

FEDERAL RESERVE SYSTEM

Mizuho Holdings, Inc. (In Formation)  
Tokyo, Japan

Order Approving Formation of a Bank Holding Company and  
Acquisition of Nonbanking Companies

Mizuho Holdings, Inc. (In Formation) (“Mizuho”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) (“BHC Act”) to become a bank holding company by indirectly acquiring the U.S. subsidiary banks of The Dai-Ichi Kangyo Bank, Ltd. (“DKB”); The Fuji Bank, Ltd. (“Fuji”); and The Industrial Bank of Japan, Ltd. (“IBJ”), all of Tokyo, Japan.<sup>1</sup> Mizuho also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire the U.S. nonbanking subsidiaries of DKB, Fuji, and IBJ and thereby engage in certain permissible nonbanking activities.<sup>2</sup> In addition, Mizuho proposes to acquire Fuji

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<sup>1</sup> The U.S. subsidiary banks are Dai-Ichi Kangyo Bank of California, Los Angeles, California (“DKB California”), and The Fuji Bank and Trust Company (“Fuji Trust”), The Industrial Bank of Japan Trust Company (“IBJ Trust”), and IBJ Whitehall Bank & Trust Company (“IBJ Whitehall”), all of New York, New York. Mizuho also has requested approval to acquire DKF Trust Co. (USA), New York, New York (“DKF Trust”), currently authorized by the Board to operate as a nondepository trust company. Mizuho proposes to operate DKF Trust as a commercial bank.

<sup>2</sup> The nonbanking activities of DKB, Fuji, and IBJ for which Mizuho has sought Board approval under section 4(c)(8) and 4(j) of the BHC Act are listed in the Appendix. Mizuho also seeks the Board’s approval to own and operate a de novo industrial loan corporation chartered in Utah, in accordance with section 225.28(b)(4)(i) of Regulation Y (12 C.F.R. 225.28(b)(4)(i)). In addition,  
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Bank International, Inc., Los Angeles, California, an Edge corporation, pursuant to section 25A of the Federal Reserve Act (12 U.S.C. § 611 *et seq.*) and the Board's Regulation K (12 C.F.R. 211).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 19,766 (2000)). 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 sections 3 and 4 of the BHC Act.

Mizuho is a corporation that would be formed under the laws of Japan to acquire DKB, Fuji, and IBJ.<sup>3</sup> On consummation of the proposal, Mizuho would become the largest banking organization in the world, with total consolidated assets of \$1.4 trillion.<sup>4</sup>

DKB, with total consolidated assets of \$489.9 billion, is the fourth largest bank in Japan.<sup>5</sup> In the United States, DKB owns DKB California, and a

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Mizuho has requested the Board's approval to engage in financial and investment advisory activities through Nomura IBJ Global Investment Advisors, Inc., New York, New York, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)).

<sup>3</sup> The transaction would be effected through an exchange of shares. Mizuho's corporate existence would begin on its commercial registration after consummation of the exchange of shares. *See Japanese Commercial Code, art. 370.*

<sup>4</sup> Asset and ranking data are as of March 31, 2000, and are based on the exchange rate then applicable.

<sup>5</sup> Asset data for DKB, Fuji, and IBJ are as of March 31, 2000, and are based on the exchange rate then applicable. Ranking data for Japanese banks are as of September 30, 1999.

controlling interest in DKF Trust Co. (USA). DKB also operates branches in Chicago, Illinois, and New York, New York, and an agency in Los Angeles, California. In addition, DKB's subsidiary bank, Chekiang First Bank, Ltd., Hong Kong Special Administrative Region, People's Republic of China, operates an agency in San Francisco, California.

Fuji, with total consolidated assets of \$548.7 billion, is the second largest bank in Japan. In the United States, Fuji owns Fuji Trust, and a controlling interest in DKF Trust Co. (USA). Fuji also operates branches in New York, New York, and Chicago, Illinois; agencies in Los Angeles, California, and Houston, Texas; and a representative office in New York, New York.

IBJ, with total consolidated assets of \$400.1 billion is the seventh largest bank in Japan. In the United States, IBJ owns IBJ Trust and IBJ Whitehall. IBJ also operates branches in New York, New York, and Chicago, Illinois; an agency in Los Angeles, California; and representative offices in Atlanta, Georgia; Houston, Texas; and San Francisco, California.

In addition, DKB, Fuji, and IBJ engage in a broad range of permissible nonbanking activities in the United States through subsidiaries.

#### Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) ("CRA") of the insured depository institutions involved in the transaction; the availability of information

needed to determine and enforce compliance with the BHC Act and other applicable federal banking law; and, in the case of applications involving foreign banks, whether the foreign banks involved are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor. In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits in the nation and relevant individual states, and compliance with other provisions of section 3(d) of the BHC Act.

The Board has considered these factors in light of a record that includes information provided by Mizuho, DKB, Fuji, and IBJ; confidential supervisory and examination information; and publicly reported financial and other information. The Board also has considered information collected from the primary home country supervisor of DKB, Fuji, and IBJ, and from various federal and state agencies, including the New York State Banking Department (“NYSBD”) and other relevant agencies. In addition, the Board has considered comments submitted by the public on the proposal.<sup>6</sup>

#### 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 the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Mizuho is New York,<sup>7</sup>

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<sup>6</sup> The Board received a comment from Inner City Press/Community on the Move & Inner City Public Interest Law Center (collectively, “ICP”) in connection with the proposal.

<sup>7</sup> A bank holding company’s home state is that 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.

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and Mizuho's subsidiary banks would be located in New York and California.<sup>8</sup>

All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.<sup>9</sup> 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 Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>10</sup>

DKB, Fuji, and IBJ control banking operations that compete directly in the New York/New Jersey Metropolitan banking market ("New York banking

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12 U.S.C. § 1841(o)(4)(C). On consummation of the proposal, Mizuho would become a bank holding company, and the state in which the total deposits of its U.S. banking subsidiaries would be the largest is New York.

<sup>8</sup> For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

<sup>9</sup> Mizuho is adequately capitalized and adequately managed, as defined by applicable law. 12 U.S.C. § 1842(d)(1)(A). On consummation of the proposal, Mizuho and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)), and would not exceed applicable deposit limitations in any state as calculated under state and federal law. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>10</sup> 12 U.S.C. § 1842(c)(1).

market").<sup>11</sup> Consummation of the proposal would result in an increase of less than one point in the Herfindahl-Hirschman Index ("HHI") in the New York banking market, and the banking market would remain unconcentrated with numerous competitors operating in the market.<sup>12</sup> 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 New York banking market or in any other relevant banking market.

#### Financial and Managerial Considerations

The Board has carefully considered the financial and managerial resources and future prospects of Mizuho and the banks involved in the proposal,

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<sup>11</sup> The New York banking market includes New York City; Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren, and a portion of Mercer Counties in New Jersey; Pike County in Pennsylvania; and portions of Fairfield and Litchfield Counties in Connecticut.

<sup>12</sup> Market share data are as of June 30, 1999. The HHI for the New York banking market would remain at 786 after consummation of the proposal. Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is less than 1000 points is considered to be unconcentrated. 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 entities.

the effect the proposed transaction would have on such resources, and other supervisory factors in light of all the facts of record, including public comments.<sup>13</sup> The Board notes that the proposal is intended to enhance the overall financial strength and future prospects of the combined organization. The transaction would occur through an exchange of shares, and Mizuho, DKB, Fuji, and IBJ would issue no debt as part of the transaction. Mizuho's stated capital levels exceed the minimum levels that would be required under the Basle Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization under similar circumstances.

The Board also has reviewed supervisory information from the home country authorities responsible for supervising DKB, Fuji, and IBJ concerning the proposal; confidential financial information from DKB, Fuji, and IBJ; and reports of examination from the appropriate federal and state supervisors assessing the financial and managerial resources of the organization. Based on all the facts of record, the Board has concluded that the financial and managerial resources and future prospects of the organization are consistent with approval.

#### Convenience and Needs Factor

The Board also has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including comments contending that the proposal would have an adverse effect on the communities to be served.

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<sup>13</sup> ICP cites press reports declaring that Mizuho would be confronted by high levels of bad debts, inadequate spending on information technology, and potential problems in reconciling different management styles.

A. CRA Performance Examinations

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 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. 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.<sup>14</sup>

This case involves the proposed formation of a new bank holding company. Accordingly, the Board has reviewed in detail the CRA performance records of the U.S. subsidiary insured depository institutions of the institutions involved in the transaction. Almost all the insured depository institutions of DKB, Fuji, and IBJ received "outstanding" CRA performance ratings at their most recent examination under the CRA, and each of their other insured depository institutions that had been examined received a "satisfactory" CRA performance rating. DKB California received a "satisfactory" CRA performance rating from the Federal Deposit Insurance Corporation ("FDIC") at its most recent examination, as of May 24, 1999 ("1999 DKB California Examination").<sup>15</sup> Fuji

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<sup>14</sup> The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 64 Federal Register 23,641 (1999).

<sup>15</sup> DKF Trust has not been examined for CRA performance since becoming a subsidiary of DKB and Fuji. Yasuda Bank and Trust Company (U.S.A.), the  
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Trust received an “outstanding” CRA performance rating from the FDIC at its most recent examination, as of June 15, 1999 (“1999 Fuji Trust Examination”). In addition, the NYSBD, as of June 11, 1999, rated Fuji Trust’s CRA performance “outstanding” pursuant to section 28-b of New York state banking law. IBJ Trust received ratings of “outstanding” from the FDIC at its most recent examination for CRA performance, as of March 8, 2000 (“2000 IBJ Trust Examination”), and from the NYSBD, as of May 28, 1999. IBJ Whitehall received an “outstanding” CRA performance rating from the Federal Reserve Bank of New York (“Reserve Bank”) at its most recent examination, as of November 30, 1998 (“1998 IBJ Whitehall Examination”), and from the NYSBD, as of July 31, 1998.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of the insured depository institutions involved in this proposal, and found no violations of fair lending laws.<sup>16</sup> Examiners also reviewed

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predecessor institution to DKF Trust, received a “satisfactory” CRA performance rating from the FDIC at its examination, as of June 30, 1998.

<sup>16</sup> ICP’s comments include contentions that CIT Group, Inc., Livingston, New Jersey (“CIT”), a subsidiary of DKB, engages in predatory lending by making subprime loans and imposing prepayment penalties more frequently than competitors, and engages in these practices more often in certain metropolitan areas with respect to African Americans than do its competitors. ICP also asserts that CIT has supported predatory lending by purchasing loans from Long Beach Mortgage Company, Orange, California (“Long Beach”). CIT purchased no mortgage loans or had any other business relationships with Long Beach since 1998. The Board has forwarded copies of ICP’s comments on CIT to the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, which have responsibility for fair lending law compliance by nondepository companies like CIT and Long Beach. The Board also has consulted with these agencies. In addition, the Board has considered information submitted by Mizuho on CIT’s consumer lending practices, including  
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the assessment areas delineated by these insured depository institutions and found that the respective assessment areas were reasonable and did not arbitrarily exclude low- and moderate-income (“LMI”) areas.<sup>17</sup>

B. DKB California

The 1999 DKB California Examination indicated that approximately 97 percent of DKB California’s loans were for business purposes. DKB California made 62.5 percent of its small business loans in 1997 and 1998 in its assessment areas, which examiners found reflected satisfactory penetration of its assessment areas. In its Los Angeles assessment area, DKB California made 56.8 percent of its small business loans in LMI census tracts in 1997 and 1998, although only 32 percent of all small businesses in the assessment area were located in LMI census tracts. Approximately 68 percent of DKB California’s

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the processes by which CIT makes credit available to consumers, the compliance procedures established by CIT, the methodology employed by CIT in setting risk-based interest rates, and the relationship of CIT with loan brokers and correspondents.

<sup>17</sup> ICP questions the appropriateness of the delineated assessment area of CIT Online Bank (“CITO”), the de novo Utah industrial loan corporation that Mizuho proposes to operate. Mizuho states that CITO intends to make small purchase money consumer loans to individuals throughout the United States. As an initial matter, CITO proposes to define its assessment area as Salt Lake County, Utah, which is the county in which CITO would be located. CITO will, at the time it opens for business, be subject to the CRA. See 12 C.F.R. 345.11(c). The Board has consulted with the FDIC on the adequacy of CITO’s CRA plan. In acting on CITO’s application for federal deposit insurance, the FDIC would consider CITO’s plans for meeting CRA objectives. 12 C.F.R. 345.29(b). In addition, the adequacy of CITO’s assessment area can and will be reviewed by the FDIC in the CRA examination process as CITO develops its operations.

small business loans in its Los Angeles assessment area were for amounts of \$100,000 or less. Examiners noted DKB California's participation in three innovative government lending programs for small businesses, including the California Export Finance Office Program, which provides debt financing to certain small businesses not qualifying for traditional bank financing.

The 1999 examination also found that DKB California made \$11.6 million in qualified community development investments since its previous CRA examination, including investments of \$11.4 million in low-income mortgage pools and mortgage-backed securities collateralized by real estate in the Los Angeles portion of DKB California's assessment area. Examiners also noted DKB California's investment of \$25,000 in the California Economic Development Lending Initiative, a community development corporation that lends to community development organizations and small businesses in California. In addition, examiners noted DKB California's investment of \$50,000 in Clearinghouse Community Development Financial Institution, a consortium that seeks to increase the housing stock for low- and very-low-income residents of Southern California by making direct loans to affordable housing projects and other community development initiatives.

#### C. Fuji Trust

Fuji Trust engages primarily in syndicating and participating in loans to major corporations, commercial leasing, and corporate trust services, and it has been designated as a wholesale bank by the FDIC for purposes of assessing its CRA performance.<sup>18</sup> The performance test for wholesale banks evaluates an

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<sup>18</sup> A “wholesale bank” is a bank that (i) is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and (continued...)

institution's record of community development lending, investments, and services in its designated assessment area.<sup>19</sup>

The 1999 Fuji Trust Examination found Fuji Trust's community development activities during the examination period totaled \$30.8 million. Examiners noted that the level of Fuji Trust's community development activities increased despite a decrease in its total assets during the preceding four years. Among Fuji Trust's lending activities, examiners highlighted a \$2 million revolving line of credit to fund the purchase of approximately 30 buildings that provided rental housing in LMI portions of Fuji Trust's assessment area.

The 1999 examination found that Fuji Trust originated or renewed a total of \$890,000 of qualified community development investments since the previous examination. Examiners noted that Fuji Trust renewed its \$100,000 certificate of deposit in a community development bank that provides loan and deposit services to LMI communities in New York City. Examiners also highlighted Fuji Trust's purchase of nonmember certificates of deposit in nine low-income credit unions in New York City, and noted Fuji Trust's grants of \$418,000 during the examination period, primarily to organizations that served LMI individuals.

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(ii) has been designated as a wholesale bank by its appropriate Federal banking agency. 12 C.F.R. 345.12(w). In October 1996, the FDIC designated Fuji Trust as a wholesale bank.

<sup>19</sup> 12 C.F.R. 345.25(a), (e).

D. IBJ Trust

IBJ Trust also operates as a wholesale bank, providing investment management, lending, leasing, trust, cash management, and other services to multinational corporations and government agencies, and has been designated by the FDIC as a wholesale bank.<sup>20</sup> The 2000 IBJ Trust Examination found that IBJ Trust was involved in lending to several community development projects. Examiners noted that IBJ Trust extended its commitment to fund a \$3.5 million of line of credit to a nonprofit mortgage lender that, as of the date of the Examination, had financed construction or rehabilitation of almost 50,000 housing units in New York City and surrounding counties. Examiners also noted a \$300,000 loan commitment by IBJ Trust to a nonprofit organization to rehabilitate and resell 29 buildings in low-income neighborhoods in Brooklyn and Queens.

The 2000 examination cited several community development investments made by IBJ Trust, including its renewal of a \$100,000 certificate of deposit in Community Capital Bank, a community development bank that finances community development in LMI neighborhoods in New York City. Examiners also noted IBJ Trust deposits totaling \$300,000 in six low-income credit unions in New York City, and stated that \$641,000 in grants were made since the previous examination to organizations serving LMI residents or engaging community development activities. These grants included \$30,000 to Asian Americans for Equality to provide home mortgage education and counseling to LMI individuals with disabilities, and \$25,000 to Common Ground

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<sup>20</sup> In September 1996, the FDIC designated IBJ Trust as a wholesale bank for purposes of assessing its CRA performance.

Job Training Corporation for its job training and placement program for residents of supportive housing.

E. IBJ Whitehall

IBJ Whitehall provides commercial lending, private banking, investment management, and other services to corporations, governments, and individuals with high net worth, and has been designated by the Federal Reserve System as a wholesale bank.<sup>21</sup> The 1998 IBJ Whitehall Examination found that the bank had increased the amount of its qualified investments by 122 percent to \$13.3 million since the previous examination.<sup>22</sup>

Examiners stated that IBJ Whitehall was engaged in a number of innovative or complex community development activities. For example, examiners noted that IBJS Capital Corporation, a subsidiary small business investment corporation of IBJ Whitehall, provided long-term financing to small businesses in IBJ Whitehall's assessment area. The 1998 examination also mentioned IBJ Whitehall's participation in programs operated by Neighborhood Housing Services to provide low-interest loans for the rehabilitation of small multifamily and mixed use buildings and down payment and closing cost assistance to LMI homebuyers. Examiners cited IBJ Whitehall's involvement in forming the Neighborhood 2000 Fund, an organization making grants to

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<sup>21</sup> See 12 C.F.R. 228.25. In April 1997, the Federal Reserve System designated IBJ Whitehall as a wholesale bank for purposes of evaluating its CRA performance.

<sup>22</sup> At the time of the examination, IBJ Whitehall was named IBJ Schroeder Bank and Trust Company.

community development corporations that support housing and economic development initiatives.

**F. Conclusion on Convenience and Needs**

In reviewing the proposal's effect on the convenience and needs of the communities to be served, the Board has carefully considered all the facts of record, including the public comments received, responses to the comments, and reports of examinations of CRA performance of the institutions involved.<sup>23</sup> The Board expects that, after consummation of the proposal, Mizuho's U.S. subsidiary banks would demonstrate the same commitment to serving the community development needs of their communities that they have demonstrated to date. DKB, Fuji, and IBJ are large banking organizations with satisfactory records of compliance with U.S. banking regulations, and Mizuho has financial and managerial resources that are sufficient to ensure compliance by the U.S. subsidiary banks with all relevant regulatory requirements, including the CRA. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that convenience and needs considerations, including the CRA

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<sup>23</sup> ICP contends that DKB, Fuji, and IBJ have indirectly supported predatory lending by providing financing to Delta Funding Corporation, Woodbury, New York ("Delta"); Ameriquest Mortgage Company, Orange, California ("Ameriquest"); and PinnFund USA, Carlsbad, California ("PinnFund"). Mizuho represents that the business relationships cited by ICP were limited to equipment leases to Delta and Ameriquest by subsidiaries of DKB and Fuji, and that a credit facility arranged by IBJ for PinnFund expired without being funded. The Board has considered these assertions in evaluating the managerial and convenience and needs factors in this case.

performance records of the U.S. subsidiary banks involved, are consistent with approval of the proposal.<sup>24</sup>

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<sup>24</sup> ICP contends that CIT has supported predatory lending by providing financing to United Companies Financial Corporation, Baton Rouge, Louisiana (“United”) and Cityscape Financial Corporation, Elmsford, New York (“Cityscape”). The only business relationships that CIT had with Cityscape involved two credit facilities totaling \$105 million. Mizuho represents that CIT did not control Cityscape’s underwriting or lending practices, and that CIT was not involved in Cityscape’s credit review process. With regard to United, CIT agreed to fund up to \$75 million of a \$150 million credit facility for United. The average loan under the facility was \$5.5 million. This facility was arranged for United by another lender and was CIT’s only business relationship with United. The facility was terminated earlier this year. Mizuho represents that CIT did not control United’s underwriting or lending practices, and was not involved in United’s credit review process.

ICP also contends that IBJ has indirectly supported predatory lending by securitizing high-loan-to-value mortgage loans. IBJ arranged three securitizations as short-term warehousing facilities for mortgage loans originated by three different lenders: PinnFund, Empire Funding Corporation, Austin, Texas (“Empire”), and FirstPlus Financial, Inc., Dallas, Texas (“FirstPlus”). IBJ states that it had no involvement in the origination of the mortgage loans warehoused in these facilities. The PinnFund financing vehicle was never used. With respect to each of the securitizations, IBJ arranged for reviews of samples of the loan documentation for compliance with the disclosure requirements of the consumer protection laws, and the lender involved made representations and warranties about its compliance with consumer protection laws. The Department of Housing and Urban Development, the Department of Justice, and Federal Trade Commission have responsibility for reviewing the compliance with the fair lending laws of nondepository institutions like Cityscape, United, PinnFund, Empire, and FirstPlus, and the Board has forwarded copies ICP’s assertions to the agencies.

### Other Supervisory Considerations

Under section 3 of the BHC Act, the Board may not approve an application involving a foreign bank unless the bank is “subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank’s home country.”<sup>25</sup> The Board previously has determined, in applications under the BHC Act, that certain Japanese commercial banks, including Fuji, were subject to comprehensive consolidated supervision by their home country supervisor.<sup>26</sup> In this case, the Board has determined that DKB and IBJ are supervised on substantially the same terms and conditions as the other Japanese banks. In addition, Japan’s Financial Services Agency (“FSA”) has supervisory authority with respect to Mizuho and its nonbanking subsidiaries. The FSA may conduct inspections of Mizuho and its subsidiaries and require Mizuho to submit reports about its operations on a consolidated basis. The FSA also may review transactions between Mizuho and its subsidiaries and has authority to require Mizuho to take measures necessary to ensure the safety and

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<sup>25</sup> 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. 12 C.F.R. 225.13(a)(4). Regulation K provides that a foreign bank may be considered subject to consolidated supervision if the Board determines that the 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 its affiliates, to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 C.F.R. 211.24(c)(1)(ii).

<sup>26</sup> See The Sanwa Bank, Limited, 86 Federal Reserve Bulletin 54 (2000); The Fuji Bank, Limited, 85 Federal Reserve Bulletin 338 (1999); and The Mitsubishi Bank, Limited, 82 Federal Reserve Bulletin 436 (1996).

soundness of the Mizuho organization. Based on all the facts of record, the Board has concluded that DKB, Fuji, and IBJ are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor.<sup>27</sup>

The BHC Act also requires the Board to determine that foreign banks have provided adequate assurances that they will make available to the Board such information on their operations and activities and those of their affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. The Board has reviewed the restrictions on disclosure in jurisdictions where DKB, Fuji, and IBJ have, and Mizuho would have, material operations and has communicated with relevant government authorities concerning access to information. Mizuho has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of Mizuho and any of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. Mizuho also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary in order to enable Mizuho to make any such information available to the Board. In light of these commitments and other facts of record, the Board has concluded that Mizuho has provided adequate assurances of access to any appropriate information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

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<sup>27</sup> In reaching this conclusion, the Board has considered ICP's contention that home country supervision of Mizuho would be inadequate.

### Nonbanking Activities

Mizuho also has filed notices under sections 4(c)(8) and (4)(j) of the BHC Act to acquire the U.S. nonbank subsidiaries of DKB, Fuji, and IBJ, and to engage in the United States in various permissible nonbanking activities. Through these subsidiaries, Mizuho would engage in a number of nonbanking activities, including lending activities, activities related to extending credit, leasing activities, performing trust company functions, providing investment and financial advisory services, providing securities brokerage, private placement, riskless principal, futures commission merchant, and other agency transactional services, underwriting and dealing in bank-eligible securities, investing and trading activities, management consulting activities, certain specific insurance agency activities,<sup>28</sup> community development activities, and data processing and transmission activities. In addition, Mizuho seeks the Board's approval to own and operate a de novo industrial loan company, and to engage in financial and investment advisory activities through Nomura IBJ Global Investment Advisors, Inc. The Board determined by regulation before November 12, 1999, that the types of activities for which notice has been provided are closely related to

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<sup>28</sup> Specifically, Mizuho has requested the Board's authorization to retain credit-related property and casualty insurance activities which DKB currently conducts through CIT pursuant to exemption D of the Garn-St Germain Depository Institutions Act of 1982. Mizuho has committed to comply with the commitments regarding this activity as outlined in the Board's order authorizing DKB's acquisition of CIT. See The Dai-Ichi Kangyo Bank, Limited, 76 Federal Reserve Bulletin 75 (1990). CIT will remain a separate subsidiary of DKB, and these insurance activities will not be conducted by any of Mizuho's other subsidiaries. Pursuant to exemption D, CIT may sell insurance only in New York, states adjacent to New York, and states where Manufacturers Hanover Corporation conducted insurance agency activities on May 1, 1982.

banking for purposes of section 4(c)(8) of the BHC Act.<sup>29</sup> Mizuho has committed that it will conduct these activities in accordance with the Board's regulations and in accordance with the orders approving these activities for bank holding companies.<sup>30</sup>

In order to approve the notice, the Board also must determine that the acquisition of the U.S. nonbank subsidiaries of DKB, Fuji, and IBJ, and the performance of the proposed activities by Mizuho can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.<sup>31</sup>

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<sup>29</sup> See 12 C.F.R. 225.28(b)(1), (2), (3), (4)(i), (5), (6), (7)(i)-(v), (8)(i) and (ii), (9), (11)(iv), (12), and (14).

<sup>30</sup> In connection with its July 1999 acquisition of HealthCare Financial Partners, Inc. (“HFP”), Fuji committed to conform the activities and investments of HFP to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y within two years of acquiring HFP. See Fuji Bank, Ltd., 85 Federal Reserve Bulletin 643, fn 2 (1999). In connection with its November 1999 acquisition of Newcourt Credit Group, Inc. (“Newcourt”), DKB committed to conform the activities and investments of Newcourt to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y within two years of acquiring Newcourt. See Dai-Ichi Kangyo Bank, Ltd., 85 Federal Reserve Bulletin 736, fn 3. (1999). Mizuho has committed to conform the activities and investments of HFP and Newcourt within the time frames specified in the original commitments by Fuji and DKB. In addition, Mizuho has committed that it will conform all other nonconforming activities to the requirements of section 4 of the BHC Act within two years after the consummation of the proposal, and that it will make no new nonconforming investments after consummation of this proposal.

<sup>31</sup> See 12 U.S.C. § 1843(j)(2)(A).

Mizuho has indicated that the proposal would improve the financial position and future business prospects of the current banking and nonbanking subsidiaries of DKB, Fuji, and IBJ. In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

The Board has carefully considered the competitive effects of the proposed transaction under section 4 of the BHC Act. To the extent that DKB, Fuji, and IBJ offer different types of nonbanking products, the proposed acquisition would result in no loss of competition. Certain nonbanking subsidiaries of DKB, Fuji, and IBJ compete, however, in the markets for commercial lending, commercial leasing, swaps and derivatives, securities brokerage and dealing, corporate trust services, and financial investment advisory markets. The markets for each of these nonbanking activities are regional or national. The record in this case indicates that there are numerous providers of these services and that the markets for these nonbanking services are unconcentrated. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition.

The Board also believes that the conduct of the proposed nonbanking activities within the framework established in this order, prior orders, and Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices, that would not be outweighed by the public benefits of the proposal, such as increased customer convenience and gains in efficiency.

Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under the standard of section 4(j) of the BHC Act is favorable and consistent with approval.

Mizuho also has provided notice under section 25A of the Federal Reserve Act and section 211.4 of Regulation K (12 C.F.R. 211.4) to acquire Fuji Bank International, Inc., a company organized under section 25A of the Federal Reserve Act. The Board concludes that all the factors required to be considered under the Federal Reserve Act and Regulation K are consistent with approval of the proposal.

### Conclusion

Based on the foregoing, the Board has determined that the transaction should be, and hereby is, approved.<sup>32</sup> In reaching its conclusion, the Board has

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<sup>32</sup> ICP requests 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 a bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any of the appropriate supervisory 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 a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C. § 1843(c)(8); 12 C.F.R. 225.25(a)(2). The Board has considered carefully ICP's request in light  
(continued...)

considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Mizuho with all the commitments made in connection with this application and notice, including the commitments discussed in the order, and the conditions set forth in the order and the above-noted Board regulations and orders, and on the Board's receiving access to information on the operations or activities of Mizuho and any of its affiliates that the Board determines to be appropriate to determine and enforce compliance by Mizuho and its affiliates with applicable federal statutes. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to be conditions imposed in writing by the Board in

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of all the facts of record. ICP has had ample opportunity to submit its views, and, in fact, submitted written comments that have been considered carefully by the Board in acting on the proposal. ICP's request fails to demonstrate why its written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. 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 request for a public meeting or hearing on the proposal is denied.

connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of the subsidiary banks of DKB, Fuji, and IBJ, may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated 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 Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors,<sup>33</sup> effective September 5, 2000.

(signed)

Robert deV. Frierson  
Associate Secretary of the Board

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<sup>33</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

## APPENDIX

Nonbanking activities of DKB, Fuji, and IBJ in which Mizuho proposes to engage:

- (1) extending credit and servicing loans, in accordance with section 225.28(b)(1) of the Board's Regulation Y (12 C.F.R. 225.28(b)(1));
- (2) activities related to extending credit, in accordance with section 225.28(b)(2) of the Board's Regulation Y (12 C.F.R. 225.28(b)(2));
- (3) providing leasing services, in accordance with section 225.28(b)(3) of Regulation Y (12 C.F.R. 225.28(b)(3));
- (4) performing trust company functions, in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5));
- (5) providing investment and financial advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6));
- (6) providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, in accordance with section 225.28(b)(7)(i)-(v) of Regulation Y (12 C.F.R. 225.28(b)(7)(i)-(v));
- (7) underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. §§ 335 and 24(7), and investing and trading activities, in accordance with section 225.28(b)(8)(i) and (ii) of Regulation Y (12 C.F.R. 225.28(b)(8)(i) and (ii));
- (8) providing management consulting services, in accordance with section 225.28(b)(9) of Regulation Y (12 C.F.R. 225.28(b)(9));
- (9) engaging in specific insurance agency activities through a subsidiary that engaged in such activities on May 1, 1982, in accordance with section 225.28(b)(11)(iv) of Regulation Y (12 C.F.R. 225.28(b)(11)(iv));
- (10) community development activities, in accordance with section 225.28(b)(12) of Regulation Y (12 C.F.R. 225.28(b)(12)); and

- (11) data processing and transmission activities, in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14)).