



## Legal Developments: Second Quarter, 2011

### Orders Issued under Bank Holding Company Act

#### Orders Issued under Section 3 of the Bank Holding Company Act

Hancock Holding Company  
Gulfport, Mississippi

##### *Order Approving the Acquisition of a Bank Holding Company*

Hancock Holding Company (“Hancock”), Gulfport, Mississippi, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire Whitney Holding Corporation (“Whitney”) and indirectly acquire Whitney’s wholly owned subsidiary bank, Whitney National Bank, both of New Orleans, Louisiana.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 *Federal Register* 7211 (February 9, 2011)). 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 the BHC Act.

Hancock, with total consolidated assets of approximately \$8.2 billion, is the 110th largest depository organization in United States, controlling approximately \$7.0 billion in deposits. Hancock controls three subsidiary banks, HBLA, HBAL, and Hancock Bank, which operate in four states.<sup>3</sup> Hancock is the third largest depository organization in Mississippi, controlling deposits of approximately \$4.6 billion, and the sixth largest depository organization in Louisiana, controlling deposits of approximately \$2.2 billion.

Whitney, with total consolidated assets of approximately \$11.8 billion, is the 82nd largest depository organization in the United States. Whitney National Bank, Whitney’s only subsidiary depository institution,<sup>4</sup> operates in Alabama, Florida, Louisiana, Mississippi, and Texas. Whitney is the 4th largest depository organization in Louisiana, controlling deposits of approximately \$8.6 billion, and the 53rd largest depository institution in Mississippi, controlling deposits of approximately \$155 million.

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Hancock is a financial holding company within the meaning of the BHC Act. On April 29, 2011, the Federal Deposit Insurance Corporation (“FDIC”) approved applications filed by Hancock under the Bank Merger Act (12 U.S.C. § 1828(c)) to merge Whitney National Bank and Hancock’s subsidiary bank, Hancock Bank of Alabama (“HBAL”), Mobile, Alabama, into another subsidiary bank of Hancock, Hancock Bank of Louisiana (“HBLA”), Baton Rouge, Louisiana. That same day, the FDIC also approved an application filed by Hancock under the Bank Merger Act to sell and transfer to Hancock Bank, Gulfport, the Florida and Alabama branches of HBLA acquired in the merger of Whitney National Bank, HBAL, and HBLA.

<sup>3</sup> HBLA operates in Louisiana; HBAL operates in Alabama; and Hancock Bank operates in Florida and Mississippi.

<sup>4</sup> For purposes of this order, insured depository institutions include commercial banks, savings banks, and savings associations.

On consummation of the proposal, Hancock would become the 55th largest depository organization in the United States, with total consolidated assets of approximately \$20 billion. Hancock would control deposits of approximately \$16.2 billion, which represent less than 1 percent of the total amounts of deposits of insured depository institutions in the United States. In Mississippi, Hancock would remain the third largest depository organization, controlling deposits of approximately \$4.7 billion, which represent approximately 10 percent of deposits of insured depository institutions in the state. In Louisiana, Hancock would become the largest depository organization, controlling deposits of approximately \$10.8 billion, which represent approximately 25 percent of deposits of insured depository institutions in the state. In Alabama, Hancock would become the 16th largest depository organization, controlling deposits of approximately \$673 million, which represent less than 1 percent of deposits of insured depository institutions in the state. In Florida, Hancock would become the 26th largest depository organization, controlling deposits of approximately \$2.6 billion, which represent less than 1 percent of deposits of insured depository institutions in the state. In Texas, Hancock would become the 64th largest depository organization, controlling deposits of \$740 million, which represent less than 1 percent of deposits of insured depository institutions in the state.

### Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Hancock is Mississippi,<sup>5</sup> and Whitney is located in Alabama, Florida, Louisiana, Mississippi, and Texas.<sup>6</sup>

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.<sup>7</sup> In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

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 in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>8</sup>

<sup>5</sup> 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)).

<sup>6</sup> For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7), 1842(d)(1)(A), and 1842(d)(2)(B)).

<sup>7</sup> 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). Hancock is adequately capitalized and adequately managed, as defined by applicable law. Whitney National Bank has been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. *See* 12 U.S.C. § 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, Hancock would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). In addition, Hancock would control less than 30 percent, or the applicable percentage established under state law, of the total amount of deposits of insured depository institutions in the relevant states. *See* 12 U.S.C. § 1842(d)(2)(B)–(C). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>8</sup> 12 U.S.C. § 1842(c)(1).

The subsidiary depository institutions of Hancock and Whitney compete directly in nine banking markets, located in Alabama, Florida, Mississippi, and Louisiana. 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 and the public comments on the proposal.<sup>9</sup> In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by Hancock’s insured depository institutions and Whitney National Bank,<sup>10</sup> the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Bank Merger Guidelines”),<sup>11</sup> and other characteristics of the markets. In addition, the Board has considered commitments made by Hancock to the Board to reduce the potential that the proposal would have adverse effects on competition by divesting eight Whitney branches, accounting for a total of approximately \$202 million in deposits, that operate in two banking markets, one in Mississippi and one in Louisiana.

#### *A. Banking Markets within Established Guidelines*

Consummation of the proposal would be consistent with Board precedent and within the thresholds of the DOJ Bank Merger Guidelines in six of the banking markets in which Hancock’s subsidiary depository institutions and Whitney National Bank directly compete.<sup>12</sup> On consummation of the proposal, one market would remain highly concentrated, three markets would remain moderately concentrated, and two would remain unconcentrated, as measured by the HHI. The change in HHI in the one highly concentrated market would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In each of the banking markets, numerous competitors would remain.

#### *B. Certain Banking Markets with Divestitures*

After accounting for the branch divestitures,<sup>13</sup> consummation of the acquisition would be consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines in

<sup>9</sup> One commenter expressed general concerns about the competitive effects of this proposal and the effects it might have on consumer choices for banking services.

<sup>10</sup> Deposit and market share data are as of June 30, 2010, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. In recognition that thrift institutions have become, or have the potential to become, significant competitors of commercial banks, the Board regularly has included thrift deposits in the market concentration and market share calculations on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

<sup>11</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its merger guidelines, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>12</sup> These banking markets and the effects of the proposal on their concentrations of banking resources are described in Appendix A.

<sup>13</sup> Hancock has committed that, not later than 60 days after consummating the proposed acquisition, it will execute an agreement for the proposed divestiture in the Biloxi, Mississippi, and Washington Parish, Louisiana, banking markets, consistent with this order, with one or more purchasers determined by the Board to be competitively suitable. Hancock has acknowledged that divestiture of a branch in the Washington Parish market must be made to a competitor outside the market. Hancock also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Hancock 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).

the Biloxi, Mississippi, and Washington Parish, Louisiana, banking markets.<sup>14</sup> Although both markets would remain highly concentrated, the HHI would increase no more than 112 points in the Biloxi market and no more than 181 points in the Washington Parish market. In addition, 14 other depository institutions would operate in the Biloxi market and 4 other depository institutions would operate in the Washington Parish market.

### *C. Tangipahoa Banking Market*

In the Tangipahoa banking market (“Tangipahoa Market”),<sup>15</sup> Hancock operates the third largest depository institution, controlling deposits of approximately \$174 million, which represent approximately 14 percent of market deposits. Whitney operates the fourth largest depository institution in the market, controlling deposits of approximately \$108 million, which represent approximately 8 percent of market deposits. On consummation of the merger the proposal, Hancock would become the second largest depository institution in the market, controlling deposits of approximately \$282 million, which represent approximately 22 percent of market deposits. The HHI would increase 228 points to 1842.

Several factors indicate that the increase in concentration in the Tangipahoa Market, as measured by the HHI and Hancock’s market share, overstates the potential competitive effects of the proposal in the market. After consummation of the proposal, 14 other commercial bank and thrift competitors would remain in the market. The Board has also considered the competitive influence of two active community credit unions in the Tangipahoa Market. Both credit unions offer a wide range of products, operate at least one street-level branch, and have broad membership criteria that include most of the residents in Tangipahoa Market.<sup>16</sup> The Board has concluded that the activities of such credit unions exert competitive influence that mitigates, in part, the potential effects of the proposal.<sup>17</sup>

### *D. Views of Other Agencies and Conclusion on Competitive Considerations*

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market.<sup>18</sup> In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and other facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive considerations are consistent with approval.

<sup>14</sup> These banking markets and the effects of the proposal on their concentrations of banking resources are described in Appendix B.

<sup>15</sup> The Tangipahoa Market is defined as Tangipahoa Parish, Louisiana, excluding the city of Kentwood.

<sup>16</sup> The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. See, e.g., *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004).

<sup>17</sup> These credit unions control approximately \$38 million in deposits in the market that, on a 50 percent weighted basis, represent approximately 3 percent of market deposits. With these deposits weighted at 50 percent, Hancock would control approximately 21 percent of the market deposits, and the HHI would increase 215 points to 1742.

<sup>18</sup> Hancock has committed to the Board that it will comply with its divestiture agreement with DOJ dated April 1, 2011.

### **Financial, Managerial, and Future Prospects 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 depository institutions involved in the proposal and certain other supervisory factors.<sup>19</sup> The Board has considered those factors in light of all the facts of record, including confidential supervisory and examination information from the relevant federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Hancock, and public comments received on the proposal.<sup>20</sup>

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. The Board also evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has carefully considered the financial factors of this proposal. Hancock and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Whitney and Whitney National Bank currently are well capitalized. The proposed transaction is structured as a share exchange. Based on its review of the record, the Board concludes that Hancock has sufficient financial resources to effect the proposal.

The Board has also considered the managerial resources of the applicant, including the proposed management of the organization. The Board has reviewed the examination records of Hancock and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Hancock and its subsidiary depository institutions are considered to be well managed. The Board also has considered Hancock's plans of implementing the proposal, including the proposed management after consummation of the proposal. In addition, the Board has considered the future prospects of the organizations involved in the proposal in light of financial and managerial resources and the proposed business plan.

Based on all the facts of record, the Board concludes that consideration relating to the financial and managerial resources and future prospects of the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

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<sup>19</sup> 12 U.S.C. § 1842(c)(2) and (3).

<sup>20</sup> One commenter expressed concern about a lawsuit filed by Whitney shareholders against Whitney, its board of directors, and Hancock that alleges, among other things, breach of fiduciary duty to shareholders by directors and conflicts of interest in selecting Hancock over another potential acquirer. The litigation is in its preliminary stages, and no wrongdoing has been adjudicated. The commenter, citing a press report, also asserted that Whitney's board of directors should have selected another company's competing bid, described only as "Company A" in Hancock's filings with the Securities and Exchange Commission.

The Board has considered these concerns in its review of Hancock's proposal and other information relating to the financial and managerial factors the Board must consider under section 3 of the BHC Act.

### 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 take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>21</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low and moderate-income neighborhoods, in evaluating expansionary proposals.<sup>22</sup>

#### *A. CRA Performance Evaluations*

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance records of Hancock’s 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.<sup>23</sup>

HBLA, HBAL, and Hancock Bank received “satisfactory” ratings at their most recent CRA performance evaluations by the FDIC, as of January 4, 2010, March 30, 2009, and June 11, 2007, respectively. Whitney National Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of February 7, 2007. Hancock has represented that after the acquisition, the combined organization will offer the same or substantially similar products and services as are currently offered by the respective organizations.

#### *B. HMDA and Fair Lending Record*

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of Hancock’s subsidiary insured depository institutions and Whitney National Bank, data reported by Hancock and Whitney under the Home Mortgage Disclosure Act (“HMDA”),<sup>24</sup> other information provided by Hancock, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2009 HMDA data, that Hancock’s subsidiary depository institutions denied the home mortgage loan applications by African American and Hispanic borrowers more frequently than those by nonminority applications in certain metropolitan statistical areas (“MSAs”).<sup>25</sup>

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denial, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Hancock is excluding any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing informa-

<sup>21</sup> 12 U.S.C. §§ 2901 et seq.

<sup>22</sup> 12 U.S.C. § 2903.

<sup>23</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

<sup>24</sup> 12 U.S.C. §§ 2801 et seq.

<sup>25</sup> The Board reviewed HMDA data for 2008 and 2009 for Hancock’s insured depository institutions in their combined assessment areas and the individual MSAs cited in the comment.

tion, provide only limited information about the covered loans.<sup>26</sup> HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

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

Because of the limitations of HMDA data, the Board has considered these data and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by Hancock's subsidiary insured depository institutions. The Board also has consulted with the FDIC, the primary federal supervisor of Hancock's subsidiary banks. In addition, the Board has considered information provided by Hancock about its fair lending policies, procedures, and practices.

The record of this application, including confidential supervisory information, indicates that Hancock has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. Hancock also represents that its subsidiary banks have such compliance policies and procedures in place. Specifically, Hancock's subsidiary banks maintain a fair lending compliance program that includes centralized underwriting of consumer credit and mortgage applications to ensure consistency and minimize subjectivity in reaching credit decisions. Moreover, all mortgage application denials and exceptions to Hancock's compliance policies and procedures are subject to additional review. Hancock also provides annual fair lending training for all its employees and has provided additional training for its compliance and lending staff. Hancock regularly conducts internal audits of its fair lending programs, including independent third-party analysis of HMDA and CRA lending patterns. Hancock anticipates that the fair lending program of the resulting bank will be a combination of the fair lending compliance programs of Hancock's subsidiary banks and Whitney National Bank.

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

### *C. Conclusion on Convenience and Needs and CRA Performance*

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the subsidiary banks of Hancock, information provided by Hancock, public comments received on the proposal, and confidential supervisory information, including records of compliance with consumer laws and regulations.<sup>27</sup> Hancock represented that it would be able to offer a broader array of banking products and services to the customers served by Whitney National Bank. In addition, consummation of the pro-

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<sup>26</sup> 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. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

<sup>27</sup> The commenter also expressed general concern that the proposal would have "anti-consumer effects."

posal would allow the combined organization to continue to provide credit and other financial services in support of the convenience and needs of the communities served by Whitney National Bank. Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the transaction.

### 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 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.<sup>28</sup> The Board's approval is specifically conditioned on compliance by the applicant with the conditions in this order and all the commitments made to the Board in connection with the proposal.<sup>29</sup> 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 15th 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective May 13, 2011.

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

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<sup>28</sup> The commenter requested that the Board 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, the commenter has had ample opportunity to submit its views, as discussed above, and, in fact, has provided substantial written submissions that the Board has carefully considered 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, including informational insufficiency, is not warranted.

<sup>29</sup> The commenter also requested that the Board hold a public meeting or hearing on the proposal on the branch closings and the loss of service that would result. Hancock has not represented that it will close any branch and has stated that any branch closings that may occur in the future would be limited to branches that are in very close proximity to each other. Moreover, federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. *See* 12 U.S.C. § 1831r-1; *Joint Policy Statement Regarding Branch Closings*, 64 *Federal Register* 34844 (June 29, 1999).

Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from a supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify material factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.3(e), and 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. As noted, the commenter had ample opportunity to submit views and submitted written comments that the Board has carefully considered. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. 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.

**Appendix A**

<b>Hancock and Whitney Banking Markets Consistent with Board Precedent and DOJ Banking Merger Guidelines without Divestitures</b>						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Mobile Area, Alabama</b> — Mobile County and the towns of Bay Minette, Daphne, Fairhope, Loxley, Point Clear, Robertsdale, Silverhill, Spanish Fort, and Summerdale, all in Baldwin County.						
Hancock Pre-Consummation	9	165.5 mil.	2.1	1612	17	24
Whitney	7	316.5 mil.	4.0			
Hancock Post-Consummation	6	482.0 mil.	6.1			
<b>Fort Walton Beach Area, Florida</b> — Okaloosa and Walton counties and the western half of Holmes County, including the town of Ponce de Leon.						
Hancock Pre-Consummation	9	167.9 mil.	4.0	755	22	24
Whitney	14	118.5 mil.	2.8			
Hancock Post-Consummation	5	286.4 mil.	6.8			
<b>Pensacola Area, Florida</b> —Escambia and Santa Rosa counties.						
Hancock Pre-Consummation	7	275.0 mil.	5.1	1199	42	18
Whitney	8	223.1 mil.	4.1			
Hancock Post-Consummation	4	498.1 mil.	9.2			
<b>Baton Rouge Area, Louisiana</b> — Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes; the northern half of Assumption Parish, including the towns of Napoleonville, Pierre Part, and Plattenville; and the town of Union in Saint James Parish.						
Hancock Pre-Consummation	4	1.2 bil.	8.3	2100	89	41
Whitney	5	789.0 mil.	5.4			
Hancock Post-Consummation	3	2.0 bil.	13.6			
<b>New Orleans Area, Louisiana</b> — Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint John the Baptist, and Saint Tammany Parishes; and Saint James Parish, excluding the town of Union.						
Hancock Pre-Consummation	12	455.7 mil.	1.7	1653	51	37
Whitney	3	4.1 bil.	15.0			
Hancock Post-Consummation	2	4.5 bil.	16.7			
<b>Lafayette Area, Louisiana</b> — Acadia, excluding the town of Mermentau; Lafayette, Saint Landry, and Vermilion Parish, excluding the town of Gueydan; and the portion of Saint Martin Parish north of Iberia Parish.						
Hancock Pre-Consummation	25	74.0 mil.	1.0	786	10	41
Whitney	5	392.2 mil.	5.3			
Hancock Post-Consummation	4	466.2 mil.	6.2			
Note: Data are as of June 30, 2010. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.						

**Appendix B**

<b>Hancock and Whitney Banking Markets Consistent with Board Precedent and DOJ Banking Merger Guidelines after Divestitures</b>						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Biloxi, Mississippi</b> — Harrison and Hancock counties and the city of Ocean Springs in Jackson County.						
Pre-Divestiture						
Hancock Pre-Consummation	1	1.7 bil.	46	2973	383	14
Whitney	6	155 mil.	4.1			
Hancock Post-Consummation	1	1.9 bil.	50.2			
Post-Divestiture						
Hancock Post-Consummation	1	1.7 bil.	46	2703 (if sold to in-market purchaser(s)) or 2591 (if sold to out-of-market purchaser(s))	≤ 112 (if sold to in-market purchaser(s)) or 0 (if sold to out-of-market purchaser(s))	14
Branches Divested	6	155 mil. (All Whitney Branches)	4.1			

(continued on next page)

**Appendix B**—*continued*

<b>Hancock and Whitney Banking Markets Consistent with Board Precedent and DOJ Banking Merger Guidelines after Divestitures</b> — <i>continued</i>						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Washington Parish, Louisiana</b> — Washington Parish.						
Pre-Divestiture						
Hancock Pre-Consummation	1	149.1 mil.	29.2	2885	797	4
Whitney	4	69.8 mil.	13.7			
Hancock Post-Consummation	1	218.9 mil.	42.8			
Post-Divestiture						
Hancock Post-Consummation	1	172.2 mil.	33.7	2269	181	4
Branch Divested to Out-of-Market Purchaser*	5	46.7 mil. (1 branch)	9.1			
Note: Data are as of June 30, 2010. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.						
* Hancock has committed to divest the branch to an out-of-market purchaser.						

**Concurring Statement by Governor Tarullo**

I approve the application as presented based on information received by the Board indicating that the institution that proposes to purchase the branches to be divested in the Biloxi area is competitively suitable.

Mitsubishi UFJ Financial Group, Inc.  
Tokyo, Japan

*Order Approving Acquisition of Interests in a Bank Holding Company and Certain Nonbanking Subsidiaries*

Mitsubishi UFJ Financial Group, Inc. (“MUFG”), a foreign banking organization that is a financial holding company for purposes of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act<sup>1</sup> to acquire up to 24.9 percent of the voting shares of Morgan Stanley, New York, New York, and thereby indirectly acquire an interest in Morgan Stanley’s subsidiary banks, Morgan Stanley Bank, National Association (“MS Bank”), Salt Lake City, Utah; and Morgan Stanley Private Bank, National Association (“MSPB”), Purchase, New York. In addition, MUFG has requested the Board’s approval to acquire interests in the nonbanking operations of Morgan Stanley that are engaged in activities described in section 4(k) of the BHC Act.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 *Federal Register* 17,418 (2011)). The time for filing comments has expired and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

MUFG, with total consolidated assets of approximately \$2.5 trillion as of March 31, 2011, is the largest banking organization in Japan. MUFG owns the Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”) and Mitsubishi UFJ Trust and Banking Corporation (“MUTB”),

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> This notice is required under section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

both of Tokyo. BTMU operates branches, agencies, and representative offices in several states.<sup>3</sup> It also controls Bank of Tokyo-Mitsubishi UFJ Trust Company (“BTMUT”), New York, New York, and UnionBanCal Corporation and its subsidiary bank, Union Bank, N.A. (“Union Bank”), both of San Francisco. MUTB operates a branch and controls Mitsubishi UFJ Trust & Banking Corporation (U.S.A.) (“MUTB USA”), both of New York, New York. MUFG controls deposits of approximately \$60 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup>

Morgan Stanley, with total consolidated assets of approximately \$836 billion, engages in investment banking, securities underwriting and dealing, asset management, trading, and other activities in the United States and abroad.<sup>5</sup> Morgan Stanley controls MS Bank, which operates one branch in Utah, with total assets of approximately \$68.6 billion and deposits of approximately \$56.7 billion. In addition, Morgan Stanley controls MSPB, with total assets of approximately \$7.4 billion and deposits of approximately \$6.4 billion.<sup>6</sup>

In 2008, the Board approved MUFG’s acquisition of up to 24.9 percent of the voting shares of Morgan Stanley.<sup>7</sup> MUFG consummated its initial investment in Morgan Stanley in 2008 by purchasing two different series of preferred stock, one of which is convertible into common stock. Subsequently, MUFG acquired additional common stock. MUFG is currently deemed to own 19.23 percent of Morgan Stanley’s voting shares.<sup>8</sup> MUFG now intends to convert all of its outstanding convertible preferred stock in Morgan Stanley to common shares, after which MUFG would own approximately 22.4 percent of Morgan Stanley’s voting shares. In addition, MUFG is seeking authority to acquire, from time to time, additional shares of Morgan Stanley pursuant to an investor agreement in order to maintain a specific level of ownership in Morgan Stanley.<sup>9</sup>

### Noncontrolling Investment

MUFG has stated that it does not propose to control or exercise a controlling influence over Morgan Stanley and that its investment in Morgan Stanley will continue to be a passive investment.<sup>10</sup> MUFG has agreed to continue to abide by certain commitments it pro-

<sup>3</sup> BTMU operates branches in California, Illinois, New York, and Washington; agencies in Georgia and Texas; and representative offices in the District of Columbia, Kentucky, Minnesota, New Jersey, and Texas.

<sup>4</sup> Deposit data for MUFG’s subsidiary banks are as of March 31, 2011.

<sup>5</sup> Asset data for Morgan Stanley and asset and deposit data for MS Bank and MSPB are as of March 31, 2011.

<sup>6</sup> In addition, Morgan Stanley holds a noncontrolling 9.9 percent interest in a bank holding company, Chinatrust Financial Holding Company, Ltd., Taipei, Taiwan, and a national bank, Herald National Bank, New York, New York. See *Morgan Stanley*, 95 *Federal Reserve Bulletin* B86 and B93 (2009).

<sup>7</sup> *Mitsubishi UFJ Financial Group, Inc.*, 95 *Federal Reserve Bulletin* B34 (2009) (“Mitsubishi UFJ”).

<sup>8</sup> The authority to make the initial and additional investments expired April 6, 2011.

<sup>9</sup> The investor agreement between MUFG and Morgan Stanley would provide MUFG with both (i) preemptive rights to participate in certain securities offerings and (ii) the authority to acquire additional shares of Morgan Stanley in the open market up to the ownership level it would acquire on consummation of the conversion transaction. MUFG will need to preserve a certain ownership level to account for its investment in Morgan Stanley using the equity method of accounting and to comply with its commitment to the Board to maintain its investment at a certain level. MUFG made that commitment in connection with its request to have a second director representative on the board of directors of Morgan Stanley without being deemed to exercise a controlling influence over that company.

<sup>10</sup> Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board’s approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 percent and 25 percent of the voting shares of banks. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., *China Investment Corporation*, 96 *Federal Reserve Bulletin* B31 (2010) (acquisition of up to 10 percent of the voting shares of a bank holding company); *Mitsubishi UFJ*, *supra*, (acquisition of up

vided in 2008,<sup>11</sup> which are similar to those previously relied on by the Board in determining that an investing company would not be able to exercise a controlling influence over another bank holding company for purposes of the BHC Act. For example, MUFG committed not to exercise or attempt to exercise a controlling influence over the management or policies of Morgan Stanley or any of its subsidiaries. The commitments also included certain restrictions on the business relationships of MUFG with Morgan Stanley.

In connection with the Board's decision in 2008, MUFG committed to have no more than one representative serve on the board of directors of Morgan Stanley or its subsidiaries. After the proposed conversion of convertible preferred shares to common shares, MUFG would have two representatives serving on the board of directors of Morgan Stanley. The Board considered carefully the potential for the proposed change in MUFG's voting power on Morgan Stanley's board to create the ability of MUFG to exercise a controlling influence over Morgan Stanley for purposes of the BHC Act. In reaching its determination that the increased voting power would not have such an effect, the Board considered the size, composition, and expertise of the members of the Morgan Stanley board of directors and the fact that a majority of the members of the board would continue to be independent of management, MUFG, and other investors. The Board also considered that MUFG representatives would represent less than 15 percent of the total membership of the board and that neither MUFG representative would be able to second a motion offered by the other MUFG representative. In addition, an MUFG representative would be able to cast only one vote on any committee or subcommittee of the board. The Board also relied on certain commitments made by MUFG with respect to, among other things, maintaining the level of its voting investment in Morgan Stanley and using reasonable best efforts to assist Morgan Stanley should Morgan Stanley decide to seek additional funding from other sources.<sup>12</sup>

Based on these facts and commitments, the Board has determined that it would not at this time initiate a control proceeding in this case based on the structure of the proposed investment. The Board notes that the BHC Act would require MUFG to file an application and receive the Board's approval before MUFG may directly or indirectly acquire additional shares of Morgan Stanley above the proposed investment level or attempt to exercise a controlling influence over Morgan Stanley or any of its subsidiaries.<sup>13</sup>

### Competitive Considerations

The Board has considered carefully the competitive effects of the proposal in light of all the facts of record. 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 proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>14</sup>

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to 24.9 percent of the voting shares of a bank holding company); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

<sup>11</sup> MUFG provided passivity commitments in 2008 in connection with the Board's approval of its application to acquire up to 24.9 percent of the voting shares of Morgan Stanley. See *Mitsubishi UFJ, supra*.

<sup>12</sup> See Board letter to H. Rodgin Cohen, Esq., dated April 22, 2011.

<sup>13</sup> 12 U.S.C. § 1842. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996).

<sup>14</sup> 12 U.S.C. § 1842(c)(1).

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.<sup>15</sup> The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.<sup>16</sup> Because the subsidiary insured depository institutions of MUFG and Morgan Stanley compete directly in the metropolitan New York-New Jersey-Pennsylvania-Connecticut (“Metro New York”) banking market,<sup>17</sup> the Board reviewed carefully the competitive effects of the proposal in the Metro New York banking market in connection with the approval granted MUFG in 2008. In particular, the Board considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by MUFG and Morgan Stanley, and the concentration level of market deposits and the increase in the level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”).

In connection with the current application, the Board has again considered the facts related to the relevant banking markets and has determined that consummation of this proposal is consistent with Board precedent<sup>18</sup> and within the thresholds of the DOJ Guidelines in the Metro New York banking market.<sup>19</sup> On consummation, the Metro New York banking market would remain moderately concentrated, and numerous competitors would remain in the market.<sup>20</sup>

The DOJ also has reviewed the proposal and has advised the Board that it does not believe that MUFG’s ownership interest in Morgan Stanley is likely to have a significant adverse effect on competition in any relevant banking or other market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration

<sup>15</sup> See e.g., *Sun Trust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

<sup>16</sup> See e.g., *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995).

<sup>17</sup> The Metro New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and the northern portion of Mercer County in New Jersey; Monroe and Pike counties in Pennsylvania, and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

<sup>18</sup> Deposit and market share data are as of June 30, 2010, 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, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). The Board regularly has included thrift institution deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

<sup>19</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally 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 more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that the DOJ Bank Merger Guidelines, which were issued in 1995, were not changed. DOJ press release (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>20</sup> On consummation, the HHI would remain unchanged at 1299, and 273 insured depository institution competitors would remain in the Metro New York banking market. The deposits of MUFG and Morgan Stanley, on a combined basis, would represent less than 1 percent of market deposits.

of resources in any relevant banking market and that competitive considerations are consistent with approval.<sup>21</sup>

### **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. The Board has considered these factors in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by MUFG. In addition, the Board has consulted with the Japanese Financial Services Agency (“FSA”), the agency with primary responsibility for the supervision and regulation of Japanese banking organizations, including MUFG.

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. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transactions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has carefully considered the financial factors of the proposal. The capital levels of MUFG exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the subsidiary depository institutions involved in the proposal are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that MUFG has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of MUFG and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. Based on all the facts of record, the Board has concluded that considerations relating to the managerial resources and future prospects of the organizations involved are consistent with approval.<sup>22</sup>

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<sup>21</sup> Competitive considerations in nonbanking markets are set forth in the discussion on nonbanking activities.

<sup>22</sup> A commenter asserted that recently announced losses at a joint venture between MUFG and Morgan Stanley reflect poorly on MUFG’s managerial capacity and its ability to avoid predatory lending. MUFG has reviewed management and controls at the joint venture and has strengthened its risk-management framework. In addition, MUFG has increased the amount of capital held by the joint venture. There appears to be no relationship between the losses at the joint venture, which engages in securities activities in Japan, and predatory lending, as asserted by the commenter.

The commenter also referred to news reports regarding Morgan Stanley’s mortgage servicer, Saxon Mortgage Services, Inc., with respect to a class action lawsuit involving the Home Affordable Modification Program and a lawsuit under the Servicemembers Civil Relief Act. In addition, the commenter referred to a settlement by Morgan Stanley with the Office of the Attorney General of the Commonwealth of Massachusetts regarding allegedly unfair residential mortgage loans. As noted above, MUFG does not control the operations of Morgan Stanley and cannot exercise a controlling influence over its management. Moreover, as part of its ongoing supervision of Morgan Stanley, the Board monitors the status of government investigations, consults as needed with relevant regulatory authorities, and periodically reviews Morgan Stanley’s liability from material litigation.

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.<sup>23</sup> The FSA is the primary supervisor of Japanese banking organizations. The Board previously has determined that BTMU and MUTB are subject to comprehensive supervision on a consolidated basis by their home-country supervisor.<sup>24</sup> In that determination, the Board took into account the FSA's supervisory authority with respect to MUFG (operating at the time as Mitsubishi Tokyo Financial Group, Inc.) and its nonbanking subsidiaries.<sup>25</sup> Based on this finding and all the facts of record, the Board has concluded that BTMU and MUTB continue to be subject to comprehensive supervision on a consolidated basis by their home-country supervisor. As noted, the FSA is the primary supervisor of Japanese banking organizations, including holding companies such as MUFG.<sup>26</sup> The FSA may conduct inspections of MUFG and its subsidiaries and require MUFG to submit reports about its operations on a consolidated basis. The FSA also may review transactions between MUFG and its subsidiaries and has authority to require MUFG to take measures necessary to ensure the safety and soundness of the MUFG organization. Based on all the facts of record, the Board has determined that MUFG is subject to comprehensive supervision on a consolidated basis by its appropriate home-country authorities for purposes of this application.<sup>27</sup>

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

### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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 depository institutions under the Community

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Finally, the commenter raised allegations that are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, e.g., The Royal Bank of Scotland Group plc*, 90 *Federal Reserve Bulletin* 87, 88 n.16 (2004); *The Royal Bank of Scotland Group plc*, 89 *Federal Reserve Bulletin* 386, 389 n.26 (2003); *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

<sup>23</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home-country supervision under the standards set forth in Regulation K. *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 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).

<sup>24</sup> *See Mitsubishi Tokyo Financial Group, Inc.*, 87 *Federal Reserve Bulletin* 349 (2001). At that time, BTMU was named The Bank of Tokyo-Mitsubishi, Ltd. and MUTB was named The Mitsubishi Trust and Banking Corporation.

<sup>25</sup> *Id.*

<sup>26</sup> *See, e.g., Chuo Mitsui Trust Holdings, Inc.*, (Order dated March 15, 2011).

<sup>27</sup> Section 3 of the BHC Act also 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 (12 U.S.C. § 1842(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which MUFG operates and has communicated with relevant government authorities concerning access to information. In addition, MUFG previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. MUFG also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. In light of these commitments, the Board has concluded that MUFG has provided adequate assurances of access to any appropriate information the Board may request.

Reinvestment Act (“CRA”).<sup>28</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.<sup>29</sup>

The Board has carefully considered the convenience and needs factor and the CRA performance records of the relevant insured depository institutions. MUFG’s subsidiary banks each received “outstanding” or “satisfactory” ratings,<sup>30</sup> and MS Bank received an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of January 25, 2010.<sup>31</sup> In addition, consummation of the proposal would strengthen the financial resources of Morgan Stanley by converting preferred stock to voting common shares and better enable its depository institution subsidiaries to provide services to and to assist in meeting the credit needs of their communities.

Based on all the facts of record, the Board has concluded that considerations relating to convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval of the proposal.

### **Nonbanking Activities**

Morgan Stanley engages in nonbanking activities that are financial in nature as described in section 4(k)(4) of the BHC Act.<sup>32</sup> Section 4(k)(6) of the BHC Act generally permits financial holding companies such as MUFG to acquire shares of companies that conduct activities that are financial in nature without prior Board approval.<sup>33</sup> Section 163(b) of the Dodd-Frank Act, however, contains an exception to this rule that requires prior Board approval of an acquisition by a bank holding company with assets of \$50 billion or more of shares of any company with assets of at least \$10 billion that is engaged in activities described in section 4(k) of the BHC Act. MUFG and Morgan Stanley exceed those asset thresholds and, accordingly, the proposal requires the Board’s prior approval.

In reviewing a notice under section 163(b) of the Dodd-Frank Act, the Board is required to consider the standards listed in section 4(j)(2) of the BHC Act.<sup>34</sup> Accordingly, the Board has considered carefully whether the proposed acquisition “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”<sup>35</sup> In addition, the Board has considered the extent to which the proposed acquisition

<sup>28</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. §§ 2901 et seq.

<sup>29</sup> 12 U.S.C. § 2903.

<sup>30</sup> The most recent CRA performance evaluations of its insured depository subsidiaries are as follows: (1) Union Bank (“outstanding”) by the Office of the Comptroller of the Currency (“OCC”) as of June 2009; (2) BTMUT (“outstanding”) by the Federal Deposit Insurance Corporation (“FDIC”) as of July 2010; and (3) MUTB USA (“satisfactory”) by the FDIC as of December 2006.

<sup>31</sup> MS Bank became a national bank on September 23, 2008, on its conversion from a Utah-chartered industrial bank. MSPB became a national bank on July 1, 2010, on its conversion from a limited-purpose savings association that was not subject to the CRA. MSPB has not yet been evaluated under the CRA by the OCC.

<sup>32</sup> 12 U.S.C. § 1843(k)(4).

<sup>33</sup> 12 U.S.C. § 1843(k)(6).

<sup>34</sup> The Dodd-Frank Act § 163(b)(4).

<sup>35</sup> 12 U.S.C. § 1843(j)(2).

“would result in greater or more concentrated risks to global or United States financial stability or the United States economy.”<sup>36</sup>

As part of its review of the factors enumerated in section 4(j)(2) of the BHC Act, the Board has considered carefully the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the public benefits of the proposal. As previously noted, the Board has concluded, based on its review of the record, that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval.

In addition, the Board carefully considered the competitive effects of MUFG’s proposed acquisition of additional voting shares of Morgan Stanley. In the United States, MUFG’s operations consist primarily of commercial banking through its retail banking subsidiary in California. Morgan Stanley does not engage in retail banking to any significant extent. Moreover, Morgan Stanley engages extensively in nonbank financial activities. MUFG has a limited presence in such activities in the United States. As a result, even if MUFG were to be considered to control Morgan Stanley, a combination of the two firms would be unlikely to raise competitive issues. The proposed marginal increase in the percentage of Morgan Stanley’s shares that would be held by MUFG would have no significant competitive effects in any relevant market. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for these services.

The Board also has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would strengthen Morgan Stanley’s capital position and allow Morgan Stanley to better serve its customers. For the reasons discussed above, and based on all the facts of record, the Board has determined that consummation of the proposal is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, and that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of public benefits is consistent with approval.

As required by section 163(b) of the Dodd-Frank Act, the Board also has considered the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or to the United States economy. In its review under this factor, the Board has considered whether the proposal would result in a material increase in risks to financial stability, due to an increase in the size of the acquirer or in the extent of the interconnectedness of the financial system, or in a reduction in the availability of substitute providers of critical financial products or services. As discussed above, MUFG has stated that it does not propose to control or exercise a controlling influence over Morgan Stanley and would need Board approval before acquiring control or exercising a controlling influence. Consummation of this proposal would not result in a significant decrease in the availability of substitute providers of critical financial services or a significant increase in the size of MUFG because MUFG will not control Morgan Stanley. For the same reason, and because the increase in MUFG’s and Morgan Stanley’s economic exposure to each other would be relatively small, this proposal will not result in a significant increase in the interconnectedness of the financial system. As a result, the Board has concluded that the change in the risk to global or United States financial stability or to the United States economy associated with this transaction would be inconsequential. Based

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<sup>36</sup> The Dodd-Frank Act § 163(b)(4).

on all the facts or record, the Board concludes that the considerations under this factor are consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal 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.<sup>37</sup> The Board's approval is specifically conditioned on compliance by MUFG with all the commitments made to and relied on by the Board in connection with the application.<sup>38</sup> For purposes of this action, 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 proposal may not be consummated before the 15th calendar day after the effective date of this order. The conversion transaction must be consummated no 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 ("Reserve Bank"), acting pursuant to delegated authority. Subject to the conversion transaction being consummated within that three-month period, MUFG may acquire additional shares up to 24.9 percent of the voting shares of Morgan Stanley within one year after the effective date of this order, such period subject to extension for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.<sup>39</sup>

By order of the Board of Governors, effective June 14, 2011.

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

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<sup>37</sup> The commenter requested that the Board extend the comment period on the proposal. In the Board's view, the commenter has had ample opportunity to submit its views and, in fact, has provided written submissions that the Board has carefully considered 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, is not warranted.

<sup>38</sup> The commenter also requested that the Board hold a public hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from 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 necessary or appropriate to clarify the factual issues related to the application and to provide an opportunity for testimony (12 CFR 223.16(e), 262.25(d)). As noted above, MUFG will not be acquiring control of Morgan Stanley or its depository institutions, and the commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. 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.

<sup>39</sup> No further approval would be required for MUFG to acquire shares to comply with its commitment to the Board to maintain an investment in at least 20 percent of the voting common equity of Morgan Stanley and to use its reasonable best efforts to honor a Board request to provide additional capital to preserve the maximum level of ownership of total equity of Morgan Stanley that MUFG achieved before the date of the Board's request. See Board letter to H. Rodgin Cohen, Esq., *supra*.

United Bankshares, Inc.  
Charleston, West Virginia

*Order Approving the Acquisition of a Bank Holding Company*

United Bankshares, Inc. (“United”) and its wholly owned subsidiary, UBC Holding Company, Inc. (“UBC”), both of Charleston, have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire Centra Financial Holdings, Inc. (“Centra”) and its subsidiary bank, Centra Bank, Inc. (“Centra Bank”), both of Morgantown, and all of West Virginia.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 *Federal Register* 20350 (2011)). 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.

United, with total consolidated assets of approximately \$7.2 billion, is the 92nd largest insured depository organization in the United States, controlling \$5.7 billion in deposits.<sup>3</sup> United controls two subsidiary banks, United Bank, Inc. (“UB-WV”), Parkersburg, West Virginia, and United Bank (“UB-VA”), Fairfax, Virginia, that operate in West Virginia, Maryland, Ohio, Virginia, and the District of Columbia.<sup>4</sup> United is the 2nd largest depository organization in West Virginia, controlling deposits of approximately \$2.9 billion, which represent 10.1 percent of the total amount of deposits of insured depository institutions in the state. United is the 19th largest depository organization in Maryland, controlling deposits of approximately \$479.2 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

Centra, with total consolidated assets of \$1.3 billion, controls Centra Bank, which operates in West Virginia, Maryland, and Pennsylvania. Centra Bank is the 9th largest insured depository institution in West Virginia, the 71st largest insured depository institution in Maryland, and the 99th largest insured depository institution in Pennsylvania, controlling deposits of \$718.5 million, \$116.4 million, and \$341.0 million, respectively.

On consummation of the proposal, United would become the 81st largest depository organization in the United States, with total consolidated assets of approximately \$8.6 billion. United would control deposits of approximately \$6.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In West Virginia, United would remain the 2nd largest depository organization, controlling deposits of approximately \$3.6 billion (approximately 12.6 percent of deposits of insured depository institutions in the state); in Maryland, it would remain the 19th largest depository organization, controlling deposits of approximately \$595.6 million (less than 1 percent of deposits of insured depository institutions in the state); and in Pennsylvania, it would become the 99th largest depository organization, controlling deposits of approxi-

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Specifically, United has requested that Centra and its four second-tier holding companies, Centra Financial Corporation-Hagerstown, Inc.; Centra Financial Corporation-Martinsburg, Inc.; Centra Financial Corporation-Morgantown, Inc.; and Centra Financial Corporation-Uniontown, Inc., all of Morgantown, merge with and into UBC.

<sup>3</sup> Deposit data are as of June 30, 2010, updated to reflect mergers through April 23, 2011. In this context, insured depository institutions include commercial banks, savings associations, and savings banks. National deposit data and rankings are as of December 31, 2010.

<sup>4</sup> UB-WV operates in West Virginia and Ohio. UB-VA operates in Maryland, Virginia, and the District of Columbia.

mately \$341.0 million (less than 1 percent of deposits of insured depository institutions in the state).

### Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of United is West Virginia,<sup>5</sup> and Centra is located in West Virginia, Maryland, and Pennsylvania.<sup>6</sup> Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.<sup>7</sup>

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>8</sup>

United and Centra have subsidiary depository institutions that compete directly in two West Virginia banking markets: the Martinsburg and the Morgantown banking markets. The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by United and Centra,<sup>9</sup> the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),<sup>10</sup> and other characteristics of the markets.

<sup>5</sup> 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)).

<sup>6</sup> For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch (12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and 1842(d)(2)(B)).

<sup>7</sup> 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). United is adequately capitalized and adequately managed, as defined by applicable law. Centra Bank has been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. *See* 12 U.S.C. § 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, United would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). United also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant states (12 U.S.C. § 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>8</sup> 12 U.S.C. § 1842(c)(1).

<sup>9</sup> Deposit and market share data are as of June 30, 2010, updated to reflect mergers through April 23, 2011.

<sup>10</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the postmerger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

### A. Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the DOJ Guidelines in the Martinsburg banking market.<sup>11</sup> On consummation of the proposal, the market would remain moderately concentrated, as measured by the HHI. The change in the HHI in the market would be consistent with Board precedent and the thresholds in the DOJ Guidelines, and a number of competitors would remain.<sup>12</sup>

### B. Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have on the Morgantown banking market<sup>13</sup> warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Guidelines. UBWV is the sixth largest insured depository institution in the Morgantown banking market, controlling deposits of approximately \$184.3 million, which represent approximately 8.1 percent of the market deposits. Centra Bank is the largest depository institution in the market, controlling deposits of approximately \$535.4 million, which represent approximately 23.6 percent of market deposits. On consummation, the HHI in this market would increase 383 points, from 1719 to 2102, and the pro forma market share of the combined entity would be approximately 31.7 percent.

The Board has considered carefully whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the Morgantown banking market.<sup>14</sup> Several factors indicate that the increase in concentration in the Morgantown banking market, as measured by the HHI and market share, overstates the potential competitive effects of the proposal in the market. After consummation of the proposal, eight other commercial bank competitors would remain, some with a significant presence in the market. The second largest bank competitor in the market would control 22 percent of market deposits, and three other bank competitors in the market each would control between 9 percent and 17 percent of market deposits.

In addition, the Board has evaluated the competitive influence of two active community credit unions in the Morgantown banking market: The United Federal Credit Union (“United Credit Union”), Morgantown, and Fairmont Federal Credit Union (“Fairmont Credit Union”), Fairmont. Both credit unions offer a wide range of products, operate at least one street-level branch, and have broad membership criteria that include most of the residents in the Morgantown banking market.<sup>15</sup> Moreover, Fairmont Credit Union is a significant source of commercial loans,<sup>16</sup> and competition from that credit union closely approximates competition from a commercial bank. Accordingly, the Board has concluded

<sup>11</sup> The Martinsburg banking market is defined as Berkeley County, West Virginia, excluding the portion of that county included in the Hagerstown Rand McNally Marketing Area (“RMA”).

<sup>12</sup> UB-WV would be the second largest depository institution in the market, controlling deposits of \$218.4 million, which would represent approximately 20.9 percent of market deposits. The HHI would increase 25 points to 1764.

<sup>13</sup> The Morgantown banking market is defined as the Morgantown RMA and the nonRMA portions of Monongalia and Preston counties, West Virginia.

<sup>14</sup> The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

<sup>15</sup> The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. See, e.g., *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006); and *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004).

<sup>16</sup> Fairmont Credit Union has a ratio of commercial and industrial loans to assets of approximately 6 percent,

that deposits controlled by this institution should be weighted at 100 percent in market-share calculations.<sup>17</sup> The Board has also concluded that the activities of such credit unions exert a competitive influence that mitigates, in part, the potential effects of the proposal.<sup>18</sup>

In addition, the record of recent entry into the Morgantown banking market indicates the market's attractiveness for entry. The Board notes that five depository institutions have entered the market de novo since 2000. Other factors indicate that the market remains attractive for entry. From 2003 to 2008, the Morgantown banking market's population grew twice as fast as other metropolitan areas in West Virginia, and the market's annualized rates of deposit growth and income growth exceeded the averages for other urban areas in West Virginia and the averages for all metropolitan areas in the United States.

### *C. View of Other Agencies and Conclusion on Competitive Considerations*

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

Based on these and other facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations 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 banks involved in the proposal and certain other supervisory factors.<sup>19</sup> The Board has carefully considered these factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal, and other available financial information, including information provided by United.

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

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which is comparable to the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

<sup>17</sup> The Board has previously indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of deposits when appropriate. See, e.g., *Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). As noted, Fairmont Credit Union's commercial-loan-to-asset ratio is higher than the ratio for many thrift institutions that have been weighted at 100 percent in past Board orders. See, e.g., *The PNC Financial Services Group, Inc.*, *supra*.

<sup>18</sup> These credit unions control approximately \$68.1 million in deposits in the market that, on a 50 percent weighted basis for United Credit Union and a 100 percent weighted basis for Fairmont Credit Union, represent approximately 2.6 percent of market deposits. Accounting for the revised weightings of these deposits, United would control approximately 30.9 percent of market deposits, and the HHI would increase 363 points to 1996.

<sup>19</sup> 12 U.S.C. § 1842(c)(2) and (3).

tion of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

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

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of United, Centra, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. United and its subsidiary depository institutions are considered to be well managed. The Board also has considered United's plans for implementing the proposal, including the proposed management after consummation of the proposal. In addition, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

Based on all the facts of record, the Board concludes that consideration 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 a proposal under section 3 of the BHC Act, the Board 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 depository institutions under the Community Reinvestment Act ("CRA").<sup>20</sup> The Board has carefully considered the convenience and needs factor and the CRA performance records of UB-WV, UB-VA, and Centra Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>21</sup> UBWV, UB-VA, and Centra Bank received "satisfactory" ratings at their most recent examinations for CRA performance by the Federal Reserve Bank of Richmond (UB-WV and UB-VA) and the Federal Deposit Insurance Corporation (Centra Bank), as of February 2, 2009, February 2, 2009, and July 16, 2008, respectively. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance records of UB-WV, UB-VA, and Centra Bank are consistent with approval of the proposal.

<sup>20</sup> 12 U.S.C. §§ 2901 et seq.; 12 U.S.C. § 1842(c)(2).

<sup>21</sup> The Interagency Questions and Answers Regarding Community Reinvestment provide that an institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor. *75 Federal Register* 11642 at 11665 (2010).

## Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application under section 3 of the BHC Act 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 United with all the conditions imposed in this order and all the commitments made to the Board in connection with the application and on receipt of all other required regulatory approvals for the proposal. 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 proposal may not be consummated before the 15th 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 20, 2011.

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

## Orders Issued under Sections 3 and 4 of the Bank Holding Company Act

Bank of Montreal  
Toronto, Canada

### *Order Approving the Acquisition of a Bank Holding Company and Notice to Engage in Nonbanking Activities*

Bank of Montreal, Toronto, Canada, and its subsidiaries, Harris Financial Corp. ("HFC"), Harris Bankcorp, Inc. ("HBI"), and Mike Merger Sub, LLC ("Interim Sub"), all of Chicago, Illinois (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")<sup>1</sup> to acquire Marshall & Ilesley Corporation ("M&I"), Milwaukee, and its two subsidiary banks, M&I Marshall & Ilesley Bank ("M&I Bank"), Milwaukee, and M&I Bank of Mayville, Mayville, all of Wisconsin.<sup>2</sup> In addition, Applicants have requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y to acquire M&I's subsidiary savings bank, M&I Bank FSB ("M&I Savings Bank"), Las Vegas, Nevada, and other nonbanking subsidiaries of M&I and thereby engage in activities in accordance with section 225.28(b) of the Board's Regulation Y.<sup>3</sup> Harris Bank also has given notice under sec-

<sup>1</sup> 12 U.S.C. § 1842. Applicants also have requested the Board's approval to hold and exercise options that allow Bank of Montreal to purchase up to 19.7 percent of M&I's outstanding common stock, if certain events occur. The options would expire on consummation of M&I's merger with Interim Sub.

<sup>2</sup> Bank of Montreal, HFC, and HBI are financial holding companies within the meaning of the BHC Act. Interim Sub is being established to facilitate the M&I acquisition. Interim Sub has requested the Board's approval under section 3 of the BHC Act to become a bank holding company through the merger of M&I with and into Interim Sub. Interim Sub would then merge with and into HFC.

<sup>3</sup> 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24 and 28(b). See Appendix A for a list of these subsidiaries and their respective activities. Applicants also propose to acquire certain other M&I subsidiaries in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k). As part of this proposal, HFC would purchase all of M&I's

tion 25 of the Federal Reserve Act (“FRA”) and section 211.3 of Regulation K in order to continue to operate M&I Bank’s foreign branch in the Cayman Islands.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 *Federal Register* 10,595 (2011)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

Bank of Montreal, with total consolidated assets equivalent to \$436 billion, is the 4th largest depository organization in Canada.<sup>5</sup> Bank of Montreal operates branches in New York City and Chicago, an agency in Houston, and through HFC and HBI, controls Harris Bank, Harris Bank Arizona, and Harris Central National Association (“Harris Central”), Roselle, Illinois. HFC, with total consolidated assets of \$74 billion, is the 29th largest depository organization in the United States, controlling \$30.5 billion in deposits.<sup>6</sup> Harris Bank operates in Illinois, Indiana, and Wisconsin; and Harris Bank Arizona operates in Arizona, Florida, and Washington. Harris Central operates only in Illinois. HFC is the 3rd largest depository organization in Illinois, controlling deposits of approximately \$26.8 billion. In Indiana, HFC is the 15th largest depository organization, controlling deposits of approximately \$1.8 billion, and in Wisconsin, it is the 10th largest depository organization, controlling deposits of approximately \$1.4 billion. In Arizona, HFC is the 18th largest depository organization, controlling deposits of approximately \$407 million, and in Florida, it is the 214th largest depository organization, controlling deposits of approximately \$114 million.

M&I has total consolidated assets of approximately \$49.7 billion, and its subsidiary insured depository institutions operate in nine states.<sup>7</sup> M&I is the 326th largest depository organization in Illinois, controlling deposits of approximately \$98 million. In Indiana, M&I is the 13th largest depository organization, controlling deposits of approximately \$1.87 billion, and in Wisconsin, it is the largest depository organization, controlling deposits of approximately \$24.16 billion. In Arizona, M&I is the 6th largest depository organization, controlling deposits of approximately \$2.66 billion, and in Florida, it is the 33rd largest depository organization, controlling deposits of approximately \$1.65 billion.

On consummation of the proposal, HFC would become the 22nd largest depository organization in the United States in terms of assets, with total consolidated assets of approximately \$126.2 billion. HFC would control deposits of approximately \$70 billion, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, HFC would remain the 3rd largest depository organization, controlling deposits of approximately \$26.9 billion, which represent approximately 7.5 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”). HFC would also become the 5th largest depository organization in

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preferred shares and associated warrants acquired by the Department of the Treasury under Treasury’s Capital Purchase Program.

<sup>4</sup> 12 U.S.C. §§ 601-604a; 12 CFR 211.3. M&I Bank and M&I Savings Bank would be contributed by HFC to HBI. M&I Savings Bank would then convert into a national bank, and M&I Bank, the former M&I Savings Bank, and The Harris Bank, National Association (“Harris Bank Arizona”), Scottsdale, Arizona, would merge into Harris National Association (“Harris Bank”), Chicago. Bank of Montreal has filed the required applications with the Office of the Comptroller of the Currency (“OCC”) and the Office of Thrift Supervision (“OTS”) to effect those transactions.

<sup>5</sup> Canadian asset and ranking data are as of April 30, 2011, and are based on the exchange rate as of that date.

<sup>6</sup> Asset data are as of March 31, 2011, and nationwide deposit ranking data are as of June 30, 2010. Statewide deposit and ranking data are as of June 30, 2010, and reflect merger activity as of March 29, 2011.

<sup>7</sup> M&I Bank operates in Arizona, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, and Wisconsin. M&I Bank of Mayville also operates in Wisconsin. In addition, M&I Savings Bank operates in Nevada, Minnesota, and Wisconsin.

Indiana, controlling deposits of approximately \$3.67 billion (approximately 3.7 percent of state deposits); in Wisconsin, it would become the largest depository organization, controlling deposits of approximately \$25.6 billion (approximately 20.2 percent of state deposits); in Arizona, it would become the 6th largest depository organization, controlling deposits of approximately \$3.1 billion (approximately 3.6 percent of state deposits); and in Florida, it would become the 31st largest depository organization, controlling deposits of approximately \$1.76 billion (less than 1 percent of state deposits).

### 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 Applicants is Illinois,<sup>8</sup> and M&I's subsidiary banks are located in eight states.<sup>9</sup>

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.<sup>10</sup> In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

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 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.<sup>11</sup> The Board also must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4 of the BHC Act.

Applicants and M&I have subsidiary depository institutions that compete directly in thirteen banking markets, including markets in Arizona, Florida, Indiana, and Wisconsin. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions ("market deposits") controlled by Applicants and

<sup>8</sup> See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

<sup>9</sup> 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)). M&I's subsidiary banks are located in Arizona, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, and Wisconsin.

<sup>10</sup> 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). Applicants are adequately capitalized and adequately managed, as defined by applicable law. M&I's two subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). Applicants would also control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits of insured depository institutions in the relevant states (12 U.S.C. § 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>11</sup> 12 U.S.C. § 1842(c)(1).

M&I in the markets,<sup>12</sup> the concentration levels of market deposits and the increases in those levels as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),<sup>13</sup> and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in all thirteen banking markets.<sup>14</sup> On consummation, each of the banking markets would either remain unconcentrated or moderately concentrated as measured by the HHI, or the HHI would increase less than 200 points. In addition, numerous competitors would remain in all the banking markets.

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the banking markets where Applicants and M&I compete directly or in any other relevant banking market. Accordingly, the Board has determined 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 depository institutions involved in the proposal and certain other supervisory factors. The Board also reviews financial and managerial resources of the organizations involved in a proposal under section 4 of the BHC Act.<sup>15</sup> The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Applicants.<sup>16</sup> The Board also has consulted

<sup>12</sup> Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2010, adjusted to reflect mergers and acquisitions as of February 11, 2011, 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 institution deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).* The deposits of M&I Savings Bank are weighted at 100 percent because the thrift institution is owned by a commercial banking organization. *See, e.g., Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992).*

<sup>13</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and 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 more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>14</sup> Definitions of the banking markets and the effects of the proposal on concentrations of banking resources in the markets are described in Appendix B.

<sup>15</sup> 12 CFR 225.26(b).

<sup>16</sup> Some commenters expressed concerns about the compensation to be paid to certain management at M&I Bank in light of M&I’s participation in Treasury’s Capital Purchase Program. As noted, M&I’s preferred shares held

with the Office of the Superintendent of Financial Institutions (“OSFI”), the agency with primary responsibility for the supervision and regulation of Canadian banks, including Bank of Montreal.

In evaluating the financial resources 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 insured depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial resources of the organizations involved in the proposal. The capital levels of Bank of Montreal exceed the minimum levels that would be required under the Basel Capital Accord and are therefore considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the subsidiary depository institutions involved in the proposal are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, M&I, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the OCC and the OTS, with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Applicants’ plans for implementing the acquisition, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.<sup>17</sup>

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.<sup>18</sup>

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by Treasury under the program will be fully redeemed as part of this proposal. In addition, the Board has reviewed the financial and managerial factors in this proposal, including the compensation noted by commenters, in the context of the financial and managerial condition of the Applicants, M&I, and the resulting organization.

<sup>17</sup> Section 3 of the BHC Act also 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 (12 U.S.C. § 1842(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Bank of Montreal operates and has communicated with relevant government authorities concerning access to information. In addition, Bank of Montreal has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Bank of Montreal also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. Based on all facts of record, the Board has concluded that Bank of Montreal has provided adequate assurances of access to any appropriate information the Board may request.

<sup>18</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject

As noted, the OSFI is the primary supervisor of Canadian banks, including Bank of Montreal. The Board previously has determined that Bank of Montreal is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.<sup>19</sup> Based on this finding and all the facts of record, the Board has concluded that Bank of Montreal continues to be subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

### 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 institutions under the Community Reinvestment Act (“CRA”).<sup>20</sup> The Board must also review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.<sup>21</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.<sup>22</sup>

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of insured depository subsidiaries of HFC and M&I, data reported by HFC and M&I under the Home Mortgage Disclosure Act (“HMDA”),<sup>23</sup> other information provided by Applicants, confidential supervisory information, and public comments received on the proposal. Although some commenters provided positive comments about the CRA performance of the depository institution subsidiaries of Applicants and M&I in certain markets, the same commenters also expressed opposition to the applications and notices and requested that the Board not approve the proposal unless HFC made specific CRA commitments in certain Metropolitan Statistical Areas (“MSAs”). Other commenters asserted that Applicants and M&I had not adequately served the credit and investment needs of its LMI communities. Commenters also expressed concern that the proposal might reduce the availability of credit to LMI neighborhoods and communities of color. Commenters alleged that M&I Bank and Harris Bank had not served the credit needs of minorities and had engaged in disparate treatment of minorities in their lending activities in certain markets. A commenter also expressed concerns that the branching records of M&I Bank and Harris Bank in predominantly minority census tracts were not proportionate to the percentage of the population residing in those tracts in the Milwaukee MSA.<sup>24</sup>

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to consolidated home-country supervision under the standards set forth in Regulation K. 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 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).

<sup>19</sup> See *Bank of Montreal*, 91 *Federal Reserve Bulletin* C14 (2005) and 80 *Federal Reserve Bulletin* 925 (1994).

<sup>20</sup> 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

<sup>21</sup> See, e.g., *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767 (2000).

<sup>22</sup> 12 U.S.C. § 2903.

<sup>23</sup> 12 U.S.C. § 2801 et seq.

<sup>24</sup> Applicants indicate that their branch network in the Milwaukee MSA is principally the result of their entry into that market in 2008 through acquisitions. Applicants further note that the acquisition of M&I would significantly expand their branch network in predominantly minority tracts in the Milwaukee MSA.

### A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the relevant insured depository institutions' CRA performance records. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>25</sup>

HFC's subsidiary banks each received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC.<sup>26</sup> M&I Bank and M&I Savings Bank received an "outstanding" and "satisfactory" CRA performance rating, respectively, at their most recent evaluations by the relevant federal supervisors.<sup>27</sup> Applicants have represented that, on consummation of the proposed merger of M&I Bank, the former M&I Savings Bank, and Harris Bank Arizona into Harris Bank, Harris Bank would select elements from each bank to meet the needs of the communities that the combined organization would serve.<sup>28</sup>

*CRA Performance of Harris Bank.* In Harris Bank's CRA evaluation,<sup>29</sup> examiners considered the bank's overall rating to be "satisfactory," with lending performance rated "high satisfactory." Examiners reported that the bank's geographic distribution of HMDA loans and small loans to businesses were adequate and that the bank's lending activity reflected excellent responsiveness to the credit needs of its assessment area, considering its size, resources, and the market for deposits and loans in the Chicago assessment area. Examiners also noted that during the evaluation period, Harris Bank made 112 community development loans totaling \$172 million and that its community development lending addressed the need for affordable housing, economic development, and community services, and supported efforts to stabilize and revitalize the community. During the evaluation period, Harris Bank made more than 26,000 small business loans totaling more than \$2.6 billion in its assessment areas and in particular, 470 small business loans totaling \$84.8 million in the Milwaukee assessment area.<sup>30</sup> Examiners also noted that the bank's distribution of small loans to businesses of different revenue sizes was excellent.

<sup>25</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642 at 11,665 (2010).

<sup>26</sup> The most recent CRA performance evaluations for Harris Bank and Harris Bank Arizona were as of July 1, 2009. Harris Central is a special-purpose bank exempt from performance evaluations under the CRA (12 CFR 345.11(c)(3)).

<sup>27</sup> The most recent CRA performance evaluation for M&I Bank by the Federal Reserve was as of February 16, 2009. The most recent CRA performance evaluation for M&I Savings Bank by the OTS was as of December 18, 2008. M&I Bank of Mayville is a special-purpose bank exempt from performance evaluations under the CRA (12 CFR 345.11(c)(3)).

<sup>28</sup> Several commenters requested that Applicants commit to undertake certain activities in the communities Applicants will serve on consummation of the proposal, including activities related to home lending and foreclosure, economic development, consumer lending and services, community development, and philanthropy. Applicants have stated that they plan to explore new methods and approaches to enhance the level of services provided to the communities they serve. The Board consistently has stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization and that the enforceability of any such third-party pledges, initiatives, and agreements are matters outside the CRA. See *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 232–33 (2004). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor. In addition, the Board notes that neither the CRA nor the agencies' implementing rules require institutions to engage in charitable giving.

<sup>29</sup> The evaluation period was January 1, 2006, through June 30, 2009.

<sup>30</sup> In this context, "small business loans" are loans with original amounts of \$1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to borrowers in the United States. Commenters alleged that the small business lending performance of Harris Bank in 2009 was worse when compared to all lenders with respect to loans less than \$100,000 in the Milwaukee MSA. The Applicants note that the bank's performance in small business lending is consistent with its peers. Moreover, there is no standard for

The bank received a “high satisfactory” rating in the investment test. Examiners noted that Harris Bank exhibited a good level of responsiveness to credit and community development needs and that the bank made qualified investments within its assessment areas through equity-equivalent investments, purchases of securities, cash contributions, and grants totaling almost \$166 million during the evaluation period.

The bank also received a “high satisfactory” rating in the service test. Examiners noted that the bank has an adequate distribution of delivery systems that are reasonably accessible to individuals and geographies of different income levels in the Chicago assessment area. Within LMI geographies, the bank opened six offices and closed one during the evaluation period. Examiners noted that the bank’s strategy during much of the evaluation period placed an emphasis on opening offices in LMI geographies, which improved access to the bank’s offices in those geographies. The bank also offers various alternative systems for delivering retail banking services.

*CRA Performance of Harris Bank Arizona.* Harris Bank Arizona received an overall “satisfactory” rating in its 2009 evaluation.<sup>31</sup> Under the lending test, Harris Bank Arizona received a “high satisfactory” rating, and examiners reported that the lending levels demonstrated excellent responsiveness to the credit needs of the bank’s assessment areas. Examiners also noted that the bank’s geographic distribution of loans was considered adequate, with a good level of lending to borrowers of different income levels.

Harris Bank Arizona received an “outstanding” rating under the investment test and examiners reported that the bank had an excellent level of qualified investment activity and community development lending within its assessment areas.

Harris Bank Arizona received a “low satisfactory” rating under the service test and examiners reported that the bank had an adequate geographic distribution of bank offices.

*CRA Performance of M&I Bank.* As noted, M&I Bank received an overall “outstanding” rating in its 2009 evaluation.<sup>32</sup> Under the lending test, M&I Bank received a “high satisfactory” rating, and the examiners reported that the distribution of loans to small businesses was good. During the evaluation period, M&I Bank made 32,600 small business loans totaling almost \$6.8 billion throughout its assessment areas, with 19,600 small business loans totaling \$3.9 billion to businesses in Wisconsin.<sup>33</sup> Examiners reported that the bank’s lending activity reflected good responsiveness to credit needs throughout the bank’s assessment areas.

Examiners reported that M&I Bank was a leader in making community development loans and made extensive use of innovative and flexible lending practices. During 2007 and 2008, M&I Bank originated 551 community development loans totaling approximately \$1.4 bil-

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the percentage of small business loans in amounts of \$100,000 or less that a reporting institution is required to make.

<sup>31</sup> The evaluation period was January 1, 2006, through June 30, 2009.

<sup>32</sup> The evaluation period was January 1, 2007, through December 31, 2008. Several commenters expressed concerns that M&I Bank might not continue to maintain its “outstanding” CRA rating after consummation of the proposal. Applicants note that M&I Bank has received a composite CRA rating of “outstanding” in its nine previous CRA evaluations. Applicants have also stated that they will review their and M&I’s current products and services with a view toward selecting elements from each to meet the credit needs of the communities that the combined organization will serve.

<sup>33</sup> One commenter alleged that M&I Bank’s small business lending in 2009 was worse when compared to all lenders with respect to loans less than \$100,000 in the Milwaukee MSA. As previously noted, there is no standard for the percentage of small business loans in amounts of \$100,000 or less that a reporting institution is required to make.

lion in its assessment areas. The majority of those loans were for affordable housing and economic development projects.

M&I Bank received an “outstanding” rating under the investment test. Examiners noted that the bank had an excellent level of qualified community development investments and grants and often served in a leadership position, particularly with respect to those investments not routinely provided by private investors. Examiners commended the bank for exhibiting excellent responsiveness to credit and community development needs.

M&I Bank also received an “outstanding” rating under the service test. Examiners found that M&I Bank’s retail delivery systems were accessible to all portions of its assessment areas and that banking services and business hours were tailored to the convenience and needs of those areas, which included LMI census tracts and individuals. Examiners noted that banking services and business hours were tailored to meet the convenience and needs of the bank’s assessment areas, including LMI areas.

*CRA Performance of M&I Savings Bank.* M&I Savings Bank received an overall “satisfactory” rating in its 2008 evaluation.<sup>34</sup> Under the lending test, M&I Savings Bank received a “low satisfactory” rating. Examiners reported that although the savings bank’s overall lending activities were strong, the majority of its HMDA and small business loans were made outside its two assessment areas and that the lending levels reflected adequate responsiveness to the assessment areas’ credit needs. Examiners reported that the savings bank generated a very strong volume of community development loans that provided a counterbalance for limited HMDA loan activity within its assessment areas.

M&I Savings Bank received an “outstanding” rating under the investment test. Examiners found a substantial amount of qualified investments and noted that when all those investments were considered, the total amount was 173 percent of the amount in the preceding examination and represented approximately 1.2 percent of the institution’s assets.

M&I Savings Bank received a “low satisfactory” rating under the service test. Examiners noted that the savings bank had limited deposit-taking offices and derived a major portion of its funding from brokers. Community development services were considered to be adequate. Examiners also reported that the savings bank offered various banking services, including free ATM transactions, direct telephone banking, and electronic online banking.

#### *B. HMDA and Fair Lending Records*

The Board has carefully considered the HMDA data for 2008, 2009, and preliminary data for 2010 reported by HFC’s and M&I’s insured depository institutions, in their respective combined assessment areas and in the MSAs of concern to the commenters,<sup>35</sup> and the fair lending records of HFC and M&I, in light of public comments received on the proposal. Several commenters alleged, based on HMDA data reported in 2009, that HFC and M&I had not adequately served the credit needs of their LMI communities or had engaged in disparate treatment of minority individuals in home mortgage lending.

HMDA lending data for HFC’s depository institutions in 2008 and 2009 in their combined assessment areas were generally consistent with the aggregate lending by all reporting lend-

<sup>34</sup> The evaluation period was January 1, 2005, through December 31, 2007.

<sup>35</sup> For HFC, the MSAs of concern to the commenters include the MSAs for Chicago, Illinois; Gary, Indiana; and Milwaukee, Wisconsin. For M&I, the commenters expressed concern about the Appleton, Eau Claire, Madison, and Milwaukee MSAs in Wisconsin; the Indianapolis MSA in Indiana; the Orlando MSA in Florida; the Phoenix MSA in Arizona; and the St. Louis MSA in Missouri.

ers in the relevant assessment areas (“aggregate lenders”) with respect to the percentage of their loans to African Americans and in predominantly minority census tracts but lagged the aggregate lenders in their lending in LMI census tracts in both years. However, the banks’ lending exceeded the aggregate lenders in loans to Hispanic borrowers and in loans to LMI individuals generally. The denial rates to African Americans relative to white applicants (denial disparity ratios or “DDR”) in the combined assessment areas, in Illinois (HFC’s home state), and in Chicago specifically were consistent with, or lower than, the aggregate lenders’ DDRs in 2008 and 2009. For Hispanic borrowers, the DDR was generally consistent with the aggregate lenders in both years in those areas. The Board has also reviewed preliminary 2010 HMDA data and notes a significant decrease in the volume of applications and loans for HFC’s depository institutions and the industry as a whole due to a weak housing market. This decline appears to have had a greater effect in predominantly minority and LMI geographies.

The HMDA-reportable lending data for 2008 for M&I’s depository institutions in their combined assessment areas generally lagged aggregate lenders in lending to African Americans and Hispanics, in predominantly minority census tracts, and to LMI individuals. In 2009, HMDA-reportable lending data were generally consistent with the data for aggregate lenders with respect to the percentage of its loans to African Americans and Hispanics and in LMI census tracts but lagged aggregate lenders in the percentage of loans to LMI individuals and in predominantly minority census tracts. The DDR for African Americans relative to white applicants in the combined assessment areas was higher than for aggregate lenders in 2008 but was largely consistent with aggregate lenders in 2009. For Hispanic borrowers, the DDR was largely consistent with aggregate lenders in both years.

Several commenters were particularly concerned about the 2009 HMDA data for M&I’s and HFC’s depository institutions in the Milwaukee MSA. With respect to M&I, the lending performance slightly exceeded that of aggregate lenders with respect to the percentage of its loans to African Americans and Hispanics, in predominantly minority census tracts, and in LMI census tracts. The depository institutions were slightly higher than aggregate lenders with respect to their percentage of loans to LMI individuals. The DDR for African Americans in the MSA was lower than aggregate lenders in 2009 but was higher for Hispanics in the same year. The Board has also reviewed preliminary 2010 HMDA data in the Milwaukee MSA and notes significant improvements in lending to African Americans and Hispanics, in predominantly minority census tracts, in LMI census tracts, and to LMI individuals.

The HMDA-related lending performance of HFC’s depository institutions in the Milwaukee MSA in 2009 was consistent with or exceeded that of aggregate lenders with respect to the percentage of loans to Hispanics, in predominantly minority census tracts, in LMI tracts, and to LMI individuals but lagged aggregate lenders with respect to the percentage of loans to African Americans. The DDRs for African Americans and Hispanics in the MSA were lower than the aggregate lenders in 2009.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not HFC is excluding or imposing higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.<sup>36</sup> HMDA data, therefore,

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<sup>36</sup> 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. In

have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by HFC, M&I, and their subsidiaries. The Board also has consulted with the OCC about the fair lending compliance records of Harris Bank and Harris Bank Arizona and with the OTS about the fair lending compliance record of M&I Savings Bank. In addition, the Board has considered information provided by Applicants about their compliance-risk-management systems.

The record of this proposal, including confidential supervisory information, indicates that HFC has taken steps to ensure compliance with fair lending and other consumer protection laws. Applicants have in place a formal fair lending policy and program that apply to their U.S. operations, including those operations involved in home mortgage and small business lending. Applicants provide internal compliance training. Their bank management, line-of-business, and compliance staffs attend outside conferences and seminars and other fair lending and consumer protection training sessions. Applicants have indicated that the combined institution will continue to have such policies and procedures on consummation of the proposal. In the fair lending reviews conducted at the most recent CRA examinations of HFC's and M&I's depository institutions, the appropriate federal supervisory agency did not report any evidence of illegal credit discrimination.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Applicants and M&I under the CRA. Their established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities and are not excluding individuals or geographies on a prohibited basis.

### *C. Conclusion on Convenience and Needs and CRA Performance*

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, public comments received on the proposal, and confidential supervisory information. Applicants represent that the proposal would result in increased credit availability and access to a broader array of financial products and services for customers of the combined organization. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.<sup>37</sup>

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addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

<sup>37</sup> A commenter expressed concern that the proposed acquisition would result in a loss of jobs. The effect of a proposed transaction on employment in a community is not among the factors that the Board is authorized to consider under the BHC Act, and the federal banking agencies, courts, and the Congress consistently have interpreted the convenience and needs factor to relate to the effect of a proposal on the availability and quality of banking services in a community. See, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

### Nonbanking Activities

As noted above, Applicants also have filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire certain nonbanking subsidiaries of M&I, including M&I Savings Bank, and to engage in a number of other nonbanking activities that are permissible for bank holding companies under Regulation Y, including financial and investment advisory activities, agency transactional services, trust company functions, activities related to extending credit, community development activities, and extending credit and servicing loans.<sup>38</sup> The Board previously has determined by regulation that the operation of a savings association by a bank holding company, and the other nonbanking activities for which Applicants have requested approval, are closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>39</sup>

As part of its evaluation of the public interest factors under section 4(j) of the BHC Act, the Board also must determine that Applicants' proposed acquisition of M&I's nonbanking subsidiaries "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."<sup>40</sup> As part of its evaluation of these factors, the Board has considered the financial condition and managerial resources of Applicants, their subsidiaries, and the companies to be acquired, as well as the effect of the proposed transaction on those resources. For the reasons discussed above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval.

The Board also has reviewed the competitive effects of Applicants' proposed acquisition of M&I's nonbanking depository subsidiary, M&I Savings Bank. For the reasons stated earlier, and based on all the facts of record, consummation of this proposal would be consistent with Board precedent and DOJ Guidelines in the banking markets where Applicants' subsidiary banks and M&I Savings Bank compete directly.

In addition, Applicants and M&I compete directly in investment advisory services, trust and custodial services, and community development services. The geographic markets for each of these nonbanking activities are regional or national in scope, except the market for community development, which is local. The record in this case indicates that there are numerous providers of each of these services and that Applicants' and M&I's levels of participation in those activities are relatively small. Based on all the facts of record, the Board concludes that consummation of the proposed nonbanking acquisitions is not likely to have any significantly adverse competitive effects.

The Board also has reviewed carefully the public benefits of the proposed acquisition of M&I's nonbank subsidiaries. Applicants have indicated that the expanded geographic scope of their nonbanking operations would provide added convenience to current and future customers of Applicants and M&I and that customers of both institutions would have access to a broader array of products and services.

For the reasons discussed above, and based on the entire record, the Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

<sup>38</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j); *see* 12 U.S.C. § 1843(i).

<sup>39</sup> 12 CFR 225.28(b)(1), (2), (4), (5), (6), (7), and (12). *See* Appendix A.

<sup>40</sup> 12 U.S.C. § 1843(j)(2)(A).

banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

### Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications and notices<sup>41</sup> should be, and hereby are, approved.<sup>42</sup> 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 Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. 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 proposal may not be consummated before the 15th 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 Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 20, 2011.

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

### Appendix A

Applicants propose to engage in the following nonbanking activities:

1. Acquiring and holding loans, in accordance with section 225.28(b)(1) of the Board's Regulation Y (12 CFR 225.28(b)(1));
2. Engaging in activities related to extending credit, including real estate settlement servicing, in accordance with section 225.28(b)(2)(viii) of the Board's Regulation Y (12 CFR 225.28(b)(2)(viii));

<sup>41</sup> Harris Bank also has given notice pursuant to section 25 of the FRA, 12 U.S.C. §§ 601604a, and section 211.3 of Regulation K, 12 CFR 211.3, to acquire the Cayman Islands branch of M&I Bank. The Board has considered the factors it is required to consider when reviewing a notice to establish a branch under section 25 of the FRA and, based on all the facts of record, finds these factors to be consistent with approval.

<sup>42</sup> Several commenters 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 authorities for the bank to be acquired make a timely written recommendation of denial of the application (12 CFR 225.16(e)). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 262.3(3) and 262.25(d)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The requests fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

3. Operating a savings association, in accordance with section 225.28(b)(4)(ii) of the Board's Regulation Y (12 CFR 225.28(b)(4)(ii));
4. Engaging in trust company functions, in accordance with section 225.28(b)(5) of the Board's Regulation Y (12 CFR 225.28(b)(5));
5. Engaging in financial and investment advisory activities, in accordance with section 225.28(b)(6) of the Board's Regulation Y (12 CFR 225.28(b)(6));
6. Providing agency transactional services, in accordance with section 225.28(b)(7)(i) of the Board's Regulation Y (12 CFR 225.28(b)(7)(i)); and
7. Engaging in community development activities, in accordance with section 225.28(b)(12) of the Board's Regulation Y (12 CFR 225.28(b)(12)).

## Appendix B

Bank of Montreal and M&I Banking Markets Consistent with Board Precedent and DOJ Guidelines						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Arizona</b>						
<b>Phoenix</b> —includes the Phoenix metropolitan area, including branches in the Phoenix Ranally Metropolitan Area ("RMA") and Fountain Hills, Gold Canyon, and Maricopa.						
Bank of Montreal Pre-Consummation	14	378.44 mil.	0.64	1842	5	60
M&I	4	2138.57 mil.	3.61			
Bank of Montreal Post-Consummation	4	2517.01 mil.	4.25			
<b>Tucson</b> —includes the Tucson metropolitan area, including branches in the Tucson RMA and Green Valley.						
Bank of Montreal Pre-Consummation	17	28.87 mil.	0.25	1703	2	18
M&I	6	353.06 mil.	3.04			
Bank of Montreal Post-Consummation	6	381.92 mil.	3.29			
<b>Florida</b>						
<b>Naples</b> —includes the county of Collier, excluding the town of Immokalee.						
Bank of Montreal Pre-Consummation	28	53.3 mil.	0.51	933	1	38
M&I	14	141.99 mil.	1.37			
Bank of Montreal Post-Consummation	13	195.29 mil.	1.88			
<b>Sarasota</b> —includes the counties of Manatee and Sarasota, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75, which includes the town of North Port; the peninsular portion of the county of Charlotte west of the Myakka River (currently includes Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West and Placida); and Gasparilla Island (the town of Boca Grande) in the county of Lee (all in Florida).						
Bank of Montreal Pre-Consummation	42	22.52 mil.	0.13	939	1	46
M&I	8	568.73 mil.	3.41			
Bank of Montreal Post-Consummation	8	591.25 mil.	3.54			
<b>Indiana</b>						
<b>Indianapolis</b> —includes the counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby; and Green township in the county of Madison (all in Indiana).						
Bank of Montreal Pre-Consummation	11	495.29 mil.	1.68	1364	20	52
M&I	5	1791.2 mil.	6.07			
Bank of Montreal Post-Consummation	4	2286.49 mil.	7.75			
<b>Wisconsin</b>						
<b>Green Bay</b> —includes the counties of Brown and Kewaunee; Morgan, Abrams, Pensaukee, Chase, and Little Suamico townships in the county of Oconto; Angelica and Maple Grove townships in the county of Shawano; Oneida township in the county of Outagamie; and Cooperstown township in the county of Manitowoc (all in Wisconsin).						
Bank of Montreal Pre-Consummation	21	10.86 mil.	0.13	3343	2	21
M&I	2	829.85 mil.	9.64			
Bank of Montreal Post-Consummation	2	840.71 mil.	9.76			
<b>La Crosse</b> —includes the county of La Crosse; the town of Glencoe in the county of Buffalo; the towns of Arcadia, Preston, Ettrick, and Gale in the county of Trempealeau; the towns of Curran, Springfield, Franklin, North Bend, and Melrose in the county of Jackson (all in Wisconsin); the county of Houston; and Honier, Richmond, Pleasant Hill, New Hartford, and Dresbach townships in the county of Winona (all in Minnesota).						
Bank of Montreal Pre-Consummation	22	14.07 mil.	0.57	767	8	25
M&I	6	177.95 mil.	7.17			
Bank of Montreal Post-Consummation	6	192.02 mil.	7.74			

(continued on next page)

## Appendix B—continued

Bank of Montreal and M&I Banking Markets Consistent with Board Precedent and DOJ Guidelines—continued						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Madison</b> —includes the county of Dane, excluding the eastern tier of townships (York, Medina, Deerfield, Christiana, and Albion); and Dekorra, Lowville, Otsego, Fountain Prairie, Columbus, Hampden, Leeds, Arlington, Lodi, and West Point townships in the county of Columbia (all in Wisconsin).						
Bank of Montreal Pre-Consummation	19	179.97 mil.	1.48	768	54	41
M&I	1	2217.29 mil.	18.22			
Bank of Montreal Post-Consummation	1	2397.26 mil.	19.7			
<b>Milwaukee</b> —includes the counties of Milwaukee, Ozaukee, and Waukesha; East Troy township in the county of Walworth; Waterford, Norway, and Raymond townships in the county of Racine; Ixonia township in the county of Jefferson; and Polk, Jackson, Richfield, and Germontown townships in the county of Washington (all in Wisconsin).						
Bank of Montreal Pre-Consummation	7	804.9 mil.	1.76	1886	114	59
M&I	1	14713.13 mil.	32.26			
Bank of Montreal Post-Consummation	1	15518.03 mil.	34.03			
<b>Sauk County</b> —includes the county of Sauk; Westford and Willow townships in the county of Richland; Wyoming and Arena townships in the county of Iowa; and Newport township in the county of Columbia (all in Wisconsin).						
Bank of Montreal Pre-Consummation	4	167.67 mil.	10.74	1639	215	16
M&I	5	156.33 mil.	10.01			
Bank of Montreal Post-Consummation	2	324 mil.	20.75			
<b>Shawano</b> —includes the county of Menominee; the county of Shawano, excluding Angelica, Maple Grove, Hutchins, Aniwa, Birnamwood, Wittenberg, and Germania townships; and Dupont, Larrabee, and Matteson townships in the county of Waupaca (all in Wisconsin).						
Bank of Montreal Pre-Consummation	10	8.01 mil.	1.27	1805	72	10
M&I	1	178.45 mil.	28.33			
Bank of Montreal Post-Consummation	1	186.46 mil.	29.6			
<b>Sheboygan County</b> —includes the county of Sheboygan, excluding Russell and Rhine townships (all in Wisconsin).						
Bank of Montreal Pre-Consummation	11	46.94 mil.	2.54	1237	48	16
M&I	4	175.23 mil.	9.48			
Bank of Montreal Post-Consummation	3	222.17 mil.	12.02			
<b>West Bend</b> —includes the county of Washington, excluding Polk, Jackson, Richfield, and Germantown townships (all in Wisconsin).						
Bank of Montreal Pre-Consummation	15	8.07 mil.	0.56	1133	24	15
M&I	1	306.26 mil.	21.42			
Bank of Montreal Post-Consummation	1	314.33 mil.	21.98			

Note: Deposit data are as of June 30, 2010. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent (M&I Savings Bank at 100 percent).

## M&T Bank Corporation Buffalo, New York

## Manufacturers and Traders Trust Company Buffalo, New York

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

M&T Bank Corporation (“M&T”), Buffalo, New York, a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act<sup>1</sup> to acquire Wilmington Trust Corporation (“Wilmington”) and thereby indirectly acquire its subsidiary bank, Wilmington Trust Company (“WT Bank”), both of Wilmington, Delaware.<sup>2</sup> M&T has also requested the

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> M&T has formed a wholly owned subsidiary, MTB One, Inc. (“MTB One”), for purposes of acquiring Wilmington. MTB One will merge with and into Wilmington, with Wilmington surviving the merger and becoming a subsidiary of M&T. Immediately following the merger of MTB One into Wilmington, First Empire State

Board's approval under sections 4(c)(8) and 4(j) of the BHC Act to acquire an indirect interest in Wilmington's subsidiary savings association, Wilmington Trust FSB ("WTFSB"), Baltimore, Maryland, and Wilmington's subsidiary trust company, Wilmington Trust Fiduciary Service Company ("WTFSC"), Weehawken, New Jersey.<sup>3</sup> M&T also proposes to acquire certain other nonbanking subsidiaries of Wilmington in accordance with section 4(k) of the BHC Act.<sup>4</sup>

In addition, M&T's subsidiary state member bank, Manufacturers and Traders Trust Company ("M&T Bank"), Buffalo, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act<sup>5</sup> ("Bank Merger Act") to purchase certain assets and assume certain liabilities from WT Bank and WTFSB. M&T Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of WT Bank and at the branches of WTFSB.<sup>6</sup>

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

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

Wilmington has total consolidated assets of approximately \$11.0 billion and is the 86th largest depository organization in the United States, controlling \$9.0 billion in deposits. Wilmington's subsidiary insured depository institutions, WT Bank and WTFSB,<sup>9</sup> operate in Delaware, Florida, Maryland, and Pennsylvania. In Delaware, Wilmington is the eighth largest depository organization, controlling deposits of \$6.6 billion. Wilmington is the 15th largest depository organization in Maryland, controlling deposits of approximately \$927 million. In Pennsylvania, Wilmington is the 79th largest depository organization, controlling deposits of \$460 million. In Florida, Wilmington is the 316th largest depository organization, controlling deposits of \$8.8 million.

On consummation of the proposal, M&T would become the 27th largest depository organization in the United States, with total consolidated assets of approximately \$79 billion. M&T would control deposits of approximately \$56.3 billion, which represent less than

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Holding Company, an intermediate bank holding company within the M&T organization, will merge with and into Wilmington, with Wilmington surviving the merger.

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

<sup>4</sup> 12 U.S.C. § 1843(k).

<sup>5</sup> 12 U.S.C. § 1828(c).

<sup>6</sup> 12 U.S.C. § 321.

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

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

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

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

### Interstate Analysis

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

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

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

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

<sup>11</sup> For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and 1842(d)(2)(B). WT Bank operates only in Delaware.

<sup>12</sup> 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). M&T is adequately capitalized and adequately managed, as defined by applicable law. WT Bank has been in existence and operated for the minimum period of time required by Delaware law and for more than five years. See 12 U.S.C. §§ 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, M&T would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). M&T also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant states (12 U.S.C. §§ 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>13</sup> See 12 U.S.C. § 1831u.

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

<sup>15</sup> See 12 U.S.C. § 1831u. M&T Bank is adequately capitalized and adequately managed, as defined in the Riegle-Neal Act. As noted above, on consummation of the proposal, M&T Bank and its affiliated insured depository institutions would control less than 10 percent of the total amount of deposits in insured depository institu-

### Competitive Considerations

The BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. Both statutes also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>16</sup> In addition, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.<sup>17</sup>

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

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

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market. In addi-

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tions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Delaware, Maryland, and Pennsylvania, respectively. All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

<sup>16</sup> 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

<sup>17</sup> 12 U.S.C. § 1843(j)(2)(A).

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

<sup>19</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that the DOJ Guidelines, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

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

tion, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

### **Financial, Managerial, and Supervisory Considerations**

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.<sup>21</sup> The Board also reviews the financial and managerial resources of the companies involved in a notice under section 4 of the BHC Act.<sup>22</sup> The Board has considered those factors in light of all the facts of record, including confidential supervisory and examination information from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by M&T and Wilmington.

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

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

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

In addition, the Board has considered the future prospects of the organizations involved in the proposal. As part of this evaluation, the Board considered information regarding how M&T would manage the integration of Wilmington into M&T. The Board also considered

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<sup>21</sup> 12 U.S.C. §§ 1842(c)(2)–(3) and 1828(c)(5).

<sup>22</sup> 12 U.S.C. § 1843(j)(4)(A)–(B).

M&T's experience in acquiring bank holding companies and successfully integrating them into its organization. The record indicates that M&T has the financial and managerial resources to serve as a source of strength to Wilmington and its subsidiary depository institutions.

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

### **Convenience and Needs Considerations**

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

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

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of M&T Bank and WT Bank, data reported by M&T Bank under the Home Mortgage Disclosure Act ("HMDA"),<sup>26</sup> other information provided by M&T, confidential supervisory information, and public comments received on the proposal. Some commenters commended M&T Bank for its relationship with community groups and for certain aspects of its CRA program but also made recommendations for M&T Bank to expand its community development programs.<sup>27</sup> In addition, other commenters alleged that M&T denied home mortgage loan applications of African American or Hispanic borrowers more frequently than those of nonminority applicants in certain areas.

#### *A. CRA Performance Evaluations*

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance record of the relevant insured depository institution. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it

<sup>23</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

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

<sup>25</sup> 12 U.S.C. § 2903.

<sup>26</sup> 12 U.S.C. § 2801 et seq.

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

represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>28</sup>

M&T Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York ("Reserve Bank"), as of May 12, 2008 ("2008 Evaluation").<sup>29</sup> WT Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Philadelphia, as of July 20, 2009.<sup>30</sup>

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

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

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

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

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

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

<sup>30</sup> WTFSC received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of July 20, 2009.

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

other banking education. These types of events provided technical assistance and training to LMI individuals, community organizations, small businesses, and housing agencies.

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

*CRA Performance of WT Bank.* As noted, WT Bank received an overall "outstanding" rating in its 2009 evaluation.<sup>32</sup> Under the lending test, WT Bank received an "outstanding" rating, and the examiners reported that the bank's geographic distribution of loans reflected an excellent penetration throughout its assessment areas and that the overall distribution of loans among borrowers of different income levels, especially LMI borrowers, also showed excellent penetration given the economic and demographic considerations in the assessment areas. The distribution of loans among businesses of different sizes, including small businesses, also reflected good penetration. Examiners noted WT Bank's participation in innovative and flexible lending programs that addressed the specific credit needs of LMI borrowers and small businesses in its assessment areas.

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

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

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

#### *B. HMDA and Fair Lending Record*

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

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

M&T had denied refinancing loan applications of Hispanic borrowers in the metropolitan area encompassing New York City more frequently than those of nonminority applicants.<sup>33</sup>

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

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

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

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

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

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

<sup>34</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicant than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

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

### *C. Conclusion on Convenience and Needs and CRA Performance*

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

### **Public Benefits**

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

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

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

### **Other Considerations**

M&T Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of WT Bank and at the branches of WTFSB. The Board has assessed the factors it is required to consider when reviewing an

<sup>35</sup> See 12 CFR 225.28(b)(4)(ii) and (5).

<sup>36</sup> 12 U.S.C. § 1843(j)(2)(A).

application under section 9 of the FRA and finds those factors to be consistent with approval.

### Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications under section 3 of the BHC Act, the Bank Merger Act, and the FRA and the notice under section 4 of the BHC Act should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. The Board's approval is specifically conditioned on compliance by M&T with the conditions in this order and all the commitments made to the Board in connection with the applications and notice and on receipt of all other regulatory approvals for the proposal.<sup>37</sup> The Board's approval of the proposed nonbanking activities is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>38</sup> and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this proposal, these commitments 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 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

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

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

<sup>37</sup> Some commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from a supervisory authority. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. See 12 CFR 225.25(a)(2). Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. See 12 CFR 262.3(e) and 262.25(d). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The requests fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

<sup>38</sup> 12 CFR 225.7 and 225.25(c).

## Appendix

M&T and Wilmington Banking Markets Consistent with Board Precedent and DOJ Guidelines						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Wilmington, DE</b> —includes New Castle County, Delaware; and Cecil County, Maryland.						
M&T Pre-Consummation	17	37 mil.	9.2	4612	1	19
Wilmington	2	5.3 bil.	0.1			
M&T Post-Consummation	2	5.3 bil.	9.3			
<b>Baltimore, MD-PA</b> —includes Baltimore, MD-PA Rationally Metropolitan Area (“RMA”); the non-RMA portions of Harford and Carroll counties, Maryland (excluding the Washington, DC-MD-VA RMA portion); and Baltimore, Maryland.						
M&T Pre-Consummation	2	11.7 bil.	23.5	1659	88	72
Wilmington	9	927 mil.	1.9			
M&T Post-Consummation	2	12.6 bil.	25.4			
<b>Philadelphia</b> —includes Bucks, Chester, Delaware, Montgomery and Philadelphia counties, Pennsylvania; and Burlington, Camden, Cumberland, Gloucester, and Salem counties, New Jersey.						
M&T Pre-Consummation	21	648 mil.	0.5	1175	0	122
Wilmington	29	460 mil.	0.4			
M&T Post-Consummation	15	1.1 bil.	0.9			
<b>Salisbury, MD-DE</b> —includes the Salisbury, Maryland-Delaware RMA; and the non-RMA portion of Wicomico County, Maryland.						
M&T Pre-Consummation	5	152.8 mil.	10.3	1268	37	12
Wilmington	11	26.4 mil.	1.79			
M&T Post-Consummation	5	178.8 mil.	12.1			
<b>Sussex, DE</b> —includes Sussex County, Delaware (excluding the city of Milford and the Salisbury, MD-DE RMA portion).						
M&T Pre-Consummation	13	15.9 mil.	0.6	1768	35	13
Wilmington	1	817 mil.	30.4			
M&T Post-Consummation	1	833 mil.	31.0			
Note: Data are as of June 30, 2010. Deposit amounts are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent, except for the deposits of thrift institutions controlled by bank holding companies, which are weighted at 100 percent.						

## Orders Issued under International Banking Act

Bank of Communications Co., Ltd.  
Shanghai, People’s Republic of China

*Order Approving Establishment of a Branch*

Bank of Communications Co., Ltd. (“BOCOM”), Shanghai, People’s Republic of China, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to establish a limited federal branch in San Francisco, 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 branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in San Francisco, California (*The Recorder*, March 9, 2009). The time for filing comments has expired, and the Board has considered all comments received.

<sup>1</sup> 12 U.S.C. § 3105(d).

BOCOM, with total assets of approximately \$599 billion, is the fifth largest bank in China.<sup>2</sup> The government of China owns approximately 43.8 percent of BOCOM's shares.<sup>3</sup> The Hongkong and Shanghai Banking Corporation Limited, Hong Kong, People's Republic of China, a subsidiary of HSBC Holdings plc, London, England, owns 19 percent of the shares of BOCOM. No other shareholder owns more than 5 percent of the shares of BOCOM.

BOCOM engages primarily in corporate and retail banking and treasury operations throughout China, including Hong Kong and Macau. Outside China, BOCOM operates branches in Japan, Singapore, South Korea, and Germany and a representative office in the United Kingdom. In the United States, BOCOM operates a federal branch in New York. BOCOM would meet the requirements for a qualifying foreign banking organization under Regulation K.<sup>4</sup>

The proposed San Francisco branch would engage in wholesale deposit-taking, lending, trade finance, and other banking services. As a limited branch, it would be prohibited from accepting deposits from sources other than those permitted by section 5 of the IBA and section 25A of the Federal Reserve Act.<sup>5</sup>

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished the Board with the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisors.<sup>6</sup> The Board also considers additional standards as set forth in the IBA and Regulation K.<sup>7</sup>

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<sup>2</sup> Asset and ranking data are as of December 31, 2010.

<sup>3</sup> The Ministry of Finance of the People's Republic of China owns approximately 26.5 percent, and the National Council for Social Security Fund of the People's Republic of China ("NCSFF") owns approximately 11.4 percent of BOCOM's total outstanding shares. HKSCC Nominees Limited, an indirect, wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited, holds NCSFF's shares as its registered nominee. The remaining 6 percent is widely held among state-owned enterprises.

<sup>4</sup> 12 CFR 211.23(a).

<sup>5</sup> BOCOM's home state is New York. Under section 5 of the IBA, a foreign bank may establish a branch outside its home state if the branch limits its deposit-taking to that of an Edge corporation operating under section 25A of the Federal Reserve Act (12 U.S.C. § 3103(a)(7)(A)). Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries (12 U.S.C. § 615(a)). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations (12 CFR 211.6(a)(1)).

<sup>6</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, 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; (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; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

<sup>7</sup> 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following (i) whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (ii) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (iii) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; the bank's record of operation. The Board may also take into account, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk (12 U.S.C. § 3105(d)(3)(E)).

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.<sup>8</sup> This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application provided that (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.<sup>9</sup> In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.<sup>10</sup> The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.<sup>11</sup> That is the standard applied by the Board in this case.

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

The Board is continuing to work actively with the appropriate supervisory authorities in China to understand their system for the consolidated supervision of BOCOM and other major Chinese banks. Those discussions are constructive and ongoing. Based on all the facts of record, the Board has determined that BOCOM's home-country supervisory authority is, at a minimum, actively working to establish arrangements for the consolidated supervision of BOCOM and that considerations relating to the steps taken by BOCOM and its home jurisdiction to combat money laundering are consistent with approval under this standard. The Board has approved applications from other Chinese banks to establish U.S. branches under this standard.<sup>12</sup>

The China Banking Regulatory Commission ("CBRC") is the principal supervisory authority of BOCOM, including its foreign subsidiaries and affiliates.<sup>13</sup> The CBRC has the authority to license banks, regulate their activities, and approve expansion, both domestically and abroad. The CBRC has no objection to BOCOM's establishment of the proposed branch. It supervises and regulates BOCOM, including its subsidiaries and foreign operations, through a combination of targeted on-site examinations and continuous consolidated off-site monitoring. Since its establishment in 2003, the CBRC has enhanced existing supervisory programs and developed new policies and procedures designed to create a framework for the consolidated supervision of banks in China.

On-site examinations by the CBRC cover, among other things, the major areas of operations: corporate governance and senior management responsibilities; capital adequacy; asset structure and asset quality (including structure and quality of loans); off-balance-

<sup>8</sup> 12 U.S.C. § 3105(d)(6).

<sup>9</sup> 12 U.S.C. § 3105(d)(6)(A).

<sup>10</sup> 12 U.S.C. § 3105(d)(6)(B).

<sup>11</sup> *Id.*

<sup>12</sup> See *China Merchants Bank Co., Ltd.*, 94 *Federal Reserve Bulletin* C24 (2008); *Industrial and Commercial Bank of China, Limited*, 94 *Federal Reserve Bulletin* C114 (2008); and *China Construction Bank Corporation*, 95 *Federal Reserve Bulletin* B54 (2009).

<sup>13</sup> Before April 2003, the People's Bank of China ("PBOC") acted both as China's central bank and its primary banking supervisor, including oversight of anti-money-laundering matters. In April 2003, the CBRC was established as the primary banking supervisor and assumed the majority of the PBOC's regulatory functions. The PBOC maintained its roles as China's central bank and the primary supervisor for anti-money-laundering matters.

sheet activities; earnings; liquidity; liability structure and funding sources; expansionary plans; internal controls (including accounting controls and administrative systems); legal compliance; accounting supervision and internal auditing (including accounting controls and administrative systems); and any other areas deemed necessary by the CBRC.

Off-site monitoring is conducted through the review of required annual, semiannual, quarterly, or monthly reports on, among other things, asset quality, capital adequacy, liquidity, risk management, corporate governance, affiliate transactions, and internal controls.

BOCOM is required to be audited annually by an accounting firm approved by the PBOC, and the results are shared with the CBRC and the PBOC. The scope of the required audit includes a review of BOCOM's financial statements, asset quality, and internal controls. The CBRC may order a special audit at any time. In addition, in connection with its listing on the Shanghai and Hong Kong stock exchanges, BOCOM is required to have external audits conducted under both International Financial Reporting Standards and generally accepted accounting practices under Chinese law. BOCOM is required to publish its financial statements annually. BOCOM conducts internal audits of its offices and operations, including its overseas operations, generally on an annual schedule. The internal audit results are shared with the CBRC, the PBOC, and BOCOM's external auditors. The proposed branch would be subject to internal audits.

Chinese laws impose various prudential limitations on banks, including limits on transactions with affiliates and on large exposures. The CBRC is authorized to require any bank to provide information and to impose sanctions for failure to comply with such requests. The CBRC also has authority to impose administrative penalties, including warnings, fines, and removal from office, for violations of applicable laws and rules. Criminal violations are transferred to the judicial authorities for investigation and prosecution.

In recent years, the Chinese government has enhanced its anti-money-laundering regime. In 2005, it took initial steps to adopt an anti-money-laundering law, the PRC Anti-Money Laundering Law ("AML Law"). The AML Law and two related rules, the Rules for Anti-Money Laundering by Financial Institutions ("AML Rules") and the Administrative Rules for the Reporting of Large-Value and Suspicious Transactions by Financial Institutions ("LVT/STR Rules") were enacted in October 2006 and December 2006, respectively. The AML Law and AML Rules became effective on January 1, 2007, and the LVT/STR Rules became effective on March 1, 2007. Together, the law and two related rules establish a regulatory infrastructure to assist China's anti-money-laundering efforts.

An Anti-Money Laundering Bureau ("AML Bureau") was established within the PBOC in 2003<sup>14</sup> to coordinate anti-money-laundering efforts at the PBOC and among other agencies. The AML Bureau also supervised the creation of the China Anti-Money Laundering Monitoring and Analysis Center ("AML Center") in September 2004. The AML Center collects, monitors, analyzes, and disseminates suspicious transaction reports and large-value transaction reports. The AML Center sends suspicious transaction reports to the AML Bureau for further investigation. The PBOC issued additional rules in 2007 and 2008 providing clarification of, or further strengthening the implementation of, operating procedures, customer due diligence and risk classification, recordkeeping, AML monitoring and reporting of suspicious transactions to the AML Center, and the international remittance agency business. China improved its AML regime in 2009 by amending its criminal law to further criminalize money laundering activities and other financial crimes.

<sup>14</sup> The AML Bureau conducts administrative investigations and handles violations of AML Rules. Money laundering cases are referred to the Ministry of Public Security, China's main law enforcement body, for investigation and prosecution.

China participates in international fora that address the prevention of money laundering and terrorist financing. China is a member of the Financial Action Task Force (“FATF”)<sup>15</sup> and is a party to the 1988 U.N. Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the U.N. Convention Against Transnational Organized Crime, the U.N. Convention Against Corruption, and the U.N. International Convention for the Suppression of the Financing of Terrorism.

As noted, the PBOC is China’s primary supervisor for anti-money-laundering matters. Like the CBRC, the PBOC supervises and regulates BOCOM through a combination of on-site examinations and off-site monitoring. On-site examinations focus on BOCOM’s compliance with anti-money-laundering laws and rules, including the AML Law, AML Rules, and LVT/STR Rules. Off-site monitoring is conducted through the review of periodic reports. In performing its responsibilities, the PBOC may require any bank to provide information and can impose administrative penalties for violations of applicable laws and rules.

The PBOC over time has increased requirements for its supervised institutions. In 2008, the PBOC promulgated a notice requiring the designation of a chief AML compliance officer as a high-level manager to ensure the provision of adequate AML resources and timely flow of information to employees with AML responsibility throughout the institution. The same notice also required the risk rating of customers, among other improvements in AML controls. The PBOC requires the filing of reports on suspicious activities and certain other transactions, and it recently has developed a policy of encouraging its supervised institutions to move from prescriptive criteria towards a more risk-based and subjective method of suspicious activity detection and reporting. In addition, banks are required to establish a customer identification system in accordance with applicable rules jointly promulgated by the PBOC and the three functional financial services regulators,<sup>16</sup> to record the identities of customers and information relating to each transaction, and to retain retail transaction documents and books. BOCOM has policies and procedures to comply with Chinese laws and rules regarding anti-money-laundering. BOCOM represents that it has taken additional steps on its own initiative to combat money laundering and other illegal activities. BOCOM states that it has implemented measures consistent with the recommendations of the FATF and that it has put in place policies, procedures, and controls to ensure ongoing compliance with all statutory and regulatory requirements, including designating anti-money-laundering compliance personnel and conducting routine employee training at all BOCOM branches. BOCOM’s compliance with anti-money-laundering requirements is monitored by the PBOC and by BOCOM’s internal and external auditors.

The Board has also considered carefully the financial and managerial factors in this case. China has adopted risk-based capital standards that are consistent with those established by the Basel Capital Accord (“Accord”). BOCOM’s capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of BOCOM are consistent with approval, and BOCOM appears to have the experience and capacity to support the proposed branch. In addition, BOCOM has established controls and procedures for the proposed branch to ensure compliance with U.S. law. In particular, BOCOM has stated that it will apply strict anti-money-laundering policies and procedures at the branch consistent with U.S. law and regulation and will establish an internal control system at the branch consistent with U.S. requirements to ensure compliance with those policies and procedures.

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<sup>15</sup> China became a member of FATF in June 2007.

<sup>16</sup> Those regulators are the CBRC, China Securities Regulatory Commission, and China Insurance Regulatory Commission.

With respect to access to information about BOCOM's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which BOCOM operates and has communicated with relevant government authorities regarding access to information. BOCOM has committed to make available to the Board such information on the operations of BOCOM and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, BOCOM 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 light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that BOCOM has provided adequate assurances of access to any necessary information that the Board may request.

China has made progress toward adopting a system of financial regulation for its financial system to mitigate the risk to financial stability from its banks. The PBOC, CBRC, other financial supervisory agencies, and other agencies in China have taken joint measures to strengthen and improve macroeconomic management, promote financial reform, and maintain financial stability. China has established a system of preliminary indicators for monitoring financial stability, developed methodology and operational frameworks for monitoring financial risks, and published an annual *China Financial Stability Report* since 2005. The CBRC has established mechanisms to cooperate with supervisory authorities in at least 25 other countries for the supervision of cross-border banking. In addition, the PBOC and CBRC officially joined the Basel Committee on Banking Supervision on behalf of China and since their accession, have actively participated in the revision of Basel II and in working groups. China also is active in the ongoing work of the Financial Stability Board.

On the basis of all the facts of record, and subject to the commitments made by BOCOM, as well as the terms and conditions set forth in this order, BOCOM's application to establish a branch is hereby approved. Should any restrictions on access to information on the operations or activities of BOCOM and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BOCOM or its affiliates with applicable federal statutes, the Board may require termination of any of BOCOM's direct or indirect activities in the United States, or in the case of any such operation licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by BOCOM with the commitments made in connection with this application and with the conditions in this order.<sup>17</sup> The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against BOCOM and its affiliates.

By order of the Board of Governors, effective April 8, 2011.

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

Robert deV. Frierson  
*Deputy Secretary of the Board*

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<sup>17</sup> The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the OCC to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed office of BOCOM in accordance with any terms or conditions that it may impose.

## Bank of Taiwan Taipei, Taiwan

### *Order Approving Establishment of a Branch*

Bank of Taiwan, Taipei, Taiwan (“Bank”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to upgrade its existing state-licensed agency to a state-licensed branch in New York, New York. 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 branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, December 30, 2010). The time for filing comments has expired, and the Board has considered all comments received.

Bank, with total assets of approximately \$135 billion, is the largest commercial bank in Taiwan.<sup>2</sup> Taiwan Financial Holdings Co., Ltd., which is wholly owned by Taiwan’s Ministry of Finance, owns all of Bank’s shares. Bank offers a range of commercial, investment, and retail banking products. Outside Taiwan, Bank operates branches in Hong Kong, Johannesburg, London, Singapore, and Tokyo and a representative office in Shanghai. In addition to its current state-licensed agency, Bank operates a state-licensed branch in Los Angeles, California.<sup>3</sup> Bank meets the requirements for a qualifying foreign banking organization under Regulation K.<sup>4</sup>

The proposed branch would continue the current activities of the New York agency, which include financing, syndicated lending, purchasing and holding securities, remittances, and foreign exchange trading, and would commence engaging in wholesale deposit-taking.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished the Board with the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisors.<sup>5</sup> The Board also considers additional standards as set forth in the IBA and Regulation K.<sup>6</sup>

<sup>1</sup> 12 U.S.C. § 3105(d).

<sup>2</sup> Asset and ranking data are as of March 31, 2011.

<sup>3</sup> Bank’s home state is California. Under section 5 of the IBA, a foreign bank may upgrade an agency outside its home state to a branch if such an upgrade is permitted under state law and all other factors are consistent with approval (12 U.S.C. § 3103(a)(7)(B)).

<sup>4</sup> 12 CFR 211.23(a).

<sup>5</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, 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; (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; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

<sup>6</sup> 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following (1) whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address

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 previously has determined that other banks in Taiwan are subject to home-country supervision on a consolidated basis by the Financial Supervisory Commission (“FSC”), which has primary responsibility for the regulation of financial institutions in Taiwan.<sup>7</sup> Bank is supervised by the FSC on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank continues to be subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.<sup>8</sup> The FSC has no objection to the establishment of the proposed branch.

The Board has also considered carefully the financial and managerial factors in this case. Taiwan has adopted risk-based capital standards that are consistent with those established by the Basel Capital Accord (“Accord”). Bank’s capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. In addition, Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law.

Taiwan has enacted laws and regulations to deter money laundering that are consistent with Financial Action Task Force recommendations. Money laundering is a criminal offense in Taiwan, and financial 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 Bank’s compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank’s operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities 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, 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 light of these commitments and other facts of record, and subject to the condition

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money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (3) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; and (4) whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; the bank’s record of operation. The Board may also take into account, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk (12 U.S.C. § 3105(d)(3)(E)).

<sup>7</sup> See, e.g., *Industrial Bank of Taiwan Co., Ltd.*, 93 *Federal Reserve Bulletin* C62 (2007). Bank was found to be subject to comprehensive supervision on a consolidated basis by the Ministry of Finance and the Central Bank of China in 1993. *Bank of Taiwan*, 79 *Federal Reserve Bulletin* 541 (1993).

<sup>8</sup> See, *supra*, note 6.

described below, the Board has determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Taiwan has made progress toward adopting a system of financial regulation for its financial system to mitigate the risk to financial stability from its banks. The FSC and the Taiwanese government have taken a number of measures to strengthen the overall financial supervisory regime. These measures include requiring financial institutions to improve the management of assets and liabilities and transparency of financial information. Financial institutions are also required to improve corporate governance, internal controls, and internal audit systems. The FSC also has implemented regulations governing prompt corrective action and market-exit mechanisms for troubled financial institutions and has tightened the anti-money-laundering regime for the financial sector. The FSC has established mechanisms to cooperate with supervisory authorities in other countries for the supervision of cross-border banking, and it actively participates in the activities of international organizations.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish a branch is hereby approved. Should any restrictions on access to information on the operations or activities of Bank and 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 termination of any of Bank's direct or 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.<sup>9</sup> The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order of the Board of Governors, effective June 27, 2011.

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

Jennifer J. Johnson  
*Secretary of the Board*

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<sup>9</sup> The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York and its agent, the New York State Banking Department, to license the proposed branch of Bank in accordance with any terms or conditions that the New York State Banking Department may impose.