

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corporation
New York, New York

J.P. Morgan & Co. Incorporated
New York, New York

Order Approving the Merger of Bank Holding Companies, Merger of Banks,
and Establishment of Branches

The Chase Manhattan Corporation (“Chase”), 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 J.P. Morgan & Co. Incorporated (“Morgan”) and thereby acquire Morgan’s subsidiary bank, Morgan Guaranty Trust Company of New York (“Morgan Guaranty”), New York, New York.¹ Chase’s lead bank, The Chase Manhattan Bank, also in New York (“Chase Bank”), a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) (the “Bank Merger Act”) to merge with Morgan Guaranty, with Chase Bank as the surviving institution. Chase Bank also has applied under section 9 of the

¹ On consummation of the proposal, Chase would change its name to J.P. Morgan Chase & Co. Chase and Morgan also have each requested the Board’s approval to hold and exercise an option to acquire up to 19.9 percent of the other’s voting shares. These options would expire on consummation of the proposal.

Federal Reserve Act (12 U.S.C. § 321) to establish branches at the locations of the main office and branches of Morgan Guaranty.²

In addition, Chase 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 1843(j)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire Morgan's subsidiary savings association, J.P. Morgan FSB, Palm Beach, Florida ("Morgan FSB").

Chase also has filed notices under section 4(c)(13) of the BHC Act (12 U.S.C. § 1843(c)(13)), sections 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 601 et seq. and 611 et seq.), and the Board's Regulation K (12 C.F.R. 211) to acquire the Edge Act subsidiary and foreign operations of Morgan Guaranty.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 36,875 (2000)). As required by the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. 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, the Bank Merger Act and the Federal Reserve Act.

Chase, with total consolidated assets of \$396 billion, is the third largest commercial banking organization in the United States, controlling approximately 6 percent of the total assets of insured commercial banks in

² The branches would be established at: 60 Wall Street, New York, New York; 522 Fifth Avenue, New York, New York; 500 Stanton Avenue, Newark, Delaware.

(continued)

the United States (“total banking assets”).³ Chase is the largest banking organization in New York, controlling deposits of \$98 billion, representing approximately 23.2 percent of total deposits in depository institutions in the state (“state deposits”).⁴ Chase also operates banks in California, Connecticut, Delaware, Florida, New Jersey, and Texas.

Morgan, with total consolidated assets of \$266.3 billion, is the fifth largest commercial banking organization in the United States, controlling approximately 4 percent of total banking assets. It is the 15th largest banking organization in New York, controlling deposits of \$7.9 billion, representing approximately 1.9 percent of state deposits. Morgan also operates an insured depository institutions in Delaware and Florida.

After consummation of the proposal, Chase would remain the third largest commercial banking organization in the United States, with total consolidated assets of \$662.3 billion, representing approximately 10 percent of total banking assets. Chase would continue to operate insured depository institutions in the states where it currently operates.

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

³ Asset data are as of June 30, 2000. All other banking data are as of June 30, 1999, unless otherwise noted, and have been adjusted to account for mergers consummated since that date.

⁴ Unless otherwise noted, depository institutions include commercial banks, savings banks, and savings associations.

conditions are met. For purposes of the BHC Act, the home state of Chase is New York.⁵ As part of the proposal, Chase proposes to acquire a bank in Delaware.⁶ All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.⁷ 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

The Bank Merger Act and section 3 of the BHC Act prohibit the Board from approving a proposal that would result in a monopoly or be in furtherance of a monopoly. These acts also prohibit 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

⁵ A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of the 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 For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

⁷ 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Chase meets the capital and managerial requirements established under applicable law. On consummation, Chase 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 state deposits in Delaware. See 5 Del. Code Ann. tit. 5 § 795G (2000). All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

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

In reviewing the competitive effects of the proposal, the Board has reviewed carefully comments submitted by Inner City Press/Community on the Move, Bronx, New York (“ICP”). ICP contends that the merger would reduce competition for banking services in several product markets and result in higher fees and reduced customer convenience. ICP also challenges the Board’s use of the cluster of banking services to review the competitive effects of the proposal.

To review the effect of a particular transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant “line of commerce” or a product market and a geographic market. The Board and the courts have recognized consistently that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.⁹ According to the Supreme Court, the cluster of banking products and services facilitates convenient access to these products and services, and this convenience vests the cluster with economic significance

⁸ See 12 U.S.C. §§ 1828(c)(5) and 1842(c).

⁹ See Chemical Banking Corporation 82 Federal Reserve Bulletin 239 (1996) and the cases and studies cited therein. The Supreme Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963); accord, United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1969) (“Phillipsburg National”).

beyond the individual products and services that constitute the cluster.¹⁰ Several studies support the conclusion that both businesses and households continue to seek this cluster of products and services.¹¹ Consistent with these precedents and studies, and on the basis of all the facts of record in this case, the Board concludes that the cluster of banking products and services represents the appropriate product market for analyzing the competitive effects of the proposal.¹²

Chase and Morgan compete directly in the Metropolitan New York/New Jersey banking market (“New York banking market”); the West

¹⁰ See Phillipsburg National 399 U.S. at 361.

¹¹ Elliehausen and Wolken, Banking Markets and the Use of Financial Services by Households, 78 Federal Reserve Bulletin 169 (1992); Elliehausen and Wolken, Banking Markets and the Use of Financial Services by Small- and Medium-Sized Businesses, 76 Federal Reserve Bulletin 726 (1990).

¹² ICP asserts that after the enactment of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)), the cluster approach no longer is appropriate, and that certain products and services provided by Morgan Guaranty, including syndicated lending, precious metal trading, debt underwriting, and foreign currency exchange, should be analyzed as separate product markets. Under the Gramm-Leach-Bliley Act, financial holding companies and financial subsidiaries of banks may, under certain circumstances, engage in a broader range of nonbanking activities than permitted previously. The passage of the act, however, does not suggest that the cluster of banking products and services no longer is the appropriate line of commerce for analyzing the competitive effect of bank affiliations. ICP also argues that the elimination of Morgan Guaranty as a counter-party or participant in the markets for specific products and services listed above would impair significantly the operations of these markets. Even if the approach advocated by ICP were adopted, the Board notes that these activities are conducted on a national or global scale, with numerous other large institutions and sophisticated participants.

Palm Beach, Florida, banking market (“West Palm Beach banking market”); and the Wilmington, Delaware, banking market (“Wilmington banking market”).¹³ The Board has reviewed carefully the competitive effects of the proposal in each of the banking markets in light of all the facts of record, including the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by Chase and Morgan,¹⁴ the concentration

¹³ In addition to considering the product markets affected by a banking merger, the Board also analyzes the effects in a geographic market. See e.g., Sunwest Financial Services, Inc., 73 Federal Reserve Bulletin 463 (1987); Pikeville National Corporation, 71 Federal Reserve Bulletin 240 (1985); Wyoming Bancorporation, 68 Federal Reserve Bulletin 313 (1982), *aff’d* 729 F.2d 687 (10th Cir. 1984).

The New York banking market is defined as 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.

The West Palm Beach banking market is defined as all of Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County, all in Florida.

The Wilmington banking market is defined as New Castle County, Delaware, and Cecil County, Maryland.

¹⁴ Except as noted, market share data are as of June 30, 1999, and are based on calculations that include the deposits of thrift institutions, which include savings banks and savings associations, weighted at 50 percent. The Board has indicated previously 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). Because the deposits of Morgan FSB are controlled by and would continue to be controlled by a bank

(continued)

level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁵ and other characteristics and measures of the markets.

Chase operates the largest depository institution in the New York banking market, controlling deposits of \$98 billion, representing approximately 22.7 percent of market deposits. Morgan controls the 12th largest depository institution in the market, with deposits of \$8 billion, representing approximately 1.9 percent of market deposits. On consummation of the proposal, Chase would continue to operate the largest depository institution in the market, controlling deposits of \$106 billion, representing approximately 24.6 percent of market deposits. The New York banking market would remain unconcentrated as measured by the HHI, which would increase 84 points to 886, with numerous other competitors.

holding company, these deposits are included at 100 percent in the calculation of Chase’s market share in the West Palm Beach banking market. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669, 670 n.9 (1990).

¹⁵ Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market is considered unconcentrated if the post-merger HHI is below 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is above 1800. 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.

Chase operates the 40th largest depository institution in the West Palm Beach banking market, controlling deposits of \$20.3 million, representing less than 1 percent of market deposits. Morgan controls the 29th largest depository institution in the market, with deposits of \$55.5 million, also representing less than 1 percent of market deposits. On consummation of the proposal, Chase would become the 25th largest depository institution in the West Palm Beach banking market, controlling deposits of \$75.8 million, representing less than 1 percent of market deposits. The HHI would remain at 1137 points, and the market would continue to be moderately concentrated, with numerous other competitors remaining.

Chase operates the second largest depository institution in the Wilmington banking market, controlling deposits of \$6.1 billion, representing approximately 12.9 percent of market deposits.¹⁶ Morgan controls the sixth largest depository institution in the market, with deposits of \$1.9 billion, representing approximately 4 percent of market deposits. On consummation of the proposal, Chase would continue to operate the second largest depository institution in the Wilmington banking market, controlling

¹⁶ Deposit data for the Wilmington banking market are as of June 30, 2000, and include preliminary summary of deposit data. ICP has asserted that Chase and Morgan manipulated their deposit data for June 30, 2000, to conceal their competitive presence in the Wilmington banking market. In reviewing competitive effects and the changes in deposit data in this market over the past year, the Board has considered the structure of market operations, types of specific institutions, and the specific business practices of Chase and Morgan and changes in the market data for other competitors in the market. Based on these considerations, the Board has concluded that the 2000 data most accurately reflect the effects of the transaction on this market.

(continued)

deposits of \$8 billion, representing approximately 16.9 percent of market deposits. The HHI would increase 104 points to 2259, and numerous other competitors would remain in the market.

In addition, the Wilmington banking market is attractive for entry by out-of-market competitors. From 1997 to 2000, market deposits increased by 47.7 percent, compared with the national rate of increase of 34.1 percent. Per capita income in the market is \$18,156, compared with the national per capita income of \$15,555. From June 1998 to June 2000, five banking organizations entered the market de novo and two banking organizations entered the market by acquisition.

The Department of Justice also has considered the competitive effects of the proposal and has determined that it would not have a significantly adverse effect on competition in any relevant banking market. The Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”) have been afforded an opportunity to comment on the competitive aspects of the proposal and have not objected to consummation of the proposal.

Based on all the facts of record, and for the reasons discussed in the order, the Board concludes that consummation of the proposal would not be likely to result in a significantly adverse effect on competition or on the concentration of banking resources in any of the banking markets in which Chase and Morgan compete directly or in any other relevant banking market. Accordingly, the Board has determined that the competitive effects in this case are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Factors

The Bank Merger Act and section 3 of the BHC Act also require that the Board consider the financial and managerial resources and future prospects of the organizations involved in a proposal as well as certain other supervisory factors. The Board has carefully considered the financial and managerial resources and future prospects of Chase, Morgan, and their respective subsidiary banks and other supervisory factors in light of all the facts of record, including comments received on the proposal, reports of examination and other confidential supervisory information assessing the financial and managerial resources of the organizations, and financial information provided by Chase.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. The Board notes that Chase and Morgan and their subsidiary depository institutions are well capitalized, as defined in the relevant regulations of the federal banking agencies, and would remain well capitalized on consummation of the proposal.¹⁷ The proposal is structured as a stock-for-stock transaction and would not increase the debt service requirements of the combined organization. The proposal also would result in a more diversified client base and more diversified revenue sources for the combined organization. In addition, Chase expects

¹⁷ ICP expresses concern about press reports of earnings volatility at a Chase subsidiary that makes venture capital investments, Chase Capital Partners, New York, New York (“Chase Capital”). The Board has considered Chase Capital’s activities and earnings record in evaluating Chase’s financial resources.

to increase net income as a result of significant cost reductions as well as projected increases in revenue.¹⁸

The Board also has taken account of the managerial resources of Chase and Morgan and the federal financial supervisory agencies' examination records in supervising these organizations. All the subsidiary depository institutions of Chase and Morgan are well managed. Chase previously has integrated acquired organizations in a satisfactory manner and has remained well managed. Although Chase and Morgan continue to assess the appropriate risk management systems and procedures that would support certain individual lines of business, Chase expects to have an integrated risk management function, including credit risk management, in place and operating at the time of consummation of the proposal.¹⁹

¹⁸ ICP also contends that the combined organization would be able to exert an inappropriate level of influence on global financial markets and foreign nations thereby resulting in an institution too large for the Board and other government agencies to regulate. The Board and the other financial supervisory agencies have extensive experience supervising Chase and Morgan and their subsidiary depository institutions as well as other large banking organizations. See, e.g., Travelers Group Inc., 84 Federal Reserve Board 985 (1998); NationsBank Corporation, 84 Federal Reserve Board 858 (1998). Building on this experience, the Board has developed a supervisory system that will permit the Board to monitor and supervise the organization effectively. As previously noted, section 3 of the BHC Act prohibits the Board from approving a transaction if the resulting organization would control more than 10 percent of the insured deposits in the country. After consummation, Chase would control approximately 3.7 percent of U.S. insured deposits.

¹⁹ ICP notes press reports stating that: (i) a certain individual with alleged connections to parties involved in a suspected money laundering enterprise maintained an account at Chase Bank; and (ii) certain Chase credit card holders were erroneously billed by a telemarketer not related to Chase. ICP has provided no facts that indicate any involvement by Chase or Chase

(continued)

ICP expresses concern about certain activities of Chase during World War II. ICP cites press reports contending that Chase allegedly collaborated with the German government to confiscate and liquidate Jewish assets and to funnel French assets to Germany. ICP has urged the Board to investigate these alleged activities and produce a full accounting of any assets Chase has retained wrongfully.²⁰

Bank employees or management in the alleged money laundering activities or erroneous billing.

ICP has expressed concern about Chase's management on the basis of press reports that Chase held less than 5 percent of the voting shares of Nichiei Co., Tokyo, Japan ("Nichiei"), a Japanese lending company at which an employee violated Japanese criminal law by engaging in certain collection practices. Chase has stated that it has never owned any interest in Nichiei. There is no evidence that Chase controls, exercises a controlling influence over, or participates in any manner in the management of Nichiei. See also 12 C.F.R. 225.31(e)(1) and 225.171.

ICP also has questioned the managerial resources of Chase and Morgan on the basis of press reports that Morgan paid no federal corporate income tax in 1998, that Chase received government assistance to retain jobs in New York City but subsequently moved those positions outside the city, and that Chase and Morgan helped to finance various activities and projects worldwide that might damage the environment particularly in predominantly minority areas. ICP's contentions are unsubstantiated and contain no allegations of illegality or other action that would affect the safety and soundness of the institutions. These matters also raise issues that are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). The Board also notes that the Department of Justice and the Environmental Protection Agency have jurisdiction, to the extent that the actions occur in the United States, to determine whether companies are in compliance with federal environmental protection statutes and regulations.

²⁰ ICP also has expressed concern about the activities of two predecessor banks of Chase that allegedly were involved in the mid-19th century in servicing life insurance policies sold on the lives of African-American slaves

(continued)

Chase has provided information about its efforts to address the alleged actions of its predecessors. Chase represents that Chase Bank has conducted a three-year investigation into the World War II activities of its predecessor bank. Through this investigation, Chase has determined that during World War II, the German government appropriated certain accounts in the Paris branch of a Chase predecessor bank, and that the holders of some of those accounts have applied for restitution. Chase and the World Jewish Congress have retained jointly an independent counsel to review Chase's self-assessment.

The Board has carefully reviewed the issues presented by ICP in light of all the facts of record and taken into consideration the Board's authority under federal banking laws. The Board has taken into account, in particular, the efforts of Chase to investigate and address these matters and the ongoing efforts of current management to effect a resolution. The Board also has taken into account that many of the matters raised by ICP involve subjects of public interest that are not within the Board's limited jurisdiction to adjudicate or do not relate to the factors that the Board is required to consider when reviewing an application or notice under the BHC Act or the Bank Merger Act.²¹

in the United States. In connection with these allegations, Chase states that it has investigated its activities and has no record indicating that it had any role in providing or servicing insurance on slaves. Chase represents that it will continue to investigate the matter by researching sources external to Chase.

²¹ The factors that the Board considers when reviewing an application or notice under the BHC Act and the Bank Merger Act are necessarily limited by the acts. Moreover, the Board has noted previously that courts have held that the Board's limited jurisdiction to review applications and notices under the BHC Act does not authorize the Board to adjudicate disputes involving

(continued)

Based on all the facts of record the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval, as are the other supervisory factors that the Board must consider under the Bank Merger Act and section 3 of the BHC Act.²²

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, including comments received on the proposal.

Three parties submitted written comments on aspects of the proposal and, in particular, the effect of the proposal on the convenience and

an applicant that do not arise under laws administered and enforced by the Board. See Deutsche Bank AG, 85 Federal Reserve Bulletin 509 (1999); Union Bank of Switzerland, 84 Federal Reserve Bulletin 684 (1998).

²² ICP notes that Chase and Morgan are defendants in several pending lawsuits. In one of these cases, which challenged the payment crediting practices of Chase USA, the parties recently reached a monetary settlement that also requires Chase to modify its practices. The other cases have been dismissed or are at preliminary pleading or discovery stages, and there has been no determination of liability or damages in these cases. In each of the cases, the courts appear to have adequate jurisdiction and authority to provide relief to plaintiffs, if warranted.

needs of the affected communities and the CRA performance records of the depository institutions involved. ICP has submitted comments opposing the proposal and generally contending that through a series of mergers over the past decade, Chase and its predecessor institutions have withdrawn from the business of retail banking and concentrated on expanding their wholesale banking services. ICP states that after consummating previous mergers, Chase closed retail branches and abandoned communities, often in low- and moderate-income (“LMI”) or predominantly minority areas. ICP further alleges that Chase underserves LMI and minority mortgage borrowers and other borrowers seeking loans on properties in LMI areas. ICP also contends, based in part on its analysis of data filed under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) (“HMDA”), that Chase and Morgan have violated the fair lending laws. The Greater Rochester Community Reinvestment Coalition, Rochester, New York (“GRCRC”) has submitted comments that commend and criticize Chase’s community reinvestment performance in Rochester. The Association for Neighborhood & Housing Development, Inc., New York, New York (“ANHD”), has provided favorable comments on the community reinvestment activities of Chase and Morgan, and in particular, the institutions’ community development lending, and their lending, investments, technical assistance, and other forms of support to community development and nonprofit organizations. ANHD also has expressed concern that the community reinvestment products and programs of Chase and Morgan would cease to be expanded or be reduced after consummation of the proposal.

A. CRA Performance Examinations

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.²³ Chase's lead bank, Chase Bank, which accounts for approximately 80 percent of the total consolidated assets of Chase, received an "outstanding" rating at its most recent CRA examination by the Federal Reserve Bank of New York ("FRBNY"), as of July 1999. All Chase's other subsidiary banks also received "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance.²⁴ Morgan's only subsidiary bank, Morgan Guaranty, received an "outstanding" rating from the FRBNY at its most recent examination, as of January 1999. Morgan's subsidiary thrift, Morgan FSB, received a "satisfactory" rating for CRA performance from its primary federal financial supervisory agency, the Office of Thrift

²³ ICP has questioned the reliability of CRA examinations in measuring the performance of a depository institution in meeting the credit needs of its community. The federal financial supervisory agencies have stated 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 financial supervisory agency. 65 Federal Register 25,088 and 25,107 (2000).

²⁴ The OCC has examined the CRA performance of the following Chase subsidiary banks: Chase Manhattan Bank and Trust Co., N.A., Los Angeles, California, rated "outstanding," as of October 1999; Chase-USA, rated "outstanding," as of May 1999; The Chase Manhattan Private Bank, N.A., Tampa, Florida, rated "outstanding," as of October 1999; and The Chase Bank of Texas – San Angelo, National Association, Texas (then named Texas Commerce Bank – San Angelo), rated "satisfactory," as of August 1996.

Supervision (“OTS”), as of November 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 substantive provisions of the fair lending laws.

Chase has indicated that it expects to continue to expand and improve the products and services of Morgan and that the CRA-related programs and activities of the combined organization would be based on the current programs of the two individual organizations. Accordingly, the Board has considered carefully the CRA performance records of Chase and Morgan in evaluating the proposal.

B. CRA Performance Record of Chase’s Subsidiaries

1. Chase Bank

Overview: Chase Bank received an examination rating of “outstanding” for its lending activities. Examiners commended the bank for its response to the credit needs of its assessment areas and all segments of its community, including LMI geographies and borrowers. During the review period of March 1997 to March 1999, Chase Bank and its subsidiaries purchased or originated approximately 67,600 small business loans, totaling more than \$5.1 billion.²⁵ More than 90 percent of these loans were in amounts of less than \$100,000, with an average loan amount of

²⁵ In this context, “small business loans” means loans in amounts of less than \$1 million. Chase Bank also made 54 percent of its small business loans to businesses with gross annual revenues of \$1 million or less (“loans to small businesses”).

approximately \$33,000, and 21 percent by number were to businesses in LMI census tracts.²⁶

During the review period, Chase Bank and its subsidiaries purchased or originated approximately 67,500 HMDA-related loans, totaling more than \$11 billion.²⁷ Examiners also noted a significant increase in Chase Bank's HMDA-related lending. From 1996 to 1997, Chase Bank's HMDA-related and small business lending increased 25 percent by volume, and from 1997 to 1998, HMDA-related and small business lending increased an additional 62 percent and 63 percent, respectively, by volume in LMI geographies. Chase has stated that for the first half of 2000, 21.4 percent of Chase Bank's mortgage loans by volume were extended to LMI borrowers and 15.5 percent by volume were extended on properties in LMI census tracts.

Community development lending at Chase Bank was considered by examiners to be outstanding. Examiners found that since its last CRA examination, Chase Bank's community development loans had increased by 34 percent to approximately \$613 million. Chase Bank dedicated a large portion of its community development lending to support housing initiatives by financing the construction of more than 4,000 housing units in the bank's assessment areas.

Examiners found that Chase Bank offered a variety of loan products that featured innovative and flexible lending practices to serve the

²⁶ Examiners noted that 21 percent of all businesses in Chase Bank's assessment area were in LMI areas.

²⁷ In this context, "HMDA-related loans" includes home purchase mortgage loans, home improvement loans, and refinancing of such loans.

credit needs of its assessment area. During the examination period, the bank originated approximately 3,600 of these loans, totaling approximately \$380 million, to assist LMI borrowers or borrowers in LMI geographies. Chase Bank was instrumental in developing and testing the “FA\$TRAK” program and other loan programs designed by the Small Business Administration (“SBA”) to provide loans to small businesses in amounts of less than \$150,000. In 1997 and 1998, the bank originated more SBA loans than any other lender in the SBA’s New York region. Chase Bank also used credit enhancements, such as guarantees provided by the SBA and other government agencies, to provide small business credit to borrowers who would not normally qualify for conventional loan products. In the area comprising New York State and the New York consolidated metropolitan statistical area (“New York CMSA”), Chase Bank originated 424 innovative or flexible small business loans during 1997 and 1998, totaling more than \$56 million.

Examiners commented favorably on Chase Bank’s innovative and flexible home mortgage lending. Chase Bank participated in special lending programs through the State of New York Mortgage Agency, the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), that were designed to help LMI and other borrowers purchase homes in LMI geographies. In addition, the bank offered a proprietary mortgage loan program for customers financing properties in LMI geographies who did not qualify for conventional mortgage products. Chase Bank also offered a program of flexible mortgages in cooperation with the Association of Community Organizations for Reform Now. In the area comprising New York State and

the New York CMSA, Chase originated more than 3,100 innovative or flexible mortgage loans in 1997 and 1998, totaling approximately \$325 million.

Chase Bank received an “outstanding” examination rating for its investment activities. Examiners commented favorably on Chase Bank’s responsiveness to the primary credit and community development needs in its assessment areas. During the examination period, Chase’s level of qualified investments totaled approximately \$377 million. Examiners also commended Chase Bank for the level of its qualified community development investments in facilities and organizations supporting affordable housing, economic development, and community services.

Chase Bank received a “high satisfactory” examination rating for its record of providing retail banking and community development services in its assessment area. Examiners stated that Chase Bank’s branch delivery system was reasonably accessible to essentially all portions of its assessment areas. At the time of the examination, Chase Bank operated 486 retail branches in its combined assessment area, 22 percent of which were in LMI geographies. Chase Bank’s business hours and services were responsive to the needs of all portions of its assessment areas, including LMI geographies and individuals. Examiners found that Chase offered a wide range of special banking products designed to support community development, such as programs for first-time home purchase expenses, education expenses, and small business capitalization. Chase Bank also provided services to nonprofit organizations seeking assistance with administering affordable housing construction loans.

New York CMSA: Examiners found that Chase Bank had a strong lending record in the New York CMSA, which represented 93 percent

of the bank's deposit base, in view of its overall lending record and volume of community development loans. Chase Bank originated approximately 110,500 HMDA-related and small business loans, totaling approximately \$12.7 billion, in the New York CMSA. The examination report stated that Chase Bank's distribution of home purchase loans reflected excellent penetration in the New York CMSA. During the examination period, examiners found that 13 percent of Chase Bank's home purchase and refinance loans were in LMI geographies, where 12 percent of the housing units were owner occupied. Furthermore, the examination report observed that 21 percent of Chase Bank's small business loans were in LMI geographies, which coincided with the percentage of businesses in LMI geographies. Examiners noted a significant increase in Chase Bank's small business and HMDA-related lending. From 1996 to 1997, the number of small business loans increased 345 percent, with a 275-percent increase in small business loans in LMI geographies. Examiners also specifically noted the bank's excellent performance in LMI geographies. From 1997 to 1998, HMDA-related lending increased 63 percent overall and 68 percent in LMI geographies.

Examiners noted that Chase Bank participated in complex and innovative community development lending programs, including a loan pool established by wholesale and foreign banks in New York City. ICP contends, however, that Chase Bank's community reinvestment efforts primarily support the construction of housing that LMI persons cannot afford. In the New York CMSA, Chase Bank had approximately \$520 million in outstanding community development loans during the examination period, which provided financing for more than 2,700 new housing units. Chase Bank also states that it has continued to engage in

community development lending. According to Chase Bank, it closed a loan for approximately \$6.9 million in 2000 to help finance the rehabilitation of 200 apartment units in the Bronx, the majority of whose residents received public housing assistance. Furthermore, Chase has stated that in August 1999, it provided a \$1.75 million loan to rehabilitate apartment units for LMI veterans in Queens.

The examination report characterized Chase Bank's level of qualified investments in the New York CMSA as strong. Chase Bank's qualified investments totaled approximately \$365 million at the time of the examination. Ninety-one percent, or \$344 million, of Chase Bank's investments were directed to agencies engaged in affordable housing. Chase Bank also participated in innovative qualified investments such as Low Income Housing Tax Credits ("LIHTC"), which accounted for approximately 77 percent of total qualified investments.

Examiners determined that Chase Bank's delivery system was reasonably accessible to essentially all portions of the New York CMSA assessment area. Chase Bank operated 406 branches in the New York CMSA, including 87 branches in LMI geographies. The examination report also stated that Chase Bank employed multiple alternative delivery systems that were generally effective in its enhancing the distribution of banking services throughout the New York CMSA, including a network of 127 stand-alone ATM locations, 33 percent of which were in LMI geographies. In certain branches, Chase Bank offered payroll check cashing for non-customer employees of Chase's corporate clients. Examiners found that Chase Bank also provided community development services that included seminars designed to help build the credit skills of community development organizations. In addition, Chase Bank also operated three

Business Resource Centers that provided business development, financing, and planning assistance for small business owners.

New York State: In Chase Bank's assessment areas in New York State, which excluded the New York CMSA, examiners found that Chase exhibited good responsiveness to the credit needs of its assessment area. During the examination period, Chase Bank reported 9,849 loans totaling approximately \$798 million, of which 64 percent were small business loans. Furthermore, the examination report noted that small business lending significantly increased, especially in LMI geographies. From 1996 to 1997, small business lending increased 397 percent. Overall, HMDA-related lending increased 18 percent from 1996 to 1997 and 45 percent from 1997 to 1998. Examiners also characterized Chase Bank's loan activity in all portions of its assessment area, including LMI geographies, as excellent. During the examination period, Chase Bank reported 362 home purchase or refinance loans in LMI geographies. Moreover, 25 percent of Chase Bank's small business loans were in LMI geographies. Examiners also found that the distribution of loans among borrowers of different income levels was excellent. More than 23 percent of Chase Bank's home purchase and finance loans were to LMI borrowers. Chase Bank also had an excellent record of lending to businesses of different sizes. Eighty-five percent of Chase Bank's small business loans were in amounts of \$100,000 or less. Furthermore, approximately 52 percent of Chase Bank's small business loans were to small businesses.

A large portion of Chase Bank's HMDA-reportable lending and small business lending in upstate New York was in the Rochester metropolitan statistical area ("Rochester MSA"). During the examination period, Chase Bank reported 1,400 home purchase and refinancing loans and

2,212 small business loans in the portion of the Rochester MSA in its assessment area. Examiners noted that Chase exhibited excellent geographic distribution of small business loans. Approximately 23 percent of Chase Bank's small business loans were in LMI geographies. This level of lending exceeded the percentage of loans in LMI geographies by small business loan reporters in the aggregate. Examiners also noted as excellent Chase Bank's performance in its distribution of small business loans by borrower income. Eighty-four percent of all Chase Bank's small business loans were in amounts of \$100,000 or less, with an average total amount of approximately \$33,000. Moreover, 53 percent of total small business loans were to small businesses.

GRCRC expresses concern about Chase Bank's home lending record among minority and LMI individuals and in predominantly minority and LMI census tracts in Rochester and about Chase Bank's record of attracting, counseling, and retaining potential minority and LMI applicants for home mortgages. The examination report, however, characterized Chase Bank's distribution of home purchase and refinance loans by borrower income as good. During the examination period, 29 percent of Chase Bank's home purchase and refinance loans were to LMI borrowers. Furthermore, Chase Bank also demonstrated a strong performance in home purchase and refinance lending, with 10 percent of such loans in LMI geographies. Chase represents that for the first half of 2000, its loan penetration of LMI census tracts has increased more than 5 percent compared with 1999. The Board also notes that from 1994 to 1999 loan applications to Chase Bank by minorities in the Rochester increased 24 percent. During the examination period, examiners found that Chase Bank

sponsored or conducted approximately 35 seminars and workshops on affordable housing with Rochester community development organizations.

Chase Bank also had a good performance record in community development lending and in innovative and flexible lending programs throughout New York State, including the Rochester MSA. During the examination period, Chase Bank reported community development loan commitments for its New York State assessment areas totaling \$31 million. In the Rochester MSA, commitments for this type of lending totaled \$13.5 million. Examiners noted that 79 percent of the bank's community development loan commitments in the New York State assessment area were originated since the previous examination. The examination report also observed that Chase Bank's innovative and flexible lending practices in the New York State assessment areas were comparable with Chase Bank's practices in the New York CMSA. In the Rochester MSA, Chase Bank originated mortgages under the Rochester LMI Housing Program, which was a program sponsoring 30-year mortgage loans that feature low down-payment requirements of \$500 from the borrower's own funds and flexible debt-to-income ratios.

In the New York State and Rochester MSA assessment areas, examiners found that Chase maintained a good level of qualified community development investments that reflected a strong responsiveness to credit and community development needs. At the time of the examination, Chase Bank's qualified investments totaled \$12 million, of which approximately 83 percent were in Rochester. Examiners also noted that Chase Bank made innovative and complex investments, such as LIHTCs which comprised approximately 77 percent, or \$9.2 million, of the bank's qualified investments in the New York State assessment areas. Moreover,

approximately 90 percent of Chase Bank's investments were directed to agencies engaged in affordable housing.

Examiners found that Chase Bank's record of providing retail banking and community development services in its New York State assessment areas, including the Rochester MSA, was outstanding. Moreover, the examination report indicated that Chase Bank's branch delivery system was readily accessible to essentially all portions of the New York State assessment areas, including the Rochester MSA. As of July 1999, Chase Bank operated 73 retail branches in its New York State assessment areas, including 31 branches in the Rochester MSA. During the examination period, Chase Bank closed one retail branch, which was not in an LMI geography. Examiners stated that Chase Bank's record of opening and closing branches had not adversely affected the accessibility of the branch delivery system. Chase Bank also provided a high level of community development service in the New York State assessment areas, including the sponsorship of 125 seminars and workshops focusing primarily on affordable housing. Chase states that in March 2000, Chase Bank conducted a seminar in cooperation with the City of Rochester and local realtors that was designed to encourage the purchase of affordable housing in Rochester. Chase Bank personnel and lending officers also were available at the seminar to discuss the mortgage application process with attendees.

Texas: Chase Bank's operations in Texas as of the date of its most recent examination of CRA performance by the OCC (September 1996, the "1996 Examination") were conducted under the name Texas

Commerce Bank, N.A., Houston (“Chase-TX”).²⁸ The Board has considered the 1996 examination and supplemental information provided by Chase on its CRA-related activities in Texas. The Board reviewed the CRA performance of Chase Bank’s operations in Texas in the context of Chase Bank’s application to merge with Chase-TX. See The Chase Manhattan Bank, 86 Federal Reserve Board 610 (2000). In approving the merger of Chase Bank and Chase-TX, the Board carefully reviewed the lending records of Chase Bank and Chase-TX, including their policies and programs designed to ensure compliance with the fair lending laws.

The 1996 Examination noted that Chase-TX had originated a significant volume and variety of loans in its communities. In 1995, Chase-TX originated 11,409 home improvement loans, totaling approximately \$135 million. After reviewing aggregate HMDA data for all reporting lenders, examiners determined that in 1995, Chase-TX made more home improvement loans in Texas than any other lender. Furthermore, Chase-TX designed a program of affordable loans that used specialized loan products to provide credit opportunities that might not otherwise have been available. Under this program, Chase-TX originated 4,376 mortgage and home improvement loans, totaling approximately \$50 million, in 1995. Examiners also found that in 1995, 90 percent of Chase-TX’s lending was in its assessment areas. Furthermore, Chase-TX demonstrated strong loan penetration of LMI areas, and a high level of performance in the distribution of loans by borrower income level. According to Chase, in 1999 its bank originated over 18,485 mortgage loans in Texas, of which approximately

²⁸ Chase-TX later changed its name to Chase Bank of Texas and merged with Chase Bank in August 2000.

10 percent were in LMI census tracts and 22 percent were to LMI borrowers. During the same time period, Chase has reported that the bank originated 8,146 small business loans in Texas, of which 30.8 percent were in LMI census tracts.

The 1996 Examination noted that Chase-TX engaged in a significant amount of community development lending. In 1995, Chase-TX provided \$94 million in community development loans. These loans helped finance projects by America's Preferred Homes (a 360-unit LMI apartment complex), the Las Haciendas single-family affordable housing development subdivision, and the Midland County Housing Authority. Chase-TX also engaged in creative and flexible financing activities, such as making a \$5.4 million bridge loan for the construction of an apartment complex for senior citizens in an LMI neighborhood and developing lease-purchase mortgage products to facilitate the development of affordable housing.

According to Chase, in 1999, Chase-TX provided \$10.9 million in loans and lines of credit for the acquisition and development of affordable housing subdevelopments and apartment complexes in Dallas and Houston. Furthermore, Chase states that in 2000, the Texas bank provided approximately \$4.8 million in loans and credit to community organizations involved in the economic redevelopment of inner cities in Texas.

The 1996 Examination commented favorably on Chase-TX's community investment activities. During the 1996 examination period, examiners found that Chase-TX made more than \$2.9 million of equity investments in Texas community development corporations. During the same period, Chase-TX also provided grants to cover the operational expenses of ACCION-San Antonio, a community organization that made

loans to borrowers in LMI neighborhoods. The 1996 Examination also stated that Chase-TX officers and employees regularly provided financial and credit counseling services, often coordinated with local not-for-profit organizations, at locations throughout its community. Examiners found that the counseling services assisted LMI individuals to understand the credit decision process and allowed them to learn about the Chase-TX's bank products designed to meet their credit needs. Chase states that Chase Bank has continued its community investment activities in Texas. According to Chase, as of October 2000, Chase Bank's outstanding community investment commitments in Texas totaled \$59.2 million. Chase states that from 1999 to 2000, Chase Bank has invested \$12.4 million in municipal bonds for affordable housing in Texas, and invested in a community development corporation in Fort Worth that provides financing for disadvantaged local small businesses.

2. Chase-USA

Chase-USA was most recently examined for CRA-performance as of May 1999 for the examination period from January 1997 to March 1999. As part of the evaluation, examiners considered the lending records and activities of Chase-USA and its affiliates, notably the Chase Manhattan Mortgage Corporation, Edison, New Jersey ("CMMC"). Examiners rated Chase-USA as "outstanding" for overall CRA performance.

The examination report stated that Chase-USA's lending record reflected good responsiveness to the credit needs of its community. During the examination period, Chase-USA originated more than \$163 million in

home purchase mortgages and \$86 million in home refinance mortgages.²⁹ Examiners found that the geographic distribution of Chase-USA's loans reflected good penetration in LMI geographies. Approximately 10 percent of Chase-USA's home mortgage and refinance loans in the Delaware portion of its assessment area were in LMI geographies. Examiners also noted good distribution of Chase-USA's loans among borrowers of different income levels. During the examination period, 47 percent of Chase-USA's home purchase mortgages, and 22 percent of its home refinance mortgages were to LMI borrowers. Chase-USA also originated 225 small business loans totaling \$4.8 million. Examiners favorably noted that the geographic distribution of Chase-USA's small business loans showed improvement during the examination period. From 1997 to 1998, small-business loans in low-income geographies increased to 8 percent, while such loans in moderate-income geographies increased to 18 percent.

Examiners found that CMMC made a significant number of home purchase and refinance loans to LMI borrowers and outside Chase-USA's assessment area. During the examination period, CMMC made more than \$3.9 billion in home mortgage purchase and refinance loans to LMI borrowers nationwide. In 1997, approximately 26.2 percent of CMMC's home purchase and refinance loans were to LMI borrowers.

Examiners found that Chase-USA offered flexible and innovative affordable mortgage products to help meet the needs of LMI borrowers. Chase-USA, as a participant in Federal Housing Administration and Veterans Administration programs, offered 1,231 loans through these

²⁹ Examiners noted that for approximately half of the examination period, Chase-USA was restricted in its ability to solicit in-state lending business under Delaware law.

programs during the examination period. Chase-USA also offered several proprietary affordable loan products. Examiners favorably noted that Chase-USA took a leadership role in establishing partnerships with local financial institutions to sell affordable mortgage-backed securities.

Chase-USA's community development lending reflected a good responsiveness to the credit needs of its assessment area in terms of loan volume and lending practices. During the examination period, Chase-USA and its affiliates, including CMMC, made loan commitments totaling \$34.2 million primarily to finance affordable rental housing development and new small businesses. Examiners found that CMMC took a lead role in establishing a network of community development financial institutions that offered credit and financial assistance to individuals and small businesses. CMMC also provided a \$12 million loan for the acquisition of a community shopping center in Philadelphia to assist in the economic revitalization of a central city community.

Examiners favorably commented on Chase-USA's significant level of qualified community development investment and responsiveness to the affordable housing and economic development needs of its community. During the examination period, the investment commitments of Chase-USA and its affiliates in its assessment area totaled \$31.6 million. Examiners noted that Chase-USA took a leadership role in working with the Delaware State Housing Authority ("DSHA") bond underwriter to restructure its bond program and thereby significantly reduced costs to the agency and home buyers. Chase-USA and CMMC purchased a total of \$21.4 million in DSHA bonds. CMMC also purchased \$1.5 million in LIHTC partnerships. Examiners noted that Chase-USA provided \$1.83 million in qualified grants to community organizations to develop affordable housing programs, shelter

and outreach services for the homeless, and a small business resource center. Chase-USA also provided more than 400 computers and printers and similar donations to community-based organizations.

C. CRA Performance Record of Morgan

Morgan Guaranty is a wholesale banking institution that provides investment management, corporate trust, financial and estate planning, fiduciary, and private banking services for institutions and high net worth individuals. Morgan Guaranty is a “wholesale bank” for CRA purposes³⁰ and its performance is evaluated under the “community development test.”³¹ Community development activities as a general matter must benefit areas in an institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s).³²

³⁰ 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 consumers; and (ii) has been designated as a wholesale bank by its appropriate federal banking agency. 12 C.F.R. 228.12(w). ICP alleges that Morgan engages in the business of multifamily mortgage lending. Morgan engages in the securitization of multifamily mortgage loans, an activity that is consistent with its wholesale bank designation.

³¹ See 12 C.F.R. 228.25(a). The test evaluates a wholesale bank on its record of community development services, community development investments, and community development lending. 12 C.F.R. 228.25(c). The primary purpose of any service, investment, or loan considered under the test must be “community development,” which is defined in terms of specific categories of activities that benefit LMI individuals, LMI areas, or small businesses or small farms. See 12 C.F.R. 228.12(h); see, e.g., The Charles Schwab Corporation, 86 Federal Reserve Bulletin 494, 496 (2000).

³² Community development activities outside an institution’s assessment area(s) may also be considered if the institution has adequately addressed the needs of its assessment area(s). See 12 C.F.R. 228.25(e).

Morgan Guaranty's most recent CRA performance evaluation reviewed the institution's record of assisting to meet the credit needs of its community in 1997 and 1998. Examiners rated Morgan Guaranty's performance under the community development test "outstanding." The examination report noted that Morgan had conducted the majority of its community development lending and qualified investment activities through its affiliate, Morgan Community Development Corporation.

During the examination period, Morgan provided a significant level of community development loans, qualified investments, and community development services to help meet the credit and community development needs of its assessment areas. Examiners stated that Morgan Guaranty's community development lending totaled approximately \$268.2 million, representing an increase of 112 percent since the previous examination. Consistent with Morgan Guaranty's wholesale bank operations, most lending activity was indirect, primarily financing housing and community service intermediaries that supported community development in the bank's assessment area.

Morgan Guaranty also had a significant level of qualified investments, totaling approximately \$196.9 million at the time of the examination and representing an increase of 106 percent since the previous examination. Indirect investments in affordable housing initiatives totaled more than \$168 million or 86 percent of Morgan Guaranty's qualified investments. Other investments included \$11.6 million of grants and contributions to more than 200 nonprofit community development organizations. Projects in the bank's assessment area totaled \$149.4 million or 76 percent of total investments.

Examiners noted that Morgan Guaranty provided a substantial level of community development services, including advisory services, technical assistance, and in-kind donations. Approximately 47 percent of Morgan Guaranty's community development services were for affordable housing programs for LMI individuals. Morgan Guaranty and its affiliates also donated office furniture, used computers, and other items to 87 nonprofit and public institutions.

Examiners indicated that Morgan Guaranty extensively used innovative and complex qualified investments, community development loans, and community development services. Through a partnership with a Primary Care Development Corporation ("PCDC"), Morgan Guaranty engaged in the financing of ten primary care facilities that served more than 73,00 low-income individuals in New York City. Examiners stated that Morgan Guaranty's long-term efforts with the PCDC had improved access to primary health care for LMI neighborhoods. Morgan Guaranty also structured a revolving line of credit to the New York Community Investment Company and syndicated bridge loans for several housing fund initiatives. Of Morgan Guaranty's total qualified investments, examiners found that approximately 81 percent or \$158.5 million were LIHTCS and, therefore, qualified as complex investments.

The examination report indicated that Morgan Guaranty had exhibited excellent responsiveness to credit and community development needs in its assessment areas through community development lending and investments and adequate responsiveness through its community development service and practices. Affordable housing activity totaled \$180.6 million or 67 percent of Morgan Guaranty's total community development lending. Morgan's lending to organizations that provide

community services for LMI individuals totaled \$62.1 million. Examiners also found that Morgan Guaranty provided financing to organizations such as the National Community Development Initiative that provided financial and technical support to nonprofit community development corporations. Qualified investments in affordable housing initiatives totaled \$178.5 million or 91 percent of Morgan Guaranty's qualified investments. In Morgan Guaranty's New York assessment area, examiners found that the institution's LIHTCs supported housing initiatives that resulted in the creation or rehabilitation of approximately 5,000 units of affordable housing for LMI individuals.

D. HMDA Data

The Board also has considered the lending record of Chase and Morgan in light of comments about the HMDA data reported by the organizations' subsidiaries.³³ HMDA data from 1997 to 1999 indicate that in New York and Texas,³⁴ Chase was generally comparable with lenders in

³³ Some commenters have criticized Chase's record of home mortgage lending in numerous markets, including Chase's assessment areas in New York and Texas. GRCRC and ICP note that in certain markets, minority applications for conventional home purchase and refinance loans were denied by Chase more frequently than by lenders in the aggregate. ICP also presents data purportedly demonstrating that Chase denies applications from minorities more frequently than it denied applications from nonminorities.

ICP contests the inclusion in Chase's HMDA data for subprime loans originated by Chase affiliates. The Board notes that Regulation C (12 C.F.R. 203 et seq.) requires all mortgage lending institutions and subsidiaries of financial institutions supervised by the Board, OCC, FDIC, and OTS to submit HMDA data to the appropriate federal financial supervisory agency. See 12 C.F.R. 203, App. A, Part I (C) & (E).

³⁴ Mortgage loans extended by Chase and its subsidiaries in New York and Texas comprise 85 percent of Chase's total HMDA-reportable loans in states where it has been evaluated for performance under the CRA.

the aggregate in its assessment areas in terms of the percentage of housing-related loans to African Americans and Hispanics. During the same time period, Chase's rate of denying applications from African-American and Hispanic borrowers for home mortgage loans in the New York and Texas assessment areas was also comparable with lenders in the aggregate. The data further indicate that Chase's lending in minority census tracts in the New York and Texas assessment areas was comparable with, and at times, exceeded, such loans by lenders in the aggregate.³⁵

The Board is concerned when an institution's record indicates disparities in lending, and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound banking, but also equal access to credit by creditworthy applicants regardless of their race or income level.³⁶

³⁵ ICP has expressed concern that the HMDA data reported by Chase do not separately report subprime loans to borrowers. HMDA and Regulation C do not require separate reporting for subprime loans to borrowers.

³⁶ ICP also generally alleges that Chase and Morgan have indirectly supported predatory and discriminatory lending through their business relationships that include warehouse finance and securitization services for several nonaffiliated nonbanking companies ("consumer lending companies").

The Board has considered the due diligence and other actions taken by Chase in connection with its relationships with consumer lending companies. For example, before obtaining Chase's warehouse financing services, consumer-lending companies must make certain written representations and warranties stating that they are in compliance with all applicable laws, including consumer protection laws. Chase also has retained an outside firm to investigate and monitor the loan production activities of its warehouse finance customers.

In addition, Chase states that in the securitization of subprime loans, it has no role in the initial funding of, and does not control the loan selection

(continued)

The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because the data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.³⁷ HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not

criteria for, the loans it securitizes. Chase states, however, that it conducts due diligence reviews for compliance with consumer and fair lending laws, including on-site reviews, of every subprime pool it securitizes as lead manager. Furthermore, when securitizing subprime mortgage loans, Chase reviews every loan purchased to help ensure adherence to fair lending laws.

Morgan states that it does not engage in subprime warehouse financing. Morgan also states that it does not control the origination of subprime loans from consumer lending companies that it securitizes, but that it hires third parties to conduct due diligence reviews of all consumer lending companies before it serves as lead manager. Furthermore, when securitizing mortgage-backed loans, Morgan, as lead manager, conducts on-site reviews of the consumer lending company and hires a third party to review a sample of the loan pool to be securitized.

The Board has considered all these facts of record in evaluating the managerial and convenience and needs factors in this case. Moreover, the Board notes that the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission have responsibility for reviewing the compliance with fair lending laws of nondepository institutions.

³⁷ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

adequately assisted in meeting its community's credit needs or has engaged in illegal lending discrimination.³⁸

Because of the limitations of HMDA data, the Board has carefully considered the data and comments in light of other information, including information provided by Chase and Morgan, examination reports, and confidential supervisory material. As noted above, examiners found no evidence of prohibited discrimination or other illegal credit practices at the subsidiary banks of Chase and Morgan at their most recent examinations. Examiners reviewed fair lending policies and procedures of the banks and found the policies and procedures to be comprehensive and appropriate for monitoring compliance with fair lending laws. The Board has also considered the HMDA data in light of the lending records of Chase and Morgan which show that the organizations' subsidiary banks significantly help to meet the credit needs of their communities, including LMI areas.

³⁸ ICP contends that Chase Bank, Chase-USA through its subsidiary CMMC, and certain other subsidiaries engage directly and indirectly in disproportionate amounts subprime lending to LMI and minority individuals in certain metropolitan areas. ICP further contends that Chase has increased its involvement in subprime lending. Subprime lending is a permissible activity when conducted in compliance with fair lending laws. ICP has provided no information that indicates that Chase's subprime lending is illegal. Moreover, examiners found no evidence of illegal discrimination or credit practices at Chase Bank. Examiners considered CMMC's practices and record of lending when evaluating Chase-USA for CRA performance and found no evidence of illegal discrimination or credit practices. The Board notes that Chase reviews subprime mortgage applications to inform applicants if they may qualify for a prime loan.

E. Branch Closings

Commenters expressed concern that consummation of the proposal would result in branch closings and that these closings would have adverse effects on the local communities in which the branches are located.³⁹

The Board has carefully considered the comments concerning branch closings in light of all the facts of record, the branch closing policies of Chase and Morgan, and the record of the two organizations in opening and closing branches. Examiners at the most recent CRA examination of Chase and Morgan reviewed the banks' records of opening and closing branches and found that the banks' branch closings had not adversely affected the accessibility of banking services in their communities.

The Board also 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.⁴⁰ The

³⁹ ICP expresses concern about potential branch closures by citing two lawsuits that Chase aggressively opposed involving alleged illegal discrimination in layoffs after previous Chase consolidations. The composition of an applicant's workforce by race or age is not within the statutory factors that the Board is permitted to consider under the BHC Act. The Board also notes that the Equal Employment Opportunity Commission has jurisdiction to determine whether a banking organization such as Chase is in compliance with federal equal employment opportunity statutes under the regulations of the Department of Labor. See 41 C.F.R. 60-1.7(a), 60-1.40.

⁴⁰ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and

(continued)

law does not authorize federal regulators to prevent the closing of any branch. Branch closings resulting from the proposal also would be considered by the appropriate federal supervisor at the next CRA examination of the relevant subsidiary depository institution.⁴¹

G. Conclusion on the Convenience and Needs Factor

In its review of the convenience and needs factor, the Board has carefully considered the entire record, including the CRA performance examinations of each of the insured depository institutions involved in the proposal, all the information provided by the commenters,⁴² Chase and Morgan, the opinion of federal and state agencies, and confidential

other supporting data for the closure, consistent with the institution's written policy for branch closings.

ICP also expresses concern over the sale of Chase Bank's Virgin Island branches to an acquirer that might also be engaged in nonbanking and nonfinancial activities. The Board notes that any sale of branches must be in accordance with the law including any relevant application and review of CRA performance as required in accordance with those applications.

⁴¹ ICP asserts that Chase should be held accountable for the closure of branches originally sold by Chase to another banking institution. The Board notes that these closings are subject to separate review by the primary federal supervisor of the purchaser under the same policy guidelines applicable to Chase.

⁴² ANHD requests that Chase and Morgan answer certain questions and provide certain commitments. The Board notes that the CRA requires only that, in considering an acquisition proposal, the Board carefully review the actual performance records of the relevant depository institutions in helping to meet the credit needs of their communities. The CRA does not require depository institutions to make pledges concerning future performance under the CRA. The Board also notes that future activities of Chase's subsidiary banks will be reviewed by the appropriate federal supervisors in future performance examinations, and such CRA performance records will be

(continued)

supervisory information.⁴³ Based on all the facts of record, and for the reasons discussed above, 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.

Nonbanking Activities

Chase also has filed notice under section 4(j)(2) of the BHC Act to acquire Morgan FSB and thereby engage in operating a savings association. The Board has determined by regulation that the operation of a savings association is, within certain limits, closely related to banking for purposes of the BHC Act.⁴⁴ Chase has committed to conduct these nonbanking activities in accordance with the limitations set forth in Regulation Y and the Board's orders and interpretations governing the activity.

To approve a notice under section 4(c)(8) of the BHC Act, the Board also must determine that the proposed activities "can reasonably be

considered by the Board in subsequent applications by Chase to acquire a depository institution.

⁴³ ICP has alleged that the merger of Chase and Morgan might result in the loss of jobs. As previously noted, the factors that the Board may consider when reviewing an application or notice are limited by the applicable law. The effect of a proposed transaction on employment in a community is not among the factors included in the acts administered by the Board. Moreover, the convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See Wells Fargo & Company, 82 Federal Reserve Board, 455, 457 (1996).

⁴⁴ See 12 C.F.R. 225.28(b)(4)(ii).

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.”⁴⁵ As noted above, Morgan received a “satisfactory” rating from the OTS at its most recent CRA performance examination, as of November 1998.

As part of its evaluation of the public interest factors, the Board considers the financial condition and managerial resources of the notificant and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the proposal.

The Board also has considered the competitive effects of the proposed acquisition by Chase of Morgan FSB. Morgan FSB has two branches in California and Florida and competes directly with Chase in the West Palm Beach banking market. For the reasons discussed above, the Board has concluded that the acquisition of Morgan’s subsidiary depository institutions, including Morgan FSB, is not likely to have any significantly adverse effects in the West Palm Beach banking market or any other relevant banking market. Based on all the facts of record, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the nonbanking acquisition proposed in the transaction.

Chase has indicated that consummation of the proposal would provide current and future customers of the two organizations greater convenience. Chase also has stated that the proposal would permit the combined organization to achieve greater operational efficiencies and economies of scale, and that these improvements would strengthen Chase's

⁴⁵ 12 U.S.C. § 1843(j)(2)(A).

ability to compete in the markets in which it operates. Morgan also would provide the combined organization with an enhanced capacity to offer wholesale banking products and services. Chase, in turn, would provide former Morgan customers with access to certain commercial and retail banking products not offered by Morgan's depository institutions, such as home mortgage loans. Furthermore, former Morgan customers would gain access to Chase's expansive branch delivery network.⁴⁶

The Board also concludes that conducting the proposed nonbanking activity within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, conflicts of interests, or unsound banking practices, that would outweigh 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 in section 4(j) of the BHC Act is consistent with approval of Chase's notice.

Chase also has requested the Board's consent under section 4(c)(13) of the BHC Act and section 211.5(c) of the Board's Regulation K (12 C.F.R. 211.5(c)) to acquire certain foreign investments of Morgan.⁴⁷ In addition, Chase has provided notice under sections 25 and 25A

⁴⁶ See, e.g., Banc One Corporation, 84 Federal Reserve Bulletin 553 (1998); First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).

⁴⁷ ICP contends that some activities by ICTSI International Holdings Corp., Manila, Philippines ("ICTSI"), and Massera S.A., Buenos Aires, Argentina ("Massera"), are impermissible under section 4 of the BHC Act. Under section 4(c)(13) of the BHC Act, a bank holding company may acquire shares of a foreign organization that does no business in the United States except as incident to its international or foreign business, if the Board

(continued)

of the Federal Reserve Act and sections 211.3, 211.4, and 211.5 of Regulation K (12 C.F.R. 211.3, 211.4, and 211.5) to acquire some of Morgan's foreign branches and Morgan Guaranty International Finance Corporation, Newark, Delaware, 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, the BHC Act, and the Board's Regulation K are consistent with approval of these proposals.

Chase Bank has also applied for under section 9 of the Federal Reserve Act (12 U.S.C. § 322 et seq.) to establish branch at the offices of Morgan Guaranty. The Board has considered the factors it is required to consider when reviewing application for establishing branches pursuant to section 9 of the Federal Reserve Act (12 U.S.C. § 322) and, for the reasons discussed in this order, finds those factors to be consistent with approval.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved.⁴⁸ The Board's approval is specifically conditioned on

determines that the exemption would not be substantially at variance with the purposes of the BHC Act and would be in the public interest. See 12 U.S.C. § 1842(c)(13). Section 211.5(b)(1)(iii) of Regulation K generally permits investments of less than 20 percent of the voting shares (and less than 40 percent of the total equity) of foreign companies without regard to the activities of such companies. 12 C.F.R. 211.5(b)(1)(iii). Chase's investments in ICTSI and Massera would comply with these provisions.

⁴⁸ Commenters have requested a public meeting or hearing on the proposal. Section 3 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. The Board has not received such a recommendation from the

(continued)

compliance by Chase with all the commitments made in connection with this application and with the conditions stated or referred to in this order. The Board's determination on the nonbanking activities also is subject to all the terms and conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (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 thereunder. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision are deemed to be conditions

appropriate supervisory authorities. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. See 12 C.F.R. 225.25(a)(2). 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).

The Board has carefully considered the requests for a public meeting or hearing in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit their views and, in fact, have submitted written comments that have been carefully considered by the Board in acting on the proposal. The requests fail to identify disputed issues of fact that are material to the Board's decision and that may be clarified by a public meeting or hearing. Commenters have provided substantial written comments that have been carefully considered by the Board, and the requests fail to show why a public meeting or hearing is necessary for the proper presentation or consideration of commenters' views. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing and further delay in considering the application is not required or warranted in this case. Accordingly, the requests are hereby denied.

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 the subsidiary banks of Morgan shall not be consummated before the fifteenth calendar day following the effective date of this order, and the proposal shall 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 Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,⁴⁹ effective December 11, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

⁴⁹ Voting for this action: Chairman Greenspan and Governors Kelley, Meyer, and Gramlich. Absent and not voting: Vice Chairman Ferguson.