



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE  
GENERAL COUNSEL

February 12, 2019

Thomas Corsi, Esq.  
BNP Paribas  
787 7th Avenue  
New York, New York 10019

Dear Mr. Corsi:

This letter responds to your request for an opinion that BNP Paribas (“BNPP”), Paris, France, would not control First Hawaiian, Inc. (“FHI”), Honolulu, Hawaii, for purposes of the Bank Holding Company Act of 1956 (“BHC Act”), in light of BNPP’s sale of all of its voting securities of FHI, the winding down and eventual termination of transitional services between BNPP and FHI, and the continuation of existing limited business relationships between BNPP and FHI. BNPP is a foreign bank as defined under section 1(7) of the International Banking Act of 1978<sup>1</sup> and a bank holding company under the BHC Act.

Beginning in 2016, BNPP began to reduce its ownership in FHI. Through a series of public offerings ending on February 1, 2019, BNPP sold all of its voting securities in FHI. As a result, BNPP no longer has any ownership interest in FHI. BNPP also represents that there are no employee, officer, or director interlocks between BNPP, on the one hand, and FHI or its subsidiaries, on the other hand.

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting

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<sup>1</sup> 12 U.S.C. § 3101(7).

securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>2</sup> In addition, the Board's Regulation Y sets forth a set of rebuttable presumptions of control.<sup>3</sup> The BHC Act and the Board's Regulation Y presume that any company that directly or indirectly owns, controls, or has the power to vote less than 5 percent of any class of voting securities of a bank or other company does not control the bank or other company.<sup>4</sup>

In determining whether a company has the power to exercise a controlling influence over another company, the Board typically has considered a number of factors, including the size and structure of the company's voting and total equity investment; the company's rights to director representation; any management, employee, or director interlocks between the companies; any covenants or other agreements that allow the company to influence or restrict management decisions of the other company; the nature and scope of the business relationships between the companies; and other indicia of the ability or incentive to exercise a controlling influence.<sup>5</sup>

The Board previously has found that a company that controlled another company for a significant period of time may be able to exert a controlling influence over the company even after a substantial divestiture.<sup>6</sup> As a result, the Board has generally applied a stricter standard for determining non-control in divestiture cases than the standard applied when a company seeks to establish that a de novo investment in another company is non-controlling. Thus, in determining whether a reduction in ownership is effective to terminate an existing control relationship, the Board has placed significant weight on the size of any voting investment retained by the divesting company and the

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<sup>2</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>3</sup> See 12 CFR 225.31(d).

<sup>4</sup> 12 U.S.C. § 1841(a)(3); 12 CFR 225.31(e).

<sup>5</sup> See Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), available at [www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm) ("Policy Statement").

<sup>6</sup> See, e.g., C.I.T. Financial Corporation, 65 Federal Reserve Bulletin 369 (1979); 65 Federal Reserve Bulletin 440; Letter from the Board to Anne R. Williams, Esq., Steptoe & Johnson, dated June 4, 1985.

ongoing relationships between the divesting company and the company being divested.<sup>7</sup> The Board has paid particular attention to the size and qualitative importance of the business relationships to each counterparty and whether the business relationships are on market terms, non-exclusive, and terminable without penalty by the company being divested.<sup>8</sup>

Through a series of public offerings starting in 2016, BNPP began to sell its voting securities in FHI. On February 1, 2019, BNPP sold the remainder of its ownership stake in FHI. As a result, BNPP no longer owns or controls any voting securities of FHI. Accordingly, BNPP is presumed by both the BHC Act and the Board's Regulation Y not to control FHI.

BNPP represents that it does not have any director, employee, or officer interlocks with FHI or its subsidiaries. BNPP also represents that it does not have any continuing right to elect directors at FHI or any of its subsidiaries. In addition, as of the date of this letter, BNPP represents that it no longer has any veto rights over FHI's major policies and decisions, and FHI's obligation to abide by BNPP's policies and other oversight for purposes of compliance with BNPP's home country law has terminated.

BNPP and FHI have entered into several agreements to facilitate the orderly separation of the two companies. To minimize disruption and ensure continuity of their respective business operations, BNPP and FHI have agreed to provide each other with temporary transitional services that do not involve either party's core banking operations. Although important to facilitating an orderly separation of BNPP and FHI, the transitional services would be quantitatively limited. The transitional services relate to, among other things, budget planning and analysis software, model and operational risk management software, and data transmission through a third-party service provider. These services are generally expected to terminate by December 31, 2019.

BNPP and FHI also would have minimal ongoing business relationships. As measured against each party's gross revenues and expenses, these relationships are and will remain quantitatively limited. The relationships also are qualitatively immaterial, as none of the relationships is core to either institution. Further, the business relationships are on market terms, non-exclusive, and terminable without penalty by

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<sup>7</sup> See supra note 6; see also Letter from Scott G. Alvarez, General Counsel of the Board, to Richard W. Decker, Jr., Belvedere Capital Partners II, LLC, dated April 5, 2010.

<sup>8</sup> See Letter from Scott G. Alvarez, General Counsel of the Board, to Rolando Mayans, Equity Bancshares, Inc., dated October 13, 2016; Letter from Scott G. Alvarez, General Counsel of the Board, to Luigi L. De Ghenghi, Esq., Davis Polk & Wardwell LLP, dated January 28, 2016.

either party. As a result, these business relationships between BNPP and FHI would not appear to provide BNPP with the ability to exercise a controlling influence over FHI.

BNPP has further represented that it does not intend to exert or attempt to exert a controlling influence over FHI, and it does not appear that BNPP entered into the various separation agreements with FHI in order to exert a controlling influence over FHI.

Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations and commitments made in connection with your request, staff of the Legal Division would not recommend that the Board find BNPP to control FHI for purposes of the BHC Act in light of BNPP's disposition of its entire voting interest in FHI, its lack of director representation on FHI's board of directors, the continued winding down and eventual termination of the transition services, and the limited continuing business relationships that will exist between BNPP and FHI.

This opinion is based on all the facts of record, including all the representations and commitments made by or on behalf of BNPP, whether noted in this letter or otherwise contained in correspondence or discussions with staff of the Board or the Federal Reserve Bank of New York. Any change in the facts or representations may result in a different opinion and should be reported immediately to Board and Reserve Bank staff.

If you have any questions about this matter, please contact Gregory Frischmann, Senior Counsel (202-452-2803), or Brian Phillips, Attorney (202-452-3321) of the Board's Legal Division.

Sincerely,

