Legal Developments

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

Banco Bilbao Vizcaya Argentaria, S.A.
Bilbao, Spain

Order Approving the Acquisition of a Bank Holding Company

Banco Bilbao Vizcaya Argentaria, S.A. (''BBVA''), 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[1] to acquire Laredo National Bancshares, Inc. (''Laredo''), Laredo, Texas; Laredo National Bancshares of Delaware, Inc., Wilmington, Delaware; and The Laredo National Bank (''LNB'') and South Texas National Bank of Laredo (''STNB''), both of Laredo.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (69 *Federal Register* 65,196 (2004)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

BBVA, with total consolidated assets of approximately $363 billion, is the 34th largest banking organization in the world. BBVA is the 110th largest depository organization in the United States, with total assets in the United States of $5.5 billion.[2] It controls approximately $2.7 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BBVA's U.S. subsidiary banks include Banco Bilbao Vizcaya Argentaria Puerto Rico (''BBVA Puerto Rico''), San Juan, Puerto Rico, a bank chartered in Puerto Rico; and Valley Bank, Moreno Valley, California, a state-chartered bank. BBVA also operates a branch in New York, New York, and an agency in Miami, Florida. BBVA's subsidiary bank in Mexico, BBVA Bancomer, S.A., operates a state-licensed agency in Houston, Texas. BBVA has no retail depository institution offices in Texas.

Laredo, with total consolidated assets of approximately $3.4 billion, is the 17th largest depository organization in Texas. It controls deposits of approximately $2.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[3] Laredo's subsidiary banks have branches only in Texas.

On consummation of this proposal, BBVA would become the 82nd largest depository organization in the United States, with total consolidated U.S. assets of $8.9 billion. BBVA would control deposits of $5.4 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4]

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of BBVA is Puerto Rico and Laredo is located in Texas. Based on a review of all the facts of record, including a review of the relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[5] The Board is therefore permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business

1. 12 U.S.C. § 1842

2. Worldwide asset data are as of December 31, 2003, and worldwide ranking is as of November 12, 2004. United States asset and deposit data are as of September 30, 2004, and national ranking is as of June 30, 2004. The data and rankings are adjusted to reflect mergers and acquisitions completed as of June 30, 2004.

3. Asset data for Laredo are as of September 30, 2004. Deposit and ranking data are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed as of that date.

4. In this context, the term ''insured depository institutions'' includes insured commercial banks, savings banks, and savings associations.

5. 12 U.S.C. §§ 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). BBVA is currently adequately capitalized and adequately managed, as defined by applicable law, and would remain so on consummation of this proposal. BBVA and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. All other requirements of section 3(d) would also be met on consummation of the proposal.

of banking. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

Applicant does not currently compete with Laredo in any relevant banking market. Accordingly, the Board concludes, based on all the facts of record, that consummation of the proposal would not have a significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including information provided by BBVA, confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, and public comments received on the proposal.[7] The Board also has consulted with the Bank of Spain, which is responsible for the supervision and regulation of Spanish financial institutions.

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 banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 effect of the transaction on the financial condition of the combined organization on consummation, including its capital position, asset quality, and earnings prospects and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board believes financial factors are consistent with approval of this proposal. Laredo currently is well capitalized, and the capital levels of BBVA would continue to exceed the minimum levels that would be required under the Basel Capital Accord. Furthermore, BBVA's capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization and would remain so after consummation of this proposal. In addition, BBVA has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share purchase, and the consideration to be received by Laredo's shareholders would be provided from BBVA's available funds.

The Board also has considered the managerial resources of BBVA, Laredo, and their subsidiary banks, particularly the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed the assessments of the organizations' management and risk management systems by the relevant federal and state banking supervisory agencies. In addition, the Board has considered the anti-money laundering programs at BBVA and the assessment of these programs by the relevant federal supervisory agencies, state banking agencies, and the Bank of Spain.[8] The Board also has considered BBVA's plans to implement the proposal, including its proposed management after consummation and the proposed integration of Laredo and its subsidiaries into BBVA.[9] Based on these and all other facts of record, the Board concludes that the managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[10] As previously

6. 12 U.S.C. § 1842(c)(1).

7. A commenter quoted a Spanish newspaper article that suggested that a construction group in Spain intended to acquire less than 5 percent of the voting stock of BBVA. The commenter provided no information, and no other information is in the record, that indicates that this potential future acquisition is in any way related to the proposal currently under review.

8. The commenter made general allegations about BBVA's ability to comply with U.S. anti-money laundering laws. In addition, the commenter expressed concern, citing media reports in 2002, that BBVA might be under investigation in Mexico, Columbia, and Peru in connection with its acquisitions of financial institutions in those countries. BBVA has provided information to the Board, the Bank of Spain, and other appropriate governmental authorities relating to these allegations and has publicly disclosed information on these matters in filings with the U.S. Securities and Exchange Commission. As part of its review of banking organizations, the Board seeks information on enforcement actions by government authorities in other countries. The Board notes that no enforcement action has been initiated against BBVA by government authorities in the countries mentioned in the media reports.

9. The commenter criticized LNB's and STNB's lending relationships with unaffiliated pawn shops and Valley Bank's lending to a rent-to-own business, stating that BBVA was enabling high-cost, nontraditional providers of financial services. These businesses are licensed by the states where they operate and are subject to applicable state law. BBVA stated that neither Laredo nor any of its affiliates engages in the activities conducted by payday lenders, check cashers, or rent-to-own businesses. The only dealings that Laredo or any of its affiliates have with such businesses are in the ordinary course of extending credit and cashing checks for existing customers, to the extent consistent with regulations of the Office of the Comptroller of the Currency ("OCC"). BBVA further stated that neither Laredo nor any of its affiliates plays any role, formal or otherwise, in the lending practices or credit review processes of any unaffiliated subprime lender or provider of nontraditional financing products.

10. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation

noted, the home country supervisor of BBVA is the Bank of Spain.

In approving an application under the International Banking Act ("IBA"),[11] the Board previously determined that BBVA was subject to home country supervision on a consolidated basis by the Bank of Spain.[12] Based on all the facts of record, the Board has concluded that BBVA continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[13] The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which BBVA operates and has communicated with relevant government authorities concerning access to information. In addition, BBVA has previously committed to make available to the Board such information on the operations of BBVA and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. BBVA has also committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable BBVA and its affiliates to make such information available to the Board. In light of the Board's review of the restrictions on disclosure and these commitments, the Board concludes that BBVA has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on this proposal, the Board is required to consider the effects of the transaction 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").[14] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of BBVA and Laredo in light of all the facts of record, including public comment on the proposal.[15] As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the application 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.[16]

All the subsidiary insured depository institutions of BBVA and Laredo received "satisfactory" ratings at the most recent evaluations of their CRA performance. BBVA Puerto Rico received a "satisfactory" CRA performance rating by the Federal Deposit Insurance Corporation ("FDIC"), as of October 29, 2002, and Valley Bank received a "satisfactory" CRA performance rating by the FDIC, as of August 26, 2002.[17] The OCC gave a "satisfactory" rating to LNB, as of February 5, 2001, and to STNB, as of September 3, 2003.

BBVA represented that it is committed to maintaining the existing CRA programs at LNB and STNB and enhancing their CRA performance. In addition, BBVA represented that consummation of this proposal would further its goal of becoming a leading financial services provider to the Hispanic community in the United States.

In BBVA Puerto Rico's most recent CRA performance evaluation, examiners reported that the bank's lending

on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

11. 12 U.S.C. § 3101 *et seq.*

12. *See BBVA Bancomer, S.A.,* 89 *Federal Reserve Bulletin* 146 (2003).

13. *See* 12 U.S.C. § 1842(c)(3)(A).

14. 12 U.S.C. § 2901 *et seq.*

15. The commenter asserted, based on data reported under the Home Mortgage Disclosure Act ("HMDA") (12 U.S.C. § 2801 *et seq.*), that Homeowners Loan Corporation ("HLC"), a subprime lending subsidiary of LNB, originated a disproportionately large percentage of subprime loans to African Americans in possible violation of fair lending laws. Using 2003 HMDA data reported by HLC in several MSAs, the commenter compared the number of HLC's loan originations to white applicants with the number of its loan originations to African-American applicants. Based on these comparisons, the commenter asserted that HLC's ratio of originations to African-American applicants compared to white applicants significantly exceeded the ratio of aggregate lenders in those markets. The commenter alleged that HLC's disproportionately high ratio of originations to African-American applicants compared to white applicants was a possible indication of fair lending law violations. The Board has considered the limited HMDA data presented by the commenter; confidential supervisory information received from the OCC, the primary federal supervisor of HLC; and information provided by the applicant. BBVA has stated that HLC selects prospects for direct marketing using objective criteria, specifically, home ownership, home equity, and credit score, and uses no racial demographic or geographic criteria in any modeling for marketing purposes. The Board also has consulted with the OCC about HLC's subprime lending operations and its programs for compliance with fair lending laws and other consumer protection laws.

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

17. The FDIC evaluated the CRA performance of Valley Bank before BBVA acquired it in early 2004.

levels reflected a "good responsiveness" to the credit needs of its assessment areas during the evaluation period.[18] Examiners noted that BBVA Puerto Rico maintained a "reasonable standard of lending" in its assessment areas by aggressively offering a variety of loan products at competitive rates. They commended BBVA Puerto Rico's distribution of small business loans and its efforts to meet the needs of businesses within its assessment areas.[19] In addition, examiners commended BBVA Puerto Rico for having a high level of community development lending directed towards areas where traditional bank products did not meet the needs of LMI families. They also noted that BBVA Puerto Rico had developed the "Global Commercial Package," a special product designed to satisfy the needs of small business owners in Puerto Rico by offering commercial accounts, credit facilities, and merchant services.

In LNB's most recent evaluation, the bank received "high satisfactory" ratings under both the lending and investment tests and an "outstanding" rating under the service test.[20] In particular, examiners described LNB's home mortgage lending, small loans to businesses, branch distribution, and community development services as "excellent."

Examiners commended LNB's record of making home purchase loans to borrowers of different income levels, including LMI individuals. They reported that the bank's market share of home purchase loans to LMI borrowers was almost twice its overall market share in the Laredo MSA.[21] In addition, examiners commended Laredo for its distribution of home purchase loans to LMI borrowers in the Houston MSA. Examiners noted that LNB offered a special affordable housing product with flexible underwriting criteria for LMI borrowers. LNB offered this product directly to customers and indirectly through special programs of Neighborhood Housing Services, Inc., an organization that provides home-buyer education classes and offers grants for down payments and closing-cost assistance.

Examiners also commended LNB's participation in the Bank Enterprise Award program of the U.S. Department of the Treasury for loans in low-income, high-unemployment neighborhoods designated as "Distressed Communities." They noted that LNB had 13 full-service branches in Distressed Communities, representing 62 percent of its total branches. In addition, examiners commended LNB for providing affordable checking account products to LMI customers and offering check-cashing services to noncustomers with a fee structure that was more affordable than most check-cashing operations offered in the bank's assessment areas.

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by BBVA, comments on the proposal, confidential supervisory information, and BBVA's plans to enhance the CRA performance of STNB and LNB. The Board notes that the proposal would provide Laredo's customers with expanded banking opportunities and resources, including access to BBVA's expertise in and knowledge of Latin American banking markets. 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, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record, including commitments and conditions imposed in this order, in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[22]

The Board's approval is specifically conditioned on BBVA's compliance with the conditions imposed in this order, including receipt by BBVA of all appropriate regulatory approvals, and with the commitments made to the Board in connection with the application. For purposes of

18. The evaluation period was from January 2000 through September 2002.

19. For purposes of this order, a "small business loan" or a "small loan to business" is a loan in an original amount of $1 million or less that either is secured by nonfarm, nonresidential properties or is classified as a commercial and industrial loan.

20. The evaluation period was January 1998 through February 2001. Full-scope reviews were performed on the following LNB assessment areas: the Laredo Metropolitan Statistical Area ("MSA"), the Harris County portion of the Houston MSA, and the Bexar County portion of the San Antonio MSA. More than 90 percent of LNB's small business, home purchase, home improvement, and refinance loans were originated or purchased within these assessment areas. LNB assessment areas receiving limited-scope reviews included the Brownsville, McAllen, and Corpus Christi MSAs and Willacy County.

21. Examiners noted that the Laredo MSA was one of the least affordable areas in the country for home ownership because home prices were relatively high while a large percentage of the population lived below the poverty level.

22. The commenter requested that the Board hold a public hearing or meeting 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 of the application. The Board has not received such a recommendation from the appropriate supervisory authority. 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. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal, and, in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not adequately present its evidence and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

this transaction, these conditions and commitments 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 proposed transaction 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 the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 30, 2005.

Voting for this action: Chairman Greenspan and Governors Gramlich, Bies, Olson, Bernanke, and Kohn. Absent and not voting: Vice Chairman Ferguson.

Robert deV. Frierson
Deputy Secretary of the Board

Citigroup Inc.
New York, New York

Order Approving the Acquisition of a Bank

Citigroup Inc. (''Citigroup''), 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 Act[1] to acquire First American Bank, SSB (''FAB''), Bryan, Texas. Citigroup would acquire FAB immediately after its conversion to a national bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (69 *Federal Register* 58,173 (2004)). 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 section 3 of the BHC Act.

Citigroup, with total consolidated assets of approximately $1.48 trillion, is the largest depository organization in the United States.[3] Citigroup's subsidiary depository institutions control deposits of approximately $192.5 billion, which represent approximately 3 percent of the total deposits of insured depository institutions in the United States.[4] Citigroup operates insured depository institutions in fourteen states, the District of Columbia, Puerto Rico, and two U.S. territories.[5] Citigroup currently operates one retail depository institution branch in Texas, primarily for employees at a sales and service center in San Antonio, and several nonbanking companies in Texas. Citigroup has no other retail depository institution offices in the state.

FAB, with total consolidated assets of approximately $3.5 billion, is the 18th largest insured depository institution in Texas, controlling deposits of approximately $2.7 billion. Currently, FAB is an indirect subsidiary of The Adam Corporation/Group (''TACG''), a Texas corporation that is subject to the supervision and regulation of the Office of Thrift Supervision (''OTS'').[6]

On consummation of the proposal, Citigroup would become the 18th largest depository organization in Texas, controlling deposits of approximately $2.7 billion, which represent less than 1 percent of the total amount of insured deposits in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[7] For purposes of the BHC Act, the home state of Citigroup is New York. Depository institutions controlled by Citigroup operate in California, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Nevada, New Jersey, New York, South Dakota, Texas, Utah, Virginia, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. Citigroup proposes to acquire a bank located in Texas.[8]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in sec-

1. 12 U.S.C. § 1842.

2. FAB would relocate the bank's main office to Dallas and change its name to Citibank Texas, National Association (''Citibank Texas'') before the proposed acquisition by Citigroup. FAB's application to convert to a national charter was approved by the Office of the Comptroller of the Currency (''OCC'') on February 15, 2005. The Board consulted with the OCC and the Federal Deposit Insurance Corporation (''FDIC''), the primary supervisor of FAB, regarding their reviews of the proposal.

3. Asset data and nationwide ranking data for Citigroup are as of December 31, 2004.

4. Deposit data are as of June 30, 2004, and reflect the unadjusted total of deposits reported by each organization's insured depository institutions in the Summary of Deposits. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. Citigroup's subsidiary insured depository institutions include Citibank, N.A., New York, New York (''Citibank''); Citibank (West), FSB, San Francisco, California; Citibank, Federal Savings Bank, Reston, Virginia; Citibank (South Dakota), National Association, Sioux Falls, South Dakota; California Commerce Bank, Century City, California; Citicorp Trust Bank, FSB, Newark, Delaware; Citibank (Nevada), National Association, Las Vegas, Nevada; Citibank USA, National Association, Sioux Falls, South Dakota; Citibank (Delaware), New Castle, Delaware; Associates Capital Bank, Inc., Salt Lake City, Utah; and Universal Financial Corp., Salt Lake City, Utah.

6. Citigroup proposes to acquire five of FAB's twelve subsidiaries, including FAB Holdings GP, LLC; FAB Holdings LP, LLC; FAB Financial, LP; SALSCO Inc.; and SB Plano Corporation. Each is currently a subsidiary of FAB and will become a subsidiary of Citibank Texas. All activities conducted by these subsidiaries are permissible for subsidiaries of a national bank. All other FAB subsidiaries will be transferred to TACG before the acquisition.

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

8. For purposes of section 3(d), 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), 1842(d)(1)(A) & (B).

tion 3(d) of the BHC Act are met in this case.[9] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits 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.[10]

Citigroup and FAB do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposed transaction would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. In reviewing these factors, the Board has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, including the Federal Reserve System's confidential supervisory information. In addition, the Board has consulted with the relevant supervisory agencies, including the OCC, OTS, FDIC, Securities and Exchange Commission (''SEC''), and Texas Savings and Loan Department. The Board also has considered publicly available financial and other information on the organizations and their subsidiaries, all the information submitted on the financial and managerial aspects of the proposal by Citigroup, and public comments received by the Board about the financial and managerial resources of Citigroup.

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 banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 effect of the transaction on the financial condition of the applicant and the target, including their capital positions, asset quality, and earnings prospects and the impact of the proposed funding of the transaction.

The Board has reviewed these factors carefully in this case and believes financial factors are consistent with approval of this application. The Board notes that Citigroup and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. The Board also finds that Citigroup has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase of the outstanding shares of FAB, and Citigroup would not directly incur any debt to finance the proposed transaction.

In addition, the Board has considered the managerial resources of Citigroup and FAB, particularly the supervisory experience and assessments of management by the various bank supervisory agencies and the organizations' records of compliance with applicable banking laws.[11] In reviewing this proposal, the Board has assembled and considered a broad and detailed record, including substantial confidential and public information about Citigroup. The Board has carefully reviewed the examination records of Citigroup, FAB, and their subsidiaries, including assessments of their risk-management systems. The Board also considered information from ongoing examinations, the publicly disclosed investigations that are underway, and consultations with other federal and state banking authori-

9. 12 U.S.C. §§ 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). Citigroup is adequately capitalized and adequately managed, as defined by applicable law. FAB has been in existence and operated for the minimum period of time required by applicable law. On consummation of the proposal, Citigroup 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 the total amount of deposits of insured depository institutions in Texas. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

10. *See* 12 U.S.C. § 1842(c)(1).

11. A commenter asserted that management of Citigroup is inadequate because it indirectly supports allegedly abusive lending practices through warehouse lending and securitization activities of its subsidiary, Citigroup Global Markets, Inc. (''CGMI''), that support unaffiliated third parties engaged in subprime lending, check cashing, auto-title lending, and operating pawnshops. The commenter also contended that FAB has relationships with these nontraditional providers of financial services that allegedly harm consumers. Citigroup indicated that CGMI engages in underwriting securities backed by subprime mortgage loans and provides warehouse loans to some mortgage banking customers for which it underwrites securities. Citigroup stated that CGMI does not control the origination of subprime loans made by unaffiliated mortgage banking customers or participate in the credit decisions of these customers. Citigroup also stated that CGMI reviews each lender's policies and procedures and sets eligibility criteria for the loans it will finance through its warehouse lending and securitization arrangements. CGMI, or an outside firm hired and supervised by CGMI, reviews a sample of any loan pool to be securitized for compliance with consumer protection laws and its loan eligibility criteria before making any warehouse loan advance. With regard to its business relationships with unaffiliated subprime lenders and nontraditional providers of financial services, Citigroup plays no role in the credit review or other lending or service practices of these entities. The nontraditional providers of financial services are licensed by the states where they operate and are subject to applicable state law.

ties, foreign financial supervisory authorities, the SEC, and other relevant regulators. The Board also reviewed confidential supervisory information on the policies, procedures, and practices of Citigroup to comply with the Bank Secrecy Act and other anti-money-laundering laws and consulted with the OCC, the appropriate federal financial supervisory agency of Citibank, concerning its record of compliance with anti-money-laundering laws.[12]

In evaluating the managerial resources of a banking organization in an expansion proposal, the Board considers assessments of an organization's risk management—the ability of the organization's board of directors and senior management to identify, measure, monitor, and control risk—to be especially important.[13] In evaluating Citigroup's and other banking organizations' risk management, the Board considers a variety of areas, including the following matters: (1) board and senior management oversight of the organization's inherent risks, as well as the general capabilities of management; (2) the adequacy of the organization's policies, procedures, and limits, including the organization's accounting and risk-disclosure policies and procedures; (3) the risk-monitoring and management-information systems used by an organization to measure risk, and the consistency of these tools with the level of complexity of the organization's activities; and (4) the adequacy of the organization's internal controls and audit procedures, including the accuracy of financial reporting and disclosure, the independence of control areas from management, and the consistency of the scope of coverage of the internal audit team with the complexity of the organization.[14] The Board has also taken into account that an organization as large and varied as Citigroup has a particular need to adopt risk-management practices that can appropriately address the scope, complexity, and geographic diversity of its operations.

In assessing these matters, the Board has also taken into account recent publicly disclosed deficiencies and investigations involving Citigroup's activities in Japan, in Europe, and in its mutual fund relationships in the United States. The Board continues to monitor the investigations of Citigroup's securities-related activities that are being conducted by its functional regulators, including the SEC, and is consulting with these authorities. In addition, the Board continues to monitor the investigations regarding Citigroup's bond trades in Europe and its private banking and other activities in Japan. The Board is consulting with the relevant foreign authorities on these matters. The Federal Reserve Bank of New York and the OCC also have conducted targeted examinations of Citigroup's Japanese operations.[15]

Citigroup has acknowledged that it has some deficiencies in its compliance and internal controls in these areas and has developed plans that it has already begun to implement to address the weaknesses. The Board has given careful attention to the measures that Citigroup and its subsidiaries have taken to address these matters and the steps it is continuing to take to resolve these matters and strengthen the company's compliance risk-management structure and practices.[16] Importantly, Citigroup has demonstrated a willingness and ability to take actions to address concerns raised in these investigations and in the examination process. The Board notes that Citigroup recently has significantly increased its funding of compliance risk-management programs and technology, and is in the process of implementing various initiatives designed to strengthen compliance risk management, increase ethics awareness and encourage compliance, and enhance the oversight of its international operations.

As part of Citigroup's plan to enhance its existing compliance risk management and to address compliance issues, Citigroup has strengthened the independence of its compliance structure. The reporting relationship between compliance personnel and business-line management has been changed so that all compliance personnel now have a direct reporting line to the independent compliance function. In addition, Citigroup is in the process of implementing enhanced compliance policies and procedures; management information and reporting systems; monitoring and surveillance programs; and firm-wide and business-specific compliance training for its employees and compliance personnel. Finally, Citigroup is in the process of expanding its audit coverage of the compliance function.

Citigroup has also reviewed and standardized its performance appraisal process to incorporate increased incen-

12. A commenter criticized the managerial resources of Citigroup and its subsidiaries based on press reports alleging that Citibank and other subsidiaries of Citigroup held accounts for certain international leaders the commenter believed were associated with terrorism. The commenter asserted, based only on information in press reports, that Citigroup lacks sufficient policies and procedures and other resources to prevent money laundering.

13. *See* Revisions to Bank Holding Company Rating System, 69 *Federal Register* 70,444 (2004).

14. *Id.* at 70,447.

15. As a matter of practice and policy, the Board generally has not tied consideration of an application or notice to the scheduling or completion of an examination or investigation if the applicant has an overall satisfactory record of performance and the issues being reviewed may be resolved in the examination and supervisory process. *See* 62 *Federal Register* 9290 (1997) (Preamble to the Board's Regulation Y). As the Board has indicated previously, it has broad supervisory authority under the banking laws to address matters that are found in the examination and supervisory process. Moreover, many issues are more appropriately and adequately addressed in the supervisory process, where particular matters and violations of law may be identified and addressed specifically, rather than in the application process, which requires a weighing of the overall record of the companies involved.

16. The commenter also asserted that Citigroup's management had not implemented effective policies and programs to address alleged abusive sales and lending practices of Citigroup's subsidiaries, including those engaged in subprime lending and related insurance activities, and that the Board's enforcement action against Citigroup and its subsidiary subprime lender, CitiFinancial Credit Company ("CitiFinancial"), Baltimore, Maryland, indicated that Citigroup's managerial resources are inadequate. *See Enforcement Actions,* 90 *Federal Reserve Bulletin* 348–349 (2004) ("Consent Order"). The Board has taken into account the Consent Order and the progress that Citigroup and CitiFinancial currently are making to comply with the Consent Order.

tives for compliance. It has introduced an enhanced corporate-wide ethics awareness program with an expanded orientation program and annual training sessions. Top corporate officials are taking an active role in this ethics program by spearheading regional meetings, conference calls, and site visits.

To ensure that the shortcomings associated with its oversight and the management structure of its Japanese operations are not prevalent in its international operations, Citigroup conducted reviews of its franchise in key global markets and met with regulators to identify any concerns that may exist with regard to corporate governance and compliance. As a result of this review, Citigroup has taken steps designed to clarify accountability and responsibility and to enhance oversight of its international operations.

In addition, the Board has considered the nature of the proposal in this case. This transaction is small relative to Citigroup's U.S. retail banking operations. The Board has also considered the strength and success of Citigroup's managerial resources in operating its retail banking business in the U.S.

Based on these and all the facts of record, including a careful review of public comments, Citigroup's management record, its risk-management programs, the actions taken by Citigroup to address compliance concerns, and the nature of the transaction at hand, the Board concludes that considerations relating to the managerial resources of Citigroup, FAB, and their subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.[17] The Board expects Citigroup management to continue its efforts to implement fully the improvements it has developed to enhance all aspects of its oversight of the organization's operations. The Board will continue to monitor closely Citigroup's implementation of its plan for enhancing its compliance programs and its progress in meeting the schedule it has set out for implementing that plan.

Given the size, scope, and complexity of Citigroup's global operations, successfully addressing the deficiencies in compliance risk management that have given rise to a series of adverse compliance events in recent years will require significant attention over a period of time by Citigroup's senior management and board of directors. The Board expects that management at all levels will devote the necessary attention to implementing its plan fully and effectively and will not undertake significant expansion during the implementation period. The Board believes it important that management's attention not be diverted from these efforts by the demands that mergers and acquisitions place on management resources. In this application, the Board has determined that demands on managerial resources from this proposal would not be so significant as to divert management from implementing its improvement programs.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC 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 institution under the Community Reinvestment Act ("CRA").[18] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the application 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.[19]

Citigroup's subsidiary depository institutions received either "outstanding" or "satisfactory" ratings at their most recent CRA performance evaluations.[20] Citibank, the lead subsidiary depository institution of Citigroup, received an "outstanding" rating from the OCC, as of June 9, 2003 ("2003 Evaluation"). FAB received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 3, 2002. Citigroup has indicated that it would continue its CRA-related loan, investment, grant, and service programs and fair lending policies at the combined entity after consummation.

17. The commenter expressed concern that Citigroup has helped to finance various activities and projects worldwide that might damage the environment or cause other social harm. These contentions contain no allegations of illegality or action that would affect the safety and soundness of the institutions involved in the proposal and 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).

18. 12 U.S.C. § 2901 *et seq.*

19. *See Interagency Questions and Answers Regarding Community Reinvestment,* 66 *Federal Register* 36,620 and 36,639 (2001).

20. The CRA ratings of all Citigroup's subsidiary depository institutions are provided in the Appendix.

B. CRA Performance of Citibank

Citibank received an "outstanding" rating under the lending, investment, and service tests in the 2003 Evaluation.[21] The examination stated that Citibank had good lending activity in its primary assessment areas, good geographic distribution of loans, and excellent distribution of loans by borrower income. Examiners commended Citibank's use of innovative and flexible mortgage loan products. Citibank, in connection with Fannie Mae, state banking agencies, and nonprofit organizations, such as ACORN, developed several programs for first-time homebuyers and LMI borrowers. Many of these programs, including CRA Portfolio Sub-Allocation and the Enhanced Fannie Neighbors with Community Homebuyers Program, allow for more flexible underwriting standards and reduced down payments. The examiners commended Citibank's small business lending and noted that Citibank was the leading small business lender in the New York City assessment area, with 23 percent of the market share of small business loans.[22]

In addition, the examiners reported that Citibank's community development lending in the New York City assessment area was excellent. They found that Citibank originated a high number and dollar amount of community development loans and that these loans exhibited complexity and innovativeness. Examiners noted that Citibank offered a wide range of financing alternatives to nonprofit and for-profit entities that supported community development initiatives, including the acquisition and rehabilitation of affordable housing units.

Additionally, examiners found that Citibank had an excellent level of community development investments during the evaluation period. For example, in the New York City assessment area, Citibank made or purchased approximately $165 million in qualified investments during the evaluation period. These investments supported affordable housing initiatives for LMI individuals and families, projects that benefited specific LMI populations, and projects that improved deteriorating or mismanaged occupied buildings. Further, the examiners stated that Citibank was a leader in providing community development services that were responsive to the needs of the bank's assessment areas.

C. HMDA and Fair Lending Record

The Board has carefully considered the lending record of Citigroup in light of public comment received on the proposal. A commenter alleged that Citigroup engages in discriminatory lending by directing minority customers to CitiFinancial or other Citigroup subsidiaries that originate subprime loans, rather than to Citigroup's subsidiary banks and other prime lending channels.[23] The commenter also alleged, based on a review of 2003 HMDA data, that the denial disparity ratios of some of the Citigroup Prime Lenders in certain markets indicated that these lenders disproportionately denied African-American or Hispanic applicants for home mortgage loans.[24] Citigroup stated that it does not direct customers to any specific subsidiary based on race or ethnicity criteria and that it provides subprime loans through certain subsidiaries as part of a group of products designed to meet a broad range of credit needs.

The Board reviewed HMDA data reported by the Citigroup Prime Lenders and the Citigroup Subprime Lenders in the primary assessment areas of the Citigroup Prime Lenders and in the other MSAs identified by the commenter.[25] An analysis of 2003 HMDA data does not support the contention that the Citigroup Prime Lenders have disproportionately denied applications of minority or LMI customers, or directed minority or LMI borrowers to its subprime lenders. The HMDA data for the Citigroup Prime Lenders indicate that their denial disparity ratios for African-American and Hispanic applicants were generally higher than the ratios for the aggregate of all lenders ("aggregate lenders") in the MSAs reviewed.[26] However, the origination rates for total HMDA-reportable loans to African-American and Hispanic borrowers by the

21. The evaluation period was from October 18, 2000, to June 9, 2003.

22. The small business lending performance reviewed by examiners included data from the following affiliates of Citibank: Citibank, Federal Savings Bank; Citibank (South Dakota), National Association; Associates Capital Bank, Inc.; Citibank (Nevada), National Association.; Citibank USA, National Association; and Universal Financial Corp. For purposes of this analysis, small business loans included business loans with an original amount of $1 million or less.

23. Specifically, the commenter's allegations were based on 2003 data reported pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. § 2801 *et seq.* ("HMDA"), by certain Citigroup subsidiaries engaged in conventional mortgage lending in the New York, New York; Nassau/Suffolk, New York; Chicago, Illinois; Los Angeles, California; Washington, D.C., and Newark, New Jersey Metropolitan Statistical Areas ("MSAs"). In addition, the commenter criticized Citigroup's lending record in the Houston and Dallas MSAs, where Citigroup's subsidiary depository institutions have no branches. The commenter also asserted, without analysis, that CitiFinancial originated a higher volume and larger percentage of its HMDA-reportable loans to African-American or Hispanic borrowers than Citigroup's conventional mortgage lending subsidiaries originated in the MSAs noted by the commenter. For purposes of this application, the Board analyzed 2002 and 2003 HMDA data in Citigroup's CRA assessment areas in these MSAs, the San Francisco–San Mateo–Redwood City, California MSA, and the State of New York that was reported by Citibank; CitiMortgage, Inc., St. Louis, Missouri; Citibank, Federal Savings Bank; and Citibank (West), FSB (collectively, "Citigroup Prime Lenders"). Citibank (West), FSB is the successor to California Federal Bank, San Francisco, California. For purposes of this review, information relating to Citibank (West), FSB included California Federal Bank's data. The Board also reviewed 2003 HMDA data reported by CitiFinancial; Citicorp Trust Bank, FSB; and CitiFinancial Mortgage Company, Inc., Irving, Texas (collectively, "Citigroup Subprime Lenders").

24. The denial disparity ratio equals the denial rate for a particular racial category (*e.g.*, African-American) divided by the denial rate for whites.

25. In the MSAs reviewed, the Board compared the 2003 HMDA data reported by the Citigroup Prime Lenders with the HMDA data reported by the Citigroup Subprime Lenders.

26. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

Citigroup Prime Lenders in all but one of the MSAs reviewed were comparable to or higher than the rates for the aggregate lenders.[27] The 2003 HMDA data also show that the Citigroup Prime Lenders extended more total HMDA-reportable loans to African-American and Hispanic borrowers than the Citigroup Subprime Lenders in most of the MSAs reviewed.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data do not demonstrate that the Citigroup Prime Lenders are excluding any racial group on a prohibited basis. The Board is concerned when HMDA data for an institution indicate 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 lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[28] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination. Moreover, HMDA data indicating that one affiliate is lending to minorities more than another affiliate do not, without more information, indicate that either affiliate has engaged in illegal discriminatory lending activities.

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 an on-site evaluation of compliance by Citigroup and its subsidiaries with fair lending laws. Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of Citigroup's subsidiary depository institutions or FAB.

The record also indicates that Citigroup has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. Citigroup has implemented corporate-wide fair lending policies, procedures, and training programs, and it regularly conducts internal reviews for compliance with policies and procedures, including reviews of individual loans and reviews of its subsidiary lenders' overall lending data. Citigroup's subsidiary depository institutions have established detailed fair lending procedures in addition to Citigroup's corporate policies and procedures, including extensive fair lending training programs for employees and fair lending self-assessments using matched-pair testing and statistical analyses. In addition, all declined applications are independently reviewed by two underwriters, the second of whom must be a senior underwriter or risk-management expert. Declined applications go through a third level of review if the applicant is a LMI borrower, is applying for a community lending product, or lives in an LMI or minority census tract.

In addition, Citigroup has taken actions to address deficiencies in CitiFinancial's management of its compliance with consumer protection laws and currently is making progress in complying with the Consent Order.[29] Citigroup is in the process of implementing the restitution plan and changes to its compliance risk-management systems, including audit and training functions, in accordance with the Consent Order's terms. The Board is continuing to monitor Citigroup's compliance with the Consent Order and enhancements to its various real estate lending initiatives to help ensure compliance with consumer protection laws and prevent abusive lending practices by CitiFinancial (''Initiatives''). Citigroup has enhanced these Initiatives by, among other things, implementing new insurance sales practices and introducing mortgage loan products at CitiFinancial that provide qualifying applicants with access to lower-cost mortgage loans. These new loan products offer interest rates that are close to the rates on the conventional mortgage loan products offered by the Citigroup Prime Lenders.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of Citigroup's subsidiary depository institutions under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Citigroup, comments on the proposal, and confidential supervisory information. The Board notes that the proposal would provide the combined entity's customers with access

27. The origination rate equals the total number of loans originated to applicants of a particular racial category divided by the total number of applications received from members of that racial category.

28. 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.

29. As the Board previously has noted, subprime lending is a permissible activity that provides needed credit to consumers who have difficulty meeting conventional underwriting criteria. The Board continues to expect all bank holding companies and their affiliates to conduct their subprime lending operations without any abusive lending practices. *See, e.g., Royal Bank of Canada,* 88 *Federal Reserve Bulletin* 385, 388 n.18 (2002). The commenter reiterated concerns raised in previous Citigroup applications and asserted that CitiFinancial engaged in various lending practices that the commenter argued were abusive, unfair, or deceptive. The commenter also contended that the Board should deny this application or impose conditions requested by the commenter in light of the Consent Order entered into by Citigroup in May 2004.

to a broader array of products and services in an expanded service area, including access to an expanded branch and ATM network. 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 depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[30] 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 and other applicable statutes.[31] The Board's approval is specifically conditioned on compliance by Citigroup with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, these commitments 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 acquisition of FAB shall 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 Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 16, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, Bernanke, and Kohn. Absent and not voting: Governor Gramlich.

Robert deV. Frierson
Deputy Secretary of the Board

30. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. 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. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit its views and has submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenter's requests fail to demonstrate why written comments do not present its evidence adequately and 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 request for a public meeting or hearing on the proposal is denied.

31. The commenter also requested that the Board delay action or extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and considerable public comment. In the Board's view, for the reasons discussed above, the commenter has had ample opportunity to submit its views and, in fact, has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that further delay in considering the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

Appendix

CRA Performance Evaluations of Citigroup

Subsidiary Depository Institution	CRA Rating	Date of Evaluation	Agency
Citibank, N.A., New York, New York	Outstanding	June 9, 2003	OCC
Citibank (West), FSB, San Francisco, California[1]	Outstanding	July 30, 2001	OTS
Citibank, Federal Savings Bank, Reston, Virginia	Outstanding	September 8, 2003	OTS
Citibank (South Dakota), National Association, Sioux Falls, South Dakota	Outstanding	May 5, 2003	OCC
California Commerce Bank, Century City, California	Outstanding	October 1, 2002	FDIC
Citicorp Trust Bank, FSB, Newark, Delaware	Outstanding	February 5, 2001	OTS
Citibank (Nevada), National Association, Las Vegas, Nevada	Outstanding	March 31, 2003	OCC
Citibank USA, National Association, Sioux Falls, South Dakota	Satisfactory	May 5, 2003	OCC
Citibank (Delaware), New Castle, Delaware	Outstanding	December 1, 2003	FDIC
Associates Capital Bank, Inc., Salt Lake City, Utah	Outstanding	March 1, 2000	FDIC
Universal Financial Corp., Salt Lake City, Utah	Outstanding	November 1, 2002	FDIC

1. As noted above, Citibank (West), FSB is the successor to California Federal Bank. The rating shown was received by California Federal Bank.

The Colonial BancGroup, Inc.
Montgomery, Alabama

Order Approving the Acquisition of a Bank

The Colonial BancGroup, Inc. (''BancGroup''), 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 Act[1] to acquire Union Bank of Florida, Lauderhill, Florida (''Union Bank'').

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (69 *Federal Register* 69,369 (2004)).[2] The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

BancGroup, with total consolidated assets of approximately $18.2 billion, is the 56th largest depository organization in the United States. BancGroup operates one subsidiary insured depository institution, Colonial Bank, National Association, also in Montgomery (''Colonial Bank''), with branches in Alabama, Florida, Georgia, Nevada, Tennessee, and Texas. BancGroup is the eighth largest depository organization in Florida, controlling deposits of approximately $5.6 billion, which represent approximately 1.9 percent of the total amount of deposits of insured depository institutions in the state (''state deposits'').

Union Bank, with total consolidated assets of approximately $1.0 billion, is the 43rd largest insured depository institution in Florida, controlling deposits of approximately $686.7 million. On consummation of the proposal, BancGroup would remain the eighth largest depository organization in Florida, controlling deposits of approximately $6.3 billion, which represent approximately 2.1 percent of state deposits.[3]

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of

1. 12 U.S.C. § 1842.
2. 12 CFR 262.3(b).

3. Asset data are as of September 30, 2004, and national rankings are as of June 30, 2004. Deposit data and state rankings are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed through December 1, 2004.

BancGroup is Alabama.[4] BancGroup proposes to acquire a bank located in Florida.[5]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[6] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits 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 its probable effect in meeting the convenience and needs of the community to be served.[7]

BancGroup and Union Bank compete directly in the Miami-Fort Lauderdale and West Palm Beach Area banking markets in Florida.[8] 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 markets, the relative shares of total deposits of depository institutions in the markets (''market deposits'') controlled by BancGroup and Union Bank,[9] the concentration 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''),[10] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in both of these banking markets. After consummation, the Miami–Fort Lauderdale and West Palm Beach Area banking markets would remain moderately concentrated as measured by the HHI. In both markets, the increases in concentration would be small and numerous competitors would remain.[11]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies were 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 either of the two banking markets in which BancGroup and Union Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

The Board is also required under section 3(c) of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and to consider certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record including, among other things, information provided by BancGroup, confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the finan-

4. 12 U.S.C. § 1842(d). Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

5. For purposes of section 3(d), the Board considers a bank to be located in 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) & (d)(2)(B).

6. 12 U.S.C. § 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). BancGroup is well capitalized and well managed, as defined by applicable law. Union Bank has been in existence and operated for the minimum period of time required by Florida law. On consummation of the proposal, BancGroup 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 the total amount deposits of insured depository institutions in Florida. *See* Fla. Stat. Ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

7. 12 U.S.C. § 1842(c)(1).

8. The Miami–Fort Lauderdale market is defined as Broward and Dade Counties. The West Palm Beach Area market is defined as Palm Beach County east of the town of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

9. Deposit and market share data are as of June 30, 2004, adjusted to reflect subsequent mergers and acquisitions through December 1, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation,* 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.,* 77 *Federal Reserve Bulletin* 52 (1991).

10. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000 and moderately concentrated if the post-merger HHI is between 1000 and 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.

11. The effects of the proposal on the concentration of banking resources in these banking markets are described in the Appendix.

cial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 effect of the transaction on the financial condition of the applicant and the target, including their capital positions, asset quality, and earnings prospects and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that BancGroup has sufficient financial resources to effect the proposal. BancGroup and its subsidiary bank are well capitalized and would remain so on consummation of this proposal. BancGroup will acquire all the shares of Union Bank from UB Financial Corporation, Sunrise, Florida, the parent company of Union Bank. The transaction will be funded through a combination of BancGroup common stock and cash raised by BancGroup through a stock issuance.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of BancGroup, Colonial Bank, and Union Bank, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. BancGroup, Colonial Bank, and Union Bank are considered well managed. The Board also has considered BancGroup's plans to integrate Union Bank and the proposed management, including the risk management systems, of the resulting organization.

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

Convenience and Needs Considerations

In acting on this proposal, 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'').[12] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income (''LMI'') neighborhoods, in evaluating bank expansionary proposals. The Board has considered carefully the convenience and needs factor and the CRA performance records of Colonial Bank and Union Bank in light of all the facts of record.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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.[13]

BancGroup's subsidiary depository institution, Colonial Bank, received a ''satisfactory'' rating at its most recent CRA performance evaluation, as of February 25, 2002, by the Federal Reserve Bank of Atlanta.[14] Union Bank received a ''satisfactory'' rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of December 2, 2002.

BancGroup has indicated that it would continue Colonial Bank's CRA-related loan, investment, grant, and service programs and fair lending policies at the combined entity after consummation.

B. CRA Performance of Colonial Bank and Union Bank

Colonial Bank. Colonial Bank received an overall rating of ''high satisfactory'' under the lending test at its most recent CRA performance evaluation. Examiners reported that the bank's lending levels reflected good responsiveness to its assessment areas' credit needs, including a good level of loans reportable under the Home Mortgage Disclosure Act (''HMDA'')[15] and loans to businesses with gross annual revenues of $1 million or less. They commended Colonial Bank's level of HMDA-reportable and small business lending in LMI census tracts and the bank's use of innovative and flexible loan programs in serving its assessment areas' credit needs, including several affordable housing loan programs. The evaluation also found that Colonial Bank made a relatively high level of community development loans, totaling $38.2 million, in its assessment areas during the evaluation period.[16] Colonial Bank represented

12. 12 U.S.C. § 2901 *et seq.*

13. *See Interagency Questions and Answers Regarding Community Reinvestment,* 66 *Federal Register* 36,620 and 36,639 (2001).

14. At that time, Colonial Bank was a state-chartered member bank of the Federal Reserve System. Colonial Bank converted to a national bank charter in 2003.

15. 12 U.S.C. § 2801 *et seq.*

16. The evaluation period was from January 1, 2000, to December 31, 2001.

that since the examination, it has originated approximately $263 million in qualified community development loans in its assessment areas.

Colonial Bank also received overall ratings of "high satisfactory" under the investment and service tests. Examiners reported that the bank made a significant level of qualified community development investments and grants, and found that Colonial Bank's systems for delivering retail banking services were accessible essentially to all segments of the bank's assessment areas. Examiners also found that the bank provided a relatively high level of community development services throughout its assessment areas and specifically noted that these services were highly responsive to affordable housing needs.

Union Bank. As previously noted, Union Bank received a "satisfactory" rating at its most recent CRA performance evaluation. Examiners found that Union Bank's overall lending activity demonstrated an adequate responsiveness to the credit needs of its assessment areas, and that the geographic distribution of the bank's loans and its community development lending activity were also adequate.[17] They reported that the bank's level of qualified community development investments within its assessment areas was very good. Examiners also favorably noted that Union Bank's retail banking delivery systems were reasonably accessible to essentially all portions of its assessment areas.

C. HMDA and Fair Lending Record

The Board's review of the record in this case included a review of HMDA data reported by Colonial Bank. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data generally do not indicate that Colonial Bank is excluding any racial group or geographic area on a prohibited basis.[18]

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by Colonial Bank with fair lending laws and the CRA performance records of Colonial Bank and Union Bank that are detailed above. Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of Colonial Bank or Union Bank. These established efforts demonstrate that, on balance, the records of performance of Colonial Bank and Union Bank in meeting the convenience and needs of their communities are consistent with approval of this proposal. The record in this case also reflects an opportunity for Colonial Bank to improve its mortgage lending to African-American borrowers in its communities. Colonial Bank has recognized the need to improve its lending in this regard and is in the process of establishing objectives and strategies for improved performance, particularly for lending to minorities and in predominantly minority census tracts. The Board expects that Colonial Bank will continue to take steps to improve its mortgage lending performance to African-American borrowers.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by BancGroup, and confidential supervisory information. The Board notes that the proposal would provide the combined entity's customers with access to a broader array of products and services in expanded service areas, including access to expanded branch and automated teller machine networks. 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 depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, 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 Board's approval is specifically conditioned on compliance by BancGroup with the condition imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the condition and these commitments 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 proposed transaction 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 the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 25, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Robert deV. Frierson
Deputy Secretary of the Board

17. The evaluation period was from January 1, 2001, to October 31, 2002.

18. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about the covered loans. HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Appendix

Banking Market Data

Miami–Fort Lauderdale, Florida

BancGroup is the 11th largest depository institution in the Miami–Fort Lauderdale market, controlling $1.5 billion in deposits, which represents approximately 1.8 percent of market deposits. Union Bank is the 21st largest depository institution in the market, controlling $627.1 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancGroup would be the ninth largest depository institution in the Miami–Fort Lauderdale market, controlling approximately $2.1 billion in deposits, which would represent approximately 2.5 percent of market deposits. The HHI for the Miami–Fort Lauderdale market would increase 2 points to 1029, and 99 other bank and thrift competitors would remain in the market.

West Palm Beach Area, Florida

BancGroup is the 11th largest depository institution in the West Palm Beach Area market, controlling $452.0 million in deposits, which represents approximately 1.8 percent of market deposits. Union Bank is the 36th largest depository institution in the market, controlling $59.6 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancGroup would be the ninth largest depository institution in the West Palm Beach Area market, controlling approximately $511.6 million in deposits, which would represent approximately 2.1 percent of market deposits. The HHI for the West Palm Beach Area market would increase 1 point to 1422, and 59 other bank and thrift competitors would remain in the market.

Synovus Financial Corp.
Columbus, Georgia

Order Approving the Acquisition of a Bank

Synovus Financial Corp. (''Synovus''), 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[1] to acquire all the voting shares of Cohutta Banking Company of Tennessee, Chattanooga, Tennessee (''CBCT''), a de novo state chartered bank.[2] After consummation of the proposal, Synovus will operate CBCT as a separate subsidiary bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 59,229 (2004)). 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 section 3 of the BHC Act.

Synovus, with total consolidated assets of $23.6 billion, is the 47th largest depository organization in the United States, controlling $17.5 billion of deposits, which represents less than 1 percent of the total deposits in insured depository institutions in the United States.[3] In Tennessee, Synovus is the 16th largest depository organization, and its subsidiary depository institutions have approximately $1.1 billion in combined assets and $720.3 million in combined deposits. Synovus operates 40 subsidiary insured depository institutions in Alabama, Florida, Georgia, South Carolina, and Tennessee, as well as a nondepository trust company in Georgia.

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 Synovus is Georgia,[4] and CBCT is located in Tennessee.[5]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[6] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

1. 12 U.S.C. § 1842.

2. Under Tennessee branching law, one of Synovus's Tennessee-chartered subsidiary banks established a phantom branch in Chattanooga, and the organizers and proposed management of CBCT filed an application to charter the branch as a de novo institution (CBCT). The Tennessee Department of Financial Institutions (''TDFI'') approved CBCT's charter on October 20, 2004, and the Federal Deposit Insurance Corporation (''FDIC'') granted CBCT deposit insurance on October 22. Synovus also has filed applications to acquire CBCT that must be approved by the FDIC, TDFI, and the Georgia Department of Banking and Finance.

3. Asset, deposit, nationwide, and statewide ranking data are as of June 30, 2004. In this context, depository institutions include commercial banks, savings banks, and savings associations.

4. *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 in July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

5. For purposes of section 3(d), the Board considers a bank to be located in 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 (d)(2)(B).

6. *See* 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). Synovus is adequately capitalized and adequately managed, as defined by applicable law. Although Tennessee law generally prohibits the acquisition of a bank that has been in operation less than five years, the state's provisions on branch banking provide an exception to this prohibition for transactions structured like Synovus's proposal. *See* TENN. CODE ANN. §§ 45-2-1403 and 45-2-614(c) (2000). On consummation of the proposal, Synovus and its affiliates 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 of insured depository institutions in Tennessee. *See* TENN. CODE ANN. § 45-2-1404. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

The proposal involves the formation and acquisition of a de novo bank in the Chattanooga Area banking market,[8] which would expand Synovus's operations in the market[9] and increase its ability to offer products and services to customers in that market. The Board previously has noted that the establishment of a de novo bank enhances competition in the relevant banking market and is a positive consideration in an application under section 3 of the BHC Act.[10] There is no evidence that the proposal would create or further a monopoly or lessen competition in any relevant market. Accordingly, the Board concludes, based on all the facts of record, that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires 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. The Board has considered carefully these factors in light of all the facts of record, including confidential reports of examination, other confidential supervisory information from the primary federal supervisors of the organizations involved in the proposal and certain other agencies, publicly reported information and other financial information, information provided by Synovus, and public comment on the proposal.[11]

In evaluating the 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 and the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 on consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Synovus has sufficient financial resources to effect the proposal. Synovus will use existing cash resources to purchase CBCT's shares and capitalize the bank. Synovus is well capitalized and will remain so on consummation of the proposal, and CBCT will be well capitalized.

The Board has considered the managerial resources of Synovus in light of its supervisory experiences and those of the other relevant federal and state banking supervisors with the organization and its subsidiary banks and their records of compliance with applicable banking laws. The Board has reviewed the examination records of the Synovus organization, including assessments of its management, risk management systems, and operations. Synovus and its subsidiary depository institutions are considered well managed. The Board also has reviewed the proposed management, risk management systems, and operations of CBCT and consulted with the FDIC and TDFI.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Synovus and CBCT are consistent with approval, as are the other supervisory factors under section 3 of the BHC Act.

Convenience and Needs Considerations

In acting on this proposal, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] The CRA requires the federal financial supervisory agencies to encourage financial 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 depository institution's record of meeting

7. 12 U.S.C. § 1842(c)(1).

8. The Chattanooga Area banking market is defined as Hamilton and Marion Counties, excluding the portion of the town of Monteagle that is outside Marion County, all in Tennessee; and Catoosa, Dade, and Walker Counties in Georgia.

9. Synovus, through The Cohutta Banking Company, Chatsworth, Georgia, has two branches in the Chattanooga Area banking market with $60.4 million in total deposits. Synovus ranks 17th in the market with less than 1 percent of the total deposits in depository institutions in the market.

10. *See Canadian Imperial Bank of Commerce,* 85 *Federal Reserve Bulletin* 733 (1999); *Wilson Bank Holding Company,* 82 *Federal Reserve Bulletin* 568 (1996).

11. A commenter expressed concern over press reports about an investigation of Synovus's credit-card processing company subsidiary and one of its clients for possible violations of federal law in connection with mailings on behalf of that client. The investigation concerns compliance with U.S. Postal Service ("USPS") regulations that authorize discounted postal rates subject to certain mailing list requirements. This matter is not within the Board's jurisdiction to adjudicate. The Board has consulted with the USPS and the Department of Justice about the matter.

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

the credit needs of its entire community, including low- and moderate-income (''LMI'') neighborhoods, in evaluating bank expansionary proposals.

The Board has carefully considered the convenience and needs factor and the CRA performance records of Synovus's subsidiary banks in light of all the facts of record, including public comment on the proposal. A commenter opposing the proposal alleged, based on data reported under the Home Mortgage Disclosure Act (''HMDA''),[13] that Synovus Mortgage Corp., Birmingham, Alabama (''SMC''), Synovus's indirect subsidiary mortgage lending company,[14] engaged in disparate treatment of African Americans in home mortgage lending in certain markets.[15]

As previously noted, CBCT is in formation and has not begun operations. CBCT was required to submit a comprehensive CRA plan to the FDIC in connection with its charter application, and the FDIC considered the CRA plan in granting preliminary approval of the bank's state charter. CBCT's plan indicates that the bank intends to lend to small- and medium-sized businesses, including those in LMI census tracts; engage in mortgage and other consumer lending activities; and provide a variety of banking, trust, brokerage, and insurance services. Synovus represented that CBCT will implement Synovus's centralized CRA policies and procedures to help ensure that the existing and anticipated credit needs of CBCT's community are met. The FDIC will evaluate the implementation of CBCT's CRA plan in future CRA performance evaluations of the bank.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations of the CRA performance records of Synovus's subsidiary insured depository institutions by the appropriate federal supervisors.[16] Each of Synovus's subsidiary depository institutions received ''outstanding'' or ''satisfactory'' ratings at their most recent performance examinations. CB&T, Synovus's lead bank, received an overall ''satisfactory'' rating at its most recent CRA performance evaluation by the FDIC, as of January 14, 2002.

CB&T received a ''high satisfactory'' rating under the lending, investment, and service tests.[17] Examiners noted that although CB&T considered itself to be primarily a commercial lender, it offered a full range of products and services to individuals in its assessment areas. They found that CB&T's lending activity demonstrated a good responsiveness to community credit needs. Examiners noted that the bank offered innovative and flexible lending programs, including various products designed to meet the needs of small businesses owned by minorities or women; different loan products sponsored by the Small Business Administration; and alternative home mortgage loan products through its affiliate, SMC, for borrowers who did not qualify for its conventional mortgage loans.

Examiners reported that CB&T was the leading lender in 2000, by number and dollar volume of small business loans and small farm loans in the bank's assessment area.[18] CB&T originated small business loans totaling approximately $153 million and small farm loans totaling approximately $6.9 million in its assessment area. Examiners noted the bank's geographic distribution of all its loans reflected adequate penetration and that its distribution of loans based on borrower income was good. More than 80 percent of its small business loan originations by number and dollar volume were to businesses with gross annual revenues of $1 million or less, and more than 96 percent of its small farm loan originations were to farms with gross annual revenues of $1 million or less. In addition, the bank originated more than 19 percent of its home mortgage loans to LMI borrowers.

Examiners noted that CB&T's level of community development lending was adequate and reflected the bank's limited opportunities to participate in community development projects in its assessment area. During the evaluation

13. 12 U.S.C. § 2801 *et seq.*

14. SMC is a subsidiary of First Commercial Bank, also in Birmingham and an indirect subsidiary bank of Synovus.

15. The commenter also asserted that Synovus's lead subsidiary bank, Columbus Bank and Trust (''CB&T''), Columbus, controls the operations of CompuCredit Corporation (''CompuCredit''), Atlanta, both in Georgia, a third-party organization that engages in subprime credit-card and payday lending. CB&T and CompuCredit offer a co-branded credit card program (''credit card affinity program'') under a contractual arrangement. Under the contract, CB&T reviews, modifies, and approves the credit terms and underwriting criteria proposed by CompuCredit for the credit card program and issues the credit cards, and CompuCredit buys the credit card receivables and provides certain marketing and other services for the issued cards. Synovus represented that CB&T reviews the terms and underwriting criteria proposed by CompuCredit to ensure that all aspects of the credit card affinity program comply with applicable consumer protection laws and regulations. Synovus also stated that a Senior Regulatory Risk Analyst manages all aspects of the CB&T/CompuCredit relationship, which includes reviewing policies and procedures with internal and external counsel, reviewing customer complaints, and initiating audits. The Board consulted with the FDIC and reviewed supervisory and other confidential information about this credit card affinity program. Synovus is not involved in any other business conducted by CompuCredit and does not own or control CompuCredit within the meaning of the BHC Act.

16. The Interagency Questions and Answers Regarding Community Reinvestment provides that an institution's most recent CRA performance evaluation is an important and often controlling factor in the consideration of an institution's CRA record because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisory agency. 66 *Federal Register* 36,620 and 36,639 (2001).

17. The evaluation period of the examination was January 1, 2001, through January 14, 2002, and included a review of HMDA-reportable mortgage loans by SMC in the bank's assessment area from January 1, 2000, through September 30, 2001. CB&T's assessment area is the Columbus, Georgia Metropolitan Statistical Area (''Columbus MSA'').

18. In this context, small business loans are loans with original amounts of $1 million or less that are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans. Small farm loans are loans with original amounts of $500,000 or less that are either secured by farmland, including farm residential improvements, or are classified as loans to finance agricultural production and other loans to farmers.

period, CB&T extended community development loans totaling more than $14 million.

Examiners reported that the bank's level of qualified investments and grants was good, despite the limited investment opportunities in its assessment area. CB&T made 45 community development investments and grants totaling more than $2.25 million during the evaluation period.

In addition, examiners found that CB&T provided a relatively high level and variety of financial and retail services to meet the needs of its assessment area. CB&T's community development activities included a school savings program for children from LMI families, financial training and special financing packages for businesses owned by women or minorities, and assistance in establishing a credit union focused on serving LMI communities.

B. HMDA and Fair Lending Records

The Board also has carefully considered the lending record of SMC in light of the comments received on the HMDA data. Based on 2003 HMDA data, the commenter alleged that SMC disproportionately denied African-American applicants for home mortgage purchase or refinance loans in three MSAs in Alabama and Georgia.[19]

In most of the markets reviewed, SMC's denial disparity ratios[20] with respect to African-American applicants for all HMDA-reportable loans on a combined basis were either below or slightly above the denial disparity ratios for the aggregate of all lenders in the market ("aggregate lenders").[21] SMC's denial rate[22] for African-American applicants was lower than the denial rate for the aggregate lenders in the markets reviewed.

Although the HMDA data may reflect certain disparities in the rates of applications, originations, or denials among members of different racial groups in certain local areas, the HMDA data generally do not demonstrate that SMC excluded any racial group on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate 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 lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[23] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including information on Synovus's programs for compliance with fair lending and other consumer protection laws. The Board also consulted with the FDIC, the primary regulator of First Commercial Bank, SMC, and CB&T, and considered examination reports on the compliance with fair lending laws of these and other subsidiary depository and lending institutions of Synovus. Examiners noted no evidence of discriminatory lending practices on a prohibited basis in the CRA performance evaluations of Synovus's subsidiary depository institutions.

The record also indicates that Synovus has taken steps to ensure compliance with fair lending laws. Synovus has a Corporate Compliance Department ("CCD"), managed and staffed by individuals with extensive compliance experience, which develops and maintains comprehensive compliance programs for all laws and regulations applicable to Synovus's consumer lending activities. The CCD consults with internal and external counsel to ensure the adequacy of these programs and requires Synovus lending personnel to receive annual fair-lending training.

In addition, Synovus stated that the CCD reviews the consumer lending programs of each subsidiary by examining lending overrides on a monthly basis and conducting full-file compliance reviews on an annual basis. The CCD also monitors the subsidiaries' compliance with the HMDA and the CRA on a quarterly basis. Compliance officers at each Synovus subsidiary forward complaints as appropriate to the CCD for review and action. Synovus represented that it will implement similar compliance programs at CBCT.

Synovus's CCD performs oversight of SMC's lending activities in a manner similar to its oversight of other Synovus subsidiary institutions. Internal reviews by both SMC's Quality Control Group and Synovus's CCD are conducted at various stages of the mortgage process,

19. The Board analyzed the 2003 HMDA data for SMC in the Columbus MSA and the Birmingham and Montgomery, Alabama MSAs, which the commenter identified, and in the Atlanta, Georgia; Huntsville, Alabama; and Pensacola, Florida MSAs, where SMC also conducts much of its lending. SMC serves as the primary mortgage lender for most of Synovus's subsidiary banks. Synovus stated that if an applicant seeks a conventional home purchase or refinance loan, the application, with the applicant's consent, is referred to SMC for processing. The Board also reviewed confidential supervisory information, information provided by Synovus, and consulted with the FDIC on SMC's HMDA-reportable lending.

20. The denial disparity ratio equals the denial rate for a particular racial category (*e.g.,* African-American) divided by the denial rate for whites.

21. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

22. The denial rate represents the percentage of a lender's HMDA loan applications that were denied.

23. 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.

including the underwriting, prefunding, and postfunding periods. Independent third-party review of SMC's lending is conducted on a monthly basis, and Synovus conducts an internal audit of SMC annually.

The Board also has considered the HMDA data in light of the CRA performance records of Synovus's subsidiary depository institutions. These records demonstrate that Synovus is active in helping to meet the credit needs of its entire community.

C. Conclusion on the Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Synovus, public comment on the proposal, and supervisory and other confidential information. The Board notes that the proposal would expand the availability of financial products and services to customers by increasing the geographic scope of Synovus's banking operations. Based on a review of the entire record, and for reasons discussed above, the Board concludes that considerations related to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, 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 and other applicable statutes. The Board's approval is specifically conditioned on compliance by Synovus with the conditions imposed in this order, the commitments made to the Board in connection with the application, and receipt of all other regulatory approvals. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The acquisition of CBCT's voting shares 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 the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 23, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Robert deV. Frierson
Deputy Secretary of the Board

The Toronto-Dominion Bank
Toronto, Canada

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank ("TD"), 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 Act[1] to acquire 51 percent of the voting shares of Banknorth Group, Inc. ("Banknorth") and its wholly owned subsidiary, Banknorth, National Association ("Banknorth Bank"), both in Portland, Maine.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 68,147 (2004)). 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 section 3 of the BHC Act.

TD, with total consolidated assets of approximately $202 billion, is the fifth largest banking organization in Canada.[3] TD is the 82nd largest depository organization in the United States, controlling $8.5 billion of deposits through its only U.S. subsidiary insured depository institution, TD Waterhouse Bank, National Association, Jersey City, New Jersey ("TDW Bank"). TD also operates a branch in New York City and an agency in Houston. Banknorth, with total consolidated assets of approximately $29 billion, is the 47th largest depository organization in the United States, controlling deposits of $19.6 billion, representing less than 1 percent of total deposits of insured depository institutions in the United States.[4] On consummation of this proposal, TD would become the 29th largest depository organization in the United States, controlling deposits of approximately $28.1 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States.[5]

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met.[6] For purposes of the BHC Act, the home state

1. 12 U.S.C. § 1842.
2. Applicants propose to acquire the nonbanking subsidiaries of Banknorth in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y. 12 U.S.C. § 1843(k); 12 CFR 225.87.
3. Asset data are as of October 31, 2004, and rankings are as of June 30, 2004. Both are based on the exchange rate then available.
4. Asset data and rankings are as of June 30, 2004.
5. On consummation of the proposal, Banknorth will be renamed TD Banknorth, Inc.
6. Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company,

of TD is New York, and Banknorth Bank is located in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont.[7]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[8] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[9]

TD and Banknorth compete directly in the Metro New York banking market.[10] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered 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 TD and Banknorth,[11] the concentration 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''),[12] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in this banking market.[13] After consummation, the Metro New York banking market would remain moderately concentrated as measured by the HHI. The increase in concentration would be small and numerous competitors would remain.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in this market or in any other 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 these and all other 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 banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires 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. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the

whichever is later. 12 U.S.C. § 1841(o)(4)(C). New York is the home state of TD for purposes of the International Banking Act and Regulation K. 12 U.S.C. § 3103; 12 CFR 211.22.

7. For purposes of section 3(d), 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 (d)(2)(B).

8. *See* 12 U.S.C. §§ 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). TD is well capitalized and well managed, as defined by applicable law. Banknorth Bank has been in existence and operated for the minimum period of time required by applicable state law. *See* Conn. Gen. Stats. Ann. Ch. 666 § 36a-411 (five years); Mass. Gen. Laws Ann. Ch. 167A § 2 (three years). On consummation of the proposal, TD 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, or the appropriate percentage established by applicable state law, of deposits in Connecticut, Maine, Massachusetts, and New Hampshire. *See* Conn. Gen. Stats. Ann. Ch. 666 § 36a-411; Maine Rev. Stat. Ann. Tit. 9-B § 1013(3)(C); Mass. Gen. Laws Ann. Ch. 167A § 2; N.H. Rev. Stat. Ann. § 384-B3. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

9. 12 U.S.C. § 1842(c)(1).

10. The Metro New York banking market is defined as the counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester in New York; the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

11. Market share data are based on Summary of Deposits reports filed as of June 30, 2004, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Board* 743 (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 (1991).

12. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 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.

13. TD operates the 15th largest depository institution in the Metro New York banking market, controlling $5.7 billion in deposits, which represents less than 1 percent of market deposits. Banknorth operates the 224th largest depository institution in the market, controlling $38.4 million in deposits. On consummation of the proposal, TD would remain the 15th largest depository institution in the market, controlling deposits of approximately of $5.7 billion. The HHI would remain at 1017, and 257 bank and thrift competitors would remain in the market.

institutions involved, publicly reported and other financial information, information provided by the applicant, and public comment on the proposal.[14] The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), which is responsible for the supervision and regulation of Canadian banks.

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 subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that TD has sufficient financial resources to effect the proposal. The capital levels of TD would continue to exceed the minimum levels that would be required under the Basel Capital Accord and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. Furthermore, the subsidiary depository institutions of TD and Banknorth are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured in part as a share purchase, and TD has indicated that it would fund the cash portion of the consideration to be received by Banknorth shareholders from general corporate sources.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of TD's U.S. operations, Banknorth, and Banknorth Bank, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. TD, Banknorth, and their U.S. subsidiary banks are considered well managed. The Board also has considered TD's plans to consummate the proposal.

Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.[15]

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[16] The home country supervisor of TD is the OSFI.

In approving applications under the BHC Act and the International Banking Act ("IBA"),[17] the Board previously has determined that various Canadian banks, including TD, were subject to home country supervision on a consolidated basis by the OSFI.[18] In this case, the Board has determined that the OSFI continues to supervise TD in substantially the same manner as it supervised Canadian banks at the time of those determinations. Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[19] The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed to make available to the Board such information on the operations of it and its affiliates that the Board deems necessary to

14. A commenter expressed concerns about:

(1) the amount of consideration Banknorth shareholders might receive in the future if TD seeks to acquire the remaining Banknorth shares;
(2) projects financed by TD in North and South America that the commenter asserted are having negative environmental consequences; and
(3) press reports about a dispute in Canada between TD and one of its retail customers.

These matters are not within the Board's jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, e.g., Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

15. A commenter expressed concern about a press report of anomalies with respect to trading of Banknorth shares before the proposal was publicly announced. The Securities and Exchange Commission ("SEC"), and self-regulatory organizations ("SROs") acting under authority delegated by the SEC, have the authority to investigate trading activity and to take action if there are violations of the federal securities laws or SRO rules. The commenter also expressed concern about allegations that TD assisted Enron in preparing false financial statements. The SEC has the authority to investigate and adjudicate if any violations of federal securities laws have occurred. The Board has consulted with the SEC and the relevant SRO about these matters.

16. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

17. 12 U.S.C. § 3101 *et seq.*

18. *See, e.g., The Toronto-Dominion Bank,* 82 *Federal Reserve Bulletin* 1052 (1996); *see also Royal Bank of Canada,* 89 *Federal Reserve Bulletin* 139 (2003); *Canadian Imperial Bank of Commerce,* 87 *Federal Reserve Bulletin* 678 (2001).

19. *See* 12 U.S.C. § 1842(c)(3)(A).

determine and enforce compliance with the BHC Act, the IBA, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable TD and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that TD has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on this proposal, 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").[20] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of TD's subsidiary insured depository institutions and Banknorth Bank in light of all the facts of record, including public comment on the proposal. Two commenters opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[21] that Banknorth Bank provided a low level of home mortgage lending to LMI borrowers or in LMI communities and engaged in disparate treatment of minority individuals in home mortgage lending in the banks' assessment areas.[22]

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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.[23]

TDW Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 10, 2003.[24] Banknorth Bank was formed on January 1, 2002, by the consolidation of nine subsidiary banks of Banknorth (the "Consolidation"), all of which had "satisfactory" or "outstanding" CRA performance ratings at that time.[25] Peoples Heritage Bank, NA, Portland, Maine ("Peoples Heritage"), the surviving bank of the Consolidation, received an "outstanding" CRA performance rating by the OCC as of July 2001, and First Massachusetts Bank, N.A., Worcester, Massachusetts ("First Massachusetts"), Banknorth's largest subsidiary bank immediately before the Consolidation, received a "satisfactory" CRA performance rating by the OCC as of April 2001.[26] TD has indicated that Banknorth's management team would remain intact after consummation of the proposal and that no new products or services are expected to be offered by Banknorth Bank as a result of the proposal.

B. CRA Performance of TDW Bank

As noted, TDW Bank received a "satisfactory" rating in its March 2003 evaluation.[27] Examiners reported that the

20. 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

21. 12 U.S.C. § 2801 *et seq.*

22. One commenter also expressed concern about Banknorth Bank's relationships with unaffiliated retail check cashers, pawn shops, and other unaffiliated nontraditional providers of financial services. TD has indicated that Banknorth had reviewed its relationships with these types of businesses and has opted to continue relationships with those firms willing to meet certain conditions. These conditions include provisions in each loan agreement with Banknorth Bank of representations and warranties that the firm will comply with all applicable laws, including any applicable fair lending and consumer protections laws, and follow the bank's program requirements to ensure compliance with anti-money-laundering laws and regulations. TD has represented that neither Banknorth Bank nor any of its affiliates play any role in the lending practices, credit review, or other business practices of these firms, nor does the bank or any of its affiliates purchase any loans originated by these firms.

23. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

24. TD dissolved its other U.S. subsidiary insured depository institution, TD Bank USA, FSB, Jersey City, New Jersey ("FSB"), as of December 31, 2004. When dissolved, FSB was rated "satisfactory" for CRA performance by the Office of Thrift Supervision in its most recent examination as of October 1999.

25. The banks that were parties to the Consolidation and their CRA ratings at that time are listed in Appendix A. Banknorth Investment Management Group, N.A., Burlington, Vermont, a nondeposit trust company, was also part of the Consolidation. Since the Consolidation, Banknorth has acquired eight additional banks and has merged them into Banknorth Bank. These banks, the date on which they were merged into Banknorth Bank, and their CRA ratings at the time of their mergers are listed in Appendix B. In addition, Banknorth Bank's acquisition of a savings association has been approved by the OCC, but the acquisition has not been consummated.

26. On consummation of the Consolidation, Peoples Heritage changed its name to Banknorth, National Association.

27. TDW Bank has elected to be evaluated for CRA performance under the strategic plan alternative. Under this alternative, the bank submits a plan, subject to the OCC's approval, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment area, and the OCC evaluates the bank on its fulfillment of the goals in the approved plan. *See* 12 CFR 25.27. The March 2003 evaluation covered the evaluation period beginning January 1, 2000, through December 31, 2003, and reviewed the bank's CRA performance under strategic plans approved by the OCC in March 1998 (with respect to the year 2000) and November 2000 (with

bank originated or purchased almost $16.8 million in community development loans during the evaluation period and had met its annual goals for community development lending each year. These loans funded affordable housing for LMI individuals in the bank's assessment areas.

The bank's community development investments totaled almost $77 million at the end of the evaluation period and included investments in community development financial institutions, low-income housing tax credit projects, and affordable housing bonds issued by the New Jersey and New York state housing authorities. The bank met its goals for community development investments in 2000 and 2002 and substantially met its goal for 2001. Examiners also reported that TDW Bank made $1.04 million in qualified community development grants during the evaluation period and met its annual grants goals in each of the three years. The bank also met its goals for each year in the evaluation period for membership in community development organizations, including organizations involved in providing affordable LMI housing and supporting community development corporations.

C. CRA Performance of Banknorth Bank

1. *Peoples Heritage*. As noted, Peoples Heritage received an overall "outstanding" rating in its July 2001 evaluation.[28] The bank received a rating of "outstanding" under the lending test in this evaluation. Examiners reported that the bank's overall distribution of home mortgage loans to LMI geographies and borrowers was excellent during the evaluation period. Examiners also noted that Peoples Heritage participated in mortgage programs sponsored by the State of Maine that offer flexible underwriting and documentation standards, below-market interest rates, and low down payments.

Examiners stated that Peoples Heritage's record of making small loans to businesses in LMI census tracts was excellent.[29] The bank also made more than $16 million in community development loans during the evaluation period, including $11 million in loans to create more than 160 units of housing for LMI individuals and families.

Peoples Heritage received ratings of "high satisfactory" and "outstanding" on the investment and service tests respectively, in the July 2001 evaluation. During the evaluation period, Peoples Heritage made 80 qualified investments totaling $3.6 million, a level examiners described as good. Examiners noted that the percentage of the bank's branches in LMI census tracts generally equaled or exceeded the percentage of the population living in LMI census tracts in the bank's assessment areas. They also reported that Peoples Heritage provided an excellent level of community development services.

2. *First Massachusetts*. As noted, First Massachusetts received an overall "satisfactory" rating in its April 2001 CRA evaluation. The bank received a rating of "high satisfactory" under the lending test in this evaluation. Examiners stated that the bank's distribution of home mortgage loans to LMI geographies and borrowers was adequate or better in each of the bank's assessment areas. They also noted that the bank participated in a number of state and federal affordable housing programs with flexible underwriting criteria and other features designed to promote homeownership among LMI individuals.

Examiners reported that First Massachusetts's record of making small loans to businesses in LMI census tracts was adequate or better in each of the bank's assessment areas. The bank also made more than $23 million in community development loans during the period covered by the April 2001 evaluation, including two loans to the Massachusetts Housing Partnership Fund, which promotes affordable housing and neighborhood development throughout Massachusetts.[30]

First Massachusetts received ratings of "low satisfactory" and "high satisfactory" on the investment and the services tests, respectively, in the April 2001 evaluation. During the evaluation period, the bank made almost $11.3 million in qualified investments, a level examiners described as adequate. Examiners characterized the bank's distribution of branches as good or excellent in its assessment areas and stated that it provided an adequate level of community development services.

3. *Recent CRA Activities of Banknorth Bank*. During 2002 and 2003, Banknorth Bank originated or purchased more than 16,900 HMDA-reportable loans totaling approximately $2.2 billion in Maine, Massachusetts, New Hampshire, and Vermont.[31] In each of these states, Banknorth Bank made higher percentages of its HMDA-reportable loans to LMI borrowers and in LMI census tracts than did lenders in the aggregate ("aggregate lenders") in 2002 and 2003.[32]

To assist first-time and LMI homebuyers, Banknorth Bank also offers loans insured by the Federal Housing Authority and loans guaranteed by the Department of Veteran Affairs and participates in state housing finance agency programs that offer below-market interest rates and lower down-payment requirements. In 2002 and 2003, the

respect to the years 2001 and 2002). In February 2004, the OCC approved the bank's strategic plan for the years 2004 through 2006.

28. The evaluation period was from July 1, 1998, through December 31, 2000, except for community development loans, which were evaluated for the period beginning September 1, 1998, through July 9, 2001.

29. In this context, "small loans to businesses" refers to loans with original amounts of $1 million or less that are either secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

30. The evaluation period was from July 1, 1997, through December 31, 2000, except for community development loans, which were evaluated for the period beginning August 1, 1997, through April 20, 2001.

31. Together, these four states accounted for more than 81 percent of Banknorth Bank's deposit base, as of June 30, 2004.

32. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market.

bank originated more than 1,700 loans totaling more than $150 million through these programs.

In 2002 and 2003, Banknorth Bank's percentages of small business loans in LMI census tracts were higher than or comparable to the percentages for aggregate lenders in each of the following states: Maine, Massachusetts, New Hampshire, and Vermont. In all its assessment areas across six states, the bank continues to participate in Small Business Administration and state programs focused on lending to small businesses unable to secure conventional financing. From January 2001 through October 2004, the bank made more than 1,500 of these loans totaling more than $152 million.

During 2001 through 2003, Banknorth Bank made 227 community development loans totaling more than $164 million. Community development lending included loan commitments of $13.6 million to finance the construction, rehabilitation, or preservation of more than 180 units of affordable housing in New Hampshire and a $7 million loan to a state housing fund to create and preserve affordable housing throughout Vermont. During this same period, the bank made loan commitments totaling almost $3.2 million to three community mental health facilities in Massachusetts.

Banknorth Bank's community development investments from January 2001 through June 2004 totaled more than $66 million. These investments included commitments of more than $18 million to fund low-income housing tax credit projects in Maine, Massachusetts, New Hampshire, and New York. Banknorth Bank has indicated that its community development donations during the same period have totaled more than $4 million, and recipients have included a wide range of community organizations throughout the bank's assessment area.

D. HMDA Data and Fair Lending Record

The Board has carefully considered Banknorth Bank's lending record in light of comments on the bank's HMDA data. Based on 2003 HMDA data, two commenters alleged that Banknorth Bank disproportionately excluded or denied African-American or Hispanic applicants for home mortgage loans in various Metropolitan Statistical Areas ("MSAs").[33] The Board reviewed HMDA data for 2002 and 2003 reported by the bank in the six states in its assessment areas, in the MSAs identified by the commenter, and in certain other MSAs.[34]

The 2002 and 2003 HMDA data reported by BankNorth Bank indicate that its denial disparity ratios[35] for African-American and Hispanic applicants for total HMDA-reportable loans in Maine, Massachusetts, and New Hampshire, which together accounted for 80 percent of the bank's HMDA-reportable loans in 2002 and 2003, were not as favorable as those ratios for the aggregate lenders in those states. The data also indicate, however, that the bank's percentages of its total-HMDA-reportable loans to African Americans or Hispanics in each of these states in 2002 and 2003 were generally comparable to or more favorable than those ratios for the aggregate lenders.[36] Similarly, the bank's percentages of total HMDA-reportable loans to borrowers in predominantly minority census tracts in Massachusetts during 2002 and 2003 were more favorable than the percentages for the aggregate lenders in those areas.[37]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups, these data generally do not indicate that Banknorth Bank is excluding any race segment of the population or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate 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 lending, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.[38] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance with fair lending laws by the subsidiary banks of TD and Banknorth. Examiners noted no fair lending law issues or concerns in the March 2003 TDW Bank evaluation or in any of the most recent CRA evaluations of the banks that have been merged into Banknorth Bank. The Board also consulted with the OCC, which has responsibility for enforcing compliance with fair

33. Specifically, the commenter cited HMDA data on Banknorth Bank's lending to African Americans or Hispanics in the Hartford and New Haven MSAs in Connecticut, in the Lowell and Springfield MSAs in Massachusetts, in the Boston MSA in Massachusetts and New Hampshire, and in the Albany MSA in New York.

34. The Board also reviewed HMDA data for the Portland, Maine, MSA, which is Banknorth Bank's home market, and the Glens Falls MSA in New York.

35. The denial disparity ratio equals the denial rate of a particular racial category (*e.g.* African-American) divided by the denial rate for whites.

36. The percentage of the bank's loans to Hispanics in New Hampshire in 2002 and 2003 were modestly less favorable than those ratios for lenders in the aggregate.

37. For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

38. 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.

lending laws by TDW Bank and Banknorth Bank, about this proposal and the record of performance of these banks since their most recent CRA evaluations.

The record also indicates that Banknorth Bank has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Among other things, the bank has implemented an annual compliance monitoring program that includes comparative file analysis and review of HMDA data, and it has developed a system for addressing fair lending complaints.

The Board has also considered the HMDA data in light of the programs described above and the overall performance records of the subsidiary banks of TDW Bank and Banknorth Bank under the CRA. These established efforts demonstrate that the banks are actively helping to meet the credit needs of their entire communities.

E. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record,[39] including reports of examination of the CRA records of the institutions involved, information provided by the applicant, public comments on the proposal, and confidential supervisory information. 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, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, 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 and other applicable statutes.[40] The Board's approval is specifically conditioned on compliance by TD with the condition imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. For purposes of this transaction, these commitments 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 the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 18, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Robert deV. Frierson
Deputy Secretary of the Board

39. One commenter requested that the Board condition its approval of the proposal on TD's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., J.P. Morgan Chase & Co.,* 90 *Federal Reserve Bulletin* 352 (2004); *Wachovia Corporation,* 91 *Federal Reserve Bulletin* 77 (2005). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by TD under this factor, the Board similarly will review TD's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

40. Two commenters also 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 timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views, and in fact, the commenters have submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's requests fail to demonstrate why the written comments do not present their views adequately and 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.

Appendix A

Banks Consolidated to Form Banknorth Bank on January 1, 2002

Bank	CRA Rating	Date	Supervisor
Andover Bank, Andover, Massachusetts	Outstanding	October 1999	FDIC
Bank of New Hampshire, N.A., Farmington, New Hampshire	Satisfactory	September 2000	OCC
Evergreen Bank, National Association, Glen Falls, New York	Satisfactory	October 2000	OCC
First Massachusetts Bank, N.A., Worcester, Massachusetts	Satisfactory	April 2001	OCC
First Vermont Bank and Trust Company, Brattleboro, Vermont	Satisfactory	December 1997	FDIC
Franklin Lamoille Bank, St. Albans, Vermont	Outstanding	March 1999	OCC
Gloucester Bank & Trust Company, Gloucester, Massachusetts	Outstanding	July 1998	FDIC
The Howard Bank, N.A., Burlington, Vermont	Outstanding	December 1997	OCC
Peoples Heritage Bank, N.A., Portland, Maine	Outstanding	July 2001	OCC

Appendix B

Banks Merged Into Banknorth Bank Since January 1, 2002

Bank	Date of Acquisition	CRA Rating	Date	Supervisor
American Bank of Connecticut, Waterbury, Connecticut	01/22/2002	Satisfactory	June 2001	FDIC
Ipswich Savings Bank, Ipswich, Massachusetts	07/27/2002	Satisfactory	May 1999	FDIC
Southington Savings Bank, Southington, Connecticut	09/01/2002	Satisfactory	June 2000	FDIC
Warren Five Cents Savings Bank, Peabody, Massachusetts	01/01/2003	Satisfactory	October 2001	FDIC
American Savings Bank, New Britain, Connecticut	02/15/2003	Outstanding	January 2001	FDIC
First & Ocean National Bank, Newburyport, Massachusetts	01/01/2004	Outstanding	August 1999	OCC
Cape Cod Bank and Trust Company, Hyannis, Massachusetts	05/01/2004	Satisfactory	March 2003	OCC
Foxborough Savings Bank, Foxborough, Massachusetts	05/01/2004	Satisfactory	September 2002	FDIC
Boston Federal Savings Bank, Burlington, Massachusetts	Acquisition pending*	Outstanding	June 2001	OTS

* The OCC approved the proposed merger on November 15, 2004.

Webster Financial Corporation
Waterbury, Connecticut

Order Approving the Acquisition of a Bank Holding Company

Webster Financial Corporation (''Webster''), a financial holding company within the meaning of the Bank Holding Company Act (''BHC Act''), has requested the Board's approval pursuant to section 3 of the BHC Act[1] to acquire Eastern Wisconsin Bancshares, Inc. (''Eastern'')[2] and its subsidiary bank, State Bank of Howards Grove, both in Howards Grove, Wisconsin (''State Bank'').[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 63,385 (2004)). 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.

Webster, with total consolidated assets of approximately $17.8 billion, is the 48th largest depository organization in the United States,[4] controlling deposits of approximately $10.6 billion.[5] Webster has one subsidiary depository institution, Webster Bank, with branches in Connecticut, Massachusetts, New York, and Rhode Island. Eastern, with total consolidated assets of approximately $164.9 million, is the 103rd largest depository institution in Wisconsin, controlling deposits of $138 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state. On consummation of the proposal, Webster would remain the 48th largest depository organization in the United States, with total consolidated assets of approximately $18 billion, and would control deposits of approximately $10.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Webster is Connecticut,[6] and Eastern's subsidiary bank is located in Wisconsin.[7]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[8] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[9]

Webster and Eastern do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

1. 12 U.S.C. § 1842.

2. Webster also has requested the Board's approval under section 3 of the BHC Act to exercise an option to purchase up to 19.9 percent of Eastern's common stock on the occurrence of certain circumstances. The option would terminate on consummation of Webster's application to acquire Eastern. In addition, Webster has requested the Board's approval under section 3 of the BHC Act to purchase up to 19.9 percent of Eastern's common stock before consummation if the Board approves the proposal and the purchase is necessary to maintain State Bank as a well-capitalized institution.

3. State Bank operates one full-service branch in Howards Grove and a loan production office in Beaver Dam, Wisconsin. State Bank offers health savings accounts (''HAS'') nationwide through its division, HSA Bank. HSAs, authorized by the Medicare Prescription Drug Improvement and Modernization Act of 2003, are tax-exempt savings accounts earmarked for medical expenses. After consummation of this proposal, Webster proposes to merge State Bank into its subsidiary bank, Webster Bank, National Association (''Webster Bank''), also in Waterbury; operate HSA Bank as a division of Webster Bank; and sell the remaining operations of State Bank, including its two offices in Wisconsin. Webster has represented that it intends to operate the State Bank offices until Webster sells them to another financial institution.

4. Asset and national ranking data are as of September 30, 2004, and reflect consolidations through that date.

5. Deposit data are as of June 30, 2004, and reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports for June 30, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

6. A bank holding company's home state is the state in which the total deposits of all subsidiary banks 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).

7. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

8. 12 U.S.C. §§ 1842(d)(1)(A)&(B), 1842(d)(2)(A)&(B). Webster is well capitalized and well managed, as defined by applicable law. State Bank has been in existence and operated for the minimum period of time required by applicable state law (five years). Wis. Stat. Ann. § 221.0901. On consummation of the proposal, Webster 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 the total amount of deposits of insured depository institutions in Wisconsin. Wis. Stat. Ann. § 221.0901. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

9. 12 U.S.C. § 1842(c)(1).

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act also requires the Board to consider the financial and managerial resources and future prospects of companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential reports of examination, other confidential supervisory information from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, public comments received on the proposal,[10] and information provided by Webster.

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 significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds Webster to have sufficient financial resources to effect the proposal. Webster and Webster Bank currently are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured primarily as a cash transaction funded from Webster's existing resources.

The Board also has considered the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of Webster, Eastern, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations.[11] In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking law. Webster, Eastern, and their subsidiary depository institutions are considered well managed. In addition, the Board also has considered Webster's plans for implementing the proposal, including its proposed management after consummation.

Based on all the facts of record, including a review of the comments received, the Board concludes 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 under the BHC Act.

Convenience and Needs and CRA Performance Considerations

In acting on this proposal, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[12] The CRA requires the federal financial supervisory agencies to encourage financial 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 depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating the depository institution's expansionary proposals.[13]

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Webster and Eastern in light of all the facts of record, including public comments received on the proposal.[14] The commenter alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[15] that Webster disproportionately denied applications for loans by minorities and that its plans to divest State Bank's offices in Wisconsin would disrupt services to retail customers.[16]

10. A commenter asserted generally that Webster's entry into the HSA business raises regulatory compliance issues and warrants an extensive compliance review. State Bank, a state member bank, operates under the supervision of the Federal Reserve System and the Wisconsin Department of Financial Institutions. Neither supervisor has found consumer compliance deficiencies related to its HSA Bank operations. Webster Bank stated that it will retain substantially all of HSA Bank's employees, including its manager, after consummation of the proposed merger with State Bank, and the HSA operations will be subject to review by the Office of the Comptroller of the Currency ("OCC"), Webster Bank's primary federal supervisor.

11. The commenter also cited a 2002 press report of a lawsuit filed against Webster Bank concerning allegations by a teller that the bank's branch employees were required to work overtime without compensation in 2000 and 2001. The press report noted that efforts would be made to certify the litigation as a class action suit. Webster Bank stated that the teller's suit was settled in March 2003 and that no class action suit was certified. Moreover, the Board does not have jurisdiction to determine compliance with state or federal employment laws.

12. 12 U.S.C. § 2901 *et seq.*

13. 12 U.S.C. § 2903.

14. The commenter asserted that Webster should be required to have a CRA plan that takes into account its proposed acquisition of State Bank's HSA Bank and that Webster should be evaluated under the CRA on a nationwide basis after consummation of the proposal. The adequacy of Webster's CRA-related efforts in the future and the scope of its CRA evaluation after consummation of this proposal are matters within the jurisdiction of the OCC, Webster Bank's primary supervisor under the CRA.

15. 12 U.S.C. § 2801 *et seq.*

16. The commenter criticized Webster's relationships with unaffiliated car-title-lending companies and other providers of nontraditional financial services. Webster Bank responded that it has entered into lending relationships with providers of nontraditional financial products, but it does not play any role in the lending or business practices or credit review processes of those providers.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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.[17]

Webster Bank received an "outstanding" rating at the most recent evaluation of its CRA performance by the Office of Thrift Supervision ("OTS"), as of January 14, 2002 ("2002 Evaluation").[18] State Bank received a "satisfactory" rating at the most recent evaluation of its CRA performance by the Federal Reserve Bank of Chicago, as of May 12, 2003.

B. CRA Performance of Webster Bank

In the 2002 Evaluation, Webster Bank received an "outstanding"rating under the lending, investment, and service tests.[19] Examiners stated that the "outstanding" rating under the lending test was based on the bank's high volume and percentage of residential mortgage loans to LMI individuals and on its high volume of loans to small businesses.[20] They also determined that Webster Bank's community development lending performance enhanced its overall lending performance.

Examiners reported that the bank made a higher percentage of its loans reported under HMDA to LMI individuals in its assessment areas in 2000 than the percentage for the aggregate of lenders ("aggregate lenders").[21] They noted that the bank used flexible mortgage loan products and innovative deposit products to serve the assessment area's credit needs.

Since the 2002 Evaluation, Webster Bank's HMDA-reportable lending in LMI geographies continued to strengthen in 2003. The bank increased its home mortgage loans in LMI census tracts from more than 570 loan originations totaling $60.9 million in 2002, to more than 1,050 loan originations totaling $105.4 million in 2003. Webster Bank also has continued to offer a variety of affordable housing loans. Webster Bank offers Fannie Mae programs that feature no or minimal down payment requirements or that allow applicants with less than perfect credit records to receive adjustable rate loans that reward timely payments over a specified period with limited interest rate reductions. Webster Bank also offers loans sponsored by the Federal Housing Administration. In October 2004, Webster Bank announced a new affordable mortgage product, the Home Ownership Possibilities for Everyone ("HOPE") mortgage loan that features nontraditional underwriting standards, including the use of innovative credit scoring methods and minimal down-payment requirements. After attending homebuyer education classes, borrowers are eligible for reduced interest rates and are not required to purchase private mortgage insurance under the HOPE mortgage program.

Examiners reported that Webster Bank had the highest market share of small loans to businesses in its assessment areas of any of the aggregate lenders, as reported by the Small Business Loan Aggregate Report of the Federal Financial Institutions Examination Council. Moreover, examiners noted that 77 percent of Webster Bank's small loans to businesses were in amounts of $100,000 or less, which demonstrated an excellent responsiveness to assessment-area credit needs. Since the 2002 Evaluation, Webster Bank reported that it made $10.5 million in small loans to businesses in its assessment areas.

In the 2002 Evaluation, Webster Bank originated community development loans totaling almost $12 million. Examiners found that these loans assisted economic development throughout all of its assessment areas and provided more than 200 units of housing to LMI residents. Examiners also noted that Webster Bank formed a business unit dedicated to community development lending during the evaluation period.

Webster Bank stated that its community development lending has increased since the 2002 Evaluation. From January 2002 through September 2004, Webster Bank originated seven major community development loans totaling $35.1 million.

In the 2002 Evaluation, examiners noted that Webster Bank had an excellent level of qualified community development investments and grants, particularly those that were not routinely provided by private investors. They commended the bank for acting as a leader with respect to its community development investments. During the evaluation period, Webster Bank made $22 million in investments. In 2002 and 2003, Webster Bank made more than $13.7 million in community development investments and grants.

Examiners reported that Webster Bank's delivery systems were readily accessible to all portions of the assessment areas and that 20 percent of its offices were in LMI geographies. They further commended Webster Bank's senior management for its leadership in providing community development services.

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17. *See Interagency Questions and Answers Regarding Community Reinvestment,* 66 *Federal Register* 36,620 and 36,639 (2001).

18. At the time, Webster Bank was a savings bank supervised by the OTS. It converted to a national bank charter in April 2004.

19. The evaluation period was from November 1, 1999, to December 31, 2001. During this period, Webster Bank had four assessment areas. The bank's Hartford assessment area and the assessment area for Bridgeport, New Haven, Waterbury, and Danbury, all in Connecticut, received full-scope reviews.

20. Small businesses are businesses with gross annual revenues of $1 million or less. Small loans to businesses include loans with original amounts of $1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans.

21. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported data in a particular area.

C. HMDA Data and Fair Lending

The Board also has carefully considered the lending record of Webster in light of comments received on the HMDA data reported by Webster Bank in 2002 and 2003.[22] The commenter alleged that Webster's lending evidenced systematic disparities by disproportionately denying applications for HMDA-reportable loans to minorities. Webster Bank's denial disparity ratios[23] for African-American and Hispanic applicants in 2002 and 2003 for the markets reviewed were comparable to, or were less favorable than, the ratios for the aggregate lenders during the same time period.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that Webster excluded any race or income segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when the record of an institution 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 lending, but also equal access to credit by creditworthy applicants regardless of race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.[24] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository and lending institutions of Webster. Examiners identified no violations of the antidiscrimination laws and regulations in the 2002 Evaluation and no substantive fair lending issues or concerns in Webster Bank's consumer compliance examinations. Examiners also noted that management implemented adequate fair lending policies and procedures, training programs, and internal reviews. After reviewing Webster Bank's advertisements and application files and holding discussions with management and staff, examiners concluded that applications were solicited from all segments of the community.

The record also indicates that Webster has taken various measures to help ensure compliance with fair lending laws.[25] Webster has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Webster has adopted a corporate Fair Lending Policy, enhanced fair-lending compliance training at all organization levels, and initiated the process of reviewing and updating the fair lending procedures of its various business lines. Webster Bank's Compliance Unit monitors the internal controls applicable to the wholesale, retail, and consumer lending operations and verifies that the internal controls system identifies fair-lending compliance risks or exceptions. The Compliance Unit also uses quality control testing to confirm that the system of internal controls in place is functioning properly at the transactional level. Webster Bank states that the fair-lending compliance functions report to the CRA Officer, who is responsible for coordinating and reviewing fair lending compliance at the Bank. Webster Bank's Internal Audit Department regularly reviews the lending activities to assess compliance with consumer protection laws and regulations. In addition, Webster Bank reports that it provides compliance training to bank employees.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of the subsidiary depository institutions of Webster. These records demonstrate that Webster is active in helping to meet the credit needs of its entire community.[26]

22. The Board analyzed 2002 and 2003 HMDA data reported by Webster Bank in specific Metropolitan Statistical Areas and statewide in Connecticut. During that period, Webster Bank operated only in Connecticut. Webster Bank acquired its Massachusetts and Rhode Island operations in May 2004 through its acquisition of First Federal Savings Bank of America, Swansea, Massachusetts, and the bank opened its New York branches in 2004.

23. The denial disparity ratio equals the denial rate for a particular racial category (for example, African-American) divided by the denial rate for whites.

24. 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.

25. The commenter expressed general concerns about Webster Bank's safeguards against predatory lending. Webster Bank has arrangements to refer subprime applicants to two third-party subprime mortgage lenders. According to Webster, the purpose of each arrangement is to provide applicants with an array of mortgage loan options after the bank has determined that they do not qualify for a loan Webster offers. Applicants are informed of these mortgage loan alternatives only after their loan applications have been reviewed under a second-review process at Webster Bank. Under an arrangement with one subprime lender, Webster Bank refers potential candidates to the lender. Under an agreement with the other subprime lender, Webster Bank originates the loan only after the subprime lender makes a creditworthiness determination and provides Webster Bank with a written commitment to purchase the loan immediately. Webster Bank has represented that it reviews and approves the lender's underwriting criteria and the terms and features of these loans before origination to ensure that there are no predatory lending practices. The OCC, as Webster Bank's primary supervisor, will examine Webster Bank's compliance with applicable statutes and regulations. Furthermore, the Board previously has noted that subprime lending is a permissible activity that provides needed credit to consumers who have difficulty meeting conventional underwriting criteria. *See, e.g., Royal Bank of Canada,* 88 *Federal Reserve Bulletin* 385, 388 (2002).

26. The commenter also expressed concern about Webster Bank's alleged involvement in mortgage lending at high rates and the suffi-

D. Branch Issues

The commenter also expressed concern about the effect on the convenience and needs of State Bank's communities from Webster's plan to divest the acquired branch and loan production office in Wisconsin, asserting that this plan would be disruptive to retail customers of the bank. Webster represented it is taking the following steps to provide continuity in banking services to the affected communities: retaining senior management of State Bank for a period of time after Webster's acquisition of Eastern, planning to sell State Bank's local operations and facilities as a single unit, and marketing this sale primarily to local banking organizations. In addition, Webster hopes to consummate the sale of State Bank's community banking operations as soon as possible after consummating the acquisition.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Webster and Eastern, comments on the proposal, and confidential supervisory information. 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 depository institutions are consistent with approval.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.[27] The Board's approval is specifically conditioned on compliance by Webster with all the conditions imposed in this order and the commitments made to the Board in connection with this proposal, and receipt of all other regulatory approvals. For purposes of this action, the conditions and these commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition shall 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 Federal Reserve Bank of Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 4, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Robert deV. Frierson
Deputy Secretary of the Board

Westamerica Bancorporation
San Rafael, California

Westamerica Bank
San Rafael, California

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

Westamerica Bancorporation ("Westamerica"), 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[1] to merge with Redwood Empire Bancorp ("Redwood"), with Westamerica as the surviving entity, and thereby indirectly acquire Redwood's wholly owned subsidiary, National Bank of the Redwoods ("Redwood Bank"), Santa Rosa, California. In addition, Westamerica's subsidiary bank, Westamerica Bank, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to merge with Redwood Bank, with Westamerica Bank as the surviving entity. Westamerica Bank has also applied under section 9 of the Federal Reserve Act ("FRA") to retain and

ciency of the bank's safeguards against predatory lending practices. The commenter cited a 2001 press report of a lawsuit by homeowners in a moderate-income housing development in Connecticut. Webster Bank became involved in the lawsuit when it acquired another bank. In 2001, the Connecticut Attorney General's Office announced a settlement with an acknowledgement that Webster Bank played a major role in resolving the predecessor bank's litigation.

27. The commenter requested that the Board hold a public hearing or meeting 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 any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. 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 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. As noted, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. The request also fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing or meeting. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

1. 12 U.S.C. § 1842.
2. 12 U.S.C. § 1828(c).

operate branches at the location of Redwood Bank's main office and branches.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (69 *Federal Register* 71,056 (2004)) and locally in accordance with the relevant statutes and the Board's Rules of Procedure.[4] As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

Westamerica, with total consolidated assets of approximately $4.6 billion, is the 23rd largest banking organization in California, controlling deposits of approximately $3.5 billion.[5] Redwood, with total consolidated assets of approximately $523 million, is the 89th largest banking organization in California, controlling deposits of approximately $455.3 million. On consummation of the proposal and accounting for the proposed divestiture, Westamerica would become the 22nd largest depository organization in California, controlling deposits of approximately $4.0 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[6]

Competitive Considerations

Section 3 of 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 monopolize the business of banking in any relevant banking market. The BHC Act and the Bank Merger Act 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.[7]

Westamerica Bank and Redwood Bank compete directly in the Lake County, Santa Rosa, and Ukiah banking markets in California.[8] 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, including public comment on the proposal.[9] In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets ("market deposits") controlled by Westamerica Bank and Redwood Bank,[10] the concentration 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"),[11] other characteristics of the markets, and commitments made by Westamerica to divest a branch.

In the Lake County banking market, Westamerica Bank is the largest depository organization, controlling approximately $159.4 million in deposits, which represents approximately 27.3 percent of market deposits. Redwood Bank is the sixth largest depository institution in the market, controlling approximately $50.1 million of deposits, which represents approximately 8.6 percent of market deposits. To mitigate the potentially adverse competitive effects of the proposal in the Lake County banking market, Westamerica Bank has committed to divest one branch with at least $43.1 million in deposits in the market to a competitor that is competitively suitable to the Board.[12] On consummation of the proposal and after accounting for the proposed divestiture, Westamerica Bank would remain the largest depository organization in the market, controlling

3. 12 U.S.C. § 321. These branches are listed in Appendix A.

4. 12 CFR 262.3(b).

5. Asset data are as of September 30, 2004, and deposit data and state ranking data are as of June 30, 2004.

6. In this context, the term "insured depository institutions" includes insured commercial banks, savings banks, and savings associations.

7. *See* 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

8. The Lake County banking market is defined as Lake County. The Santa Rosa banking market is defined as the Santa Rosa Ranally Metropolitan Area and the town of Cloverdale in Sonoma County. The Ukiah banking market is defined as the towns of Ukiah, Hopland, and Redwood Valley in Mendocino County.

9. One commenter expressed general concern about the competitive effects of this proposal in the Lake County banking market.

10. Deposit and market share data are as of June 30, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

11. Under the DOJ Guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800, and a market is considered highly concentrated if the post-merger HHI is more than 1800. The Department of Justice ("DOJ") 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 DOJ has stated that the higher than normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

12. Westamerica has committed that, before consummating the proposed merger with Redwood, it will execute an agreement for the proposed divestiture in the Lake County banking market, consistent with this order, with a purchaser determined by the Board to be competitively suitable. Westamerica also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Westamerica has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branch to an independent trustee who will be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See BankAmerica Corporation,* 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

approximately $166.4 million of deposits, which represents approximately 27.6 percent of market deposits.[13] The HHI would increase by not more than 157 points and would not exceed 1739.

After the proposed divestiture, consummation of the proposal would be consistent with the DOJ Guidelines. At least seven other competitors would remain in the market. The second largest bank competitor in the market would control approximately 18 percent of market deposits, and two other bank competitors would each control more than 10 percent of market deposits.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Santa Rosa and Ukiah banking markets.[14] After consummation, the Santa Rosa market would remain moderately concentrated, with only a modest increase in market concentration as measured by the HHI, and numerous competitors would remain in the market. Although the Ukiah banking market would remain highly concentrated after consummation of the proposal, the increase in market concentration as measured by the HHI would be small and several other competitors would remain in the banking market.

The DOJ has reviewed the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. The other federal banking agencies also have been afforded an opportunity to comment and have not objected to the proposal.

Based on all 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 three banking markets in which Westamerica Bank and Redwood Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestiture, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

The BHC Act, the Bank Merger Act, and the FRA require the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record including, among other things, confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, information provided by the applicants, and public comments on the proposal.

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 banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, 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 effect of the transaction on the financial condition of the applicant and target, including their capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Westamerica has sufficient financial resources to effect the proposal. Westamerica and Westamerica Bank are well capitalized and would remain so on consummation of this proposal. The proposed transaction would be funded by a cash payment and an exchange of shares, and Westamerica would not incur debt as part of this proposal.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of Westamerica, Redwood, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. The Board also has considered Westamerica's plans to integrate Redwood and Redwood Bank and the proposed management, including the risk management systems, of the resulting organization.

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

Convenience and Needs Considerations

In acting on this proposal, the Board also 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").[15] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

13. Westamerica Bank's deposits after the divestiture reflect a decrease in branch deposits since June 30, 2004.

14. The effects of the proposal on the concentration of banking resources in these banking markets are described in Appendix B.

15. 12 U.S.C. § 2901 *et seq.*

The Board has considered carefully the convenience and needs factor and the CRA performance records of Westamerica Bank and Redwood Bank in light of all the facts of record, including public comment on the proposal. Two commenters expressed concerns about Westamerica Bank's record of meeting the banking needs of the LMI communities it serves, particularly in Lake County, California.[16] In addition, commenters expressed concern about potential branch closings and other possible reductions in service resulting from the proposed merger.[17]

A. CRA Performance Evaluations

As provided in the BHC Act and the Bank Merger Act, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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.[18]

Westamerica Bank received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of San Francisco, as of April 12, 2004 ("2004 CRA Evaluation").[19] Redwood Bank also received an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of November 12, 2003.[20]

B. CRA Performance of Westamerica Bank

In the 2004 CRA Evaluation, Westamerica Bank received a "high satisfactory" rating under the lending test. Examiners noted that Westamerica Bank's primary business strategy was to serve the needs of small- and middle-market businesses and professionals through the creation of ongoing rather than transactionally based banking arrangements. Therefore, the lending test evaluation focused primarily on Westamerica Bank's record of small business loans[21] and loans to small businesses,[22] as well as community development loans. Examiners concluded that Westamerica Bank's level of lending reflected a good responsiveness to the credit needs of its assessment areas.[23] In the 2004 CRA Evaluation, examiners also noted that the overall distribution of loans among borrowers of different income levels and businesses of different revenue sizes was good throughout its assessment areas. Examiners characterized Westamerica Bank's geographic distribution of loans throughout its assessment areas as good and found that the bank's lending was reasonably dispersed among the assessment area's census tracts of different income levels.

The Board has also carefully considered the lending record of Westamerica Bank in light of the comments received on the bank's record. A review of the small business lending data indicates that, although Westamerica Bank's percentage of small business loans to businesses in LMI geographies in California was slightly lower than the percentages for the aggregate lenders in 2002 and 2003, the bank has improved its lending to LMI geographies during this period. In addition, Westamerica Bank increased the number of loans to small businesses in LMI census tracts by more than 20 percent in 2003. Westamerica Bank also increased its small-business-related lending in predominantly minority census tracts in 2003. Westamerica Bank made twice as many small businesses loans in predominantly minority census tracts throughout California in 2003 as it made in 2002, and tripled the number of loans to small businesses in predominantly minority census tracts during the same period.[24]

In the 2004 CRA Evaluation of the Lake County assessment area, examiners described Westamerica Bank's geographic distribution of small business loans as "excellent." Examiners found that Westamerica Bank's percentage of small business loans to businesses in moderate-income geographies in Lake County exceeded the percentage of such loans made by the aggregate lenders.[25]

Examiners praised Westamerica Bank for a relatively high level of community development loans throughout its assessment areas. During the evaluation period,

16. The commenters also criticized Westamerica Bank's lending to small businesses in LMI census tracts in Alameda County, California. Westamerica Bank had two limited-scope assessment areas in Alameda County, Alameda East and Alameda West. Alameda East consists of the cities of Dublin, Livermore, and Pleasanton, and has no LMI census tracts. Alameda West consists of the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont. Based on 1990 census data, Westamerica Bank's percentage of small business loans to businesses in LMI geographies in Alameda West exceeded the percentage of such loans made by the aggregate of lenders ("aggregate lenders") in those geographies. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported small business lending as part of their CRA data in a particular area.

17. The commenters also noted concerns about Westamerica possibly lending to an unaffiliated payday lender. Westamerica represented that it does not have any equity interest in any payday lender nor, to its knowledge, does it lend to any payday lender.

18. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

19. The evaluation period for the 2004 CRA Evaluation was from January 1, 2002, through December 31, 2003.

20. The evaluation period for Redwood Bank's CRA performance evaluation was from January 1, 2000, through December 31, 2002.

21. In this context, "small business loans" are loans that have original amounts of $1 million or less and that either are secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

22. In this context, "small businesses" are businesses with gross annual revenues of $1 million or less.

23. At the time of the evaluation, Westamerica had 25 assessment areas, five of which received full-scope reviews. The full-scope assessment areas were Fresno, Kern, Lake, and Marin Counties, and the Gualala area, which is a large census tract in Mendocino County that includes the city of Point Arena.

24. See footnotes 21 and 22 for definitions of the terms "small business loans" and "small businesses."

25. The Lake County assessment area had no low-income geographies.

Westamerica Bank's community development loans totaled $82.6 million. In the Lake County assessment area, examiners described Westamerica Bank's community development loans as responsive in meeting the area's credit needs. During the evaluation period, the bank's community development loans in Lake County, which totaled $1.5 million, supported a school, a community development service provider for LMI individuals, and a tribal health consortium that had 85 percent of its patients living below the poverty level. Westamerica represented that from 2000 through 2004, it funded 11 community development loans totaling $17.1 million in Lake County, which helped provide affordable housing in moderate-income areas, and provided an additional $11.6 million in community development loans in Sonoma and Mendocino Counties.

In the 2004 CRA Evaluation, Westamerica Bank received a "high satisfactory" rating under the investment test.[26] During the evaluation period, the bank made 326 new investments totaling $45 million, including a $4.5 million investment for the creation of 675 affordable housing units. In particular, examiners praised Westamerica Bank's "good responsiveness" to community development needs with its community development investments in Lake County, despite infrequent opportunities for community equity investment. The examination noted the bank's purchase of statewide mortgage-backed securities that included loans on properties in Lake County.

Westamerica Bank also received a "high satisfactory" rating under the service test. Examiners observed that Westamerica Bank's delivery systems were readily accessible to all portions of its assessment areas.[27] Examiners noted that in Lake County, Westamerica Bank provided the only retail banking institution in the community in the Upper Lake area. Examiners noted that all the bank's branches offered a full range of products, including low-cost deposit accounts. Westamerica Bank also stated that it provides LMI customers with no-cost checking accounts. In addition, examiners noted that Westamerica Bank provided various community service programs, including a program designed to introduce LMI Spanish-speaking individuals to the bank's products and encourage them to apply for loans. The bank also provided "Basic Budgeting" seminars to teach financial literacy skills to LMI individuals and a "Senior Guard" program that helps senior citizens avoid predatory financial practices.

26. A commenter criticized Westamerica for refusing to disclose its charitable donations. The Board notes that neither the CRA nor the agencies' implementing rules require that depository institutions engage in charitable giving nor do they require depository institutions to publicly disclose their charitable giving.

27. One commenter stated that Westamerica declined to participate in the California Electronic Benefits Transfer Program (the "EBT Program") and thus denied recipients of electronic benefits transfers access to Westamerica's ATM network and opportunities to open accounts. The EBT Program is administered by California authorities. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to offer any particular product or services overseen by state government agencies.

C. CRA Performance of Redwood Bank

As previously noted, Redwood Bank received an overall "satisfactory rating" at its most recent CRA performance evaluation. The bank received a "high satisfactory" rating under the lending test. Geographic distribution of Redwood Bank's home mortgage lending was considered good and distribution of its home mortgage loans to borrowers of different income levels was considered adequate, in light of the fact that Redwood Bank had sold its retail mortgage lending unit in 1999 and, consequently, had made fewer mortgage loans than in previous evaluations. Examiners considered Redwood Bank's geographic distribution of small business loans to be "excellent" and its distribution of loans to small businesses to be adequate. Examiners commended the bank's community development lending performance, noting that it had been "highly responsive to the affordable housing and community service needs of the area." Redwood Bank originated nine community development loans within its full-scope assessment area[28] during the evaluation period, totaling almost $6 million, to provide affordable housing and community services.

Redwood Bank received an "outstanding" rating under the investment test, reflecting its excellent volume of investments relative to its capacity to invest in its full-scope assessment area. The bank made 102 qualified investments totaling $3.5 million during the evaluation period, which examiners characterized as a significant allocation of resources in light of limited investment opportunities. A majority of the investments supported affordable housing.

Redwood Bank received a "high satisfactory" performance under the service test, based on its accessible branches and alternative delivery services and on its banking services that were tailored to the needs of its full-scope assessment area. Examiners noted that the bank's branches were accessible to essentially all of its assessment areas.

D. Branch Closures

Westamerica Bank has stated that it plans to consolidate four branches, none of which are in an LMI area, and that it will close one branch in a moderate income area. Westamerica Bank will have a branch within 2.7 miles of all the branches that will be closed or consolidated, and these remaining branches will provide accessible banking services to LMI individuals in its assessment areas.

In making the determination regarding these branches, Westamerica Bank followed its branch closing policy that requires it to consider the impact on the community, the business viability and profitability of the branch, branch usage, demographic growth or decline in the community, the impact on credit access, and the necessity of ensuring that the branch closing has no discriminatory impact. The policy requires that, before a final decision is made to close a branch, management must conduct an impact study to

28. The full-scope assessment area for Redwood Bank's CRA evaluation was the Santa Rosa Metropolitan Statistical Area.

assess the likely effects of the closure. In reviewing a branch closure in an LMI area, the impact study must include concerns and suggestions from the local community, an assessment of the closure's potential impact on customers, and other possible ways the community's credit needs might be met.[29]

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, and Westamerica Bank has stated that it will follow this policy when it closes or consolidates the branches.[30] In addition, the Board, as the appropriate federal supervisor of Westamerica Bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Westamerica Bank, public comments on the proposal, and confidential supervisory information.[31] The proposed transaction would provide Redwood Bank's customers with a wider range of consumer retail products, such as NOW and IRA accounts, and loans subject to the larger lending limits of Westamerica Bank. The Board expects the resulting organization to continue to help serve the banking and credit needs of all its communities, including LMI areas. 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 depository institutions are consistent with approval.[32]

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications 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 Westamerica with all the commitments made to the Board in connection with this proposal and the conditions imposed in this order. For purposes of this action, the commitments 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 proposed transactions 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 the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 26, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix A

Addresses of Main Offices and Branches in California to be Acquired by Westamerica

Lakeport
650 North Main Street

Rohnert Park
6400 Redwood Drive

29. In Westamerica Bank's most recent CRA performance evaluation, examiners reviewed the bank's policy on closing branches. The examiners also noted that although Westamerica Bank closed six branches during the evaluation period, none of those closings adversely affected accessibility to the bank's services for LMI individuals, and that a large number of branches remained in LMI census tracts or readily accessible to LMI areas. They further noted that the bank opened a new branch in a moderate-income area of Fresno County and provided some alternative delivery systems targeted to LMI individuals, such as a mobile branch serving a low-income senior center in Napa County.

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

31. Two commenters expressed concern that Westamerica would not honor existing agreements between Redwood Bank and community groups. Both commenters further requested that Westamerica make certain community reinvestment commitments, meet with community representatives, or take certain other actions, and that the Board impose specific conditions on Westamerica. As the Board has previously explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has stated consistently that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to provide commitments regarding future performance under the CRA, confer authority on the agencies to enforce commitments made to third parties, or require depository institutions to meet with, or enter into agreements with, any particular organization. The Board views the enforceability of pledges and agreements with third parties as matters outside the scope of the CRA. *See, e.g., J.P. Morgan Chase & Co.,* 90 *Federal Reserve Bulletin* 352 (2004).

32. One commenter has requested the Board to arrange an informal meeting between the commenter and Westamerica. The Board's Rules of Procedure allow a Reserve Bank to hold a private meeting to provide a forum for narrowing issues and resolving differences between an applicant and commenter, if appropriate, but does not require any person to attend an informal meeting. *See* 12 CFR 262.25(c). Westamerica declined to meet with the commenter through this process.

Santa Rosa
424 Farmers Lane
2800 Cleveland Avenue
111 Santa Rosa Avenue

Sebastopol
800 Gravenstein Highway North

Ukiah
325 East Perkins

Appendix B

Banking Market Data

Santa Rosa, California

Westamerica Bank is the eighth largest depository institution in the Santa Rosa banking market, controlling deposits of approximately $276 million, which represent approximately 5.1 percent of market deposits. Redwood Bank is the sixth largest depository institution in the market, controlling deposits of approximately $352 million, which represent approximately 6.5 percent of market deposits. On consummation of the proposal, Westamerica Bank would become the fifth largest depository institution in the market, controlling deposits of approximately $628 million, which represent approximately 11.5 percent of market deposits. Sixteen other depository institutions would remain in the banking market. The HHI would increase by 65 points to 1151.

Ukiah, California

Westamerica Bank is the seventh largest depository institution in the Ukiah banking market, controlling deposits of approximately $20.7 million, which represent approximately 3.1 percent of market deposits. Redwood Bank is the fourth largest depository institution in the market, controlling deposits of approximately $53 million, which represent approximately 8 percent of market deposits. On consummation of the proposal, Westamerica Bank would become the third largest depository institution in the market, controlling deposits of approximately $74 million, which represent approximately 11.1 percent of market deposits. Five other depository institutions would remain in the banking market. The HHI would increase by 49 points to 3666.

Orders Issued Under International Banking Act

Nacional Financiera, S.N.C.
Mexico City, Mexico

Order Approving Establishment of a Representative Office

Nacional Financiera, S.N.C. (“Bank”), Mexico City, Mexico, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office in Los Angeles, California. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Los Angeles, California (*Los Angeles Daily Journal*, October 12, 2004). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately $19.9 billion,[1] is the largest development bank in Mexico. Bank primarily funds loans by Mexican banks and other financial intermediaries to private-sector participants in financing programs established by Bank to further economic policies of the Mexican government. As financing agent for the Mexican government, Bank also disburses loan proceeds provided by multilateral agencies and foreign governments to entities in Mexico’s public and private sectors. Bank is wholly owned by the Mexican government and has branches the United Kingdom and the Cayman Islands and a representative office in Japan. Bank engages in securities activities in the United States through a subsidiary.

The proposed representative office would act as a liaison with existing and potential customers of Bank and with multilateral organizations, U.S. government agencies, and other entities that provide funding for development projects in Mexico. The office would solicit new business, conduct research, and perform preliminary and servicing steps in connection with lending. It would provide information to U.S. businesses seeking investment opportunities in Mexico through programs offered by the Bank and to Mexican businesses regarding products and services offered under funding initiatives of the U.S. government.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2)).[2] The Board also may

1. Unless otherwise indicated, data are as of September 30, 2004.

2. In assessing the supervision standard, the Board considers, among other factors, the extent to which the home country supervisors:

(i) Ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide;
(ii) Obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise;
(iii) Obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic;

consider additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)). The Board will consider that the supervision standard has been met where it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.[3] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities (12 CFR 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered the following information. The National Banking and Securities Commission (''CNBV''), a branch of the Ministry of Finance and Public Credit, is the primary regulatory and supervisory authority for Mexican banks, including commercial and development banks, and, as such, is the home country supervisor of Bank. The Board previously has considered the supervisory regime in Mexico for commercial banks.[4] The CNBV's supervision and regulation of development banks in Mexico is substantially similar to that of commercial banks, and there is no difference with respect to capital adequacy requirements and limits on credit concentrations, large credit exposures, and foreign currency exposure. Bank is subject to on-site examinations by the CNBV at least annually, and Bank must submit annual audited financial statements and monthly unaudited financial statements.

Bank is authorized by the Bank of Mexico to participate in certain financial markets, including foreign exchange markets, and is required to file a number of financial reports with the Bank of Mexico related to its trading activity, capital position, and counterparty positions. Bank also is subject to supervision by the Secretariat of Public Function, which monitors for public corruption and governmental transparency, and the Superior Auditor of the Federation, which audits the disbursement of public funds.

Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)) have also been taken into account. The CNBV has authorized Bank to establish the proposed office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Mexico is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Mexico has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, or other illicit activities. Money laundering is a criminal offense in Mexico, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations, and these are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the CNBV may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank and the terms and conditions

(iv) Receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis;

(v) Evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

3. *See, e.g., Jamaica National Building Society,* 88 *Federal Reserve Bulletin* 59 (2002); *RHEINHYP Rheinische Hypothekenbank AG,* 87 *Federal Reserve Bulletin* 558 (2001); *see also Promstroybank of Russia,* 82 *Federal Reserve Bulletin* 599 (1996); *Komercni Banka, a.s.,* 82 *Federal Reserve Bulletin* 597 (1996); *Commercial Bank ''Ion Tiriac,'' S.A.,* 82 *Federal Reserve Bulletin* 592 (1996).

4. *See, e.g., BBVA Bancomer, S.A.,* 89 *Federal Reserve Bulletin* 146 (2003); *Banpais S.A.,* 81 *Federal Reserve Bulletin* 204 (1995).

set forth in this order, Bank's application to establish the representative office is hereby approved.[5] Should any restrictions on access to information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct and indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.[6] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings against Bank and its affiliates under 12 U.S.C. § 1818.

By order, approved pursuant to authority delegated by the Board, effective February 11, 2005.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

FINAL ENFORCEMENT DECISIONS ISSUED BY THE BOARD OF GOVERNORS

In the Matter of a Notice to Prohibit Further Participation Against

Kenneth L. Coleman,
Former Employee,
PNC Bank,
Pittsburgh, Pennsylvania
and
Mellon Bank, N.A.,
Pittsburgh, Pennsylvania

Docket No. OCC-AA-EC-04-43

Final Decision

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (''the FDI Act'') in which the Office of the Comptroller of the Currency of the United States of America (''OCC'') seeks to prohibit the Respondent, Kenneth L. Coleman (''Respondent''), from further participation in the affairs of any financial institution because of his conduct as an employee of two national banks, PNC Bank (''PNC'') and Mellon Bank, N.A. (''Mellon''), both of Pittsburgh, Pennsylvania. Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision of Administrative Law Judge Ann Z. Cook (the ''ALJ''), and orders the issuance of the attached Order of Prohibition.

I. Statement of the Case

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified *misconduct*, including a violation of law or regulation, an unsafe or unsound practice or a breach of fiduciary duty; (2) that the conduct had a specified *effect*, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)–(C).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intent to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice. 12 CFR 19.19(a) and 263.19(a). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer. 12 CFR 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On November 22, 2004, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation and Notice of Charges for Restitution (''Notice'') that sought, *inter alia*, an order of prohibition against Respondent based on his actions of stealing funds while employed by PNC and Mellon. Specifically, the Notice alleged that while employed by PNC, Respondent stole funds on October 14, 1999, November 26, 1999, and December 1, 1999 by inflating the amount of customer deposits and subsequently depositing the surplus amount into his own account. After

5. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

6. The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of California to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of California or its agent, the California Department of Financial Institutions (''Department''), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

Respondent paid partial restitution to PNC in the amount of $979.77, PNC currently maintains an outstanding loss of $1,590.23. The Notice further alleged that while employed by Mellon, Respondent stole $810 in cash after processing a combined check and cash transaction. Mellon maintains a loss of $810 as the result of Respondent's action.

The Notice directed Respondent to file an answer within 20 days and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The record shows that the Respondent received service of the Notice. Nonetheless, Respondent failed to file an answer within the 20-day period.

On or about January 3, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default. The motion was served on Respondent in accordance with the OCC's rules, but he did not respond to it. Finally, on or about January 4, 2005, the ALJ issued an Order to Show Cause, which was mailed to the address at which Respondent had received the Notice. The order provided Respondent until January 21, 2005 to file an answer to the Notice and show good cause for failing to do so previously. The ALJ subsequently amended that order, providing Respondent until January 28, 2005 to respond. The amended order also was sent to the address at which Respondent had received the Notice. Respondent ignored the Order to Show Cause and has never filed an answer to the Notice.

II. Discussion

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice." 12 CFR 19.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer despite notice to him of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The Notice alleges, and the Board finds, that on four separate occasions between October 14, 1999 and February 29, 2000, Respondent stole funds from PNC and Mellon, respectively, while he was processing transactions as part of his employment at each of these banks. Respondent received a total of $3,380 as a result of his actions. After Respondent partially paid restitution to PNC Bank, PNC maintains a loss of $1,590.23 and Mellon maintains a loss of $810.

This conduct by Respondent meets all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It is a violation of law, breach of fiduciary duty, and an unsafe or unsound practice for a bank employee to steal funds from the bank at which he is employed. Respondent's action caused gain to himself, as well as loss to each of the banks. Finally, such actions also exhibit personal dishonesty. Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

Conclusion

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 1st day of March 2005.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Jennifer J. Johnson
Secretary of the Board

Order of Prohibition

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against KENNETH L. COLEMAN ("Coleman"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C § 1813(u)), of PNC Bank, Pittsburgh, Pennsylvania and Mellon Bank, N.A., Pittsburgh, Pennsylvania.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. § 1818(e)(7)(B)), Coleman is hereby prohibited:

(a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

(b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(c) from violating any voting agreement previously approved by any Federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u)

of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).

2. Any violation of this Order shall separately subject Coleman to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By Order of the Board of Governors, this 1st day of March 2005.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Jennifer J. Johnson
Secretary of the Board