FEDERAL RESERVE SYSTEM

Fifth Third Bancorp,
Cincinnati, Ohio

Order Approving the Acquisition of a Bank Holding Company

Fifth Third Bancorp ("Fifth Third"), 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 (12 U.S.C. § 1842) to acquire Old Kent Bank Financial Corporation, Grand Rapids ("Old Kent"), also a financial holding company, and thereby acquire Old Kent's subsidiary banks: Old Kent Bank, its lead subsidiary bank, also in Grand Rapids, and Old Kent Bank, N.A., Jonesville, all in Michigan. Fifth Third proposes to acquire Old Kent through a merger with a newly formed direct subsidiary of Fifth Third, Fifth Third Financial Corporation, Cincinnati ("FTFC").[1] Fifth Third also has requested the Board's approval under section 3 of the BHC Act for FTFC to become a bank holding company by acquiring Old Kent and has filed with the Board an election for FTFC to become a financial holding company pursuant to section 4(k) and (l) of the BHC Act (12 U.S.C. § 1843(k) and (l)) and section 225.82 of the Board's Regulation Y (12 C.F.R. 225.82).[2]

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[1] In addition, Fifth Third has requested the Board's approval to exercise an option to acquire up to 19.9 percent of Old Kent's voting shares if certain events occur. The option would expire on consummation of the proposal.

[2] Fifth Third initially would hold the subsidiary banks of Old Kent as direct subsidiaries of FTFC. Fifth Third has informed the Board that it might reorganize the branch structure of some of its subsidiary banks through consolidations, mergers, and purchase and assumption transactions after the

In addition, Fifth Third and FTFC (collectively, "Fifth Third") have requested the Board's approval under section 4(c)(8) and (j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) to acquire all the nonbanking subsidiaries of Old Kent and thereby engage in certain nonbanking activities.[3] In addition, Fifth Third has provided notice under section 25 of the Federal Reserve Act (12 U.S.C. § 601 et seq.) and the Board's Regulation K (12 C.F.R. Part 211) of its intention to acquire the agreement corporation subsidiary of Old Kent.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 110 and 7,490 (2001)). 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 and the Federal Reserve Act.

Fifth Third, with total consolidated assets of approximately $44.7 billion, is the 24th largest commercial banking organization in the United States.[4] Fifth Third operates subsidiary depository institutions in Arizona, Florida, Kentucky, Indiana, Illinois, Michigan, and Ohio. Fifth Third is the second largest commercial banking organization in Ohio, controlling deposits of $16.4 billion, representing approximately 10 percent of total deposits in insured depository institutions in the state ("state

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Board's decision on the current applications and notices, and that it would make the necessary filings and request the Board's prior approval for any such reorganization under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) and section 9 of the Federal Reserve Act (12 U.S.C. § 321).

[3] These nonbanking activities are listed in Appendix A.

[4] Asset and ranking data are as of June 30, 2000.

deposits").[5] In Michigan, Fifth Third is the 14th largest commercial banking organization, controlling deposits of $1.2 billion, representing approximately 1 percent of state deposits.

Old Kent, with total consolidated assets of $22.2 billion, is the 41st largest commercial banking organization in the United States. Old Kent operates subsidiary depository institutions in Illinois, Indiana, and Michigan. Old Kent is the fourth largest commercial banking organization in Michigan, controlling deposits of $10.7 billion, representing approximately 9.1 percent of state deposits.

On consummation of the proposal and after accounting for the proposed divestitures in this order, Fifth Third would become the 21st largest commercial banking organization in the United States, with total consolidated assets of $66.9 billion, representing approximately 1.1 percent of total banking assets of commercial banks in the United States. Fifth Third would become the third largest commercial banking organization in Michigan, controlling deposits of $1.8 billion, representing approximately 10.1 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 home state of the bank holding company if certain

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[5] Deposit and ranking data are as of June 30, 2000. In this context, depository institutions include commercial banks, savings banks, and savings associations.

conditions are met.[6] For purposes of the BHC Act, the home state of Fifth Third is Ohio, and Old Kent's subsidiary banks are located in Illinois, Indiana, and Michigan.[7]

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[8] Fifth Third is adequately capitalized and adequately managed, as defined by applicable law.[9] Each subsidiary bank of Old Kent located in a state with a minimum age requirement has been in existence and operated continuously for at least the period of time required by applicable state law.[10] On consummation of the proposal and after accounting for the proposed divestitures, Fifth Third and its affiliates would control less than 30 percent, or the applicable percentage established by state law, of total deposits held by insured depository institutions in each state in which the insured depository institutions of both Fifth Third and Old Kent are located.[11] All other requirements of

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[6] 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 the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1842(o)(4)(C).

[7] For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

[8] See 205 Ill. Comp. Stat. Ann. 10/3.071(i)(1) (West 2000); Ind. Code. Ann. § 28-2-16-17 (Michie 2000); Mich. Comp. Laws § 23.710(11104) (8) (2000).

[9] See 12 U.S.C. § 1842(d)(1)(A).

[10] See 12 U.S.C. § 1842(d)(1)(B).

[11] See 12 U.S.C. § 1842(d)(2)(B).

section 3(d) would be met in this case. Accordingly, based on all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal 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.[12]

Fifth Third and Old Kent compete directly in eight local banking markets in Michigan and Indiana.[13] The Board has reviewed carefully the competitive effects of the proposal in each of these markets in light of comments received and all the facts of record.[14] In particular, the Board has considered the number of competitors that would remain in the markets, the relative share of total deposits in depository institutions in the

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[12] See 12 U.S.C. § 1842(c)(1).

[13] These banking markets are described in Appendix B.

[14] Two commenters expressed concern that the proposal would have anticompetitive effects in certain banking markets.

markets ("market deposits") controlled by Fifth Third and Old Kent,[15] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[16] other characteristics of the markets, and commitments made by Fifth Third to divest certain branches.[17]

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[15] Market share data are as of June 30, 2000, and are based on calculations in which the deposits of thrift institutions are included at 50 percent, except as discussed in this order. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Board 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[16] Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

[17] With respect to each market in which Fifth Third has committed to divest offices to mitigate the anticompetitive effects of the proposal, Fifth Third has committed to execute, before consummation of the proposal, a sales agreement for the proposed divestitures with a purchaser determined by the Board to be competitively suitable and to complete the divestitures within 180 days after consummation of the proposal. Fifth Third also has

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in the Allegan, Michigan and the Elkhart-Niles-South Bend, Michigan/Indiana banking markets.[18] After consummation of the proposal, these banking markets would remain moderately concentrated as measured by the HHI.

To reduce the potential for adverse effects on competition in four of the remaining six Michigan markets in which Fifth Third and Old Kent compete directly, Fifth Third has committed to divest six branches that account for approximately $203.6 million in deposits.[19] In light of the proposed divestitures, consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Fremont-Newaygo and Muskegon-Grand Haven banking markets.[20]

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committed that, if it is unsuccessful in completing any divestiture within 180 days after consummation of the acquisition of Old Kent, Fifth Third will transfer the unsold branch(es) to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the branch(es) promptly to one or more alternative purchasers acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

[18] The effects of the proposal on the concentration of banking resources in these markets are described in Appendix C.

[19] These markets are Muskegon-Grand Haven, Fremont-Newaygo, Holland, and Benton-Harbor, all in Michigan.

[20] The effects of the proposal on the concentration of banking resources in the banking markets are described in Appendix D. As discussed in the Appendix, the transaction would result in no increase in the HHI in the Fremont-Newaygo banking market, and the increase in the HHI in the

Fifth Third and Old Kent compete directly in four banking markets in Michigan where the proposal would result in concentration levels that warrant a more detailed review under the DOJ Guidelines and Board precedent: Holland, Benton Harbor-St. Joseph ("Benton Harbor"), Grand Rapids, and Ludington. In each of these banking markets, the Board has carefully considered whether other factors either mitigate the competitive effects of the proposal in the market or indicate that the proposal would have a significantly adverse effect on competition in the market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the level of concentration and size of the increase in market concentration.[21]

Holland. Fifth Third operates the fourth largest depository institution in the Holland banking market, controlling deposits of $202.3 million, representing approximately 13.6 percent of market deposits. Old Kent operates the second largest depository institution in the market, controlling deposits of $308.1 million, representing approximately 20.7 percent of market deposits. To reduce the potential for adverse competitive effects in this banking market, Fifth Third has committed to divest two branches in the market, with total deposits of $82.3 million, representing approximately 5.5 percent of market deposits, to an out-of-market commercial banking organization or an in-market commercial banking organization that currently controls less than 2 percent of market

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Muskegon-Grand Haven banking market would be within the threshold levels in the DOJ Guidelines.

[21] See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

deposits. After the proposed merger and divestiture, Fifth Third would operate the largest depository institution in the market, controlling deposits of $428.1 million, representing 28.7 percent of market deposits. The HHI would increase by not more than 260 points and would not exceed 1962.[22]

Several factors indicate that the increase in concentration in the Holland banking market as measured by the HHI does not reflect a significantly adverse effect on competition. Many financial institutions, relative to the size of total market deposits, would continue to compete in this market. At least 10 commercial banking organizations besides Fifth Third and one thrift institution would remain in the market after consummation of the proposal. At least two other banking organizations would each control more than 14 percent of market deposits, including a large multistate banking organization with $416.2 million in deposits, representing 27.9 percent of market deposits. In addition, three other banking organizations each would control more than 5 percent of market deposits, and three other large multistate banking organizations would remain in the market after consummation.

The significant recent entries into the Holland banking market confirm that the market is attractive for entry. Since 1997, two de novo banking organizations have been organized and chartered in the banking market. Although these banking organizations did not begin to compete in the market until November 1997 and October 1998, they already are the third and fifth largest banking organizations, respectively, in the banking market, as measured by deposits. In addition, five banking organizations

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22 If Fifth Third were to divest the relevant Holland branches to an out-of-market firm, the HHI would increase by 244 points to 1946.

have entered the Holland banking market by opening de novo branches since 1997, and three other banking organizations besides Fifth Third have entered the market through acquisitions.

Other factors indicate that the Holland banking market is attractive for entry. For example, from 1996 to 1999, the percentage increase in total market deposits in the Holland banking market exceeded the percentage increase in total deposits statewide. During that same time period, the percentage increase in population in the Holland market exceeded that of the state by almost 6 percent.[23]

The Board has concluded that these considerations and other factors mitigate the potential adverse competitive effects of the proposal in the Holland banking market.

Benton Harbor. Fifth Third operates the second largest depository institution in the Benton Harbor banking market, controlling deposits of $319.8 million, representing approximately 23.1 percent of market deposits. Old Kent operates the fourth largest depository institution in the market, controlling deposits of $146.9 million, representing approximately 10.6 percent of market deposits. To reduce the potential for adverse competitive effects in this banking market, Fifth Third has committed to divest two branches with total deposits of $63.8 million, representing approximately 4.6 percent of market deposits, to an out-of-market commercial banking organization or an in-market commercial banking organization that currently controls less than 2 percent of market

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23 From 1996 to 1999, the population in the Holland banking market increased by 7.1 percent, while the population of Michigan increased by 1.3 percent.

deposits. After the proposed merger and divestiture, Fifth Third would operate the second largest depository institution in the market, controlling deposits of $402.8 million, representing 29.1 percent of market deposits. The HHI would increase by not more than 239 points and would not exceed 2699.[24]

Several mitigating factors indicate that the increase in market concentration in the Benton Harbor banking market, as measured by the HHI, does not reflect a significantly adverse effect on competition. Many financial institutions, relative to the size of total market deposits, would continue to compete in this market. At least seven commercial banking organizations besides Fifth Third and two thrift institutions would remain in the market after consummation of the proposal. One of the commercial banking organizations would remain the largest depository institution in the market, with 40.3 percent of market deposits. In addition, two large multistate banking organizations would remain in the banking market and control 5.4 and 12 percent of market deposits.

The Benton Harbor banking market also had de novo entry in recent years. Since 1997, two banking organizations have entered the Benton Harbor banking market by opening de novo branches, and nine banking organizations have entered the market through the acquisition of branches. Other factors also indicate that the Benton Harbor market is attractive for entry. From 1996 to 1999, the percentage increase in per capita income in Van Buren and Berrien Counties, portions of which are in the Benton Harbor banking market, exceeded the average Metropolitan

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[24] If Fifth Third were to divest the relevant Benton Harbor branches to an out-of-market firm, the HHI would increase by 222 points to 2682.

Statistical Area ("MSA") counties in Michigan. In addition, the percentage increase in total market deposits in Van Buren County exceeded the average percentage increase for all MSA counties in Michigan during the same time period. The Board also has considered the competitive effect of credit unions operating in the Benton Harbor banking market. Five credit unions control approximately 21 percent of the market deposits and offer a full range of retail banking products. The largest credit union, which controls approximately 13 percent of market deposits, would be the third largest competitor in the market.

The Board has concluded that these considerations and other factors mitigate the potential adverse competitive effects of the proposal in the Benton Harbor banking market.

Grand Rapids. Fifth Third, which did not enter the Grand Rapids banking market until December 2000 by acquiring a thrift institution, operates the eighth largest depository institution in the market, controlling deposits of $261 million, representing only 2.9 percent of market deposits. Old Kent, which is headquartered in Grand Rapids, operates the largest depository institution in the market, controlling deposits of $4.2 billion, representing approximately 46.7 percent of market deposits. After consummation of the proposal, Fifth Third would operate the largest depository institution in the market, controlling deposits of $4.5 billion, representing 49.5 percent of market deposits. The HHI would increase by 268 points to 2713.

Although the structural effects as measured by the HHI would be sizeable, the Board finds that a number of factors mitigate the potential anticompetitive effects of the transaction. In this proposal, a competitor that only has a very small presence in the market and that only recently entered the Grand Rapids market is acquiring the longstanding largest competitor. The presence of numerous other depository institution competitors also is an important consideration in this market. Twenty-five other commercial banking organizations, including five multistate organizations, each with at least 20 branch offices in the market, and two thrift institutions would remain after consummation of the proposal. A large multistate bank holding company would remain the second largest depository institution in the market, controlling more than 11 percent of market deposits, and two other large multistate banking organizations would each control between 5 percent and 10 percent of market deposits.

In addition, the attractiveness of the Grand Rapids banking market is demonstrated by the significant new entry in recent years. Four de novo commercial banks have been organized in the Grand Rapids banking market since 1995, including one organized in December 1997 that already is the fifth largest depository institution with more than $362 million in market deposits. In addition, five commercial banks and one thrift institution have entered the Grand Rapids banking market since 1995 by opening de novo branches, and four other commercial banking organizations besides Fifth Third have entered the market through branch acquisitions. Other factors indicate that the Grand Rapids banking market is attractive for entry. For example, the statistics for Kent County have exceeded the averages for all MSA counties in Michigan, in recent years, with respect to total deposits per banking office, per capita income, and percentage increases in market population, market deposits, and per capita income.

Based on all the facts of record, the Board concludes that these considerations, including the number and strength of competitors in the market, the significant recent de novo entry in the market, the attractiveness of the market for future entry by out-of-market competitors, and other factors, mitigate the potentially adverse competitive effects of the proposal in the Grand Rapids banking market.[25]

Ludington. Fifth Third operates the seventh largest depository institution in the Ludington banking market, controlling deposits of $45.3 million, representing approximately 8.7 percent of market deposits. Old Kent operates the second largest depository institution in the market, controlling deposits of $80.8 million, representing approximately 15.5 percent of market deposits. After the proposed merger, Fifth Third would operate the second largest depository institution in the market, controlling deposits of $126.1 million, representing 24.7 percent of market deposits. The HHI would increase by 282 points to 1904.

Several factors suggest that this increase in market concentration in the Ludington banking market as measured by the HHI does not reflect a significantly adverse effect on competition in the market. The Board has considered that one savings association operating in the market serves as a significant source of commercial loans and provides a broad

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[25] Fifth Third contends that, for purposes of evaluating the competitive factors in the Grand Rapids market, the Board should exclude certain categories of Old Kent's deposits, primarily brokered certificates of deposits. The Board continues to believe that deposits maintained by a banking organization in a specific market, including deposits generated outside the market, represent an important measure of the banking organization's capacity to compete in that market. See, e.g., First Security Corporation, 86 Federal Reserve Bulletin 122 (2000). The Board has adjusted market indices to account for certain types of deposits only under very limited circumstances, such as when the bank holding company was limited by law, contract, or duration of relationship in its ability to use the deposits for any activity other than supporting the deposit account.

range of consumer, mortgage, and other banking products. Competition from this savings association closely approximates competition from a commercial bank. Accordingly, the Board has concluded that deposits controlled by this organization should be weighted at 100 percent in calculating market concentration under the DOJ Guidelines.[26]

The presence and competitive strength of other bank competitors is an important factor in this market. After consummation of the proposal, six depository institutions besides Fifth Third would compete in the market, including two large multistate banking organizations. The largest competitor in the banking market would control more than 27.8 percent, and two other commercial banking organizations would each control more than 10 percent of market deposits. Further, two of the three other remaining commercial banking organizations would each control more than 9 percent of market deposits.

In addition, factors indicate that the Ludington market is attractive for entry. For example, the averages for the counties in the Ludington banking market have exceeded the averages for all non-MSA counties in Michigan, in recent years, with respect to the following statistical categories: population per banking office, total deposits per banking office, and percentage increases in total market deposits, market population, and per capita income.

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[26] The Board previously has indicated that it may consider the competitiveness of a saving association at a level greater than 50 percent of the savings association's deposits, if appropriate. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). On consummation of the proposal, and after taking into account the deposits controlled by this thrift, the HHI would increase by 268 points to 1830.

The Board has concluded that these considerations and other factors mitigate the potential adverse competitive effects of the proposal in the Ludington banking market.

The Department of Justice also has conducted a detailed review of the anticipated competitive effect of the proposal and has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not have a significantly adverse effect on competition in any relevant banking market. The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, including public comments on the competitive effects of the proposal, and for the reasons discussed above and in the appendices, the Board has concluded that consummation of the proposal would not result in a significantly adverse effect on competition or on the concentration of banking resources in any of the eight markets in which Fifth Third and Old Kent compete directly or in any other relevant banking market.[27] Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has

[27] One commenter criticized Fifth Third for not identifying the specific branches that it would divest in connection with the proposal in the nonconfidential portion of its application during the comment period and indicated that this omission hindered the commenter's ability to submit views on the competitive effects of the proposal. The Board has concluded that the publicly available information provided by Fifth Third on the proposal is sufficient for interested persons to evaluate and comment on the competitive effects of the proposal.

determined that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Factors

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 other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including public comments, reports of examination, other confidential supervisory information assessing the financial and managerial resources of the organizations, and other information provided by Fifth Third and Old Kent.[28]

In evaluating financial factors in expansion proposals by a banking organization, the Board consistently has considered capital adequacy to be especially important. Fifth Third, Old Kent, and each of their subsidiary depository institutions are, and on consummation of the proposed transaction would remain, well capitalized and the earnings of each company have been strong. The proposed acquisition is structured as an exchange of shares of Fifth Third for shares of Old Kent, and Fifth Third would not incur any debt as a result of the transaction.

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[28] One commenter criticized Fifth Third for not disclosing in its application an agreement it reached with the U.S. Department of Labor in March 2000 to resolve allegations of race and gender discrimination at the company. The Board previously has noted that the racial composition of a company's management or work force is not among the factors the Board is authorized to consider under the BHC Act. See, e.g., Deutsche Bank AG, 85 Federal Reserve Bulletin 509 (1999).

The Board also has considered the managerial resources of Fifth Third and Old Kent and the examination records of those organizations and their subsidiary depository institutions by the appropriate federal financial supervisory agencies. Fifth Third, Old Kent, and their subsidiary depository institutions are well managed and have appropriate risk management systems in place. The Board also has considered the plans of Fifth Third to implement the proposed acquisition, including its available managerial resources. The Board has considered that Fifth Third recently acquired other bank holding companies and that Fifth Third's management successfully integrated the acquired institutions into its existing operations.

Based on all the facts of record, including confidential reports of examination and other supervisory information, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Fifth Third, Old Kent, and their respective subsidiary depository institutions are consistent with approval, as are the other supervisory factors that 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 to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[29] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the

[29] 12 U.S.C. § 2901 et seq.

credit needs of local communities in which they operate, consistent with safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Fifth Third and Old Kent in light of all the facts of record, including public comments received on the effect the proposal would have on the communities to be served by the combined organization.

A. Summary of Public Comments

The Board received timely comments on the proposal from 17 commenters. Fourteen supported the proposal or commented favorably on Fifth Third's or Old Kent's CRA-related activities. Many of these commenters commended Fifth Third's efforts to increase lending in LMI and predominantly minority communities, including through activities such as homebuyer training seminars, community development grants, and financial, strategic, and technical assistance to community development organizations. For example, one local government agency and three private organizations involved in community development in Akron, Ohio, commented favorably on their experiences with Fifth Third. They noted that Fifth Third has provided below-market rate loans to build and renovate homes in Akron for LMI families, helped community development groups expand their activities and services, and provided numerous grants and scholarships to LMI individuals. Other favorable comments commended Fifth Third's active participation in community development efforts in Columbus and Springfield, Ohio, and Lexington, Kentucky.

Three commenters opposed the proposal and expressed concerns about the CRA performance records of Fifth Third or Old Kent. Commenters criticized the level of banking services that Fifth Third and Old Kent provided to LMI or predominantly minority neighborhoods, expressed concerns about their records of providing home mortgage loans to minorities in the communities they serve, or requested that the Board approve the proposal subject to conditions suggested by the commenters.[30] Two commenters also expressed concerns about the level of Fifth Third's community development activity. In addition, two commenters alleged that Fifth Third and Old Kent engaged in disparate treatment of minority individuals in home mortgage lending, based on data submitted under the Home Mortgage Disclosure Act ("HMDA").[31]

B. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations by the appropriate

[30] Commenters requested that Fifth Third provide certain commitments, take certain actions, and answer certain questions, or that the Board impose specific CRA performance-related conditions. The Board notes that the CRA requires that, in considering an acquisition proposal, the Board carefully review the actual performance records of the relevant depository institutions in helping to meet the credit needs of their communities. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges concerning future performance under the CRA. The Board also notes that future activities of Fifth Third's subsidiary depository institutions will be reviewed by the appropriate federal financial supervisors in future performance examinations, and that such CRA performance records will be considered by the Board in any subsequent applications by Fifth Third to acquire a depository institution.

[31] 12 U.S.C. § 2801 et seq.

federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[32]

All the subsidiary insured depository institutions of Fifth Third received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, Fifth Third's lead bank, Fifth Third Bank, Cincinnati, Ohio ("Fifth Third Bank"), which currently accounts for approximately 71.2 percent of the total consolidated assets of Fifth Third,[33] received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland, as of March 8, 1999.[34] All the subsidiary banks of Old Kent also received

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[32] See Interagency Questions and Answers Regarding Community Reinvestment, 65 Federal Register 25,0888 and 25,107 (2000).

[33] Total consolidated asset data for Fifth Third and Old Kent are as of December 31, 2000, and include acquisitions by both companies as of that date, except Fifth Third's acquisition of Capital Holdings, Inc.

[34] Fifth Third Bank is the surviving bank from Fifth Third's consolidation of its Ohio subsidiary banks in December 2000. The predecessor banks involved in the Ohio consolidation were Fifth Third Bank of Western Ohio, Dayton; Fifth Third Bank of Central Ohio, Columbus; Fifth Third Bank of Northwestern Ohio, N.A., Toledo ("Fifth Third Bank, N.A."); and Fifth Third Bank, Ohio Valley, Hillsboro, all in Ohio. Each of these banks received a "satisfactory" rating from the Federal Reserve Bank of Cleveland, as of March 8, 1999, except for Fifth Third Bank, N.A., which received a "satisfactory" rating from the OCC, as of February 17, 1998.

"satisfactory" ratings at the most recent examinations of their CRA performance. In particular, Old Kent Bank, Grand Rapids, which is Old Kent's lead bank and now represents approximately 98.3 percent of the total consolidated assets controlled by Old Kent, received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 9, 1999.[35]

Fifth Third's other subsidiary insured depository institutions and their CRA performance evaluation ratings are: Fifth Third Bank, Indiana, St. Joseph, Michigan (the former Civitas Bank, Evansville, Indiana)--"satisfactory" rating from the Federal Reserve Bank of Chicago ("FRB Chicago"), as of August 9, 1999; Fifth Third Bank of Florida, Naples, Florida--"satisfactory" rating from the Federal Reserve Bank of Atlanta, as of October 28, 1996; Fifth Third Bank of Kentucky, Louisville, Kentucky--"outstanding" rating from Federal Reserve Bank of St. Louis ("FRB SL"), as of March 22, 1999; Fifth Third Bank of Northern Kentucky, Florence, Kentucky--"satisfactory" rating from FRB SL, as of March 8, 1999; and Fifth Third Bank, Southwest, F.S.B., Scottsdale, Arizona--"satisfactory" rating from the Office of Thrift Supervision, as of February 22, 2000. Fifth Third Bank, Indianapolis, Indiana ("Fifth Third Bank IN"), which received a "satisfactory" rating from FRB of Chicago, as of March 8, 1999, was merged into Civitas Bank in March 2000. The resulting institution was named "Fifth Third Bank, Indiana" and its headquarters were relocated to St. Joseph.

A commenter contended that Fifth Third Bank of Northeastern Ohio, Cleveland, Ohio, a predecessor bank of Fifth Third Bank, N.A., was not examined for CRA performance. This bank was merged into Fifth Third Bank, N.A., in March 1998, and its CRA performance was reviewed by the OCC as part of that bank's most recent CRA performance evaluation in March 1999.

[35] Old Kent's other bank subsidiary, Old Kent Bank, N.A., received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of April 12, 1999.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of the insured depository institutions involved in this proposal and found no violations of substantive provisions of the fair lending laws. Examiners also reviewed the assessment areas delineated by the subsidiary banks of Fifth Third and Old Kent and did not report that these assessment areas were unreasonable or arbitrarily excluded LMI areas.[36]

In recent years, Fifth Third has acquired other banking organizations and consolidated their subsidiary banks. The most recent CRA performance evaluations of Fifth Third's subsidiary banks predated the current structure of the organization. Old Kent also has acquired other banking organizations since the most recent CRA performance evaluations of its subsidiary banks. Therefore, the Board also has evaluated substantial information submitted by Fifth Third and Old Kent concerning their CRA performance since the dates of their most recent performance evaluations.

C. Fifth Third's CRA Performance Record

In the most recent CRA performance evaluations of Fifth Third's subsidiary insured depository institutions, examiners commended the depository institutions for their responsiveness to the credit

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[36] Using information submitted by Old Kent, a commenter noted that Old Kent Bank deleted low-income census tracts from its Ann Arbor MSA assessment area. The Board has considered this comment in light of the fact that Old Kent Bank closed its Ann Arbor banking center in 1999, which was the only Old Kent banking center in the county where Ann Arbor is located, Washtenaw County. Accordingly, Old Kent Bank modified its assessment area by eliminating the 81 census tracts in the county, including 55 middle- and upper-income census tracts. Since its CRA performance evaluation in 1999, Old Kent has increased the total number of branches in LMI census tracts in other areas from 28 to 35.

needs in the communities they serve, particularly with respect to the percentages of loans the institutions made in their assessment areas. Examiners commented favorably on efforts by Fifth Third’s insured depository institutions to increase consumer and mortgage lending to LMI borrowers. Examiners uniformly reported that Fifth Third's depository institutions offered an array of innovative lending products to enhance their ability to meet the credit needs of their assessment areas, including LMI areas, and noted the depository institutions' extensive use of innovative and flexible lending criteria.

Fifth Third has implemented the Good Neighbor home mortgage loan program, which provides flexible, affordable home purchase loans for LMI borrowers, no or reduced downpayments, higher debt-to-income ratios, reduced closing costs, and a homebuyer training course. Examiners noted that, as of their latest CRA performance evaluations, Fifth Third's depository institutions provided loans under this program totaling more than $37 million. Fifth Third stated that, from May 1999 through year-end 2000, mortgage loans provided through its Good Neighbor mortgage loan program totaled more than $268 million. To increase home mortgage and consumer lending to LMI residents, Fifth Third has reduced closing costs on its Good Neighbor mortgage loan product that features no downpayment and offered a 50 basis point discount on interest rates for home improvement, auto loans, and other consumer loans.

Fifth Third’s depository institution subsidiaries also participate in a number of government-sponsored home mortgage loan programs, including Federal Housing Administration ("FHA") and Veterans Administration ("VA") programs. For example, examiners noted that

Fifth Third Bank and Fifth Third Bank IN made FHA loans totaling more than $7.5 million and VA loans totaling more than $6.3 million during the applicable review periods. Examiners also reported that Fifth Third's subsidiary banks participated in a number of state and locally sponsored programs.

Examiners generally commended Fifth Third's banks, particularly those in Ohio, for good penetration in small business lending among businesses of different sizes and in LMI areas.[37] In addition, examiners noted Fifth Third's varied small business lending efforts and active participation in state and federal government-sponsored small business lending programs. For example, they cited Fifth Third Bank of Northwestern Ohio's participation in the State of Ohio Link Deposit program, a program to provide lower-cost funds for Ohio businesses.

Examiners also commended each of Fifth Third's subsidiary banks for its community development activities.[38] In particular, examiners

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[37] In this context, “small business loans” refers to commercial loans with an original amount of less than $1 million.

[38] A commenter alleged that Fifth Third had not sufficiently participated in community development programs related to housing development and financing in Akron. Fifth Third denied the allegation and noted that it had pledged $300,000 in financial support for the affordable housing activities of the Local Initiatives Support Corporation in Akron and provided financial and technical assistance to various other community development organizations in Akron.

The commenter also expressed concerns that Fifth Third had not fulfilled an earlier CRA agreement with community groups in Akron. Neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into agreements with any organization. The Board, therefore, views such pledges and agreements and their enforceability as matters outside the CRA and focuses on the existing determined that seven of Fifth Third's subsidiary banks provided a significant level of qualified community development investments or grants or made significant use of innovative and complex investments to support community development initiatives.[39]

Although the composition of community development investments or grants used by Fifth Third's banks to meet the needs of their assessment areas varied, examiners generally noted two corporate community development investment vehicles: the Fifth Third Foundation ("FTF") and the Fifth Third Community Development Corporation ("CDC").[40] For each Fifth Third depository institution, the FTF manages a charitable trust that is funded from the institution's profits to provide grants and contributions to the community and to neighborhood, health and human services, educational, and cultural organizations. The CDC makes community development investments through low-income housing tax credits and small business venture capital equity funds. These equity funds

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record of an applicant and the programs that the applicant has in place to serve the credit needs of its community. See, e.g., Fleet Financial Group, Inc., 85 Federal Reserve Bulletin 747, 765 (1999).

[39] These banks included Fifth Third Bank Western Ohio; Fifth Third Bank, Florida; Fifth Third Bank IN; Fifth Third Bank Kentucky, Inc.; Fifth Third Bank; Fifth Third Bank of Central Ohio; and Fifth Third Bank of Northern Kentucky. Examiners stated that Fifth Third's other two subsidiary banks at the time, Fifth Third Bank, N.A., and Fifth Third Bank of Southern Ohio, affirmatively addressed the needs of their assessment areas through their community development investment activities.

[40] FTF operates as a department of the Fifth Third Investment Advisors division at each bank. The CDC is a direct subsidiary of Fifth Third Bancorp.

invest primarily in small businesses in the assessment areas of Fifth Third's insured depository institutions.

In the 1999 CRA performance evaluations of five Fifth Third banks, the examiners noted that the FTF had made more than $1.6 million in contributions annually and that the CDC had funded almost $7.9 million of approximately $15 million in total commitments made on behalf of the five banks.[41] Examiners also reported that the CDC had, on behalf of the individual banks, funded a combined total of more than $3.3 million in small business venture capital equity funds since the previous CRA performance evaluation of each bank.[42]

Fifth Third stated that, between August 1999 and October 2000, it provided $54 million in low-income housing tax credit, venture capital project investments, and charitable contributions. Fifth Third also stated that it had community development loans outstanding totaling $97.7 million in 2000, including more than $78 million in the assessment areas of its Ohio subsidiary banks. Examples of Fifth Third Bank's community development loans since the last CRA performance evaluations include a $3.7 million loan to a nonprofit organization for the development of a project that provided 62 units of low-income residential housing in Cincinnati; a $1.45 million loan to a developer to purchase an apartment building and

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[41] These banks included Fifth Third Bank, Fifth Third Bank of Central Ohio, Fifth Third Bank of Northern Kentucky, Fifth Third Bank of Kentucky, and Fifth Third Bank IN.

[42] The CRA performance evaluation of each bank before its 1999 performance evaluation took place in 1997, with the exception of the previous evaluation of Fifth Third Bank of Central Ohio, which was in December 1996.

provide affordable housing for LMI residents in East Cleveland, Ohio; and two loans totaling almost $500,000 to nonprofit organizations in Kentucky to construct housing for LMI individuals who are chemically dependent.

Examiners generally found that Fifth Third's banks provided a good level of banking services to their assessment areas, including LMI areas.[43] In addition, examiners determined that the retail banking and alternative delivery services of Fifth Third's subsidiary depository institutions were generally accessible to all geographies in their assessment areas and that no branch closing had adversely affected the accessibility of its delivery systems in the communities served, including LMI communities.

Fifth Third stated that its current policy for "banking center closures, consolidations and reductions in service" would apply for any such event after consummation of the proposal.[44] Under this policy, the Fifth Third subsidiary bank must consider the impact of any proposed banking center closing, consolidation, or reduction in service on the community in which the facility is located, in light of the bank's ability to provide continuity of service through other offices, the physical proximity of

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[43] A commenter alleged that Fifth Third had not sufficiently marketed its loan products and banking services, or opened a full-service branch, in the LMI areas in Akron. Fifth Third began operating in Akron in 1995 by acquiring a thrift institution. Since that time, Fifth Third has marketed its products and services through a variety of media, including radio stations and publications with predominately minority audiences. Fifth Third stated that its marketing efforts have led to a threefold increase in its home improvement lending in Akron's LMI areas.

[44] The policy defines a "banking center" as a traditional "brick and mortar" building or similar banking facility at which deposits are received, checks are paid, or money is lent, but does not include an automated teller machine or a temporary office.

the bank’s other offices, and the presence of other financial institutions in the community. Before any banking center is closed, Fifth Third Bank also must review and evaluate alternatives to closing to determine the feasibility of continuing to serve the surrounding community by restructuring the services offered at the banking center.[45]

D. Old Kent's CRA Performance Record

Old Kent Bank's most recent CRA performance evaluation reviewed the bank's activities from July 1, 1997, through June 30, 1999 ("review period").[46] Examiners found that the bank's loan volume and

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[45] Two commenters criticized Fifth Third for not publicly disclosing in its proposal which branches it would close or consolidate after consummating the acquisition of Old Kent. Federal banking law provides a specific mechanism for addressing branch closings that requires insured depository institutions to provide notice to the public and to the appropriate federal regulatory agency at least 30 days before closing a branch. See 12 U.S.C. § 1831r-1 (as implemented by the Interagency Policy Statement on Branch Closings (64 Federal Register 34,844 (1999)). The law does not authorize federal regulators to prevent the closing of any branch. Any branch closings resulting from the proposed transaction will be considered by the appropriate federal financial supervisor as part of the CRA examination of the relevant subsidiary bank.

[46] The April 1999 CRA performance evaluation of Old Kent’s other subsidiary bank, Old Kent Bank, N.A., was the bank's first CRA performance evaluation since the bank was chartered in April 1997. Old Kent Bank, N.A., is a relatively small bank in a rural community in Michigan, without any LMI census tracts in its assessment area. As of June 30, 2000, the bank represented less than 1 percent of Old Kent's total assets. Examiners generally found that Old Kent Bank, N.A., addressed community credit needs in a manner consistent with its size, resources, and capabilities. Examiners commended the bank's consumer lending efforts, primarily through home equity and direct consumer loans. Examiners also favorably noted the community development services provided by Old Kent Bank, N.A., particularly through job training. Examiners identified the

general responsiveness to the credit needs of its assessment area during the review period were good. Examiners favorably noted that Old Kent Bank's geographic distribution of HMDA-reportable loans had improved each successive year since the bank's previous performance evaluation.

In particular, examiners found that during the review period 95 percent of the bank's HMDA-reportable loans were originated in Old Kent Bank's delineated community. Examiners noted that Old Kent Bank ranked as the first or second highest lender among HMDA-loan reporters in six assessment areas in 1998. During the review period, Old Kent Bank and Old Kent Mortgage Company ("OKMC") originated housing-related loans to borrowers in LMI census tracts totaling more than $354 million. Examiners commended Old Kent Bank and OKMC for originating more than 28 percent of their number of multifamily loans in LMI geographies and noted that this figure compared favorably with the percentage of LMI geographies in the bank's assessment area.

Old Kent stated that, in the bank's assessment area in 1999, Old Kent and OKMC originated or purchased housing-related loans to borrowers in LMI census tracts totaling more than $216 million and more than $573 million in housing-related loans to LMI borrowers. In addition, Old Kent noted that OKMC began a "Home Club" program in Grand Rapids for LMI residents referred by the Grand Rapids Housing Commission. Since the program's inception in 1999, 21 members have received home purchase or refinance loans from OKMC totaling more than $1.3 million. Old Kent also noted that it participates in the Michigan State Housing

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bank's job training program as benefiting LMI individuals in the bank's assessment area.

Development Authority Property Improvement Program, which provides lower interest rate loans of up to $25,000 to LMI borrowers for residential property improvements.

Examiners commended the community development activities of Old Kent Bank and noted that the bank originated more than $33 million in community development loans during the review period. Old Kent stated that, during 1999 and 2000, it made community development loans totaling more than $65 million, including almost $13 million in Grand Rapids. For example, Old Kent Bank partially funded its $1.1 million in participation commitments to two loan pools administered by nonprofit organizations to fund residential mortgages in LMI areas of Grand Rapids and Muskegon. Old Kent added that Old Kent Bank has remained an active participant in the Community Investment Program of the Federal Home Loan Bank of Indianapolis. Through this program in 1999, Old Kent Bank provided a $3.9 million construction and permanent loan for a 120-unit affordable housing project in Holland, Michigan. In addition, Old Kent Bank provided more than $2 million in financing for projects to develop 144 units of affordable housing in western Michigan in 2000. Old Kent also stated that, in 1999 and 2000, it made CRA-qualified investments totaling almost $54 million.

Examiners characterized Old Kent Bank as an active small business and small farm lender in its assessment areas and noted that Old Kent Bank's distribution of loans among small businesses and farms of different sizes was reasonable and consistent with the demographics of its combined assessment area. Between July 1997 and July 1999, Old Kent Bank originated small business loans totaling $2.56 billion, including almost $412 million to businesses in LMI census tracts. Seventy-five percent of the total small business loans were originated to businesses with gross annual revenues of $1 million or less. Old Kent stated that, in 2000, its small business loans totaled more than $1.57 billion, including more than $253 million in loans to businesses in LMI census tracts in its assessment areas.

In addition, examiners found that the bank was an active participant in Small Business Administration ("SBA") lending programs. Examiners noted that, during 1998 and 1999, Old Kent Bank originated SBA loans totaling $39.4 million and, as of June 30, 1999, the bank's SBA portfolio totaled $60.7 million. In 2000, Old Kent Bank was awarded the SBA's Lender of the Year in Michigan and was the largest SBA lender in Michigan, and the fourth largest in Illinois, based on quantity of loan approvals.

In addition, examiners found that Old Kent Bank has established a network of branches and alternative delivery systems that provide customers reasonable convenience and accessibility in its assessment areas.[47] Examiners commended the bank's recognition of the

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[47] A commenter expressed concern about the services to minorities at branches in a predominantly minority community in Grand Rapids and about the fees that Old Kent Bank allegedly charged for cashing checks for minority residents who were not the bank's customers. The commenter also alleged that Old Kent had not made subsequent contact with community leaders after a meeting in May 2000. Old Kent stated that the purpose of the May meeting was to identify how Old Kent Bank could better serve the predominantly minority community and that Old Kent Bank initiated subsequent contacts with various participants. After these meetings, Old Kent Bank introduced a free checking account for all homeowners (regardless of whether they had received a mortgage loan from the bank) with no minimum balance requirement, monthly account fee, or per-check charge. Old Kent stated that consumers had opened more than 30,000 of

community's need for its financial expertise, through the involvement of bank representatives in community development organizations and activities, including Bankers Alliance for Neighborhood Development, a loan pool to fund residential mortgages in LMI census tracts in Grand Rapids, and the Grand Rapids Housing Commission, which provides financing to rental clients unable to qualify for conventional financing.

E. HMDA Data

The Board also has carefully considered the lending records of Fifth Third and Old Kent in light of comments about HMDA data reported by their subsidiaries.[48] Some categories of Fifth Third's housing-related lending to minority individuals and in predominantly minority communities were below the average lending levels of the HMDA-reporting lenders in the aggregate (the "aggregate") in some of Fifth Third's CRA assessment areas, while in others it exceeded the aggregate's lending levels. For example, the 1998 and 1999 HMDA data indicate that Fifth Third's housing-related loan originations to African-American applicants as a percentage of its total housing-related loan originations ("percentage of originations") generally was below that of the aggregate in the states and MSAs reviewed, but its percentage of originations to African-American applicants exceeded that of

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these accounts throughout the banks' assessment area. In January 2001, Old Kent Bank began offering another free checking account with the same terms but without a homeownership requirement.

[48] Commenters criticized Fifth Third's record of home mortgage lending to African-American or Hispanic individuals in the following MSAs: Cincinnati, Cleveland, Akron, Dayton, Columbus, Tuscon, Louisville, and Lexington. Commenters also criticized Old Kent's record of home mortgage lending to minority applicants in the Grand Rapids, Detroit, and Chicago MSAs.

the aggregate in the Akron, Cleveland, and Toledo MSAs in 1998, and in the Tucson and Toledo MSAs in 1999. The HMDA data for those years also indicate that Fifth Third's percentage of originations to Hispanics generally was below that of the aggregate, but exceeded the aggregate's percentage in the Lexington, Tucson, Cleveland, and Toledo MSAs in 1998, and in the Tuscon and Cleveland MSAs in 1999.[49]

The 1998 and 1999 HMDA data also indicate that Old Kent's percentage of housing-related loan originations to African-Americans in its assessment areas generally was lower than that of the aggregate. With respect to housing-related loan originations to Hispanics, Old Kent's percentage of originations generally was lower than the aggregate's percentage of originations in its assessment areas. However, Old Kent's percentage of housing-related loans to Hispanics exceeded the aggregate's percentage in Michigan and the Grand Rapids MSA in 1998 and 1999, and in the Detroit MSA in 1999.

The Board is concerned when an institution's record indicates disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound banking, but also equal access to credit by creditworthy applicants, regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because the data cover only a few categories of

[49] Fifth Third's origination rates to Hispanics were comparable with the aggregate's origination rate in the following states or MSAs in the years indicated: Kentucky in 1998; Cincinnati in 1998 and 1999; Louisville in 1998; and Columbus and Dayton in 1999.

housing-related lending.[50] HMDA data, moreover, provide only limited information about the covered loans. HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not adequately assisted in meeting its communities' credit needs or has engaged in illegal discrimination in making lending decisions.

Because of the limitations of HMDA data, the Board has carefully considered the data in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary banks of Fifth Third and Old Kent with fair lending laws and the overall lending and community development activities of the banks, and a fair lending examination of OKMC. Examiners found no evidence of prohibited discrimination or illegal credit practices at the subsidiary depository institutions of Fifth Third or Old Kent, and examiners considered OKMC's fair lending policies, procedures, training programs, and internal monitoring programs to be satisfactory. The record indicates that Fifth Third and Old Kent have taken a number of affirmative steps to ensure compliance with fair lending laws. Fifth Third requires all lending personnel to receive training on corporate lending policies and procedures, including compliance with fair lending laws. Old Kent also requires

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

banking center managers and staff to receive regular fair lending training. During 2000, all OKMC loan officers received fair lending training. Fifth Third and Old Kent also have implemented a second review process for all denied loan applications and special computer software to analyze underwriting patterns and practices to help ensure fair treatment of all applicants.[51]

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[51] A commenter generally noted that Old Kent engages in subprime mortgage lending through a subsidiary of Old Kent Bank, OKMC, and characterized OKMC as a significant competitor in the subprime lending market. The commenter also alleged that Old Kent's subprime lending activities had resulted in predatory lending litigation against a division of Old Kent, National Pacific Mortgage ("NPM"), and concluded that Fifth Third should have noted these issues in its proposal to the Board.

NPM does not engage in subprime lending activities, and the pending litigation against NPM has not established that its lending activities violate federal or state law. Old Kent conducts subprime lending exclusively through Old Kent Financial Services, a division of OKMC. The Board notes that subprime lending is a permissible activity and provides needed credit to consumers who have difficulty meeting conventional underwriting criteria.

The Board has considered information submitted by Old Kent on OKMC's lending practices, including the processes by which OKMC makes credit available to consumers, the fair lending policies and procedures of OKMC, the compliance procedures established by OKMC, and the relationship of OKMC with loan brokers and correspondents. As discussed above, Old Kent has taken a number of affirmative steps to ensure compliance with fair lending laws, including extensive fair lending training and second review processes. In addition, Old Kent has implemented a procedure for referring borrowers that appear to qualify for traditional "prime" home mortgage loans to OKMC's prime lending division.
The Board has forwarded copies of the comments on OKMC's lending activities to the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, which have responsibility for fair lending law compliance by nondepository companies like OKMC. The Board also has consulted with these agencies.

The Board has considered the HMDA data in light of the overall lending records of Fifth Third and Old Kent, including the lending and community development programs discussed above, which show that they assist significantly in meeting the credit needs of their communities.

F. Conclusion on Convenience and Needs

In reviewing the effect of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered the entire record, all the information provided by commenters, Fifth Third, and Old Kent, evaluations of the performance of each of Fifth Third's and Old Kent's insured depository institution subsidiaries under the CRA, and confidential supervisory information.

Based on all the facts of record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

Nonbanking Activities

Fifth Third also has filed a notice under section 4(c)(8) and (j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) to acquire certain nonbanking subsidiaries of Old Kent. Fifth Third would engage in a number of permissible nonbanking activities, including financial investment advising, securities brokerage, credit-related insurance, and community development activities. The Board has determined by regulation that each of the activities for which Fifth Third has provided notice under section 4 of the BHC Act is closely related to banking for purposes of the BHC Act.[52]

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[52] See 12 C.F.R. 225.28(b)(6), (7), (11), and (12).

Moreover, the Federal Reserve System previously has approved applications by Old Kent to engage in all the proposed activities, and Fifth Third has committed to conduct these nonbanking activities in accordance with the limitations set forth in Regulation Y and the Board's orders and interpretations thereunder.

To approve this notice, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of the nonbanking subsidiaries of Old Kent by Fifth Third "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." [53]

As part of its evaluation of these factors, the Board has considered the financial and managerial resources of Fifth Third, its subsidiaries, and the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of Fifth Third's proposed acquisition of the nonbanking subsidiaries of Old Kent in light of all the facts of record. Community development markets are local in nature, but Fifth Third's and Old Kent's nonbanking subsidiaries do not directly compete in any markets. The other nonbanking activities of the subsidiaries of Fifth Third and Old Kent--securities brokerage, financial and investment advisory, and credit-related insurance services--are national or regional in scope, are conducted in unconcentrated

[53] 12 U.S.C. § 1843(j)(2)(A).

markets, and involve numerous competitors. As a result, the Board expects that consummation of the proposal would have a de minimis effect on competition for each of these services. Based on all the facts of record, the Board concludes that it is unlikely that significantly adverse competitive effects would result from the nonbanking acquisitions proposed in this transaction.

Fifth Third has indicated that the proposal would enhance its ability to serve the needs of all segments of the communities it serves, including LMI areas, through an expanded range of products and services and through improved operating efficiencies in Old Kent's nonbanking subsidiaries. Fifth Third has stated that the proposal also would provide Old Kent's customers with a broader range of banking and nonbanking services. In addition, the expanded community development activities would benefit the convenience and needs of the LMI communities in which Fifth Third operates.

The Board also concludes 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 banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that it must consider under section 4(j)(2)(A) of the BHC Act is favorable and consistent with approval of this proposal.

As required by section 25 of the Federal Reserve Act and section 211.4(f) of the Board's Regulation K (12 C.F.R. 211.4(f)), Fifth Third also has provided notice of its intention to acquire Old Kent Hong Kong LLC, Grand Rapids, which is organized under section 25A of the Federal Reserve Act. The Board concludes that all the factors it is required to consider under the Federal Reserve Act and Regulation K are consistent with the approval of the notice.

Financial Holding Company Declaration

FTFC also has filed with the Board an election to become a financial holding company pursuant to section 4(k) and (l) of the BHC Act and section 225.83 of Regulation Y. FTFC has certified that all depository institutions that it proposes to control are well capitalized and well managed and has provided all the information required under Regulation Y. The Board has reviewed the examination ratings received by each insured depository institution controlled by FTFC and Old Kent under the CRA and other relevant examination reports and information. Based on all the facts of record, the Board has determined that this election to become a financial holding company will become effective on consummation of the acquisition of Old Kent by Fifth Third and FTFC, as long as each of the relevant depository institutions continue to be well capitalized and well managed and they each have at least a satisfactory CRA rating on that date.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications and notices should be, and hereby are, approved.[54] In reaching its conclusion, the Board has considered all the facts

[54] Two 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 authority for the bank to be acquired makes a timely written

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 Fifth Third with all commitments made in connection with the applications and notices, including the divestiture commitments discussed in this order. These commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of the subsidiary banks of Old Kent may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months

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recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C. § 1843(c)(8); 12 C.F.R. 225.25(a)(2). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit their views, and they submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenters' requests fail to demonstrate why their written comments do not present their evidence adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,[55] effective March 12, 2001.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

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

APPENDIX A

Nonbanking Activities of Old Kent to be Acquired Under Section 4 of the BHC Act

Engaging in financial and investment advisory and securities brokerage activities pursuant to sections 225.28(b)(6) and (7) of Regulation Y (12 C.F.R. 225.28(b)(6) and (7)), through Old Kent Securities Corporation, Grand Rapids, Michigan;

Engaging in credit-related reinsurance activities pursuant to sections 225.28(b)(11) of Regulation Y (12 C.F.R. 225.28(b)(11), through Old Kent Financial Life Insurance Company, Grand Rapids, Michigan; and

Engaging in community development activities pursuant to section 225.28(b)(12) of Regulation Y (12 C.F.R. 225.28(12)), through CFSB-Eastbrook Apartments Investor, LLC, Lansing; Eastbrook Apartment Limited Housing Association Limited Partnership, Lansing; Gladshire Limited Dividend Housing Association LP, Kalamazoo; Grand Rapids Hope Limited Partnership, Grand Rapids; Grand Rapids Hope II Limited Partnership, Grand Rapids; Hayward-Wells Limited Dividend Housing Association Limited Partnership, Benton Harbor; Independence Village of Brighton Limited Dividend Housing Association LP, Brighton; Michigan Capital Fund for Housing Limited Partnership I, Lansing; Michigan Capital Fund for Housing Limited Partnership II, Lansing; Mount Mercy LP, Grand Rapids; New Hope Homes Limited Dividend Housing Association LP, Grand Rapids; Pleasant Prospect Limited Dividend Housing Association LP, Grand Rapids; Pleasant Prospect II Limited Dividend Housing Association LP, Grand Rapids; and Trinity Village II Limited Dividend Housing Association LP, Muskegon, all in Michigan.

APPENDIX B

Banking Markets in which Fifth Third and Old Kent Compete Directly

A. Michigan Banking Markets

Allegan	Allegan County, excluding Laketown, Fillmore, Overisel, Salem, Dorr, Leighton, Otsego, and Gunplain townships.
Benton Harbor-St. Joseph	Van Buren County, excluding the eastern two tiers of townships and the northwestern portion of Berrien County (Watervliet, Coloma, Hagar, Bainbridge, Benton, St. Joseph, Pipestone, Sodus, Royalton, Lincoln, Baroda, Lake, and Chikaming townships).
Fremont-Newaygo	The southern two-thirds of Newaygo County (Denver, Lincoln, Wilcox, Goodwell, Dayton, Sherman, Everett, Big Prairie, Sheridan, Garfield, Brooks, Croton, Bridgeton, Ashland, Grant, and Ensley townships).
Grand Rapids	Kent County, excluding Oakfield and Spencer townships; Yankee Springs, Thornapple, and Irving townships in Barry County; Casnovia township in Muskegon County; Salem, Dorr, and Leighton townships in Allegan County; and Jamestown, Georgetown, Blendon, Allendale, Tallmadge, Polkton, Wright, and Chester townships in Ottawa County.
Holland	Park, Holland, Zeeland, Olive, and Port Sheldon townships in Ottawa County; and Laketown, Fillmore, and Overisel townships in Allegan County.
Ludington	Mason County, excluding Grant, Freesoil, and Meade townships; Lake County, excluding Elk and Eden townships; Oceana County; and the northern third of Newaygo County (Barton, Beaver, Home, Lilley, Merrill, Monroe, Norwich, and Troy townships).

Muskegon-Grand Haven	Muskegon County, excluding Casnovia township; and Grand Haven, Spring Lake, Crockery, and Robinson townships in Ottawa County.

B. Banking Market Located in Michigan and Indiana

Elkhart-Niles-South Bend	Elkhart County, Indiana; St. Joseph County, Indiana, excluding Olive and Warren townships; Scott, Jefferson, Van Buren, and Turkey Creek townships in Kosciusko County, Indiana; Cass County, Michigan; and Oronoko, Berrien, Buchanan, Niles, and Bertrand townships in Berrien County, Michigan.

APPENDIX C

Certain Banking Markets without Divestitures

Allegan, Michigan	Fifth Third operates the seventh largest out of 10 depository institutions in the market, controlling deposits of $14.1 million, representing approximately 4 percent of market deposits. Old Kent operates the fourth largest depository institution in the market, controlling deposits of $50 million, representing approximately 14.3 percent of market deposits. After the proposed merger, Fifth Third would operate the largest depository institution in the market, controlling deposits of $64.1 million, representing 18.3 percent of market deposits. The HHI would increase by 115 points to 1607.
Elkhart-Niles-South Bend Indiana/ Michigan	Fifth Third operates the sixteenth largest out of 23 depository institutions in the market, controlling deposits of $26.9 million, representing less than 1 percent of market deposits. Old Kent operates the sixth largest depository institution in the market controlling deposits of $314.2 million, representing approximately 5.8 percent of market deposits. After the proposed merger, Fifth Third would operate the sixth largest depository institution in the market, controlling deposits of $341.1 million, representing 6.3 percent of market deposits. The HHI would increase by 6 points to 1670.

APPENDIX D

Certain Michigan Banking Markets with Divestitures

Fremont-Newaygo	Fifth Third operates the fifth largest out of six depository institutions in the market, controlling deposits of $28 million representing approximately 11.3 percent of market deposits. Old Kent operates the second largest depository institution in the market, controlling deposits of $57.5 million, representing approximately 23.2 percent of market deposits. Fifth Third proposes to divest one branch in the market, with $26.5 million of deposits, representing approximately 10.7 percent of market deposits, to an out-of-market commercial banking organization. After the proposed merger and divestiture, Fifth Third would operate the second largest depository institution in the market, controlling deposits of $59 million, representing 23.8 percent of market deposits. There would be no resulting change in the HHI. Five commercial banking organizations, other than Fifth Third would remain in the market.
Muskegon-Grand Haven	Fifth Third operates the fifth largest out of 14 depository institution in the market, controlling deposits of $194.5 million, representing approximately 11.2 percent of market deposits. Old Kent operates the ninth largest depository institution in the market, controlling deposits of $374.9 million, representing approximately 21.6 percent of market deposits. Fifth Third proposes to divest a branch in the market, with $31 million of deposits, representing approximately 1.8 percent of market deposits, to an out-of-market commercial banking organization or an in-market banking organization that currently controls less than 2 percent of market deposits. After the proposed merger and divestiture, Fifth Third would operate the largest depository institution in the market, controlling deposits of $538.4 million, representing 31 percent of market deposits. The HHI would increase by not more than 383 points and would

not exceed 1718.[56] At least eleven commercial banking organizations besides Fifth Third would remain in the market.

[56] If Fifth Third were to divest the relevant Muskegon-Grand Haven branch to an out-of-market firm, the HHI would increase by 378 points to 1713.