

FEDERAL RESERVE BOARD

M&T Bank Corporation
Buffalo, New York

Manufacturers and Traders Trust Company
Buffalo, New York

Order Approving the Acquisition of a Bank Holding Company,
Merger of Banks, and Establishment of Branches

M&T Bank Corporation (“M&T”), Buffalo, New York, a financial 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 Act¹ to acquire Wilmington Trust Corporation (“Wilmington”) and thereby indirectly acquire its subsidiary bank, Wilmington Trust Company (“WT Bank”), both of Wilmington, Delaware.² M&T has also requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act to acquire an indirect interest in Wilmington’s subsidiary savings association, Wilmington Trust FSB (“WTFSB”), Baltimore, Maryland, and Wilmington’s subsidiary trust company, Wilmington Trust Fiduciary Service Company (“WTFSC”), Weehawken, New Jersey.³ M&T also proposes to acquire certain other nonbanking subsidiaries of Wilmington in accordance with section 4(k) of the BHC Act.⁴

In addition, M&T’s subsidiary state member bank, Manufacturers and Traders Trust Company (“M&T Bank”), Buffalo, has requested the Board’s approval under

¹ 12 U.S.C. § 1842.

² M&T has formed a wholly owned subsidiary, MTB One, Inc. (“MTB One”), for purposes of acquiring Wilmington. MTB One will merge with and into Wilmington, with Wilmington surviving the merger and becoming a subsidiary of M&T. Immediately following the merger of MTB One into Wilmington, First Empire State Holding Company, an intermediate bank holding company within the M&T organization, will merge with and into Wilmington, with Wilmington surviving the merger.

³ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24. The Board previously has determined by regulation that the operation of a saving association and a trust company by a bank holding company is closely related to banking for the purposes of section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4)(ii) and (5).

⁴ 12 U.S.C. § 1843(k).

section 18(c) of the Federal Deposit Insurance Act⁵ (“Bank Merger Act”) to purchase certain assets and assume certain liabilities from WT Bank and WTFSB. M&T Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of WT Bank and at the branches of WTFSB.⁶

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 Federal Register 2688 (2011)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act, the Bank Merger Act, and the FRA.

M&T, with total consolidated assets of \$68.0 billion, is the 29th largest depository organization in the United States, controlling \$47.3 billion in deposits.⁷ M&T controls two subsidiary banks, M&T Bank and M&T Bank, National Association (“M&T Bank, N.A.”), Oakfield, New York, that operate in seven states and the District of Columbia.⁸ M&T is the second largest depository organization in Maryland, controlling deposits of approximately \$14.6 billion. In Pennsylvania, M&T is the 6th largest depository organization, controlling deposits of \$7.9 billion, and in Delaware, M&T is the 32nd largest depository organization, controlling deposits of \$16 million.

Wilmington has total consolidated assets of approximately \$11.0 billion and is the 86th largest depository organization in the United States, controlling \$9.0 billion in deposits. Wilmington’s subsidiary insured depository institutions, WT Bank and WTFSB,⁹ operate in Delaware, Florida, Maryland, and Pennsylvania. In Delaware, Wilmington is the eighth largest depository organization, controlling deposits of \$6.6 billion. Wilmington is the 15th largest depository organization in Maryland, controlling deposits of approximately

⁵ 12 U.S.C. § 1828(c).

⁶ 12 U.S.C. § 321.

⁷ Asset and nationwide deposit-ranking data are as of December 31, 2010. Statewide deposit and ranking data are as of June 30, 2010, and reflect merger activity through April 16, 2010.

⁸ M&T Bank operates in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. M&T Bank, N.A., operates only in New York.

⁹ For purposes of this order, insured depository institutions include commercial banks, savings banks, and savings associations.

\$927 million. In Pennsylvania, Wilmington is the 79th largest depository organization, controlling deposits of \$460 million. In Florida, Wilmington is the 316th largest depository organization, controlling deposits of \$8.8 million.

On consummation of the proposal, M&T would become the 27th largest depository organization in the United States, with total consolidated assets of approximately \$79 billion. M&T would control deposits of approximately \$56.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, M&T would remain the second largest depository organization, controlling deposits of approximately \$15 billion, which represent approximately 13 percent of the total amount of deposits of insured depository institutions in the state. In Pennsylvania, M&T would remain the sixth largest depository organization, controlling deposits of approximately \$8.4 billion, which represent approximately 2.9 percent of the total amount of deposits of insured depository institutions in the state. In Delaware, M&T would become the eighth largest depository organization, controlling deposits of approximately \$6.7 billion, which represent approximately 2.3 percent of the total amount of deposits of insured depository institutions in the state. In Florida, M&T would become the 316th largest depository organization, controlling deposits of \$8.8 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of M&T is New York,¹⁰ and WT Bank is located in Delaware.¹¹

¹⁰ See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

¹¹ 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 or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and 1842(d)(2)(B). WT Bank operates only in Delaware.

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.¹² In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) authorizes a bank to merge with another bank located in another state under certain conditions unless, after September 29, 1994, and before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law that applies equally to all out-of-state banks and expressly prohibits merger transactions involving out-of-state banks.¹³ For purposes of the Riegle-Neal Act, the home state of M&T Bank is New York, and the home state of WT Bank is Delaware.¹⁴ Neither Delaware nor New York has adopted a law expressly prohibiting such interstate mergers. M&T Bank has provided a copy of its Bank Merger Act application to the relevant state agencies and stated that it has complied with state law. The proposal also complies with all the other requirements of the Riegle-Neal Act.¹⁵ Accordingly, approval of the proposed transaction is consistent with the Riegle-Neal Act.

Competitive Considerations

The BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to

¹² 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). M&T is adequately capitalized and adequately managed, as defined by applicable law. WT Bank has been in existence and operated for the minimum period of time required by Delaware law and for more than five years. See 12 U.S.C. §§ 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, M&T 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)(A). M&T also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant states. 12 U.S.C. §§ 1842(d)(2)(B)-(D). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

¹³ See 12 U.S.C. § 1831u.

¹⁴ See 12 U.S.C. § 1831u(a)(4) and (g)(4).

¹⁵ See 12 U.S.C. § 1831u. M&T Bank is adequately capitalized and adequately managed, as defined in the Riegle-Neal Act. As noted above, on consummation of the proposal, M&T Bank and its affiliated insured depository institutions would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Delaware, Maryland, and Pennsylvania, respectively. All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

monopolize the business of banking in any relevant banking market. Both statutes also prohibit the Board from approving a 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.¹⁶ In addition, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.¹⁷

M&T and Wilmington have subsidiary depository institutions that compete directly in five banking markets: Baltimore, Maryland-Pennsylvania; Philadelphia, Pennsylvania-New Jersey; Sussex County, Delaware; Salisbury, Delaware-Maryland; and Wilmington, Delaware-Maryland. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by the subsidiary depository institutions of M&T and by Wilmington,¹⁸ the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁹ and other characteristics of the markets.

¹⁶ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹⁷ 12 U.S.C. § 1843(j)(2)(A).

¹⁸ Deposit and market share data are as of June 30, 2010, adjusted to reflect mergers and acquisitions through March 30, 2011, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, except for the deposits of thrift institutions controlled by bank holding companies, which are weighted at 100 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 Federal Reserve Bulletin 386, 387 (1989); *Provident Corporation*, 70 Federal Reserve Bulletin 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 Federal Reserve Bulletin 52, 55 (1991).

¹⁹ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that the DOJ Guidelines,

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in all five banking markets.²⁰ On consummation of the proposal, one market would remain highly concentrated, and four markets would remain moderately concentrated, as measured by the HHI. The change in HHI in each market would be consistent with Board precedent and the thresholds in the DOJ Guidelines. In addition, numerous competitors would remain in all five banking markets.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the five banking markets where the subsidiary depository institutions of M&T and Wilmington compete directly or in any other relevant depository institution market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.²¹ The Board also reviews the financial and managerial resources of the companies involved in a notice under section 4 of the BHC Act.²² The Board has considered those factors in light of all

which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), [available at www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

²⁰ Those banking markets and the effects of the proposal on their concentrations of banking resources are described in the appendix.

²¹ 12 U.S.C. §§ 1842(c)(2)-(3) and 1828(c)(5).

²² 12 U.S.C. § 1843(j)(4)(A)-(B).

the facts of record, including confidential supervisory and examination information from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by M&T and Wilmington.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered the financial factors of the proposal carefully. M&T and its subsidiary depository institutions are well capitalized and would remain so on consummation. WT Bank is also well capitalized. The proposed transaction is structured as a share exchange. Based on its review of the record, the Board finds that M&T has sufficient financial resources to effect the proposal.

The Board also has carefully considered the managerial resources of the organizations involved in the proposed transaction. The Board has reviewed the examination records of M&T, Wilmington, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. M&T and its subsidiary depository institutions are considered to be well managed. The Board also has considered M&T's plans for implementing the proposal, including the proposed management after consummation.

In addition, the Board has considered the future prospects of the organizations involved in the proposal. As part of this evaluation, the Board considered information regarding how M&T would manage the integration of Wilmington into M&T. The Board also considered M&T's experience in acquiring bank holding companies and successfully integrating them into its organization. The record indicates that M&T has the financial and managerial resources to serve as a source of strength to Wilmington and its subsidiary depository institutions.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").²³ The Board must also review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.²⁴

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

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of M&T Bank and WT Bank, data reported

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

²⁴ *See, e.g., North Fork Bancorporation, Inc.*, 86 Federal Reserve Bulletin 767 (2000).

²⁵ 12 U.S.C. § 2903.

by M&T Bank under the Home Mortgage Disclosure Act (“HMDA”),²⁶ other information provided by M&T, confidential supervisory information, and public comments received on the proposal. Some commenters commended M&T Bank for its relationship with community groups and for certain aspects of its CRA program but also made recommendations for M&T Bank to expand its community development programs.²⁷ In addition, other commenters alleged that M&T denied home mortgage loan applications of African American or Hispanic borrowers more frequently than those of nonminority applicants in certain areas.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance record of the relevant insured depository institution. 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.²⁸

M&T Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York (“Reserve Bank”), as of May 12, 2008 (“2008 Evaluation”).²⁹ WT Bank received an “outstanding” rating

²⁶ 12 U.S.C. § 2801 et seq.

²⁷ The Board consistently has stated that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments. See, e.g., The PNC Financial Services Group, Inc., 94 Federal Reserve Bulletin C38 (2008); Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005). In addition, the CRA does not require depository institutions to offer specific types of products or services. The Board focuses on the existing CRA and fair lending performance and compliance records of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment area at the time the Board reviews a proposal under the convenience and needs factor.

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

²⁹ M&T’s other bank subsidiary, M&T Bank, N.A. received a “satisfactory” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of May 18, 2009. WTFSC is not an insured depository institution subject to the CRA. 12 U.S.C. § 2902(2).

at its most recent CRA performance evaluation by the Federal Reserve Bank of Philadelphia, as of July 20, 2009.³⁰

CRA Performance of M&T Bank. In addition to the overall “outstanding” rating that M&T Bank received in the 2008 Evaluation, the bank received separate overall ratings of “outstanding” or “satisfactory” in all the states and multistate metropolitan areas reviewed.³¹ Examiners reported that M&T Bank’s geographic distribution of loans was good. They also stated that the bank’s distribution of loans to borrowers reflected a good penetration among customers of different income levels and among businesses of different revenue sizes. In addition, examiners noted that M&T Bank offered a Federal National Mortgage Association affordable mortgage product in all its assessment areas that had resulted in the origination of almost 1,000 mortgages totaling \$89 million during the evaluation period.

In the 2008 Evaluation, examiners characterized M&T Bank as a leader in making community development loans in its assessment areas, reporting that the bank made more than 455 community development loans totaling \$1.96 billion during the evaluation period. Examiners noted that the bank’s community development lending volume generally exceeded similarly situated banks in the New York, Pennsylvania, and Maryland full-scope assessment areas.

Examiners rated M&T Bank’s overall performance under the investment test as “outstanding.” Qualifying community development investments totaled more than \$246 million, representing an increase from its previous evaluation. Most of the investments were concentrated in the form of low-income-housing tax credits, which help to provide affordable housing to LMI borrowers, and 86 percent of the qualified community development investments supported development of affordable housing.

³⁰ WTFSB received a “satisfactory” rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of July 20, 2009.

³¹ Examiners considered HMDA-related and CRA-reportable small business loans that were originated between January 1, 2006, and December 31, 2007. Examiners also reviewed community development loans, investments, services, and activities pertaining to the service test for the same period.

In addition, examiners concluded that the bank's performance under the service test was "outstanding." Examiners found that the M&T Bank's retail delivery systems were readily accessible to all portions of its assessment areas. They reported that 20 percent of M&T Bank's branches were in LMI tracts and that 19 percent of the bank's automated teller machines ("ATMs") were in LMI areas, which enhanced the bank's performance under the service test in those communities. Examiners also noted that M&T Bank's customers could use ATMs owned by institutions that had business relationships with the bank without paying a fee and that six of the ATMS were in LMI areas. In addition, examiners indicated that M&T Bank was a leader in providing community development services throughout its assessment areas, including sponsoring and participating in a significant number of seminars and presentations relating to affordable mortgages, small business assistance, and other banking education. These types of events provided technical assistance and training to LMI individuals, community organizations, small businesses, and housing agencies.

M&T indicated that M&T Bank's CRA staff would work with WT Bank's CRA staff to determine the most effective ways to integrate the CRA programs of the two banks going forward. In recognition of the fact that M&T Bank's assessment area in Delaware would significantly expand as a result of the proposed acquisition, M&T plans to retain WT Bank's CRA officer to provide uninterrupted, in-market program oversight and support.

CRA Performance of WT Bank. As noted, WT Bank received an overall "outstanding" rating in its 2009 evaluation.³² Under the lending test, WT Bank received an "outstanding" rating, and the examiners reported that the bank's geographic distribution of loans reflected an excellent penetration throughout its assessment areas and that the overall distribution of loans among borrowers of different income levels, especially LMI borrowers, also showed excellent penetration given the economic and demographic considerations in the assessment areas. The distribution of loans among businesses of different sizes,

³² The evaluation includes HMDA, small business lending, and small farm lending data reported from January 1, 2007, through December 31, 2008.

including small businesses, also reflected good penetration. Examiners noted WT Bank's participation in innovative and flexible lending programs that addressed the specific credit needs of LMI borrowers and small businesses in its assessment areas.

Examiners also noted that WT Bank made a significant number of community development loans in its assessment areas. During the evaluation period, the bank originated nine community development loans totaling \$16.3 million to finance community development initiatives of which seven loans totaling \$12.6 million supported affordable housing; one loan for \$3.7 million supported economic development; and one loan for \$84,000 supported the provision of community development services.

The bank received a "high satisfactory" rating under the investment test in the WT Bank 2009 Evaluation. Examiners found that WT Bank had a significant level of qualified community development investments and grants throughout its assessment areas. Investments of \$24.7 million included support for affordable housing, and economic development and for the provision of community development services.

In the 2009 evaluation, WT Bank received an "outstanding" rating under the service test. Examiners found that branch delivery systems, as well as alternative delivery systems such as ATMs, telephone, and Internet banking, were accessible to essentially all portion of the bank's assessment areas. WT Bank's banking services did not vary in a way that inconvenienced portions of the bank's assessment areas, particularly LMI census tracts or borrowers. Examiners noted that WT Bank is a leader in providing community development services, including deposit accounts that provided greater access to banking services for LMI borrowers and small businesses.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of M&T in light of public comment received on the proposal. Commenters alleged, based on 2009 HMDA data, that M&T had denied the conventional home mortgage loan applications of African American borrowers more frequently than those of nonminority applicants in Buffalo and Baltimore. Those commenters also alleged, again based on 2009 HMDA data, that M&T had denied refinancing loan applications of Hispanic

borrowers in the metropolitan area encompassing New York City more frequently than those of nonminority applicants.³³

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not M&T is excluding any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³⁴ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates must conduct their mortgage lending operations without any abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by M&T's subsidiary insured depository institutions. In particular, examiners did not find any evidence that M&T's subsidiary depository institutions had engaged in illegal discrimination or in any other illegal credit practices. In addition, the Board has considered information provided by M&T about its compliance risk-management systems.

³³ The Board reviewed HMDA data for 2009 for M&T Bank in the two markets, as well as in its combined assessment area for all types of HMDA-reportable lending on a combined basis.

³⁴ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicant 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. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

The record of this proposal, including confidential supervisory information, indicates that M&T has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. M&T represents that the lending unit within M&T Bank's Centralized Compliance Department works in conjunction with compliance personnel to design and document compliance control procedures, monitor compliance within assigned business units, provide support with new products and business initiatives, design test scripts, analyze findings and develop action plans, determine requirements for new or revised regulations, and manage M&T's Fair Banking Program.

The Fair Banking Program is a coordinated and comprehensive effort within M&T Bank that includes oversight, training, procedures, monitoring and analysis, and testing. In addition, the program includes education and training, an annual fair lending audit, and a complaint-resolution process. M&T Bank also performs a second review of all denied residential mortgage applications to ensure the correctness of the action taken. M&T has stated that all appropriate measures will be taken to ensure that Wilmington's home mortgage lending activities will be integrated into the policies, procedures, and practices of the Centralized Compliance Department.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of M&T and Wilmington under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including the evaluation of the CRA performance records of the institutions involved, information provided by M&T, public comments received on the proposal, and confidential supervisory information. M&T represents that the proposal will result in increased credit availability and access to a broader range of financial services for customers of M&T's subsidiary depository institutions and Wilmington's former customers. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations

relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.

Public Benefits

As noted above, M&T has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire WTFSB and WTFSC, which engage in activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.³⁵

As part of its evaluation of the public interest factors under section 4(j) of the BHC Act, the Board also must determine that the proposed acquisitions by M&T “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”³⁶

The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would provide the current customers of M&T and Wilmington and future customers of the combined organization with expanded financial products and services. For the reasons discussed above, and based on the entire record, the Board has determined that the acquisition of the savings association and trust company within the framework of Regulation Y and Board precedent is not likely to result in significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Moreover, based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Other Considerations

³⁵ See 12 CFR 225.28(b)(4)(ii) and (5).

³⁶ 12 U.S.C. § 1843(j)(2)(A).

M&T Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of WT Bank and at the branches of WTFSB. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and 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 applications under section 3 of the BHC Act, the Bank Merger Act, and the FRA and the notice under section 4 of the BHC Act should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. The Board's approval is specifically conditioned on compliance by M&T with the conditions in this order and all the commitments made to the Board in connection with the applications and notice and on receipt of all other regulatory approvals for the proposal.³⁷ The Board's approval of the proposed nonbanking activities is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),³⁸ 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. For purposes of this proposal, these commitments

³⁷ Some commenters requested that the Board hold 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 written recommendation of denial of the application. The Board has not received such a recommendation from a supervisory authority. 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 CFR 225.25(a)(2). Under its regulations, 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. See 12 CFR 262.3(e) and 262.25(d). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The requests fail 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 requests for a public meeting or hearing on the proposal are denied.

³⁸ 12 CFR 225.7 and 225.25(c).

and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,³⁹ effective April 26, 2011.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

³⁹ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke and Tarullo. Abstaining from this action: Governor Raskin.

Appendix

M&T/Wilmington Banking Markets Consistent with Board Precedent and DOJ Guidelines						
Data are as of June 30, 2010. Deposit amounts are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent, except for the deposits of thrift institutions controlled by bank holding companies, which are weighted at 100 percent.						
Wilmington, DE – includes New Castle County, Delaware; and Cecil County, Maryland.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	17	\$37M	9.2	4612	1	19
<i>Wilmington</i>	2	\$5.3B	0.1			
<i>M&T Post-Consummation</i>	2	\$5.3B	9.3			
Baltimore, MD-PA – includes Baltimore, MD-PA Ranally Metropolitan Area (“RMA”); the non-RMA portions of Harford and Carroll Counties, Maryland (excluding the Washington, DC-MD-VA RMA portion); and Baltimore, Maryland.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	2	\$11.7B	23.5	1659	88	72
<i>Wilmington</i>	9	\$927M	1.9			
<i>M&T Post-Consummation</i>	2	\$12.6B	25.4			
Philadelphia – includes Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, Pennsylvania; and Burlington, Camden, Cumberland, Gloucester, and Salem Counties, New Jersey.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	21	\$648M	0.5	1175	0	122
<i>Wilmington</i>	29	\$460M	0.4			
<i>M&T Post-Consummation</i>	15	\$1.1B	0.9			

Salisbury, MD-DE – includes the Salisbury, Maryland-Delaware RMA; and the non-RMA portion of Wicomico County, Maryland.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	5	\$152.8M	10.3	1268	37	12
<i>Wilmington</i>	11	\$26.4M	1.79			
<i>M&T Post-Consummation</i>	5	\$178.8M	12.1			
Sussex, DE – includes Sussex County, Delaware (excluding the city of Milford and the Salisbury, MD-DE RMA portion).						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>M&T Pre-Consummation</i>	13	\$15.9M	0.6	1768	35	13
<i>Wilmington</i>	1	\$817M	30.4			
<i>M&T Post-Consummation</i>	1	\$833M	31.0			