserted that Union Bank had not engaged in an adequate amount of home mortgage lending to LMI and minority borrow-

²³ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii).

²⁴ See *Mitsubishi UFJ Financial Group, Inc.* (Order dated June 14, 2011), 97 Federal Reserve Bulletin 10 (2nd Quar. 2011). See also *Mitsubishi Tokyo Financial Group, Inc.*, 87 Federal Reserve Bulletin 349 (2001) (order involving predecessors to MUFG, BTMU, and MUTB).

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

²⁶ 12 U.S.C. § 2901(b).

²⁷ 12 U.S.C. § 2903.

²⁸ 12 U.S.C. § 2801 *et seq.*

ers. Some of the commenters also criticized Union Bank as failing to meet the needs of small and minority-owned businesses.²⁹

1. Records of Performance Under the CRA

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.³⁰ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.³¹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of Union Bank.*³² Union Bank was assigned an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of June 1, 2009 (“UB Evaluation”).³³ The bank received a “high satisfactory” rating on the lending test and “outstanding” ratings on both the investment and service tests.³⁴ As described in detail below, Union Bank has responded to the credit needs of the entire communities that the bank serves, such as affordable housing for LMI geographies and borrowers, through extensive transactions associated with community development loans, investments, and services, in addition to its direct lending. As noted above, a number of commenters, including community groups and advocates, highlighted programs and efforts of Union Bank that supported the CRA ratings of Union Bank.

In the UB Evaluation, examiners noted that Union Bank’s lending under the CRA focused on small business lending and that the bank offered various special loan programs designed to accommodate small business needs and to foster their development. These programs include the Business Diversity Lending program, which provides easier access to credit for women-owned, minority-owned, and disabled-veteran-owned small businesses, programs related to the Small Business Administration (“SBA”), and programs related to state initiatives.

Union Bank also engages in residential mortgage lending. Union Bank’s primary residential mortgage lending product is a jumbo, interest-only mortgage loan with a low loan-to-value (“LTV”) ratio. In addition, Union Bank offers non-jumbo, adjustable rate mortgages and a non-jumbo, fixed-rate product for LMI borrowers under its Economic

²⁹ One commenter also questioned Union Bank’s efforts in awarding contracts to minority-owned businesses. Although the Board fully supports programs designed to promote equal opportunity in contracting, the comment about contracting practices is beyond the factors the Board is authorized to consider under the BHC Act. See, e.g., *Bank of America Corporation*, 94 Federal Reserve Bulletin C81 (2008).

³⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

³¹ 12 U.S.C. § 2906.

³² As noted above, MUFG indirectly controls MUTB USA, which is a limited-purpose bank for purposes of the CRA. MUTB USA received a “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of December 18, 2006.

³³ The period for the UB Evaluation was January 1, 2005, through December 31, 2008.

³⁴ Union Bank’s performance in California was given considerably more weight than its performance in other states that are part of Union Bank’s assessment area to reflect the fact that 99 percent of the bank’s deposits were booked in branches in California. In reaching their conclusions on Union Bank’s CRA performance, examiners took into account significant housing affordability barriers that exist in California that have an effect on a lender’s ability to originate home mortgage loans to LMI borrowers. Other states included in the evaluation were Oregon and Washington.

Opportunity Mortgage (“EOM”) program,³⁵ which permits higher LTV ratios, higher debt-to-income ratios, and lending to borrowers with limited credit histories. Union Bank’s emphasis on residential mortgage lending has increased since the UB Evaluation. Currently, more than half of Union Bank’s combined commercial, mortgage, and consumer lending portfolio is comprised of residential mortgage loans.³⁶

Union Bank received a “high satisfactory” on the lending test in the UB Evaluation. Examiners stated that the lending test ratings were influenced most by the bank’s small business lending and, to a lesser extent, its home mortgage purchase lending.³⁷ Examiners noted that Union Bank had good lending activity and characterized its distribution of loans among geographies of different income levels as good. Examiners reported that the bank’s distribution of small business loans among businesses of different revenue sizes and geographies was good.³⁸

In evaluating Union Bank’s HMDA-reportable mortgage lending and reaching conclusions regarding the bank’s record of meeting the credit needs of its entire community, examiners took into account the high housing costs in California and noted that those costs present severe challenges for a financial institution to lend to LMI borrowers. Examiners found that the bank’s overall distribution for HMDA-reportable mortgage loans to borrowers of various income levels was poor. However, examiners also noted that Union Bank had developed the EOM program to help address affordable housing and the needs of LMI borrowers and that during the evaluation period, the bank originated 1,613 loans totaling more than \$263 million through the EOM program. Examiners also stated that Union Bank exhibited an adequate geographic distribution of HMDA-reportable mortgage loans.

In addition, examiners gave significant weight to Union Bank’s community development lending activities that provided and supported affordable housing to LMI geographies and borrowers. Examiners commended Union Bank’s \$1.8 billion of community development lending and noted that Union Bank emphasized affordable housing loans, which the examiners identified as meeting an important community need. Examiners noted that Union Bank provided financing for 9,030 units of affordable housing in its full-scope assessment areas during the evaluation period that benefitted LMI geographies or borrowers.

Since the UB Evaluation, the bank has maintained a substantial amount of community development and small business lending. Union Bank represented that it originated approximately \$1.1 billion in community development loans in 2011 in California, Oregon, and Washington. In addition, Union Bank represented that it increased its small business lending through various SBA programs in its assessment areas from \$32.5 million in 2009 to \$93.1 million in 2011.³⁹

³⁵ Union Bank’s EOM product is intended to compete with loans insured by the Federal Housing Administration.

³⁶ As a portfolio lender, Union Bank’s general practice is to retain loans in its portfolio until maturity.

³⁷ Examiners noted that, consistent with Union Bank’s focus on small business lending during the evaluation period, the bank had a low volume of HMDA-reportable home lending activity in its assessment areas.

³⁸ In this context, “small business loans” are loans with original amounts of \$1 million or less that either are secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans. A commenter asserted that Union Bank has not provided sufficient lending to African-American-owned small businesses. The Board reviewed data on Union Bank’s CRA-reportable small business lending in 2008, 2009, 2010, and 2011. The data generally support the findings of examiners regarding Union Bank’s small business lending and indicate that the percentage of the bank’s CRA reportable small business loans that were made in minority census tracts generally approximated or exceeded that of lenders in the aggregate.

³⁹ One commenter asserted that Union Bank’s SBA lending does not benefit very small businesses that need small- to mid-size loans. The commenter asserted that the average size of Union Bank’s SBA 7(a) and 504 program loans is more than \$1 million and that Union Bank has stopped offering SBA Express loans. The Board reviewed data provided by Applicants on Union Bank’s SBA lending. The data indicate that the average size of

In 2011, Union Bank implemented a revised lending strategy intended to increase lending to minorities, in minority residential areas, and in LMI communities. Union Bank represented that it has developed relationships with minority realtor trade organizations and advertises its products in multicultural media across radio, mainstream newspapers, targeted ethnic newspapers, and English and Spanish websites.⁴⁰ The bank also has created the new position of Head of Multicultural & CRA Business Development, added multicultural- and CRA-focused loan officers and sales teams, and increased to 85 the number of brokers approved to originate EOM loans, 9 of whom primarily serve LMI and minority markets.

In addition, Union Bank made several changes to the EOM product in 2011 to make the product more attractive to LMI borrowers. Among other changes, the bank increased the maximum LTV ratio in certain counties, lowered the minimum down payment needed without private mortgage insurance, and raised the maximum borrower income threshold for the EOM program. As discussed below, this revised lending strategy resulted in an increase in Union Bank's lending to minorities, in minority residential areas, and in LMI communities.

Examiners assigned Union Bank an “outstanding” rating under the investment test in the UB Evaluation. During the evaluation period, Union Bank made more than 2,800 investments, including grants and contributions, totaling more than \$379 million. Examiners noted that much of Union Bank’s investments, grants, and contributions were focused on affordable housing for LMI households, and the vast majority of the investments were in tax-credit equity funds that financed projects for more than 1,000 affordable housing units. Examiners commended Union Bank for its innovative program of packaging its investments in Low-Income-Housing Tax Credits (“LIHTC”) into Union Bank Guaranteed Tax Credit Funds and then selling participations in the funds to other financial institutions. Examiners noted that this program enables smaller financial institutions to participate in LIHTC investments and reduces Union Bank’s overall investment balances, thereby allowing the bank to explore new investment opportunities.

Union Bank has maintained a substantial level of community development investments in its assessment areas since the UB Evaluation. Union Bank represented that it has committed approximately \$370 million in CRA-qualified investments to 41 projects since January 2010. In addition, Union Bank represented that it has approved funding for two new investments in small business investment companies and the launch of a new program to support community development financial institutions.

Examiners also assigned an “outstanding” rating under the service test in the UB Evaluation. Examiners found that Union Bank’s overall branch distribution was excellent and that Union Bank’s products and services were readily accessible to geographies and individuals

Union Bank’s SBA 7(a) and 504 loans was approximately \$427,000 in 2011, and the average size of all Union Bank’s SBA program loans was approximately \$308,000. Further, although Union Bank has reduced the number of SBA Express loans it originated from 348 in 2009 to 90 in 2011, Union Bank has increased the number of SBA 7(a) and 504 loans from 29 in 2009 to 212 in 2011. Union Bank represented that the reduction in the origination of SBA Express loans, which carry only a 50 percent guarantee from the SBA, was the result of the bank adjusting its credit policy standards in light of the deteriorating performance of its portfolio during the economic downturn. In addition, data on Union Bank’s CRA-reportable small business lending in 2011 indicate that Union Bank originated or purchased 6,699 loans to businesses in California with gross revenues of \$1 million or less and that these loans averaged approximately \$44,000 each.

⁴⁰ A commenter asserted that Union Bank spent less money advertising in African American media outlets compared with other types of media. The Board reviewed Union Bank’s advertising practices and examination records and consulted with the OCC and Consumer Financial Protection Bureau (“CFPB”), which have responsibility for enforcing the bank’s compliance with fair lending laws. The record does not suggest that Union Bank’s advertising practices are discriminatory.

of different income levels. Examiners commended Union Bank's Cash & Save program, which combines traditional banking products and services with check cashing services to serve LMI individuals who do not typically use traditional banking services.⁴¹ Examiners also reported that Union Bank provided a high level of community development services that had an overall positive impact in all the bank's full-scope assessment areas. In addition, examiners praised Union Bank's leadership efforts in its involvement with the Bank on California program, which helps LMI individuals open bank accounts, and the Community Based Financing program, which assists developing small businesses in gaining access to banking services and capital.

Since the UB Evaluation, Union Bank has maintained a substantial level of community development services in its assessment areas. In 2011, Union Bank expanded the number of branches that offer Cash & Save services from 16 to 29. In addition, the distribution of Union Bank's branches continues to approximate the overall population distribution within its assessment areas.⁴² Further, Union Bank represented that its employees donated more than 53,000 hours of volunteer service in 2011, an increase of more than 175 percent over the bank's total in 2010.

The OCC is conducting a new CRA performance evaluation of Union Bank as of June 4, 2012. The Board has consulted with the OCC regarding the ongoing evaluation.

CRA Performance of SBBT. SBBT received an overall "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of September 11, 2007 ("SBBT Evaluation").⁴³ In the SBBT Evaluation, the bank received "outstanding" ratings on the lending and investment tests and a "high satisfactory" rating on the service test. Examiners reported that SBBT's overall lending activity was excellent and reflected good responsiveness in relation to the credit needs of the bank's assessment areas.⁴⁴ Examiners also noted that SBBT's level of community development loans was excellent. Further, examiners reported that SBBT's distribution of branches provided an excellent response to the needs of LMI geographies and individuals. Examiners also noted that the bank provided a satisfactory level of retail services throughout its assessment areas. In addition, examiners reported that SBBT provided a satisfactory level of community development services that are responsive to community needs throughout its assessment areas. Union Bank expects to

⁴¹ A commenter asserted that the data cited in the UB Evaluation relating to the percentage of Cash & Save customers who successfully transition to traditional bank products were incorrect. Applicants represented that the data cited in the evaluation referred to the percentage of one branch's Cash & Save customers, rather than the overall percentage of the bank's Cash & Save customers. Examiners from the OCC confirmed that the material factor in Union Bank's "outstanding" rating under the service test was that the bank provides alternative banking services through its Cash & Save program and that the conversion of a particular percentage of Cash & Save customers to traditional checking account services was not a critical evaluative factor under the service test.

⁴² A commenter expressed general concern that the proposed acquisition would lead to branch closings. Applicants have stated that they have not made any decisions regarding potential branch closures or consolidations. The Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch and to adopt a policy regarding branch closures. See 12 U.S.C. § 1831r-1; Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)). The Board has reviewed Applicants' branch closing policy in connection with this application and notes that the OCC will continue to review the branch closing record of Union Bank in the course of conducting CRA performance evaluations.

⁴³ Before May 26, 2011, SBBT was named Pacific Capital Bank, N.A. The period for the SBBT Evaluation was January 1, 2003, through December 31, 2006.

⁴⁴ A commenter alleged that SBBT has a long history of issuing high-cost tax refund anticipation loans ("RALs"). SBBT has not originated RALs since 2009, and SBBT sold the business line responsible for issuing RALs in 2010. Applicants represented that Union Bank has no plans to offer RALs after consummation of the proposal.

implement its CRA policies and procedures at the combined organization after the merger of SBBT into Union Bank.

2. HMDA Analysis and Fair Lending Record

The Board has considered the records of Union Bank and SBBT in complying with fair lending and other consumer protection laws. Several commenters cited HMDA data and alleged that Union Bank disproportionately excluded or denied minority and LMI applicants for home mortgage loans. As part of its consideration of Union Bank's compliance with fair lending and other consumer protection laws, the Board has reviewed HMDA data from 2009, 2010, and 2011 reported by Union Bank.

The HMDA data for 2009, 2010, and 2011 indicate that the percentages of Union Bank's total HMDA-reportable applications from and loans to African American, Hispanic, and Asian individuals were below the percentages for lenders in the aggregate in Union Bank's combined assessment areas. For instance, the HMDA data show that in its combined assessment areas in 2010, Union Bank originated 0.9 percent, 3.6 percent, and 5.2 percent of its total HMDA-reportable mortgage loans to African Americans, Hispanics, and Asians, respectively, while lenders in the aggregate originated 2 percent, 9.6 percent, and 14.5 percent of their total HMDA-reportable mortgage loans to African Americans, Hispanics, and Asians, respectively. Union Bank also generally lagged lenders in the aggregate in the percentages of applications from and loans to LMI individuals and borrowers in predominantly LMI areas in its combined assessment areas.

In addition, the HMDA data for 2009, 2010, and 2011 indicate that an above-average proportion of Union Bank's home mortgage applications lack information regarding the applicant's race. For instance, in 2011, 28.5 percent of Union Bank's home mortgage applications in its combined CRA assessment areas lacked information regarding the applicant's race compared with 16.2 percent for lenders in the aggregate.⁴⁵ Union Bank is undertaking efforts to reinforce the training it provides to processors, loan officers, and brokers in order to reinforce the requirement to collect information from loan applicants regarding their race.

A significant portion of Union Bank's HMDA-reportable mortgage loan originations are jumbo, interest-only loans with low LTV ratios.⁴⁶ In contrast to apparent weaknesses in lending evident from the aggregate HMDA data, these data also demonstrate that the percentage of Union Bank's jumbo loan originations to African American and Hispanic borrowers significantly exceeded the percentages for lenders in the aggregate in Union Bank's combined assessment areas in California. For instance, in 2011, approximately 1.6 percent and 9.8 percent of Union Bank's jumbo loan originations were to African American and Hispanic borrowers, respectively, compared with 0.6 percent and 2.7 percent for lenders in the aggregate.

⁴⁵ In 2010, Union Bank did not obtain racially identifying information from 27.4 percent of its loan originations compared with 16.5 percent of lenders in the aggregate. For loans above \$900,000, which approximates the average amount of a Union Bank jumbo loan, Union Bank did not obtain information regarding race on 29 percent of originations in 2010, while lenders in the aggregate did not obtain such information on 25 percent. Union Bank represented that jumbo loan applications lack information regarding race more often than conventional loan applications because a higher proportion of jumbo loan applications are received by phone or mail, and the only method of obtaining the information regarding race is if the customer elects to submit it. Union Bank contends that its greater overall disparity compared with lenders in the aggregate is due to the fact that the majority of Union Bank's loan applications are for jumbo loans.

⁴⁶ For instance, almost 80 percent of Union Bank's lending in the Los Angeles and San Francisco markets in 2010 consisted of jumbo loans.

The HMDA data also reflect overall improvements in the number of mortgage loans the bank originated during 2011 to African Americans, Hispanics, Asians, and individuals residing in predominantly minority and LMI census tracts. In addition, in connection with the revised lending strategy adopted by Union Bank discussed above, the bank's loan originations to minority and LMI borrowers and communities increased from the first quarter of 2011 to the first quarter of 2012. Data provided by the bank indicate that, within this timeframe, its loans to African American, Hispanic, and Asian borrowers increased by 36 percent, 61 percent, and 43, respectively. Loans to African American, Hispanic, and Asian borrowers who are LMI individuals increased by 100 percent, 45 percent, and 218 percent, respectively. Loans to African American, Hispanic, and Asian borrowers in LMI census tracts increased by 200 percent, 86 percent, and 118 percent, respectively.

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Union Bank has excluded or imposed higher costs on any group on a prohibited basis.

Because of the limitations of HMDA data, the Board has considered, along with these data, other information, including examination reports that provide on-site evaluations of compliance with fair lending and other consumer protection laws and regulations by Union Bank. The Board also has consulted with the OCC and CFPB about this proposal and the record of Union Bank with fair lending and other consumer protection laws and regulations since the UB Evaluation.

Examiners noted in the UB Evaluation that they found no evidence of prohibited discriminatory or other illegal credit practices or of substantive violations of fair lending laws. Union Bank is subject to continuous supervision by its supervisory agencies, and it has undergone a number of reviews for compliance with consumer protection and fair lending laws, regulations, and statutes since the UB Evaluation. Such reviews incorporate additional data beyond the HMDA data reported annually and include reviews of loan files, the stated policies and procedures of the institution, and assessments of the bank's actual practices.⁴⁷ The fair lending reviews include assessments of Union Bank's underwriting, pricing, and advertising and marketing programs, and examiners have found no evidence of discouragement or discrimination on any prohibited basis.

The Board has reviewed Union Bank's compliance programs and conferred with the OCC and CFPB regarding Union Bank's programs. Union Bank has taken steps to ensure compliance with fair lending laws, including instituting policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations.⁴⁸ Union Bank's compliance programs include a second-review process, regular internal

⁴⁷ HMDA data are also taken into account in the assessment of a relevant depository institution's record of compliance with the CRA by its primary federal supervisor. Accordingly, the OCC considered HMDA data for Union Bank in the UB Evaluation. As noted above, Union Bank received an "outstanding" CRA rating at its most recent CRA performance evaluation, and examiners found that Union Bank met its CRA obligations through its direct lending efforts, as well as through extensive transactions associated with community development loans, investments, and services.

⁴⁸ A commenter asserted that Union Bank's checking account overdraft practices are unfair. In November 2011, Union Bank agreed to settle a class action lawsuit that alleged that it unfairly sequenced the order in which it posted debit card transactions and ATM withdrawals to customer checking accounts. Pursuant to the settlement, Union Bank agreed to pay \$35 million to checking account holders who were charged overdraft and other fees as a result of the sequencing policies. In August 2010, Union Bank changed its sequencing policy so

examinations, and compliance self-assessments. The bank also provides fair lending training to all newly hired sales and operational staff and conducts annual fair lending training for all employees. Union Bank reviews and manages all complaints with respect to fair lending and unfair, deceptive, or abusive acts and practices.

For its mortgage lending business, Union Bank relies on a wholesale channel of approved mortgage brokers in addition to its in-house retail channel.⁴⁹ Union Bank controls fair lending risks in its wholesale channel through a broker approval process whereby the bank reviews fair lending lawsuits, judgments, or settlements against the broker and requires annual broker certification of compliance with all applicable laws and regulations. The bank also uses contractual provisions under which approved brokers receive a straight percentage of the loan amount regardless of a borrower's race, age, or gender, with the exception that in a small percentage of loans, the broker may choose to receive borrower-paid compensation. To monitor pricing and ensure nondiscriminatory pricing in the wholesale channel, Union Bank performs standard pricing analysis.

In 2011, Union Bank hired a new chief compliance officer and centralized its compliance function by combining its business unit compliance groups with its corporate compliance group. The new, centralized compliance function coordinates compliance activities across business lines and has established enterprise-wide compliance standards. As noted above, these enhancements already have resulted in improvements to compliance with fair lending requirements. Applicants have represented that, on consummation of the proposal, SBBT's compliance function will be integrated into Union Bank's centralized compliance management system.

3. Convenience and Needs of the Communities Served by SBBT

Applicants represent that the proposal will benefit the convenience and needs of the communities currently served by SBBT in several ways. Union Bank intends to offer its treasury management, capital markets, and other services to SBBT's corporate clients. Further, Union Bank expects to enhance SBBT's small business products with longer-term real estate financing and access to SBA products, which currently are not offered by SBBT. In addition, due to increased automation, Union Bank expects to process small business loan applications in approximately half the time that SBBT took to process such applications. Union Bank also intends to extend to SBBT's client base its Business Diversity Lending Program, which, as noted above, provides easier access to credit for women-owned, minority-owned, and disabled-veteran-owned small businesses. In addition, consummation of the proposal would provide customers of Union Bank and SBBT with access to a larger ATM network.

4. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, and confidential supervisory information. Based on the Board's analysis of the HMDA data, evaluation of Union Bank's mortgage lending operations and compliance programs, review of

that debit card transactions and ATM withdrawals are posted from low to high dollar amounts. In addition, Union Bank provides consumer financial education about avoiding overdrafts to its customers with repeat overdrafts.

⁴⁹ In 2010, Union Bank received 59.2 percent of its total home mortgage applications through its wholesale channel. Union Bank's reliance on the wholesale channel was moderately lower in 2011, with 50.4 percent of its applications occurring through that channel. Loan originations closely corresponded to the proportion of applications received by channel, with 59.8 percent and 52.7 percent of originations in 2010 and 2011, respectively, occurring through the bank's wholesale channel.

examination reports, and consultations with the OCC and CFPB, the Board believes that, on balance, the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board also believes that there are opportunities for Union Bank to continue to improve its outreach and mortgage lending to minority and LMI individuals and to borrowers in LMI communities, and the Board will continue to monitor that performance, along with the OCC.

D. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”⁵⁰

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm; availability of substitute providers for any critical products and services offered by the resulting firm; interconnectedness of the resulting firm with the banking or financial system; extent to which the resulting firm contributes to the complexity of the financial system; and extent of the cross-border activities of the resulting firm.⁵¹ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁵²

Analysis of the Financial Stability Impact of this Proposal

In this case, the Board has evaluated the proposal, including considering the metrics noted above, to determine whether the proposal presents a significant risk to the stability of the U.S. banking or financial system. The Board reviewed publicly available data, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

The Board has considered the effect of the proposed acquisition on MUFG’s systemic footprint. Pacific Capital controls approximately 0.05 percent of the total deposits in the United States and ranks between 156th and 200th among U.S. financial institutions in deposits, assets, liabilities, and leverage exposures. Pacific Capital is engaged in traditional commercial banking activities and is not meaningfully interconnected with the rest of the USFS, nor does it engage in any cross-border activities or serve as a significant provider of any critical products or services. As a result of the acquisition, MUFG would remain the 17th largest financial institution in the United States by deposit size, controlling less than

⁵⁰ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

⁵¹ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system (“USFS”).

⁵² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

1 percent of FDIC-insured deposits in the United States.⁵³ MUFG would continue to rank as about the 20th largest financial institution in the United States based on its share of U.S. assets, liabilities, and leverage exposures. MUFG's share of the other metrics relative to the USFS is either commensurate with or far lower than its share of the size-based metrics and would not materially change as a result of the acquisition. The acquisition of Pacific Capital would not introduce additional difficulties in a resolution of MUFG's U.S. or global operations.⁵⁴

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has approved the proposed transaction.⁵⁵ 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 Applicants with all the commitments made to and relied on by the Board in connection with the application and on receipt of all other regulatory approvals. 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 proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 14, 2012.

⁵³ Taking into account uninsured deposits controlled by MUFG's U.S. branches, MUFG would remain the ninth largest U.S. financial institution in the United States after consummation.

⁵⁴ MUFG has \$2.57 trillion in global assets, and its global operations are concentrated outside the United States and on providing Japanese corporate clients and other multinational, nonfinancial firms with loans and other commercial banking services in the countries in which those entities operate. In evaluating MUFG's U.S. and global operations, the Board considered MUFG's significant but noncontrolling investments in U.S. entities such as Morgan Stanley, New York, New York. See *Mitsubishi UFJ Financial Group, Inc.* (Order dated June 14, 2011), 97 *Federal Reserve Bulletin* 10 (2nd Quar. 2011).

⁵⁵ Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from those authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify material factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e), 262.25(d). The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.

Robert deV. Frierson
Secretary of the Board

Appendix

UnionBanCal/Pacific Capital Banking Markets in California Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Los Angeles – includes the Los Angeles Ranally Metropolitan Area ("RMA"), Acton, and Rosamond.						
UnionBanCal Pre-Consummation	3	\$32.6B	10.1	1003	1	145
Pacific Capital	84	\$172M	0.1			
UnionBanCal Post-Consummation	3	\$32.7B	10.1			
Monterey-Seaside-Marina – includes the Monterey-Seaside-Marina RMA.						
UnionBanCal Pre-Consummation	8	\$114M	2.9	2071	60	11
Pacific Capital	4	\$403M	10.3			
UnionBanCal Post-Consummation	4	\$517M	13.2			
Oxnard-Thousand Oaks-Ventura – includes the Oxnard-Thousand Oaks-Ventura RMA, Fillmore, and Piru.						
UnionBanCal Pre-Consummation	18	\$111M	0.8	1465	11	26
Pacific Capital	5	\$842M	6.3			
UnionBanCal Post-Consummation	4	\$953M	7.1			
Salinas – includes the Salinas RMA, Gonzales, and Soledad.						
UnionBanCal Pre-Consummation	6	\$115M	3.8	1718	68	10
Pacific Capital	5	\$276M	9			
UnionBanCal Post-Consummation	4	\$391M	12.8			
San Francisco-Oakland-San Jose – includes the San Francisco-Oakland-San Jose RMA, Byron, Hollister, San Juan Bautista, Pescadero, and Point Reyes Station.						
UnionBanCal Pre-Consummation	8	\$7.7B	2.4	2137	1	88
Pacific Capital	26	\$507M	0.2			
UnionBanCal Post-Consummation	8	\$8.2B	2.6			
San Luis Obispo – includes the San Luis Obispo RMA, Arroyo Grande, Atascadero, Cambria, Cayucos, Grover Beach, Grover City, Los Osos, Morro Bay, Paso Robles, Pismo Beach, and Templeton.						
UnionBanCal Pre-Consummation	14	\$87M	1.8	1273	10	13
Pacific Capital	8	\$140M	2.9			
UnionBanCal Post-Consummation	7	\$227M	4.6			
Santa Barbara – includes the Santa Barbara RMA, Buellton, Los Olivos, Santa Ynez, and Solvang.						
UnionBanCal Pre-Consummation	17	\$49M	0.6	1416	32	16
Pacific Capital	1	\$2.0B	25.9			
UnionBanCal Post-Consummation	1	\$2.1B	26.5			
Santa Maria – includes the Santa Maria RMA and Guadalupe.						
UnionBanCal Pre-Consummation	11	\$30M	1.7	1595	14	12
Pacific Capital	7	\$71M	4			
UnionBanCal Post-Consummation	7	\$100M	5.7			
Watsonville – includes the Watsonville RMA.						
UnionBanCal Pre-Consummation	5	\$84M	10.2	1692	290	8
Pacific Capital	3	\$117M	14.2			
UnionBanCal Post-Consummation	1	\$201M	24.4			

Data are as of June 30, 2011. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. Data do not include BTMU's branch in the Los Angeles banking market. This branch is not insured by the FDIC and generally cannot accept retail deposits. Moreover, the branch does not control a significant share of the Los Angeles banking market.

River Valley Bancorp
Madison, Indiana

*Order Approving the Formation of a Bank Holding Company
FRB Order No. 2012–10 (October 17, 2012)*

River Valley Bancorp (“RVB”), Madison, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Dupont State Bank (“Dupont”), Dupont, both of Indiana, and to become a bank holding company.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*77 Federal Register* 3774 (2012)). 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.

RVB, with total consolidated assets of approximately \$408 million,² is currently a savings and loan holding company that owns all of River Valley Financial Bank (“River Valley”), Madison, Indiana, a federal savings association. River Valley is the 53rd largest insured depository institution in Indiana, controlling approximately \$293 million in deposits.³ As part of this proposal, River Valley would be merged into Dupont, the resulting bank would be renamed River Valley Financial Bank, and RVB would become a bank holding company.

Dupont is the 127th largest insured depository institution in Indiana, controlling deposits of approximately \$72.9 million. Dupont controls \$82.6 million of total assets. Dupont is currently wholly owned by Citizens Union Bancorp of Shelbyville, Inc. (“Citizens Union”), Shelbyville, Kentucky.

Under the proposed transaction, RVB would purchase Dupont from Citizens Union and merge River Valley into Dupont, with the resulting institution renamed River Valley Financial Bank. On consummation of this proposal, the resulting bank would become the 41st largest insured depository organization in Indiana, controlling deposits of approximately \$365.9 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

Competitive Considerations

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

¹ 12 U.S.C. § 1842.

² Asset data are as of June 30, 2012.

³ State- and market-level deposit and ranking data are as of June 30, 2011, updated to reflect mergers, acquisitions, and branch transactions through May 2, 2012. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁴ 12 U.S.C. § 1842(c)(1).

River Valley and Dupont compete directly in the Madison, Indiana, banking market (“Madison banking market”).⁵ River Valley operates four branches in the market: three in or around the town of Madison in the southern part of the market and one in the town of Hanover, Indiana, which is southwest of Madison. Dupont has one office in Dupont in the northern part of the market. The Board has reviewed 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 market, the relative shares of total deposits in insured depository institutions in the market (“market deposits”) controlled by River Valley and Dupont,⁶ the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Competitive Review Guidelines (“DOJ Bank Merger Guidelines”),⁷ and other characteristics of the market.

River Valley is the largest insured depository institution in the Madison banking market, controlling deposits of approximately \$235.2 million, which represent approximately 43.6 percent of market deposits. Dupont is the fifth largest insured depository institution in the market, controlling deposits of approximately \$14.5 million, which represent approximately 2.7 percent of market deposits. As these data indicate, the acquisition represents a relatively small, incremental change in River Valley’s share of market deposits. On consummation of the proposed merger, the resulting institution would remain the largest insured depository institution in the market, controlling deposits of approximately \$249.7 million, which would represent approximately 46.3 percent of the market deposits. The HHI would increase by 234 points to 3284.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the Madison banking market.⁸ A number of factors indicate that the increase in concentration in this banking market, as measured by the HHI and the market share of the combined organization, overstates the potential competitive effects of the proposal in the market. Three community credit unions exert a competitive influence in the Madison bank-

⁵ The banking market is defined as Jefferson County, Indiana, and the Milton census county division in Trimble County, Kentucky.

⁶ Deposit and market share data are based on calculations in which the deposits of River Valley, the only thrift institution in the market, are included at 100 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). However, where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). In this case, River Valley’s commercial and industrial and agricultural loan portfolios are similar to those of other commercial banks in the market, as measured in terms of the ratios of those types of loans to total loans and assets. Moreover, River Valley proposes to merge into a bank at consummation of this proposal. Thus, a full weighting more accurately reflects the competitive environment in this case.

⁷ Under the DOJ Bank Merger 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 would not be challenged (in the absence of other factors indicating anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

⁸ The number and strength of the factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and resulting level of concentration in a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

ing market.⁹ Each institution offers a wide range of consumer products, operates street-level branches, and has memberships open to almost all the residents in the market. Their operations in this banking market mitigate, in part, the potential competitive effects of the proposal. The three community credit unions control approximately \$30.1 million in deposits in the market on a 50 percent weighted basis, which represents approximately 5 percent of market deposits. Accounting for the revised weightings of these deposits, River Valley would control approximately 43.8 percent of market deposits on consummation of the proposal, and the HHI would increase by 210 points to 2959.

Three other insured commercial bank competitors and a total of six other insured depository institutions (including the credit unions) would remain in this rural market. Some of the other competitors have a significant presence in the market. The second largest competitor after consummation would be a large regional bank that would control approximately 25.5 percent of market deposits, if credit union deposits are weighted at 50 percent. The third largest competitor would control approximately 18 percent of market deposits. The fourth largest competitor is in the process of being acquired by a large regional commercial bank.

In addition, the record indicates that the Madison banking market may be attractive for entry and expansion by bank competitors. In 2005, the large regional institution that is currently the second largest bank competitor entered the market through acquisition of a smaller depository institution that operated only in this market. The third largest bank competitor in the market has begun construction of a new branch in this market, indicating its intention to expand. Finally, as noted, the smallest remaining bank competitor is being acquired by a large regional bank.

The features of the Madison banking market and the location of the applicant and target in the market also suggest that HHI calculations are likely to overstate the competitive effects of the merger. All the banking activity in the market, except for Dupont's activities, is centered around the town of Madison and the populous southern portion of the market. In contrast, Dupont only operates in, and is the only depository institution that operates in, the rural, sparsely populated, northernmost part of the market. Although the Board has concluded that the northern and southern parts of this area should be included in the same banking market due to economic ties between them, those ties are mostly one way. For example, a high percentage, but very small number, of individuals residing in the northern part of the market commute to Madison in the south. Neither a high percentage nor a large number of individuals make the reverse trip. This characteristic of the market suggests that the elimination of Dupont as a competitor in the northern part of the market is unlikely to have substantial effects on competition. To the extent that the combination of River Valley and Dupont has an effect on competition in the northern portion of the market, that effect should be lessened by the other mitigating factors noted above.

The Board has reviewed carefully all the facts of record and has considered those facts in light of Board precedent. The pro forma market share in the Madison banking market is relatively high in this case. The change in concentration in the market, however, only marginally exceeds the DOJ Bank Merger Guidelines, and other factors in this market suggest that this proposal is not likely to have a significantly adverse effect on competition in the Madison banking market.

⁹ The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. See, e.g., *The PNC Financial Services Group, Inc.*, 93 Federal Reserve Bulletin C65 (2007); *Allied Irish Banks, p.l.c. and M&T Bank Corporation*, 93 Federal Reserve Bulletin C11 (2007); *Regions Financial Corporation*, 93 Federal Reserve Bulletin C16 (2007); *Wachovia Corporation*, 92 Federal Reserve Bulletin C183 (2006).

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

For the reasons discussed in this order and based on all the facts of record, the Board has determined that competitive factors are consistent with approval of the proposal.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. Those factors include: the financial and managerial resources (including consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system. The Board has considered all these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by RVB.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. As part of this review, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board assesses 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 Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

RVB and River Valley are well capitalized and will remain so on consummation of the proposed acquisition. RVB is a shell holding company, with River Valley accounting for almost all of RVB's consolidated assets. The proposed transaction is a bank merger structured as a cash purchase of shares. RVB will fund the purchase from cash on hand. RVB is in stable financial condition, and the asset quality and earnings of River Valley are consistent with approval. On a pro forma basis, the acquisition of Dupont would not adversely impact RVB's operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of RVB, River Valley, and Dupont, 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 the organizations' records of compliance with applicable banking and anti-money-

laundering laws. The Board also has considered RVB's plans for implementing the proposal.

RVB and River Valley are considered to be well managed. The boards of directors and senior management of RVB and River Valley are considered experienced and capable. RVB's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior management of RVB and River Valley, and the risk-management program of RVB, would not change as a result of the proposal.

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

B. Convenience and Needs Considerations

Under section 3, 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").¹⁰ The CRA requires federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹¹ and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.¹²

The Board has considered all the facts of record, including evaluations of the CRA performance of River Valley and Dupont, other information provided by RVB, and confidential supervisory information.

As provided in the CRA, the Board has considered the convenience and needs factor in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.¹³ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor. River Valley received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of February 2, 2010, and Dupont received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of February 16, 2011. Examiners found no evidence of illegal credit discrimination during these evaluations.

River Valley and Dupont have established records of assisting in meeting the credit needs of their communities. At River Valley's 2010 CRA evaluation, examiners determined that the bank's loan-to-deposit ratio was very good and that its lending levels were consistently above average. Dupont's 2011 CRA performance evaluation noted that the bank's level of lending, as reflected by its loan-to-deposit ratio, was excellent and demonstrated that the bank was using the deposits obtained from its assessment area to fund loans.

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

¹¹ 12 U.S.C. § 2901(b).

¹² 12 U.S.C. § 2903.

¹³ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

RVB has represented that it will continue to meet the credit needs of its communities in the same manner as it has in the past. RVB also has represented that the merged entity would provide convenient and accessible service to the retail market through extended banking hours, as well as access to its ATMs and drive-thru facilities.

The Board has considered all the facts of record, including reports of examination of the CRA records of River Valley and Dupont, information provided by RVB, and confidential supervisory information, including current records of compliance with consumer laws and regulations.

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

C. Financial Stability

The Board has also considered information relevant to risks to the stability of the United States banking or financial system. The proposed investment represents a *de minimis* transaction for financial stability purposes, and the proposed transaction would not materially increase the interconnectedness or complexity of RVB. The Board, therefore, concludes that financial stability considerations in this proposal are consistent with approval.

D. Conclusion on Section 3(c) Factors

Based on all the facts of record, including those described above, the Board has determined that all of the factors it must consider under section 3(c) of the BHC Act are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by RVB with all the conditions imposed in this order and the commitments made to the Board in connection with the application, including receipt of all required regulatory approvals. 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 proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 17, 2012.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.

Robert deV. Frierson
Secretary of the Board

Sumitomo Mitsui Financial Group, Inc.
Tokyo, Japan

Sumitomo Mitsui Banking Corporation
Tokyo, Japan

*Order Approving Acquisition of Shares of a Bank Holding Company
FRB Order No. 2012–11 (October 31, 2012)*

Sumitomo Mitsui Financial Group, Inc. (“SMFG”) and Sumitomo Mitsui Banking Corporation (“SMBC”), both of Tokyo, Japan (collectively, “Applicants”), foreign banking organizations that are bank holding companies under the Bank Holding Company Act of 1956, as amended (“BHC Act”),¹ have requested the Board’s approval under section 3(a) of the BHC Act to acquire up to 9.9 percent of the voting shares of The Bank of East Asia, Limited (“BEA”), Hong Kong SAR, People’s Republic of China, a foreign banking organization that is a bank holding company under the BHC Act by virtue of its ownership of The Bank of East Asia (U.S.A.) National Association (“BEA USA”), New York, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*76 Federal Register* 70722 (November 15, 2011)). 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.

SMFG, with total assets of approximately \$1.7 trillion, is the third largest banking organization in Japan.³ SMFG, through its subsidiaries, including SMBC, engages in a broad range of banking and financial services throughout Japan, Asia, the United Kingdom, and North and South America. Outside Japan, SMFG owns subsidiary banks in the United Kingdom, Brazil, Canada, People’s Republic of China, Indonesia, Russia, and Malaysia, and SMBC operates branches in more than a dozen additional countries. In the United States, Applicants own Manufacturers Bank, Los Angeles, California, with consolidated assets of \$2.1 billion and deposits of approximately \$1.6 billion. Manufacturers Bank engages in retail and commercial banking in the United States through 10 branches in California. SMBC operates uninsured state branches in New York City, Los Angeles, and San Francisco and representative offices in Houston and Jersey City. Applicants also maintain nonbanking subsidiaries in the United States.⁴ SMFG and SMBC are each a qualifying for-

¹ 12 U.S.C. § 1842.

² 12 CFR 225.11(c)(1). BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, are bank holding companies by virtue of their ownership of 20 percent of the voting shares of BEA-USA. With the Board’s prior approval, the Industrial and Commercial Bank of China Limited (“ICBC”), Beijing, People’s Republic of China, recently acquired 80 percent of the voting shares of BEA-USA from BEA. See *Industrial and Commercial Bank of China Limited*, FRB Order No. 2012-4 (May 9, 2012). BEA has an option to sell the remaining shares of BEA-USA to ICBC beginning 18 months after this transaction. If BEA exercises its option, BEA would continue to be treated as a bank holding company subject to the BHC Act because it operates branches in the United States. 12 U.S.C. § 3106(a).

³ Unless otherwise provided, asset and ranking data are as of June 30, 2012, and are based on the exchange rate as of that date, as appropriate. Japan Trustee Services Bank, Ltd. (“JTSB”) and The Master Trust Bank of Japan, Ltd. (“MTBJ”) own approximately 6.4 percent and 5.2 percent of the shares of SMFG, respectively, as of March 31, 2012. Both JTSB and MTBJ hold these shares as registered nominee accounts for various beneficial shareholders, none of which owns 5 percent or more of the shares of SMFG. No other shareholder owns 5 percent or more of the outstanding shares of SMFG.

⁴ These nonbanking subsidiaries include SMBC Capital Markets, Inc.; SMBC Leasing and Finance, Inc.; SMBC Nikko Securities America, Inc.; and JRI America, Inc., all of New York, New York.

ign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.⁵

BEA, with total consolidated assets of approximately \$82.6 billion, is the third largest bank in Hong Kong. BEA engages primarily in retail and commercial banking, wealth management, and insurance services in People's Republic of China, North America, the United Kingdom, and Southeast Asia. In the United States, BEA controls BEA-USA and operates an insured federal branch in New York City and uninsured federal branches in New York City and Los Angeles. BEA-USA, with consolidated assets of approximately \$720.6 million and deposits of approximately \$561.1 million, engages in retail and commercial banking in the United States. BEA USA operates 13 branches in New York and California.

Noncontrolling Investment

Applicants own approximately 4.7 percent of the voting shares of BEA. Applicants have stated that they do not propose to control or exercise a controlling influence over BEA as a result of the proposal.⁶

Applicants have agreed to abide by certain commitments substantially similar to those on which the Board has previously relied in determining that an investing 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”). For example, Applicants have committed not to exercise or attempt to exercise a controlling influence over the management or policies of BEA; not to seek or accept more than one representative on the board of directors of BEA; and not to have any other director, officer, employee, or agent interlocks with BEA or its subsidiaries. The Passivity Commitments also include certain restrictions on the business relationships between Applicants and BEA.

Based on these considerations and all the facts of record, the Board has concluded that Applicants would not, as a result of the structure of the proposed transaction, control or exercise a controlling influence over BEA or any of its subsidiaries through the acquisition of up to 9.9 percent of the voting common stock of BEA. The Board notes that the BHC Act requires Applicants to receive the Board’s approval before they directly or indirectly acquire additional shares of BEA or attempt to exercise a controlling influence over BEA or any of its subsidiaries.⁷

Competitive Considerations

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

⁵ 12 CFR 211.23(a).

⁶ 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., *Mitsubishi UFJ Financial Group, Inc.*, 95 Federal Reserve Bulletin B34 (2009) (acquisition of up to 24.9 percent of the voting shares 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); *Mansura Bancshares, Inc.*, 79 Federal Reserve Bulletin 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

⁷ 12 U.S.C. § 1842. See, e.g., *Emigrant Bancorp, Inc.*, 82 Federal Reserve Bulletin 555 (1996) (“Emigrant Bancorp Order”).

public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.⁹ The Board has found that noncontrolling interests in directly competing depository institutions may raise competitive issues 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.¹⁰

Because the subsidiary banks of Applicants and BEA compete directly in California in the Los Angeles and San Francisco-Oakland-San Jose banking markets,¹¹ the Board has reviewed the competitive effects of the proposal in these 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 insured depository institutions in the markets (“market deposits”) controlled by relevant institutions,¹² and the concentration level of market deposits and the increase in the level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”).¹³

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Los Angeles and San Francisco banking markets. The transaction would not change the HHI in the Los Angeles banking markets and on consummation, the market would remain moderately concentrated, as measured by the HHI.¹⁴ The HHI in the San Francisco banking market would also remain unchanged.¹⁵ In each banking market, numerous competitors would remain in the market.

⁸ 12 U.S.C. § 1842(c)(1). See, e.g., Emigrant Bancorp Order.

⁹ See e.g., *Sun Trust Banks, Inc.*, 76 Federal Reserve Bulletin 542 (1990).

¹⁰ See e.g., *BOK Financial Corp.*, 81 Federal Reserve Bulletin 1052, 1053-54 (1995).

¹¹ The Los Angeles banking market is defined as the Los Angeles Ranally Metropolitan Area (“RMA”) and the cities of Acton in Los Angeles County and Rosamond in Kern County. The San Francisco banking market is defined as the San Francisco-Oakland-San Jose RMA and the cities of Byron in Contra Costa County, Hollister and San Juan Bautista in San Benito County, Pescadero in San Mateo County, and Point Reyes Station in Marin County. Applicants do not currently compete with BEA in any other relevant banking market. BEA operates an insured branch in New York, and BEA-USA operates in New York, SMBC’s New York branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits. Moreover, neither banking organization controls a significant share of the New York banking market.

¹² Call report, deposit, and market share data are based on data reported by insured depository institutions in the summary of deposits data, as of June 30, 2011. The data are also 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, Inc.*, 75 Federal Reserve Bulletin 386 (1989); *National City Corporation*, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 Federal Reserve Bulletin 52 (1991).

¹³ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁴ The HHI would remain unchanged at 1018 in the Los Angeles banking market, which has 145 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in the banking market represent less than 1 percent of market deposits.

¹⁵ The HHI would remain unchanged at 2048 in the San Francisco banking market, which has 92 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in the banking market represent less than 1 percent of market deposits.

The DOJ also has reviewed the matter and has advised the Board that it does not believe that the ownership interest of Applicants in BEA is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the application.

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

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the companies and depository institutions involved in the proposal, as well as the effectiveness of these companies in combatting money laundering activities.¹⁶ Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁷

The review was conducted in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by Applicants and by public commenters. The Board also has consulted with the Japanese Financial Services Agency (“JFSA”), the agency with primary responsibility for the supervision and regulation of Japanese banking organizations, including Applicants.

In evaluating financial factors, the Board reviews the financial condition of the applicants and the target depository institutions. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicants, including their 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 capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization seeking to acquire up to 9.9 percent of BEA.¹⁸ Applicants’ reported earnings performance and asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. Applicants’ U.S. bank subsidiary, Manufacturers Bank, and BEA-USA are each well capitalized and would remain so on consummation.

¹⁶ The Board has analyzed the effectiveness of Applicants’ anti-money-laundering efforts in connection with the Board’s assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

¹⁷ 12 U.S.C. § 1842(c)(3)(A).

¹⁸ The Board has considered the total, and the tier 1 risk-based, capital ratios and the ratios of tier 1 capital to total consolidated assets of SMFG and SMBC.

The proposed transaction is structured as a cash purchase of shares, and Applicants will use existing resources to fund the proposed purchase of shares. In light of the relative size of Applicants to the size of the investment in BEA, the transaction would have a minimal impact on the financial condition of Applicants. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants' and BEA's U.S. operations, including assessments of their management, risk-management systems, and operations. The Board also has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. As noted, the Board has also consulted with the JFSA. In addition, the Board has considered the future prospects of Applicants, BEA, Manufacturers Bank, and BEA-USA in light of the financial and managerial resources of the organizations.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application and as required by section 3 of the BHC Act, the Board has considered whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.¹⁹

¹⁹ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation.

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

The Board previously has determined that SMBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor.²⁰ SMBC continues to be supervised by the JFSA on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board has concluded that SMBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In evaluating this proposal, the Board also has considered whether SMFG is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country. As noted, the JFSA is the supervisor of Japanese banking organizations, including holding companies such as SMFG. As such, the JFSA conducts inspections of SMFG and its subsidiaries and requires SMFG to submit reports about its operations on a consolidated basis. The JFSA also reviews transactions between SMFG and its subsidiaries and has authority to require SMFG to take measures necessary to ensure the safety and soundness of the SMFG organization. The Board has previously determined that other Japanese holding companies of Japanese banks were subject to comprehensive, consolidated supervision by the JFSA.²¹ SMFG has represented, and the JFSA has confirmed, that SMFG is subject to the same supervisory regime as those other Japanese holding companies. Based on all the facts of record, the Board has determined that SMFG is subject to comprehensive supervision on a consolidated basis by its appropriate home country authorities for purposes of this application.

In evaluating the effectiveness of Applicants' policies and procedures to combat money-laundering activities in connection with these determinations, the Board considered Applicants' anti-money-laundering policies and procedures as well as the Board's supervisory experiences and those of other relevant banking supervisory organizations with Applicants' compliance record. On the basis of all facts of record, the Board has determined that Applicants' anti-money-laundering measures are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").²² The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

The Board has considered all the facts of record, including evaluations of the CRA performance records of Manufacturers Bank, BEA-USA, and BEA's insured New York City branch; data reported by BEA-USA under the Home Mortgage Disclosure Act ("HMDA");²⁴ other information provided by Applicants; confidential supervisory informa-

²⁰ The *Wakashio Bank, Limited*, 89 *Federal Reserve Bulletin* 217 (2003). SMBC merged with and into The Wakashio Bank, Limited, which was subsequently renamed Sumitomo Mitsui Banking Corporation.

²¹ See, e.g., *Mitsubishi UFJ Financial Group, Inc.* (Order dated June 14, 2011), 97 *Federal Reserve Bulletin* 10 (2nd Quar. 2011); *Chuo Mitsui Trust Holdings, Inc.* (Order dated March 15, 2011), 97 *Federal Reserve Bulletin* 30 (1st Quar. 2011).

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

²³ 12 U.S.C. § 2903.

²⁴ 12 U.S.C. §§ 2801-2810.

tion; and public comments received on the proposal. A commenter alleged, based on 2009 HMDA data, that BEA-USA had excluded African Americans and Hispanics in its conventional home purchase and refinance lending (“one-to-four family lending”) and Asian Americans with income below 100 percent of the median income of the metropolitan statistical area in its refinance lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions, including BEA-USA. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.²⁵

Manufacturers Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of November 29, 2010.²⁶ BEA’s insured federal branch in New York City received an “outstanding” rating at its most recent CRA performance evaluation by the FDIC, as of January 4, 2010.²⁷ BEA-USA received an “outstanding” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”), as of January 4, 2010.²⁸ The bank received an “outstanding” rating under each of the lending and community development tests.²⁹

BEA-USA has approximately \$561.1 million in total deposits and \$720.6 million in total assets. The bank is primarily a commercial lender and engages in limited residential lending.³⁰ Examiners noted that a substantial majority of BEA-USA’s loans were originated in its assessment areas, that the distribution of its loans reflects excellent penetration among businesses of different sizes in the assessment areas, and that the geographic distribution of loans reflects excellent dispersion throughout the assessment areas. Examiners also reported that BEA-USA’s community development performance demonstrates excellent responsiveness to the needs of the assessment areas through loans, investments, and services.³¹ As indicated above, Applicants would not control BEA or BEA-USA as a result of the proposal and, accordingly, the proposal should not affect BEA-USA’s CRA program or performance.

²⁵ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

²⁶ Manufacturers Bank received a high satisfactory in each of the lending, investment, and service tests. The evaluation period was October 25, 2007, to November 29, 2010.

²⁷ The evaluation period was January 1, 2007, to September 30, 2009. SMBC’s and BEA’s uninsured branches are not subject to the CRA.

²⁸ The evaluation period was January 1, 2006, to January 4, 2010.

²⁹ BEA-USA was evaluated under the intermediate small bank performance criteria, which only include a lending test and a community development test.

³⁰ HMDA-reportable loans were not part of BEA-USA’s CRA performance evaluation because examiners did not consider the bank’s volume of those types of loans to be sufficient enough to review.

³¹ BEA-USA controls \$261 million in deposits in the New York banking market, which approximates its CRA assessment area in New York. In that assessment area, BEA-USA made 15 community development loans totaling \$18.6 million, including 5 loans for affordable housing, and 22 qualified investments totaling approximately \$2.6 million, which consisted of \$2.5 million in Fannie Mae investments and \$100,000 in charitable donations. BEA-USA’s staff also provided community development services during the review period, including financial literacy and homeownership seminars.

B. HMDA and Compliance with Fair Lending and Other Consumer Protection Laws

The Board has considered the HMDA data for 2009, 2010, and 2011 reported by BEA-USA in its combined assessment areas, as well as the fair lending record of BEA-USA in light of public comments received on the proposal.³² A commenter alleged, based on HMDA data reported in 2009, that BEA-USA had engaged in disparate treatment of minority individuals in its one-to-four family home mortgage lending. Specifically, the commenter has asserted that BEA-USA excludes African Americans and Hispanics in home purchase and refinance lending and discriminates against Asian Americans with income below 100 percent of the median income of the metropolitan statistical area in its refinance lending.

Although the HMDA data provide an insufficient basis by themselves on which to conclude whether or not BEA-USA is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis, the Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending.³³ The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates should conduct mortgage lending operations that are free of abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data and taken into account other information, including examination reports that provide evaluations of compliance by BEA-USA with consumer protection laws. The Board also has consulted with the OCC, BEA-USA's primary federal supervisor.

As noted above, BEA-USA is predominantly a commercial lender and makes a limited number of one-to-four family mortgage loans. BEA-USA's one-to-four family mortgage lending largely results from walk-in traffic at BEA-USA's branches, most of which are in Asian American neighborhoods. Throughout its combined assessment areas, BEA-USA made a total of 32 one-to-four family mortgage loans in 2009, 26 in 2010, and 20 in 2011. During that same time period, BEA-USA received only one application for a one-to-four family mortgage loan from an African American and four applications from Hispanics. The HMDA data also indicate that the bank made a material percentage of its one-to-four family mortgage loans to LMI borrowers (those with incomes of less than 80 percent of the area median income) in BEA-USA's assessment areas. Between 2009 and 2011, 21 percent of BEA-USA's mortgage refinance loans, and 35 percent of BEA-USA's conventional home purchase loans, were made to LMI borrowers.³⁴

The record of this application, including confidential supervisory information, also indicates that BEA-USA has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. In BEA-USA's most recent CRA performance

³² BEA-USA's combined CRA assessment areas consist of Kings, Manhattan, and Queens Counties in the New York-New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area; the San Francisco-San Mateo-Redwood City, California Metropolitan Division and the Alameda County portion of the Oakland-Fremont-Hayward, CA Metropolitan Division, which are part of the greater San Francisco-Oakland-Fremont, California Metropolitan Statistical Area; and the Los Angeles-Long Beach-Glendale Metropolitan Division.

³³ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applications than other institutions attract and do not provide for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher cost credit) are not available from HMDA data.

³⁴ More than half of BEA-USA's branches are located in low-to-moderate income communities.

evaluation, examiners noted no evidence of discriminatory or other illegal credit practices.³⁵ In addition, BEA-USA's loan policies include information on prohibited discriminatory lending practices and its advertising and marketing policy contains specific guidance on practices employees should avoid that would tend to discourage loan applicants on a prohibited basis. Additionally, the bank's employees who are involved in lending are required to participate in annual training that includes compliance with fair lending laws and other applicable laws and regulations.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered all the facts of record, including evaluations of the CRA performance record of Manufacturers Bank (the bank controlled by Applicants), BEA-USA, and other relevant insured depository institutions, information provided by Applicants, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board also to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”³⁶

In this case, the proposed acquisition of a noncontrolling interest in BEA is not a significant expansion by SMFG and would have a de minimis impact on SMFG's systemic footprint. The value of the additional shares that Applicants propose to purchase is approximately \$415 million.³⁷ In addition, there is no evidence of any significant increase in interconnectedness, complexity, cross-border activities, or other risk factor, as the proposal merely increases the ownership by Applicants from approximately 4.7 percent to 9.9 percent of the voting shares of BEA. Applicants would neither consider BEA a subsidiary nor consolidate its financial performance on their balance sheets.

Based on these and all the other facts of record, the Board has determined that the proposal would not materially increase risk to the stability of the U.S. financial or banking system.

Conclusion

Based on the foregoing and all the facts of record, the Board approves the proposal by Applicants to acquire up to 9.9 percent of the voting shares of BEA. 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 conditions its decision on Applicants providing to the Board adequate information on their operations and activities as well as those of their affiliates to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes. Should any restric-

³⁵ The Bank of East Asia, USA, National Association Community Reinvestment Act Performance Evaluation, January 4, 2010, at 5. Moreover, the CRA performance evaluation noted that BEA-USA's assessment areas do not arbitrarily exclude LMI areas. *Id.* at 4.

³⁶ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

³⁷ This value is based on BEA's listed price on the Hong Kong Stock Exchange as of October 17, 2012, and the exchange rate as of that date.

tions on access to information on the operations or activities of Applicants or any of their affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes, the Board may require termination or divestiture of any of Applicants' or their affiliates' direct or indirect activities in the United States.

The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the proposal.³⁸ 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 proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 31, 2012.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.

Robert deV. Frierson
Secretary of the Board

³⁸ The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public hearing on an application to acquire shares of a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 262.3(e) and 262.25(d). The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied. The commenter raised additional concerns that address matters beyond the statutory factors the Board is authorized to consider. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).