

FEDERAL RESERVE SYSTEM

National Commerce Bancorporation
Memphis, Tennessee

Order Approving Merger of Bank Holding Companies

National Commerce Bancorporation (“National Commerce”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to merge with CCB Financial Corporation (“CCB Financial”), and thereby acquire Central Carolina Bank and Trust Company (“CCB Bank”), both of Durham, North Carolina.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 24,959 (2000)). The time for filing comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

National Commerce, with total consolidated assets of \$6.8 billion, is the 105th largest commercial banking organization in the United States, controlling less than 1 percent of the total assets of insured commercial banks in the United States.² National Commerce operates subsidiary depository institutions in Tennessee, North Carolina, Georgia, Virginia, West Virginia, Arkansas, and Mississippi. The depository institution controlled by National

¹ Under the proposal, National Commerce would merge with CCB Financial, with National Commerce as the surviving corporation. National Commerce also has requested the Board’s approval to hold and exercise an option to acquire up to 19.9 percent of CCB Financial’s voting shares. This option would expire on consummation of the proposed merger.

² All asset data are as of December 31, 1999, and all deposit data are as of June 30, 1999.

Commerce is the 22nd largest depository institution in North Carolina, controlling deposits of \$335.4 million, representing less than 1 percent of total deposits in depository institutions in the state.³

CCB Financial, with total consolidated assets of \$8.2 billion, is the 91st largest commercial banking organization in the United States, controlling less than 1 percent of the total assets of insured commercial banks in the United States. CCB Financial operates subsidiary depository institutions in North Carolina and South Carolina.⁴ CCB Bank is the seventh largest depository institution in North Carolina, controlling deposits of \$5.5 billion, representing approximately 5.4 percent of total deposits in depository institutions in the state.

After consummation of the proposal, National Commerce would become the 62nd largest commercial banking organization in the United States, with total consolidated assets of \$15 billion, representing less than 1 percent of total banking assets. National Commerce would control the seventh largest depository institution in North Carolina, with deposits of \$5.9 billion, representing approximately 5.8 percent of total deposits in depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain

³ In this context, depository institutions include commercial banks, savings banks, and savings associations.

⁴ American Federal Bank, F.S.B., Greenville, South Carolina, a subsidiary of CCB Financial, would be merged into CCB Bank before consummation of the proposal.

conditions are met.⁵ For purposes of the BHC Act, the home state of National Commerce is Tennessee, and National Commerce proposes to acquire CCB Bank, which is located in North Carolina and South Carolina. All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁶ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Factors

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or be in furtherance of a monopoly. Section 3 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 in that banking market 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.⁷

National Commerce and CCB Financial compete directly in the Greensboro-High Point, Raleigh, and Durham banking markets, all in North

⁵ See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁶ 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). National Commerce meets the capital and managerial requirements established under applicable law. On consummation, National Commerce would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of total deposits held by insured depository institutions in North Carolina, the state in which National Commerce and CCB Financial both operate insured depository institutions. All other requirements under section 3(d) of the BHC Act, including applicable state age limitations, would be met on consummation of the proposal.

⁷ See 12 U.S.C. § 1842(c).

Carolina.⁸ The Board has carefully reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including the number of competitors that would remain, the share of total deposits in depository institutions (“market deposits”) controlled by each competitor in the markets,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”),¹⁰ attractiveness for entry, and other characteristics.

⁸ The Greensboro-High Point banking market is defined as the Greensboro-Highpoint Ranally Metropolitan Area (“RMA”) and the non-RMA portions of Davidson and Randolph Counties. The Raleigh banking market is defined as the Raleigh RMA, and the non-RMA portions of Franklin, Johnston, Wake, and Harnett Counties. The Durham banking market is defined as the Durham RMA and the non-RMA portions of Durham, Orange, and Chatham Counties.

⁹ Market share data are based on calculations that include the deposits of thrift institutions, which include savings banks and savings associations, weighted 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 calculation of market share on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 Federal Reserve Bulletin 52 (1991).

¹⁰ Under the Department of Justice Merger Guidelines (“DOJ Guidelines”), 49 *Federal Register* 26,923 (June 29, 1984), a market in which the post-merger HHI is more than 1800 is considered to be highly concentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Greensboro-High Point and Raleigh banking markets.¹¹ Each of these banking markets would remain moderately concentrated after consummation of the proposal and numerous competitors would remain in each market relative to the size of the market.

Consummation of the proposal in the Durham banking market would exceed the DOJ Guidelines as measured by the HHI. National Commerce controls the seventh largest depository institution in the Durham banking market, controlling deposits of \$146.8 million, representing approximately 3.7 percent of market deposits. CCB Financial controls the largest depository institution in the Durham banking market, controlling deposits of \$1.3 billion, representing approximately 33.5 percent of market deposits. On consummation of the proposal, National Commerce would control the largest depository institution in the Durham banking market, with approximately \$1.5 billion of deposits, representing 37.2 percent of market deposits. Concentration in the market, as measured by the HHI, would increase 246 points to 2055.

In evaluating the competitive effects of the proposal in the Durham banking market, the Board has considered several factors. After consummation of the proposal, 15 depository institutions would remain in the market, including six other multistate bank holding companies. Three of these multistate bank holding companies would each control over 10 percent of market deposits and two other multistate bank holding companies would each control over 5 percent of market deposits. In addition, the attractiveness for entry into the Durham banking market is demonstrated by the entry of two

¹¹ The competitive effects of the proposal in these banking markets are summarized in the Appendix.

depository institutions into the banking market since 1999, one through *de novo* entry and one by acquisition.

The Department of Justice has reviewed the proposal, including its effect on competition in the Durham banking market, and advised the Board that consummation of the proposal would not likely have a significantly adverse competitive effect in any banking market. The Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) have been afforded an opportunity to comment and have not objected to consummation of the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the Durham banking market. For the reasons explained above, the Board also has concluded that consummation of the proposal would not likely have a significantly adverse effect on competition or on the concentration of banking resources in the other banking markets in which National Commerce and CCB Financial both compete or any other relevant banking market.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act also requires that the Board consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal and certain other supervisory factors. The Board has carefully considered the financial and managerial resources and future prospects of National Commerce, CCB Financial, and their respective subsidiary banks and other supervisory factors in light of all the facts of record, including reports of examination, other confidential supervisory information assessing the financial and managerial resources of the organizations, and financial information provided by National Commerce. The Board notes that

National Commerce and CCB Financial and their subsidiary depository institutions currently are well capitalized and are expected to remain so on consummation of the proposal. Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of National Commerce, CCB Financial, and their subsidiary banks are consistent with approval, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.

Convenience and Needs Factor

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effect of the proposal on the convenience and needs of the communities to be served. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”). Accordingly, the Board has carefully considered the effect of the proposed merger on the convenience and needs of the communities to be served and the CRA records of performance of the institutions involved in light of all the facts of record.¹²

¹² The Board received one letter filed after the close of the comment period on the application from thirteen community organizations and churches in North Carolina. The letter included comments on the record of mortgage and community development lending to low- and moderate-income (“LMI”) and minority borrowers of National Commerce’s subsidiary depository institutions and the lack of branches of National Bank of Commerce, Memphis, Tennessee, in LMI areas. In addition, the letter included comments on the level of qualified investments made by the subsidiary depository institutions of National Commerce and CCB Financial and the impact of the loss of CCB Financial’s corporate headquarters in North Carolina. The letter also commented on the possible loss of jobs resulting from consummation of the proposal and concerns about the promotion of minority employees and use of minority vendors by National Commerce and CCB Financial. Several of these comments relate to factors that are not within the statutory factors that the Board is permitted to

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations of the CRA performance records of the relevant depository institutions by the appropriate federal financial supervisory agency.¹³ National Bank of Commerce, the lead depository institution of National Commerce, received a “satisfactory” rating at its most recent CRA performance examination by the OCC, as of July 1998.¹⁴ CCB

consider under section 3 of the BHC Act. See, e.g., First Security Corporation, 86 Federal Reserve Bulletin 122, 132 n.56 (2000); Community Capital Bancshares, Inc., 85 Federal Reserve Bulletin 444, 445 n.3 (1999). A public meeting or hearing on the proposal was also requested. Section 3 of the BHC Act requires the Board to hold a public hearing on an application only on a timely written recommendation of denial from the appropriate supervisory authority for the bank to be acquired. The Board has not received such a recommendation in this case. The Board has accumulated a significant record on the proposal, including reports of examination, supervisory information, and public reports and information. In light of the record accumulated and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or otherwise warranted in this case.

¹³ The Interagency Questions and Answers Regarding Community Reinvestment provides that an institution’s most recent CRA performance evaluation is an important and often controlling factor in the consideration of an institution’s CRA record because it represents a detailed evaluation of the institution’s overall record of performance under the CRA by its appropriate federal banking supervisor. 64 Federal Register 23,618 and 23,641 (1999).

¹⁴ The other subsidiary depository institutions of National Commerce also have received “satisfactory” ratings at their most recent CRA performance examinations. NBC Bank, FSB, Memphis, Tennessee, received a “satisfactory” rating from the Office of Thrift Supervision (“OTS”), as of July 1998; First Market Bank, FSB, Memphis, Tennessee, received a “satisfactory” rating from the OTS, as of July 1998; and Hillsborough Savings Bank, Inc., SSB, Hillsborough, North Carolina, which National Commerce acquired on April 11, 2000, received a “satisfactory” rating from the Federal Deposit Insurance Corporation, as of August 1998. NBC Bank, FSB, Knoxville, Tennessee (“NBC-Knoxville”), which was merged into National Bank of

Bank received a “satisfactory” rating at its most recent CRA performance examination by the FDIC, as of January 2000.¹⁵

National Commerce has indicated that CCB Bank would continue in operation after consummation of the proposal and that National Commerce would use the strengths of the CRA programs of National Commerce and CCB Financial at all of its subsidiary depository institutions. Consequently, the Board has considered the CRA performance records of the subsidiary depository institutions of National Commerce and CCB Financial in evaluating the proposal.

Examiners at the most recent CRA performance examination of National Bank of Commerce indicated that the residential real estate lending and small business lending of the bank reflected a reasonable penetration in LMI geographies and an adequate distribution of loans to LMI borrowers that were reportable under the Home Mortgage Disclosure Act.¹⁶ Examiners favorably noted two flexible lending programs designed to deliver real estate loans to LMI individuals. The affordable mortgage program offers mortgages that feature lower downpayments and flexible debt ratios to qualified borrowers. During the evaluation period, the bank made 50 loans totaling \$2.5 million under this program. The first mortgage refinance program offers mortgages with lower downpayments, flexible loan-to-value ratios, no

Commerce on May 9, 2000, received a “satisfactory” rating from the OTS, as of July 1998.

¹⁵ American Federal Bank received a “satisfactory” rating from the OTS at its most recent CRA performance examination, as of August 1999.

¹⁶ The 1998 examination of National Bank of Commerce reviewed the bank’s activities from July 31, 1996, through June 30, 1998. During this period, the bank’s assessment area consisted of portions of the Memphis and Jackson Metropolitan Statistical Areas and portions of Bradley County, all in Tennessee.

application or origination fees, and no private mortgage insurance to qualified borrowers. Between February 1998 and June 1998, the bank made 192 loans under this program totaling \$17 million.¹⁷

In addition, examiners indicated that National Bank of Commerce made qualified community development loans totaling \$4.9 million during the evaluation period to provide affordable housing to LMI individuals. Examiners also indicated that National Bank of Commerce made an adequate number of qualified investments in its assessment areas during the examination period. Examiners stated that the bank's delivery of retail banking services was reasonably accessible to LMI individuals through the bank's branch network in grocery stores. Examiners also indicated that a fair lending examination was conducted concurrently with the CRA performance examination and did not detect any evidence of discriminatory or other illegal credit practices.

Examiners at the most recent CRA performance examination of CCB Bank stated that the bank responded well to community credit needs as evidenced by the level of lending inside the bank's assessment area. CCB Bank originated 87 percent of its mortgage loans and 89 percent of the dollar volume of mortgage loans in its assessment areas in 1998 and 1999. Examiners indicated that CCB Bank demonstrated good geographic distribution of lending throughout its assessment areas and had a good distribution of loans to borrowers with different incomes. Examiners also commended the bank for offering innovative or flexible lending programs, including flexible mortgage

¹⁷ NBC-Knoxville operated branches in Tennessee, North Carolina, Mississippi, and Georgia. Examiners noted that the lending activity of NBC-Knoxville reflected an adequate responsiveness to the credit needs of the bank's assessment areas.

programs. In 1998 and 1999, CCB Bank made 4,621 loans under these programs totaling \$401 million.

Examiners favorably noted that CCB Bank made 163 community development loans totaling \$21 million in 1998 and 1999. Examiners also indicated that the bank made a significant level of community development investments, including making more than \$500,000 in qualified donations to LMI individuals and families in its assessment areas. Examiners described CCB Bank's delivery of retail banking services as outstanding. In connection with the CRA performance evaluation, examiners noted that the current compliance examination of CCB Bank did not reveal any substantive violations of the fair lending laws and regulations.

In its review of the convenience and needs factor under the BHC Act, the Board has carefully considered the entire record. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant insured depository institutions, are consistent with approval of the proposal.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance by National Commerce with all the commitments made in connection with the application and on the receipt by National Commerce of all necessary approvals from state regulators. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of CCB Financial shall not be consummated before the fifteenth calendar day following the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁸ effective June 19, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

¹⁸ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

APPENDIX

Summary of Market Structure

Greensboro-
High Point

National Commerce is the 17th largest depository institution in the market, controlling deposits of \$51.9 million, representing approximately less than 1 percent of market deposits. CCB Financial is the third largest depository institution in the market, controlling deposits of \$831.6 million, representing approximately 10.1 percent of market deposits. After the proposed merger, National Commerce would become the third largest depository institution in the market, controlling deposits of \$883.4 million, representing approximately 10.7 percent of market deposits. The HHI would increase 13 points to 1130 and 24 other competitors would remain in the market.

Raleigh

National Commerce is the tenth largest depository institution in the market, controlling deposits of \$128.8 million, representing approximately 1.6 percent of market deposits. CCB Financial is the sixth largest depository institution in the market, controlling deposits of \$659.3 million, representing approximately 8.1 percent of market deposits. After the proposed merger, National Commerce would become the sixth largest depository institution in the market, controlling deposits of approximately \$788.1 million, representing approximately 9.7 percent of market deposits. The HHI would increase 26 points to 1251 and 21 other competitors would remain in the market.