

Legal Developments: First Quarter, 2007

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

ORDERS ISSUED UNDER SECTION 3 OF THE BANK HOLDING COMPANY ACT

Bank of America Corporation Charlotte, North Carolina

Order Approving the Acquisition of a Bank Holding Company

Bank of America Corporation (“Bank of America”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire U.S. Trust Corporation (“U.S. Trust”) and its subsidiary bank, United States Trust Company, National Association (“U.S. Trust Bank”), both of New York, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 132 (2007)). 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.³

Bank of America, with total consolidated assets of approximately \$1.5 trillion, is the second largest depository organization in the United States.⁴ Bank of America operates six insured depository institutions⁵ that operate in 30 states and the District of Columbia, and it engages nationwide in numerous nonbanking activities that are permissible under the BHC Act.

U.S. Trust, with total banking assets of approximately \$11.1 billion, controls one depository institution, U.S. Trust

Bank, with branches in 11 states and the District of Columbia. U.S. Trust also engages in a broad range of permissible nonbanking activities. On consummation of the proposal, Bank of America would remain the second largest depository organization in the United States, with total consolidated assets of approximately \$1.5 trillion.

INTERSTATE AND DEPOSIT CAP 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 Bank of America is North Carolina,⁶ and U.S. Trust Bank is located in California, Connecticut, the District of Columbia, Florida, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Texas.⁷

The Board may not approve an interstate acquisition under section 3(d) if the applicant controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States (“nationwide deposit cap”).⁸ As required by section 3(d), the Board has carefully considered whether Bank of America controls, or on consummation of the proposed transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions⁹ in the United States. In

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

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 or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

8. One commenter expressed general concerns about the proposal’s consistency with the nationwide deposit cap.

9. The BHC Act adopts the definition of “insured depository institution” used in the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.) (“FDI Act”). See 12 U.S.C. § 1841(n). The FDI Act contains an identical nationwide deposit cap applicable to bank-to-bank mergers and, consequently, many of the terms used in the nationwide deposit cap in the BHC Act refer to terms or definitions contained in the FDI Act. The FDI Act’s definition of “insured depository institution” includes all banks (whether or not the institution is a bank for purposes of the BHC Act), savings banks, and savings associations that are insured by the Federal Deposit Insurance Corporation (“FDIC”) and insured U.S. branches of foreign banks, as each of those terms is defined in the FDI Act. See 12 U.S.C. § 1813(c)(2).

1. 12 U.S.C. § 1842.

2. U.S. Trust is a wholly owned subsidiary of The Charles Schwab Corporation (“Charles Schwab”), San Francisco, California. Bank of America proposes to acquire all the outstanding common stock of U.S. Trust from Charles Schwab. In addition, Bank of America proposes to acquire the nonbanking subsidiaries of U.S. Trust in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

3. Three commenters expressed concerns on various aspects of the proposal.

4. Asset data are as of December 31, 2006.

5. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

analyzing this matter, the Board calculated the percentage of total deposits of insured depository institutions in the United States and the total deposits that Bank of America controls, and on consummation of the proposal would control, in the same manner as described in the Board's 2004 order approving Bank of America's acquisition of FleetBoston Financial Corporation.¹⁰ These calculations are based on the definition of "deposit" in the FDI Act,¹¹ the deposit data collected in reports filed by all insured depository institutions,¹² and the methods and adjustments used by the FDIC to compute total insured deposits.

Based on the latest available deposit data reported by all depository institutions, the total amount of deposits of insured depository institutions in the United States is approximately \$6.757 trillion as of December 31, 2006. Also based on the latest Call Report, Bank of America (including all its insured depository institution affiliates) controls deposits of approximately \$612.0 billion, and U.S. Trust controls deposits of approximately \$9.4 billion. Bank of America, therefore, currently controls approximately 9.1 percent of total U.S. deposits. On consummation of the proposed transaction, Bank of America would control approximately 9.2 percent of the total amount of deposits of insured depository institutions in the United States. Therefore, the Board finds that Bank of America does not now control, and on consummation of the proposed transaction would not control, an amount of deposits that would exceed the nationwide deposit cap.

Section 3(d) also prohibits the Board from approving a proposal if, on consummation, the applicant would control 30 percent or more of the total deposits of insured depository institutions in any state in which both the applicant and the organization to be acquired operate an insured depository institution, or such higher or lower percentage that is established by state law ("state deposit cap").¹³ On consummation of the proposal, Bank of America would control less than 30 percent of the total amount of deposits of insured depository institutions in California, Connecticut, the District of Columbia, Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and

Texas, and would not hold deposits in excess of any applicable state deposit caps.

All other requirements of section 3(d) of the BHC Act also would be met on consummation of the proposal.¹⁴ 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 an 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁵

Bank of America and U.S. Trust have subsidiary depository institutions that compete directly in 16 banking markets throughout the United States. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by Bank of America and U.S. Trust,¹⁶ 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"),¹⁷ and other characteristics of the markets.

14. Bank of America is adequately capitalized and adequately managed as defined by applicable law (12 U.S.C. § 1842(d)(1)(A)). U.S. Trust Bank has been in existence and operated for the minimum period of time required by applicable state law. See 12 U.S.C. § 1842(d)(1)(B). The other requirements in section 3(d) of the BHC Act also would be met on consummation of the proposal.

15. 12 U.S.C. § 1842(c)(1).

16. Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through February 20, 2007, 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). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

17. 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 by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

10. *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 219 (2004) ("*BOA/Fleet Order*"); see also *Bank of America Corporation*, 92 *Federal Reserve Bulletin* C5 (2006) (order approving Bank of America's merger with MBNA Corporation, Wilmington, Delaware ("*BOA/MBNA Order*")).

11. Section 3(d) of the BHC Act specifically adopts the definition of "deposit" in the FDI Act (12 U.S.C. § 1842(d)(2)(E)) (incorporating the definition of "deposit" at 12 U.S.C. § 1813(l)).

12. Each insured bank in the United States must report data regarding its total deposits in accordance with the definition of "deposit" in the FDI Act on the institution's Consolidated Report of Condition and Income ("Call Report"). Each insured savings association similarly must report its total deposits on the institution's Thrift Financial Report. Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. These data are reported quarterly to the FDIC and are publicly available.

13. 12 U.S.C. § 1842(d)(2)(B)-(D).

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 15 of the 16 banking markets.¹⁸ On consummation of the proposal, three of these markets would remain unconcentrated, eleven markets would remain moderately concentrated, and one market would remain highly concentrated, as measured by the HHI. The change in the HHI measure of concentration in each of these markets would be very small. Moreover, numerous competitors would remain in each of the 15 banking markets.

B. Banking Market Warranting Special Scrutiny

Bank of America and U.S. Trust compete directly in one banking market, Hartford, Connecticut,¹⁹ that warrants a detailed review because the post-consummation market share of Bank of America in that market would exceed 35 percent. In the Hartford banking market, Bank of America is the largest depository organization, controlling deposits of approximately \$10.3 billion, which represent approximately 40.5 percent of market deposits. U.S. Trust is the 25th largest depository organization in the market, controlling deposits of \$50.6 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Bank of America would remain the largest depository organization in the market, controlling deposits of approximately \$10.3 billion, which represent approximately 40.7 percent of market deposits. Bank of America's market share would increase by less than 1 percent, and the HHI would increase by only 16 points to 2142, which is consistent with the DOJ Guidelines.

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 market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.²⁰

Several factors indicate that the proposal would not have a significantly adverse effect on concentration in the Hartford banking market. Although the market is highly concentrated, as measured by the HHI, the change in market share and market structure would be de minimis, and 32 other depository organizations would continue to operate in the market. In addition, the record of entry into the Hartford banking market evidences the market's attractiveness for entry. Eight depository institutions have entered the market de novo since 2001.

18. These markets, and the effects of the proposal on the concentration of banking resources in these markets, are described in the appendix.

19. The Hartford banking market is defined as the Hartford-New Britain-Randall Metropolitan Area.

20. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

C. Views of Other Agencies and Conclusion on Competitive Considerations

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 16 banking markets where Bank of America and U.S. Trust 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 has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, including information provided by Bank of America.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of 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, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. Bank of America, all its subsidiary banks, and U.S. Trust Bank currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Bank of America has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase of shares, and Bank of America will use existing resources to fund the purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Bank of America and U.S. Trust, and their

subsidiary banks, including assessments of their management, risk-management systems, and operations.²¹ 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.²² The Board also has considered Bank of America's plans for implementing the proposal, 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 under the BHC Act.²³

21. The Board has considered that Bank of America recently entered into agreements with the Internal Revenue Service ("IRS") and the DOJ with respect to ongoing industrywide investigations being conducted by the DOJ, the IRS, and the Securities and Exchange Commission ("SEC") related to certain practices in the municipal bond industry. Bank of America has voluntarily provided information and continues to work with the three agencies on this matter. The Board has also considered that this month Bank of America settled an SEC enforcement action against Bank of America's subsidiary, Banc of America Securities LLC, related to its research reports. Consistent with the provisions of section 5 of the BHC Act, as amended by the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999), the Board has relied on examination and other supervisory information provided by the SEC and other appropriate functional regulators about functionally regulated subsidiaries. The Board also has consulted with the SEC about its review of the efforts of Bank of America to comply with federal securities laws. The Board also has considered the willingness and efforts undertaken by Bank of America's management to ensure compliance with all applicable state and federal law and to improve compliance programs and policies in light of these investigations.

22. As part of its consideration of managerial factors, the Board reviewed confidential supervisory information on the policies, procedures, and practices of Bank of America and its subsidiary banks for complying with the Bank Secrecy Act and consulted with the Office of the Comptroller of the Currency ("OCC"). The Board also considered the result of investigations by other authorities concerning anti-money-laundering matters involving Bank of America, which related to deficiencies in handling money transfers through Bank of America's New York branch and to certain deficiencies in customer due diligence and suspicious activity reporting at a subsidiary of Bank of America, Banc of America Investment Services, Inc. These investigations have recently been settled, and Bank of America has taken appropriate steps to revise its anti-money-laundering policies, systems, and controls.

23. One commenter reiterated concerns he had expressed previously about Bank of America's relations with unaffiliated third parties engaged in subprime lending, including OwnIt Mortgage ("OwnIt"), formerly Oakmont Mortgage Company, Woodland Hills, California. Bank of America represented that its investment in OwnIt was a passive, noncontrolling investment and that OwnIt recently terminated its operations. Bank of America provides warehouse lines-of-credit to subprime lenders and other consumer finance companies, purchases subprime mortgage loans from unaffiliated lenders, and securitizes pools of subprime mortgage loans. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. See *BOA/Fleet Order* 217, at 223 n.29 (2004). Moreover, the commenter provided no evidence that Bank of America has originated, purchased, or securitized "predatory" loans or otherwise engaged in abusive lending practices. Bank of America has policies and proce-

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").²⁴ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansion proposals.²⁵

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of Bank of America and U.S. Trust, data reported by Bank of America under the Home Mortgage Disclosure Act ("HMDA"),²⁶ other information provided by Bank of America, confidential supervisory information, and public comments received on the proposal. One commenter questioned Bank of America's record of serving the credit needs of residents of the New York City area. The commenter also expressed concern that the acquisition of U.S. Trust Bank could negatively affect LMI residents of New York City if U.S. Trust Bank's current CRA programs were altered.²⁷ Two other commenters alleged, based on HMDA data, that Bank of America engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

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

dures to help ensure that the subprime loans it purchases and securitizes are in compliance with applicable state and federal consumer protection laws.

24. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

25. 12 U.S.C. § 2903.

26. 12 U.S.C. § 2801 et seq.

27. The commenter also requested that Bank of America implement a number of CRA-related recommendations set forth in the comment letter. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See *BOA/Fleet Order* at 232–33. 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 needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²⁸

Bank of America's lead bank, Bank of America, National Association ("BA Bank"), Charlotte, North Carolina, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2001 ("2001 Evaluation").²⁹ The only other subsidiary bank of Bank of America subject to the CRA, FIA Card Services, N.A., Wilmington, Delaware,³⁰ also received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of April 4, 2005. U.S. Trust Bank was formed in 2006 by the conversion of United States Trust Company of New York ("USTC New York"), New York, New York, to a national bank charter and its subsequent merger with U.S. Trust Company, National Association ("USTC Los Angeles"), Los Angeles, California. Both banks were subsidiaries of U.S. Trust and had "outstanding" CRA performance ratings by the Board and the OCC, respectively, before the merger.³¹ Bank of America has represented that it would work to combine the community development and community investment activities of BA Bank and U.S. Trust Bank to strengthen and meet the banking needs of the communities in which they operate.

CRA Performance of BA Bank. The 2001 Evaluation of BA Bank was discussed in the *BOA/Fleet Order*.³² The Board also considered BA Bank's CRA performance in the *BOA/MBNA Order*. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in those two orders concerning BA Bank's CRA performance record. Bank of America also provided the Board with additional information about its CRA performance since the Board last reviewed such matters in the *BOA/MBNA Order*.³³ The Board also consulted with the OCC with respect to BA Bank's CRA performance since the *BOA/MBNA Order*.

In the 2001 Evaluation, examiners commended BA Bank's overall lending performance, which they described as demonstrating excellent or good lending-test results in all its rating areas. Examiners reported that the distribution of HMDA-reportable mortgage loans among areas of dif-

ferent income levels was good, and they commended BA Bank for developing mortgage loan programs with flexible underwriting standards, such as its Neighborhood Advantage programs, which assisted in meeting the credit needs of BA Bank's assessment areas. Examiners also reported that the bank's small business lending was excellent or good in the majority of its rating areas, and they commended the distribution of small business loans among businesses of different sizes in several of BA Bank's assessment areas.³⁴ In addition, examiners noted in the 2001 Evaluation that BA Bank's level of community development lending was excellent.

Since the 2001 Evaluation, BA Bank has maintained a substantial level of home mortgage, small business, and community development lending. The bank originated more than 376,000 HMDA-reportable home mortgage loans totaling approximately \$80 billion throughout its assessment areas in 2005.³⁵ More than 75,000 of those loans totaling more than \$8 billion were originated to LMI individuals. In 2006, BA Bank was recognized by the U.S. Small Business Administration ("SBA") for the ninth consecutive year as the leading small business lender in the country, based on its origination of approximately 13,000 SBA loans totaling more than \$405 million. Bank of America represented that BA Bank's community development lending during 2005 and 2006 totaled approximately \$5.8 billion.³⁶

In the 2001 Evaluation, examiners reported that BA Bank consistently demonstrated strong investment-test performance, noting that its performance was excellent or good in the majority of its assessment areas. During the evaluation period, BA Bank funded more than 17,000 housing units for LMI families through its community development investments throughout its assessment areas.³⁷ Examiners commended BA Bank for taking a leadership role in developing and participating in complex investments that involved multiple participants and both public and private funding.

Since the 2001 Evaluation, BA Bank has continued its strong activities in community development investment in its assessment areas. Bank of America represented that BA Bank's qualifying community development investments during 2005 and 2006 totaled approximately \$3.6 billion and that BA Bank's subsidiary community development

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

29. The evaluation period for the 2001 Evaluation was January 1, 2000, through December 31, 2001.

30. FIA Card Services was formerly known as MBNA America Bank, National Association, Wilmington, Delaware, and was renamed in June 2006.

31. USTC New York received an overall "outstanding" CRA performance rating from the Board, as of March 15, 2004, and USTC Los Angeles received an overall "outstanding" CRA performance rating from the OCC, as of October 15, 2002. The OCC has not yet evaluated U.S. Trust Bank's CRA performance.

32. *BOA/Fleet Order* at 225-229.

33. Bank of America has provided detailed information about its community development activities in New York City in response to a commenter's concerns about its record of serving the credit needs of the city's residents.

34. 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.

35. BA Bank originated more than 5,400 HMDA-reportable home mortgage loans totaling approximately \$1.6 billion in the New York MSA in 2005, including 785 loans totaling approximately \$188 million to LMI individuals.

36. Bank of America advised that information for 2006 is based on preliminary data, which have not been finalized and may be incomplete.

37. Bank of America also has provided grants to nonprofit organizations, such as ACCION and the New Mexico Community Development Loan Fund, that originate microloans in amounts as small as \$500 and promote SBA programs.

corporation had helped develop more than 6,200 housing units in LMI census tracts or for LMI individuals since 2003.³⁸

Examiners commended BA Bank's service performance throughout its assessment areas in the 2001 Evaluation. They reported that the bank's retail delivery systems were generally good and that the bank's distribution of branches among geographies of different income levels was adequate. Examiners also commended BA Bank for its community development services, which typically responded to the needs of the communities served by the bank throughout its assessment areas.³⁹

CRA Performance of U.S. Trust Bank. As noted, U.S. Trust Bank received an overall "outstanding" rating in its March 2004 evaluation.⁴⁰ U.S. Trust Bank provides investment management, private banking, and fiduciary services to high-net-worth individuals and institutions and is designated as a wholesale bank for purposes of evaluating its CRA performance. As such, it is evaluated under the community development test, and examiners may consider the bank's community development investments, loans, and services nationwide rather than only in the bank's assessment area.⁴¹

With respect to community development lending, examiners commended U.S. Trust Bank's responsiveness to the credit needs of its assessment area. Examiners noted that during the evaluation period, U.S. Trust Bank made more than \$44 million in qualified community development investments, including a number of low-income housing tax credit investments, which helped meet the assessment area's critical needs for affordable housing.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Bank of America in light of public comments received on the proposal. Two commenters alleged, based on 2005 and 2006 HMDA data, that Bank of America had denied the home mortgage loan applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various metropolitan statistical areas ("MSAs") and nationwide. The commenters also alleged that Bank of America and its subsidiaries made higher-cost loans more frequently to African-American and Hispanic borrowers than to nonmi-

nority borrowers.⁴² The Board has focused its analysis on the 2005 HMDA data reported by Bank of America and its subsidiary banks.⁴³

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 Bank of America 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.⁴⁴ 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. 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 Bank of America and its subsidiaries. The Board also has consulted with the OCC, the primary federal supervisor of Bank of America's subsidiary banks.

The record, including confidential supervisory information, indicates that Bank of America has taken steps to ensure compliance with fair lending and other consumer protection laws. Bank of America has corporate wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Bank of America's compliance program includes fair lending policy and product guides, compliance file reviews, testing of HMDA data integrity, and other quality-assurance measures. In addition, Bank of America represented that it provides annual fair lending training to ensure that Bank of America's associates understand their respon-

38. Bank of America also has represented that, during 2005 and 2006, BA Bank's qualifying community development investments in New York City totaled approximately \$170 million and qualified community development lending in New York City totaled approximately \$700 million.

39. One commenter asserted that Bank of America should ensure that certain banking products and services are made available to LMI customers in New York City. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes their costs to the consumer.

40. The evaluation period was from March 16, 2002, through December 31, 2003.

41. See 12 CFR 25.25.

42. Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 percentage points or more for first-lien mortgages and 5 percentage points or more for second-lien mortgages (12 CFR 203.4).

43. The Board reviewed HMDA data for BA Bank nationwide and in MSAs and states where the bank's primary assessment areas are located. The Board notes that 2006 HMDA data are preliminary and that final data will not be available for analysis until fall 2007.

44. 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.

sibilities for complying with the fair lending policy and how to employ fair lending “best practices” in all aspects of the lending process. Bank of America has stated that its fair lending policies will continue to apply to current Bank of America operations and that it will review and make appropriate modifications to the fair lending policies that would apply to U.S. Trust Bank’s operations after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Bank of America under the CRA. These established efforts and record 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 of the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Bank of America, comments received on the proposal, and confidential supervisory information. Bank of America represented that the proposal will result in greater convenience for Bank of America and U.S. Trust customers through expanded delivery channels and a broader range of products and services. 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 record of the relevant insured depository institutions are consistent with approval of the proposal.

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.⁴⁵ In reaching its

45. One commenter 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

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 Bank of America with the conditions in this order and all the commitments made to the Board in connection with the proposal. 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 27, 2007.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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 factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e), 262.3(i)(2), 262.25(d)). The Board has considered carefully the commenter’s request in light of all the facts of record. In the Board’s view, the commenter had ample opportunity to submit his views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter’s request fails to demonstrate why written comments do not present his 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

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
BOSTON BANKING MARKET IN MASSACHUSETTS AND NEW HAMPSHIRE						
<i>Boston—the Boston Ranally Metropolitan Area (RMA) and the town of Lyndeboro in Hillsborough County, New Hampshire</i>						
Bank of America Pre-Consummation	1	30.0 bil.	23.17	1,231	16	161
U.S. Trust	26	445.7 mil.	.34	1,231	16	161
Bank of America Post-Consummation	1	30.4 bil.	23.51	1,231	16	161
CHARLOTTE—ROCK HILL BANKING MARKET IN NORTH CAROLINA AND SOUTH CAROLINA						
<i>Charlotte-Rock Hill—the Charlotte RMA and the non-RMA portion of Cabarrus County, North Carolina</i>						
Bank of America Pre-Consummation	2	21.8 bil.	23.27	4,741	0	49
U.S. Trust	38	8.7 mil.	.01	4,741	0	49
Bank of America Post-Consummation	2	21.8 bil.	23.28	4,741	0	49
DALLAS BANKING MARKET IN TEXAS						
<i>Dallas—Dallas County; the southeastern quadrant of Denton County (including the cities of Denton and Lewisville); the southwestern quadrant of Collin County (including the cities of McKinney and Plano); Rockwall County; the communities of Forney and Terrell in Kaufman County; and the cities of Midlothian, Waxahachie, and Ferris in Ellis County</i>						
Bank of America Pre-Consummation	2	18.9 bil.	24.50	1,726	3	114
U.S. Trust	75	52.5 mil.	.07	1,726	3	114
Bank of America Post-Consummation	2	18.9 bil.	24.57	1,726	3	114
GREENSBORO-HIGH POINT BANKING MARKET IN NORTH CAROLINA						
<i>Greensboro-High Point—the Greensboro RMA and the non-RMA portions of Davidson (excluding the Winston-Salem RMA portion) and Randolph counties</i>						
Bank of America Pre-Consummation	3	1 bil.	9.03	1,179	0	27
U.S. Trust	27	3.6 mil.	.03	1,179	0	27
Bank of America Post-Consummation	3	1 bil.	9.07	1,179	0	27

Appendix—Continued

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
HOUSTON BANKING MARKET IN TEXAS						
<i>Houston—the Houston–Sugar Land–Baytown Metropolitan Statistical Area, consisting of Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties</i>						
Bank of America Pre-Consummation	2	9.1 bil.	11.17	1,406	1	84
U.S. Trust	70	26.2 mil.	.03	1,406	1	84
Bank of America Post-Consummation	2	9.1 bil.	11.20	1,406	1	84
LOS ANGELES BANKING MARKET IN CALIFORNIA						
<i>Los Angeles—the Los Angeles RMA and the towns of Acton and Rosamond</i>						
Bank of America Pre-Consummation	1	56.4 bil.	21.24	814	5	166
U.S. Trust	58	268.5 mil.	.10	814	5	166
Bank of America Post-Consummation	1	56.6 bil.	21.34	814	5	166
MIAMI-FORT LAUDERDALE BANKING MARKET IN FLORIDA						
<i>Miami-Fort Lauderdale—Broward and Dade counties</i>						
Bank of America Pre-Consummation	2	20.1 bil.	20.12	990	0	99
U.S. Trust	98	0.0 mil.	.00	990	0	99
Bank of America Post-Consummation	2	20.1 bil.	20.12	990	0	99
NAPLES BANKING MARKET IN FLORIDA						
<i>Naples—Collier County, excluding the town of Immokalee</i>						
Bank of America Pre-Consummation	2	1.8 bil.	17.89	1,150	9	36
U.S. Trust	29	24.7 mil.	.25	1,150	9	36
Bank of America Post-Consummation	2	1.8 bil.	18.14	1,150	9	36
NEW YORK BANKING MARKET IN NEW YORK, NEW JERSEY, PENNSYLVANIA, AND CONNECTICUT						
<i>New York—Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties in New York; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties in New Jersey; Monroe and Pike counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut</i>						
Bank of America Pre-Consummation	3	56.2 bil.	6.57	1,246	9	285
U.S. Trust	20	5.7 bil.	.67	1,246	9	285
Bank of America Post-Consummation	3	62 bil.	7.24	1,246	9	285

Appendix—Continued

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
PHILADELPHIA BANKING MARKET IN NEW JERSEY AND PENNSYLVANIA						
<i>Philadelphia—Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania; and Burlington, Camden, Cumberland, Gloucester, and Salem counties in New Jersey</i>						
Bank of America Pre-Consummation	5	6.4 bil.	6.09	1,003	0	123
U.S. Trust	109	9.2 mil.	.01	1,003	0	123
Bank of America Post-Consummation	5	6.4 bil.	6.10	1,003	0	123
PORTLAND BANKING MARKET IN OREGON AND WASHINGTON						
<i>Portland—the Portland RMA; the towns of Banks, Molalla, Mount Angel, North Plains, Saint Helens, Scappoose, Vernonia, and Woodburn, Oregon; and Yacolt, Washington</i>						
Bank of America Pre-Consummation	2	4.1 bil.	16.96	1,438	4	42
U.S. Trust	32	22.3 mil.	.09	1,438	4	42
Bank of America Post-Consummation	2	4.1 bil.	17.05	1,438	4	42
RALEIGH BANKING MARKET IN NORTH CAROLINA						
<i>Raleigh—the Raleigh RMA and the non-RMA portions of Franklin, Harnett (excluding the Fayetteville RMA portion), Johnston, and Wake counties</i>						
Bank of America Pre-Consummation	6	1.1 bil.	7.01	1,538	1	31
U.S. Trust	28	1.8 mil.	.01	1,538	1	31
Bank of America Post-Consummation	6	1.1 bil.	7.02	1,538	1	31
SAN FRANCISCO-OAKLAND-SAN JOSE BANKING MARKET IN CALIFORNIA						
<i>San Francisco—Oakland—San Jose—the San Francisco—Oakland—San Jose RMA and the towns of Byron, Hollister, San Juan Bautista, Pescadero, and Point Reyes Station</i>						
Bank of America Pre-Consummation	1	56.2 bil.	27.03	1,349	1	101
U.S. Trust	73	56.9 mil.	.03	1,349	1	101
Bank of America Post-Consummation	1	56.2 bil.	27.06	1,349	1	101

Appendix—Continued

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
<p>WASHINGTON BANKING MARKET IN THE DISTRICT OF COLUMBIA, MARYLAND, VIRGINIA, AND WEST VIRGINIA</p> <p><i>Washington—the Washington RMA, the non-RMA portions of Calvert, Charles, Frederick, Prince George’s, and St. Mary’s counties in Maryland; Fauquier and Loudoun counties in Virginia; Jefferson County in West Virginia; and the independent cities of Alexandria, Fairfax, Falls Church, and Manassas in Virginia</i></p>						
PNC Pre-Consummation	2	14.8 bil.	11.76	842	1	91
Mercantile	80	16.9 mil.	.01	842	1	91
PNC Post-Consummation	2	14.8 bil.	11.77	842	1	91
<p>WEST PALM BEACH BANKING MARKET IN FLORIDA</p> <p><i>West Palm Beach—Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County</i></p>						
Bank of America Pre-Consummation	2	5.9 bil.	18.39	1,520	13	62
U.S. Trust	32	115.4 mil.	.36	1,520	13	62
Bank of America Post-Consummation	2	6 bil.	18.75	1,520	13	62

NOTE: Data are as of June 30, 2006. All amounts of deposits are un-weighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

Community Bankshares, Inc. Greenwood Village, Colorado

Order Approving the Acquisition of a Bank Holding Company

Community Bankshares, Inc. (“Community”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Citizens Financial Corporation (“Citizens”) and its subsidiary bank, The Citizens State Bank of Cortez (“Citizens State Bank”), both of Cortez, Colorado.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 68,817 (2006)). 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.

Community, with total consolidated assets of approximately \$1.4 billion, operates the following subsidiary insured depository institutions in California and Colorado: Community Banks of Northern California, Tracy, California; and Community Banks of Colorado (“Community Bank”), Greenwood Village, Colorado. Community is the 17th largest depository organization in Colorado, controlling deposits of \$981.1 million, which represent 1.3 percent of total deposits of insured depository institutions in Colorado (“state deposits”).²

Citizens, with total banking assets of approximately \$78 million, operates one insured depository institution with branches only in Colorado. Citizens is the 103rd largest depository organization in Colorado, controlling

1. 12 U.S.C. § 1842.

2. Data are as of June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

deposits of approximately \$65 million, which represent less than 1 percent of state deposits.

On consummation of this proposal, Community would remain the 17th largest depository organization in Colorado, controlling deposits of approximately \$1 billion, which represent 1.4 percent of state deposits.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a 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.³ The Board has considered carefully the competitive effects of the proposal in light of all the facts of record.

A. Geographic Banking Market

Community and Citizens compete directly in the Cortez, Colorado banking market (“Cortez banking market”). Community contends that the Cortez banking market, as delineated by the Federal Reserve Bank of Kansas City (“Reserve Bank”),⁴ does not reflect the true nature of banking competition in Cortez and that the relevant geographic market for analysis should be expanded to include La Plata County, where the city of Durango is located. Community bases its contention on the commuting patterns between Montezuma and La Plata counties.⁵

In defining a geographic market, the Board and the courts have consistently found that the relevant geographic market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where customers can practicably turn for alternatives.⁶ In reviewing Community’s conten-

tion, the Board has considered a number of factors to identify the economically integrated area that represents the appropriate local geographic banking market encompassing Cortez for purposes of analyzing the proposal’s competitive effects.⁷

The Board reviewed the proximity of Cortez and Durango and the commuting data between their respective counties. A mountain pass between Cortez and Durango reportedly makes commuting and other travel between these cities difficult at times during the winter months. The rate of commuting between Montezuma and La Plata counties remains low at approximately 7 percent of residents despite some increase during the past decade. Other indicators of economic integration, such as entertainment, restaurant, and shopping opportunities available in one market but not in the other, are insufficient to suggest that the low commuting rate understates the economic integration of the counties. Both cities have large discount retail stores and supermarkets.

Banking data also support the Reserve Bank’s definition of the Cortez banking market as the relevant geographic market. Interviews by the Reserve Bank with bankers in Cortez and Durango indicate that most, if not all, of the local banks view the two cities as separate markets. Banks in each city generally have few customers from the other city, do not solicit or advertise for business in the other city, and do not monitor the loan or deposit rates of banks in the other city.⁸

Based on the foregoing and a careful review of all the facts of record, including information provided by local banks, the state of Colorado, and other publicly available information, the Board reaffirms that the relevant geographic market within which to evaluate the competitive effects of this proposal is the Cortez banking market, as currently defined by the Reserve Bank.

B. Competitive Effects in the Banking Market

The Board has reviewed carefully the competitive effects of the proposal in the Cortez banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking

3. 12 U.S.C. § 1842(c)(1).

4. The Cortez banking market is defined as Dolores and Montezuma counties, Colorado.

5. Community argues that approximately 7 percent of workers in Montezuma County, where Cortez is located, commute to La Plata County for employment, and that the absolute number of commuters traveling from Montezuma County to La Plata County exceeds the absolute number of commuters traveling to Montezuma County from Dolores County (the other county in the Cortez banking market). Community also notes that the only banking institution in Dolores County is 35 road miles from Cortez and that Durango, where most La Plata County banking institutions are located, is only 45 road miles from Cortez.

6. See *United States v. Phillipsburg National Bank*, 399 U.S. 350 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963); *Brown Shoe Co. v. United States*, 370 U.S. 294, 336–337 (1962). See also *First York Ban Corp.*, 88 *Federal Reserve Bulletin* 251 (2002); *First Union Corporation*, 84 *Federal Reserve Bulletin* 489

(1998); *First Union Corporation*, 83 *Federal Reserve Bulletin* 1012, 1013–14 (1997); *Chemical Banking Corporation*, 82 *Federal Reserve Bulletin* 239, 241 (1996); and *Wyoming Bancorporation*, 68 *Federal Reserve Bulletin* 313, 314 (1982).

7. In delineating the relevant geographic market in which to assess the competitive effects of a bank merger or acquisition, the Board reviews population density; worker commuting patterns; the usage and availability of banking products; advertising patterns of financial institutions; the presence of shopping, employment, and other necessities; and other indicia of economic integration and transmission of competitive forces among banks. See, e.g., *First Security Corporation*, 86 *Federal Reserve Bulletin* 122 (2000); *Penn Bancorp*, 69 *Federal Reserve Bulletin* 548 (1983).

8. One exception is a bank in the town of Mancos, Colorado, that has attracted depositors from both cities. Mancos is in Montezuma County between Cortez and Durango.

market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Community and Citizens,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the market.

In the Cortez banking market, the concentration levels on consummation of the proposal would exceed the threshold levels in the DOJ Guidelines. Community’s subsidiary, Community Bank, is the fifth largest depository institution in the market, controlling deposits of approximately \$51.8 million, which represent approximately 13.4 percent of market deposits. Citizens’ subsidiary, Citizens State Bank, is the third largest depository institution in the market, controlling deposits of approximately \$65.1 million, which represent approximately 16.8 percent of market deposits. On consummation of the proposal, Community Bank would become the largest depository institution in the market, controlling deposits of approximately \$116.9 million, which would represent 30.2 percent of market deposits. The HHI would increase 449 points to 2192.

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 market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and the resulting level of concentration in a banking market.¹¹

Several factors indicate that the increase in concentration in the Cortez banking market, as measured by increases in the HHI and Community Bank’s market share, overstates the potential competitive effects of the proposal. After consummation, five insured depository institutions would continue to operate in the market, which is an average number of competitors for sparsely populated rural banking markets like the Cortez market. The relative share of market deposits held by each depository institution indicates there is active competition in the market. Each of the four remaining institutions that directly compete with Community Bank will have a market share of between 12 percent and 22 percent on consummation of the pro-

posal. Moreover, the market concentration as measured by the HHI has decreased 624 points during the last decade, from 2367 in 1996¹² to 1743 in 2006, evidencing significant and effective competition by market participants during this period.

In addition, actions by competitors to enter the market in 2007 demonstrate that the market is attractive for entry. Although no depository institutions have entered the market in recent years, two institutions have taken steps within the past year that will lead to entry into the market in 2007 through de novo branches. One bank established a loan production office (“LPO”) in Cortez in 2006 and has purchased a building as part of its plans to convert the LPO into a full-service branch in 2007. Another bank plans to open a de novo branch in the market in the near future and has taken significant actions to implement that plan. The Board previously has considered such prospective entry into a market by competitors as evidence of a market’s attractiveness for entry.¹³

C. Views of Other Agencies and Conclusion on Competitive Considerations

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Cortez banking market 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 has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by Community.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved both on a parent-

9. Deposit and market share data are as of June 30, 2006, adjusted to reflect subsequent mergers and acquisitions through February 12, 2007. No savings associations operate in the market.

10. 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 by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

11. See *NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

12. *Aspen Bancshares, Inc.*, 82 *Federal Reserve Bulletin* 665 (1996).

13. *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

only and on a consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of 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, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial factors of the proposal. Community, all its subsidiary depository institutions, and Citizens Bank currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Community has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase. The purchase would be funded from the proceeds of an issuance of trust preferred securities and debt.

The Board also has considered the managerial resources of Community, Citizens, and their subsidiary depository institutions. The Board has reviewed the examination records of these 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking laws, including anti-money-laundering laws. The Board also has considered Community's plans for implementing the proposal, 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 under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁴ Community Banks of Northern California and Community Bank both received "satisfactory" ratings at their most recent CRA performance evaluations by the Federal Reserve Bank of San Francisco and the Reserve Bank, as of November 17, 2003, and June 6, 2005, respectively. Citizens State Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of September 5, 2006. After consummation of the proposal, Community plans to implement its CRA policies at Citizens State Bank. Community has

represented that the proposal will provide greater convenience to customers through a larger network of branches and automated teller machines and a broader range of financial products and services over an expanded geographic area. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the community to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. 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 Community with the conditions imposed in this order and the commitments made to the Board in connection with the application. 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 proposed transaction 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 Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 1, 2007.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, and Kroszner. Absent and not voting: Governor Mishkin.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

The Industrial Bank of Taiwan Co., Ltd. Taipei, Taiwan

IBT Holdings Corp. Cerritos, California

Order Approving the Formation of a Bank Holding Company

The Industrial Bank of Taiwan Co., Ltd. ("IBT") and its wholly owned subsidiary, IBT Holdings Corp., have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")¹ to become bank

14. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

1. 12 U.S.C. § 1842.

holding companies and to acquire EverTrust Bank (“EverTrust”), City of Industry, California.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 46,230 (2006)). 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.

IBT, with total consolidated assets of approximately \$4 billion, is the 37th largest bank in Taiwan.² IBT currently has no banking operations in the United States. EverTrust, with total consolidated assets of approximately \$308 million, is the 122nd largest depository institution in California, controlling deposits of approximately \$293.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.³

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁴

As noted, IBT does not control a U.S. depository institution, and the proposal would not result in an expansion of EverTrust. 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 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 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 confidential reports of examination and other supervisory information received from the federal and state supervisors of EverTrust, publicly reported and other financial information, information provided by IBT, and public comments received on the proposal. The Board has also consulted with the Financial Supervisory Commission (“FSC”), the primary home-country supervisor of IBT.⁵

In evaluating the financial factors in proposals involving the formation of new bank holding companies, the Board reviews the financial condition of the applicant and the target depository institutions. The Board also evaluates the financial position of the pro forma organization, 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 factors of the proposal. Taiwan’s risk-based capital standards are consistent with those established by the Basel Capital Accord (the “Accord”). On consummation, the capital ratios of IBT would continue to exceed the minimum levels that would be required under the Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization. Furthermore, EverTrust is well capitalized and would remain so on consummation of the proposal. Based on its review of these factors, the Board finds that IBT has sufficient financial resources to effect the proposal. The proposed transaction is structured as a cash purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed supervisory information provided by the FSC and information provided by IBT, including information about compliance with anti-money-laundering laws.⁶ In addition, the Board has reviewed the examination records of EverTrust, including assessments of its management, risk-management systems, and operations. The Board has also considered the supervisory experiences of relevant federal and state banking supervisory agencies with EverTrust and the bank’s record of compliance with applicable banking law and anti-money-laundering laws.

5. The FSC has confirmed that IBT is in good standing and has not objected to the proposal.

6. A commenter expressed concern about alleged money laundering and governmental corruption in Taiwan and the possible impact of these allegations could have on banking in the Asian-American community. The Board has taken into consideration Taiwan’s laws and regulations, as well as IBT’s and EverTrust’s policies and procedures, on anti-money-laundering. 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. IBT, a private sector bank, has policies and procedures that are monitored by its audit division and by governmental entities responsible for anti-money-laundering compliance. IBT has confirmed that it will maintain EverTrust’s compliance policies and procedures, which are considered satisfactory by its regulators, and that it will conform them to IBT’s policies and procedures if those policies are the more stringent.

2. Taiwanese asset and ranking data are as of September 30, 2006, and are based on the exchange rate then in effect. IBT is organized and chartered as an industrial bank in Taiwan. Taiwanese industrial banks may conduct various banking and financial activities, such as lending, securities trading, underwriting, and trust activities. With respect to deposit-taking and foreign-exchange activities, however, they may only serve certain types of customers.

3. Domestic asset and ranking data are as of September 30, 2006. Deposit data are as of June 30, 2006. In this context, depository institutions include commercial banks, savings banks, and savings associations.

4. 12 U.S.C. § 1842(c)(1).

Moreover, the Board has considered IBT's plans for implementing the proposal, including the proposed management after consummation.

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

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by its home-country supervisor.⁷ As noted, the FSC is the primary supervisor of commercial and industrial banks in Taiwan, including IBT. The Board has previously determined, in connection with applications involving other banks in Taiwan, that those banks were subject to home-country supervision on a consolidated basis.⁸ In this case, the Board has determined that IBT is supervised by the FSC on substantially the same terms and conditions as those other banks. Based on all the facts of record, the Board has concluded that IBT is subject to comprehensive supervision and regulation on a consolidated basis by its home-country supervisor.

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.⁹ The Board has reviewed the restrictions on disclosures in jurisdictions where IBT would have material operations and has communicated with the relevant government authorities concerning access to information. IBT has committed that it will make available to the Board such information on its operations and the operations of any 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 law. IBT also has committed to cooperate

with the Board to obtain any waivers or exemptions that may be necessary to enable it to make such information available to the Board. In light of the commitments provided by IBT and other facts of record, the Board has concluded that IBT has provided adequate assurances of access to any necessary information the Board may request. For these reasons, and based on all the facts of record, the Board has concluded that the supervisory factors it is required to consider under section 3(c)(3) of the BHC Act are consistent with approval.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁰ EverTrust received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of November 1, 2003. IBT has represented that it does not plan to make any reductions in products or services offered by EverTrust and may expand them. IBT's financial resources will serve as a source of strength for EverTrust and enhance the bank's ability to meet the banking needs of the communities it serves. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by IBT with the conditions imposed in this order, the commitments made to the Board in connection with the application, and receipt of all other regulatory approvals.¹¹ 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.

7. See 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 relationships to any affiliate, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

8. See *International Commercial Bank of China Co., Ltd.*, 92 *Federal Reserve Bulletin* C199 (2006); *Taiwan Cooperative Bank*, 92 *Federal Reserve Bulletin* C201 (2006); *SinoPac Holdings*, 88 *Federal Reserve Bulletin* 307 (2002); *Chinatrust Financial Holding Company, Ltd.*, 88 *Federal Reserve Bulletin* 303 (2002); *E. Sun Commercial Bank Limited*, 86 *Federal Reserve Bulletin* 238 (2000); *Chinatrust Commercial Bank, Ltd.*, 84 *Federal Reserve Bulletin* 1121 (1998); *Land Bank of Taiwan*, 83 *Federal Reserve Bulletin* 336 (1997); *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Farmers Bank of China*, 81 *Federal Reserve Bulletin* 620 (1995). The supervision of industrial banks and commercial banks in Taiwan is substantially the same.

9. See 12 U.S.C. § 1842(c)(3)(A).

10. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

11. IBT also has committed that its subsidiaries will conform their existing direct and indirect nonbanking activities and investments, including by divestiture if necessary, to the requirements of the BHC Act within two years of its acquisition of EverTrust. This conformance period may, in the discretion of the Board, be extended by up to three one-year extensions, taking into consideration the factors set forth in section 4(a)(2) of the BHC Act (12 U.S.C. § 1843(a)(2)). IBT also has committed to ensure that, after consummating its acquisition of EverTrust, neither IBT nor its subsidiaries, directly or indirectly, will engage in new activities or new lines of business or make additional investments in or acquire entities that are inconsistent with the requirements of the BHC Act.

The proposed transaction 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 San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 9, 2007.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

The PNC Financial Services Group, Inc. Pittsburgh, Pennsylvania

Order Approving the Merger of Bank Holding Companies

The PNC Financial Services Group, Inc. (“PNC”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to merge with Mercantile Bankshares Corporation (“Mercantile”), Baltimore, Maryland, and acquire Mercantile’s 11 subsidiary banks.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 69,132 (2006)). 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.

PNC, with total consolidated assets of approximately \$98 billion, is the 21st largest depository organization in the United States, controlling deposits of approximately \$63.5 billion, which represent less than 1 percent of the total amount of deposits of depository institutions in the United States.³ PNC owns two subsidiary insured deposi-

tory institutions that operate in nine states and the District of Columbia,⁴ and engages in numerous nonbanking activities that are permissible under the BHC Act. PNC is the 22nd largest depository organization in Maryland, controlling deposits of approximately \$313.8 million.

Mercantile’s subsidiary banks operate in Delaware, Maryland, Pennsylvania, Virginia, and the District of Columbia. In Maryland, Mercantile is the second largest depository organization, controlling deposits of approximately \$11.1 billion.

On consummation of the proposal, PNC would become the 18th largest depository institution in the United States, with total consolidated assets of approximately \$116 billion. PNC would control deposits of approximately \$75 billion, which represent approximately 1.15 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, PNC would become the second largest depository organization, controlling deposits of approximately \$11.4 billion, which represent approximately 12.3 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 such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of PNC is Pennsylvania,⁵ and Mercantile is located in Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia.⁶

Based on a review of all the facts of record, including relevant state and District of Columbia 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.⁷ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

1. 12 U.S.C. § 1842. PNC proposes to acquire the nonbanking subsidiaries of Mercantile in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

2. Mercantile’s largest subsidiary bank, as measured by both assets and deposits, is Mercantile-Safe Deposit and Trust Company (“Mercantile Lead Bank”), Baltimore, Maryland. Mercantile’s other subsidiary banks in Maryland are: Annapolis Bank and Trust Company, Annapolis; Citizens National Bank, Laurel; Farmers & Mechanics Bank, Frederick; Mercantile County Bank, Elkton; Mercantile Eastern Shore Bank, Chestertown; Mercantile Southern Maryland Bank, Leonardtown; and Westminster Union Bank, Westminster. Mercantile’s subsidiary banks in Virginia are Marshall National Bank and Trust Company, Marshall, and the National Bank of Fredericksburg, Fredericksburg. Its subsidiary bank in Delaware is Mercantile Peninsula Bank, Selbyville.

3. Nationwide asset data are as of September 30, 2006. Nationwide deposit and ranking data are as of June 30, 2006, and reflect merger activity through November 14, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. PNC’s largest subsidiary bank, as measured by total deposits, is PNC Bank, National Association (“PNC Lead Bank”), Pittsburgh, Pennsylvania, which operates in Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, and the District of Columbia. PNC’s other subsidiary bank, PNC Bank, Delaware (“PNC Delaware Bank”), Wilmington, Delaware, has branches in Delaware and Pennsylvania.

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

6. 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)).

7. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). PNC is adequately capitalized and adequately managed, as defined by applicable law. All of Mercantile’s subsidiary banks have been in existence and operated for the minimum period of time required by applicable state and District of Columbia laws. On consummation of the proposal, PNC would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

PNC and Mercantile have subsidiary depository institutions that compete directly in four banking markets: Sussex County, Delaware; York, Pennsylvania; Wilmington in Delaware and Maryland; and Washington in Maryland, Virginia, West Virginia, and the District of Columbia. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by PNC and Mercantile,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the markets.

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ

institutions in Delaware, Maryland, Pennsylvania, Virginia, and the District of Columbia. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

8. 12 U.S.C. § 1842(c)(1).

9. Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through January 19, 2007, 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)*. Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52, 55 (1991)*.

10. 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. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

Guidelines in three of the four banking markets.¹¹ On consummation of the proposal, the Washington market and the York market would remain moderately concentrated, and the Wilmington market would remain highly concentrated, as measured by the HHI. The changes in the HHI measure of concentration in each of these markets are small. Moreover, numerous competitors would remain in each of the three banking markets.

B. Banking Market Warranting Special Scrutiny

PNC and Mercantile compete directly in one banking market that warrants a detailed review, Sussex County, Delaware,¹² because the post-consummation concentration level would exceed the thresholds of the DOJ Guidelines. In the Sussex County banking market, PNC is the fourth largest depository organization, controlling deposits of approximately \$257.3 million, which represent approximately 9.8 percent of market deposits. Mercantile is the second largest depository organization in the market, controlling deposits of \$426.3 million, which represent approximately 16.2 percent of market deposits. On consummation of the proposal, PNC would become the second largest depository organization in the market, controlling deposits of approximately \$683.6 million, which represent approximately 26.0 percent of market deposits. The HHI would increase 317 points to 2010.¹³

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 market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.¹⁴

Several factors indicate that the increase in concentration, as measured by the HHI, overstates the potential

11. These markets, and the effects of the proposal on the concentration of banking resources in these markets, are described in Appendix A.

12. The Sussex County banking market is defined as Sussex County, Delaware, excluding the city of Milford.

13. These market concentration and market share calculations include the weighting of deposits controlled by three thrift institutions in the market at 100 percent. The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989)*. The thrift institutions in the Sussex County banking market serve as significant sources of commercial loans and provide a broad range of consumer, mortgage, and other banking products. These thrift institutions have ratios of commercial and industrial loans to assets of approximately 14.9 percent, 7 percent, and 5.5 percent, which are comparable to the national average for all commercial banks. Competition from these thrift institutions, therefore, closely approximates competition from commercial banks. *See First Union Corporation, 84 Federal Reserve Bulletin 489 (1998)*.

14. *See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998)*.

anticompetitive effect of the proposal in the Sussex County market. After consummation of the proposal, 16 other depository organizations would continue to operate in the market.

In addition, the Board has concluded that the activities of two community credit unions in the market exert sufficient competitive influence to mitigate, in part, the potential adverse competitive effects of the proposal. Both credit unions offer a wide range of consumer products, operate street-level branches, and have membership open to almost all the residents in the market.¹⁵ These active community credit unions control approximately \$185.3 million of deposits in the market, which represent approximately 3.4 percent of market deposits on a 50 percent weighted basis. If these credit unions were factored into the market calculations on a 50 percent weighted basis, PNC would control approximately 25.2 percent of market deposits on consummation of the proposal, and the HHI would increase 296 points to 1885.¹⁶

Moreover, the record of entry into the Sussex County banking market evidences its attractiveness for entry. The Board notes that three depository institutions have entered the market de novo since 2003. Other factors indicate that the market remains attractive for entry. From 1999 to 2004, the market's annualized population growth substantially exceeded the annualized population growth for Delaware as a whole, and the market's annualized income growth also exceeded the annualized income growth for the entire state.

C. Views of Other Agencies and Conclusion on Competitive Considerations

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 four banking markets where PNC and Mercantile compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

15. The Board previously has considered the competitiveness of similarly active credit unions as a mitigating factor. *See, e.g., Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004).

16. Before consummation of the proposal, with deposits of these credit unions weighted at 50 percent, PNC would be the fourth largest depository organization in the market, with approximately 9.5 percent of market deposits, and Mercantile would be the second largest depository organization in the market, controlling approximately 15.7 percent of market deposits.

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 has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by PNC, and public comments received on the proposal.¹⁷

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of 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, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. PNC, all its subsidiary banks, and all Mercantile's subsidiary banks currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that PNC has sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. PNC will use existing resources and the proceeds of a trust preferred securities issuance and long-term debt to fund the cash purchase of the shares.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of PNC, Mercantile, and their subsidiary banks, 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 banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-

17. One commenter expressed concern about press reports regarding the theft of a laptop computer containing data about some of Mercantile Lead Bank's customers. In response to the security breach, Mercantile Lead Bank notified potentially affected customers, monitored customer accounts for suspicious activities, and offered customers credit-monitoring services at bank expense. Mercantile and PNC have policies and procedures in place to address data protection and data breaches, as well as to safeguard customer information.

laundering laws.¹⁸ The Board also has considered PNC's plans for implementing the proposal, 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 under the BHC Act.

CONVENIENCE AND NEEDS CONSIDERATIONS

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁹ 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.²⁰

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of PNC and Mercantile, data reported by PNC and Mercantile under the Home Mortgage Disclosure Act ("HMDA"),²¹ other information provided by PNC, confidential supervisory information, and public comments received on the proposal. A commenter alleged, based primarily on 2005 HMDA data, that PNC and Mercantile engaged in discriminatory treatment of minority individuals in the home mortgage lending operations of their subsidiary depository institutions.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of PNC and Mercantile. 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.²²

PNC Lead Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of April 15, 2002. PNC Delaware Bank also received an "outstanding" rating at its most recent CRA evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of January 21, 2003. Mercantile Lead Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 19, 2004. Each of Mercantile's other subsidiary banks received a "satisfactory" rating at its most recent CRA performance evaluation.²³ PNC has represented that it plans to implement its current CRA program at Mercantile's subsidiary banks.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of PNC and Mercantile in light of public comments received on the proposal. A commenter alleged, based on 2005 HMDA data, that PNC denied the home mortgage loan applications of African-American borrowers more frequently than those of nonminority applicants in various metropolitan statistical areas ("MSAs"). The commenter also alleged that Mercantile denied the home mortgage loan applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various states and made inadequate numbers of loans to African Americans and Hispanics. The Board has focused its analysis on the 2005 HMDA data reported by PNC Lead Bank and by each of Mercantile's subsidiary banks.²⁴

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 PNC or Mercantile are 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.²⁵ HMDA data, therefore, have limitations

18. A commenter reiterated its past criticism of PNC's acquisition of Riggs National Corporation ("Riggs"), Washington, D.C., in 2005, without providing any new information. The commenter previously submitted extensive comments on PNC's application to acquire Riggs, and the Board considered those comments in acting on that proposal. See *The PNC Financial Services Group, Inc.*, 91 *Federal Reserve Bulletin* 424 (2005).

19. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

20. 12 U.S.C. § 2903.

21. 12 U.S.C. § 2801 et seq.

22. See *Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 at 36,640 (2001).

23. Appendix B lists the most recent CRA performance ratings of these banks.

24. The Board reviewed the HMDA data for PNC Lead Bank in the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA; in the Pittsburgh, Pennsylvania, MSA; and in its CRA assessment areas. In addition, the Board reviewed the HMDA data reported by each of Mercantile's subsidiary banks in its respective CRA assessment areas.

25. 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

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 PNC, Mercantile, and their subsidiaries. The Board also has consulted with the OCC and FDIC, respectively, about the fair-lending compliance records of PNC Lead Bank and Mercantile Lead Bank.

The record, including confidential supervisory information, indicates that PNC and Mercantile have taken steps to ensure compliance with fair lending and other consumer protection laws. PNC and Mercantile each has a fair-lending compliance program that includes a second review process, and periodic self-assessments utilizing comparative file reviews to identify any discriminatory practices with respect to the companies' home mortgage lending. In addition, PNC and Mercantile each has a process for resolving fair lending complaints, and each conducts periodic internal audits of its fair lending program. Both companies also require employees to complete fair-lending training sessions. PNC has represented that Mercantile's current fair-lending compliance program initially would remain in place at Mercantile's subsidiary banks after consummation of the proposal, but it would be replaced by PNC's fair-lending compliance program later in 2007 after Mercantile's subsidiary banks are merged into PNC's subsidiary banks.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of PNC and Mercantile under the CRA. These established efforts and records 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 institutions involved, information provided by PNC, comments received on the proposal, and confidential supervisory information. PNC represented that the proposal will result in greater convenience for PNC and Mercantile

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.

customers through a larger branch network and a broader variety of products and services. 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.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.²⁶ 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 PNC with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 15, 2007.

Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

26. A commenter 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 any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any appropriate supervisory authority. Under its rules, the Board 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 provide an opportunity for testimony or other presentations (12 CFR 225.16(e), 262.3(i)(2), 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The 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 hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting is denied.

Appendix A

PNC AND MERCANTILE 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
WILMINGTON BANKING MARKET IN DELAWARE AND MARYLAND						
<i>Wilmington—includes New Castle County, Delaware, and Cecil County, Maryland</i>						
PNC Pre-Consummation	2	1,790,381	13.3	2,616	68	21
Mercantile	7	344,617	2.6	2,616	68	21
PNC Post-Consummation	2	2,134,998	15.8	2,616	68	21
WASHINGTON BANKING MARKET IN THE DISTRICT OF COLUMBIA, MARYLAND, VIRGINIA, AND WEST VIRGINIA						
<i>Washington—includes the Rmally Metro Area (RMA) of Washington, DC–MD–VA–WV; the non-RMA portions of Calvert, Charles, Frederick, and St. Mary's counties in Maryland and Fauquier and Loudon counties in Virginia; Jefferson County, West Virginia; and the Virginia independent cities of Alexandria, Fairfax, Falls Church, and Manassas</i>						
PNC Pre-Consummation	8	2,943,750	2.8	1,026	25	83
Mercantile	7	4,616,421	4.5	1,026	25	83
PNC Post-Consummation	6	7,560,171	7.3	1,026	25	83
YORK BANKING MARKET IN PENNSYLVANIA						
<i>York—includes Adams and York counties</i>						
PNC Pre-Consummation	10	279,184	4.5	1,036	1	15
Mercantile	17	6,973	0.1	1,036	1	15
PNC Post-Consummation	10	286,157	4.6	1,036	1	15

NOTE: Data are as of June 30, 2006, and adjusted to reflect mergers and acquisitions through January 19, 2007. All deposit amounts are in thousands of dollars. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

Appendix B

CRA PERFORMANCE EVALUATIONS OF MERCANTILE BANKSHARES CORPORATION'S OTHER BANKS

Bank	CRA Rating	Date	Supervisor
1. Citizens National Bank, Laurel, Maryland	Satisfactory	February 2005	OCC
2. National Bank of Fredericksburg, Fredericksburg, Virginia	Satisfactory	September 2002	OCC
3. Marshall National Bank and Trust Company, Marshall, Virginia	Satisfactory	April 2005	OCC
4. Mercantile Peninsula Bank, Selbyville, Delaware	Satisfactory	June 2005	FDIC
5. Mercantile Southern Maryland Bank, Leonardtown, Maryland	Satisfactory	January 2005	FDIC
6. Westminster Union Bank, Westminster, Maryland	Satisfactory	March 2004	FDIC
7. Mercantile County Bank, Elkton, Maryland	Satisfactory	May 2005	FDIC
8. Mercantile Eastern Shore Bank, Chestertown, Maryland	Satisfactory	October 2004	FDIC
9. Farmers & Mechanics Bank, Frederick, Maryland	Satisfactory	November 2005	FRB
10. Annapolis Bank and Trust Company, Annapolis, Maryland	Satisfactory	April 2005	FRB

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

*Banco Santander Totta, S.A.
Lisbon, Portugal*

Order Approving Establishment of a Representative Office

Banco Santander Totta, S.A. (“Bank”) (formerly known as Banco Totta & Açores, S.A. (“Açores”)), Lisbon, Portugal, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to retain a representative office in Mineola, New York.² The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

1. 12 U.S.C. § 3107(a).

2. Açores operated the representative office in Mineola. The Açores banking organization was reorganized effective December 16, 2004. In connection with the reorganization, a new holding company, Santander Totta SGPS, S.A., was created, and Açores merged with Açores’ two subsidiary banks, Companhia Geral de Crédito Predial Português, S.A. (“Crédito”) and Banco Santander Portugal, S.A., with Crédito as the survivor. Crédito then changed its name to Banco Santander Totta, S.A.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Mineola (*Newsday, Inc.*, May 19, 2006). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately \$44.6 billion,³ is the third largest privately owned banking organization in Portugal. Bank provides a broad range of banking, financial, and other services to corporate and retail clients primarily in Portugal. Outside Portugal, Bank operates a subsidiary bank in Angola; branches in the United Kingdom, Luxembourg, Puerto Rico, and Madeira; and representative offices in Germany, Canada, Switzerland, Venezuela, France, and South Africa. In the United States, Bank has one nonbank subsidiary, Totta & Açores, Newark, New Jersey, that engages in money-remittance services in Connecticut, New Jersey, New York, and Massachusetts.

Bank is a subsidiary of Banco Santander Central Hispano, S.A. (“Santander”), Madrid, Spain.⁴ Through its offices and subsidiaries, Santander offers banking, financial, and other services worldwide. In the United States, Santander indirectly controls two U.S. insured depository institutions⁵ and owns several U.S. subsidiaries that engage

3. Asset data are as of September 30, 2006.

4. Santander indirectly controls approximately 99.6 percent of Bank’s voting shares.

5. Santander controls Banco Santander Puerto Rico, San Juan, Puerto Rico, a state-chartered bank with offices only in Puerto Rico;

in nonbanking activities. Santander and its foreign bank subsidiaries operate a number of direct offices in the United States.

Bank assumed the existing operations of Açores in connection with a corporate reorganization. No changes in the activities of Bank's representative office have occurred as a result of the reorganization. That office acts as a liaison between Bank and its existing and potential customers. The office's activities include soliciting new business, conducting research, marketing various services, and receiving applications for extensions of credit and executing loan documents on behalf of Bank.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home-country supervisors.⁶ The Board also considers additional standards as set forth in the IBA and Regulation K.⁷

As noted above, Bank and Santander engage 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, in connection with applications involving other banks in Portugal, that those banks were subject to home-country supervision on a consolidated basis.⁸ Bank is supervised by the Bank of Portugal on substantially the same terms and conditions as those other banks. With respect to Bank's parent, the Board previously has determined that Santander is subject to comprehensive supervision on a consolidated basis by the

and Sovereign Bank, Wyomissing, Pennsylvania, a savings association with offices in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island.

6. 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). 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.

7. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3).

8. See, e.g., *Caixa Económica Montepio Geral*, 86 *Federal Reserve Bulletin* 700 (2000); *Banco Comercial Português, S.A.*, 86 *Federal Reserve Bulletin* 613 (2000); *Banco Espírito Santo, S.A., et al.*, 86 *Federal Reserve Bulletin* 418 (2000); *Caixa Geral de Depósitos S.A.*, 85 *Federal Reserve Bulletin* 774 (1999).

Bank of Spain.⁹ Based on all the facts of record, including the above information, it has been determined that Bank and Santander are subject to comprehensive supervision on a consolidated basis by their home-country supervisors.

The Board also has taken into account the additional standards set forth in section 7 of the IBA and Regulation K.¹⁰ The Bank of Portugal and the Bank of Spain have no objection to Bank's retention of the representative office.

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

Portugal is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Portugal has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Portugal, 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 that are 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 and Santander have 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 and Santander have committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from

9. See e.g., *Banco Santander, S.A.*, 85 *Federal Reserve Bulletin* 441 (1999).

10. See 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: whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and Santander have provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank and Santander, as well as the terms and conditions set forth in this order, Bank's application to retain the representative office in Mineola, New York, is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹¹ 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 and Santander with the commitments made in connection with this application and with the conditions in this order.¹² 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, approved pursuant to authority delegated by the Board, effective March 16, 2007.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

The Bank of Nova Scotia Toronto, Canada

Order Approving Establishment of a Branch

The Bank of Nova Scotia ("Bank"), Toronto, Canada, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to establish a branch in Houston, Texas. 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 newspa-

11. See 12 CFR 265.7(d)(12).

12. The Board's authority to approve the retention of the representative office 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 New York State Banking Department to license the representative office in accordance with any terms or conditions that it may impose.

1. 12 U.S.C. § 3105(d).

per of general circulation in Houston (*The Houston Chronicle*, November 20, 2006). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of \$338 billion, is the third largest commercial bank in Canada.² It provides a variety of banking services to retail and corporate customers through more than 950 branches in Canada. It also provides stock brokerage, insurance brokerage, fund management, and financial advisory services through subsidiaries.

In the United States, Bank operates branches in Portland, Oregon, and New York, New York; and agencies in Atlanta, Georgia, and San Francisco, California.³ Bank also engages in financing, investment advisory, securities, fiduciary and custody, and money transmission activities through subsidiaries.

The proposed branch would replace Bank's existing representative office in Houston. It would engage in a wholesale banking business, offering corporate investment, lending, and cash management services to existing and prospective customers. Bank is a qualifying foreign banking organization under Regulation K.⁴

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 of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.⁵ The Board also may consider additional standards set forth in the IBA and Regulation K.⁶

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided

2. Asset data are as of October 31, 2006.

3. In connection with this proposal, Bank has filed notice under section 211.22(b)(1) of Regulation K (12 CFR 211.22(b)(1)) to change its home state from New York to Texas. Bank's branch in Portland was established before the enactment of the IBA in 1978. See 12 U.S.C. § 3103(b). Bank's New York office is currently licensed as an agency by the state of New York. Because the office accepts large-denomination deposits from U.S. residents, it is treated as a branch for purposes of the IBA. As a consequence of Bank's change of home state, Bank's branch in New York must limit its deposit taking to that permitted to an agency under the IBA and Regulation K.

4. 12 CFR 211.23(b).

5. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). In assessing this standard, the Board considers, among other factors, the extent to which the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (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. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

6. 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3).

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, in connection with applications involving other banks in Canada, that those banks were subject to home-country supervision on a consolidated basis by their home-country supervisor, the Office of the Superintendent of Financial Institutions (“OSFI”).⁷ Bank is supervised by the OSFI on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is 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.⁸ The OSFI has no objection to the establishment of the proposed branch.

Canada’s risk-based capital standards 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 considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Canada is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and terrorist financing. In accordance with those recommendations, Canada has enacted laws and adopted regulations to deter money laundering and terrorist financing. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. Bank has policies and procedures to comply with these laws and

regulations, and its compliance with applicable laws and regulations is monitored by the bank’s auditors and the OSFI.

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

Based on the foregoing and all the facts of record, Bank’s application to establish a branch is hereby approved.⁹ 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 conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁰ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 13, 2007.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

7. See *Toronto-Dominion Bank*, 92 *Federal Reserve Bulletin* C100 (2006); *Bank of Montreal*, 92 *Federal Reserve Bulletin* C14 (2006). See also *Toronto-Dominion Bank*, 82 *Federal Reserve Bulletin* 1052 (1996); *Bank of Montreal*, 80 *Federal Reserve Bulletin* 925 (1994).

8. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). These standards include (i) whether the bank’s home-country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vi) the needs of the community; and (vii) the bank’s record of operation.

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

10. The Board’s authority to approve the establishment of the proposed branch parallels the continuing authority of the state of Texas to license offices of a foreign bank. The Board’s approval of this application does not supplant the authority of the state of Texas to license the proposed office of Bank in accordance with any terms or conditions that it may impose.

FINAL ENFORCEMENT DECISIONS
ISSUED BY THE BOARD

IN THE MATTER OF

Seresa T. Morgan
A Former Institution-Affiliated Party of

Civitas BankGroup, Inc.
Franklin, Tennessee

Docket No. 06-020-E-I

Order of Prohibition Issued Upon Consent Pursuant to Section 8(e) of the Federal Deposit Insurance Act, as Amended WHEREAS, pursuant to sections 8(e) and (i)(3) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. §§ 1818(e) and (i)(3)), the Board of Governors of the Federal Reserve System (the "Board of Governors") issues this consent Order of Prohibition (the "Order") against Seresa T. Morgan ("Morgan"), a former institution-affiliated party, as defined in sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), of Civitas BankGroup, Inc., Franklin, Tennessee, previously known as Cumberland Bancorp, Inc., a registered bank holding company ("Civitas");

WHEREAS, on January 5, 2007, the Board of Governors issued a Notice of Intent to Prohibit Issued Pursuant to Section 8(e) of the Federal Deposit Insurance Act, as amended (the "Notice") against Morgan alleging that when Morgan was employed by Civitas, she allegedly participated in violations of law, unsafe or unsound practices, and breaches of fiduciary duty in connection with the embezzlement of over \$197,000 from Civitas, and falsification of its books and records; that she was thereafter terminated from her position as an employee of Civitas; and that she had executed a promissory note requiring her to make repayment to Civitas;

WHEREAS, on January 12, 2007, Morgan filed an answer to the Notice; and

WHEREAS, this Order resolves the proceeding initiated by issuance of the Notice; and

WHEREAS, by affixing her signature hereunder, Morgan has consented to the issuance of this Order by the Board of Governors and has agreed to comply with each and every provision of this Order, and has waived any and all rights she might otherwise have pursuant to 12 U.S.C. § 1818 or 12 CFR Part 263, or otherwise: (a) to a hearing for the purpose of taking evidence with respect to any matter implied or set forth in this Order; (b) to obtain judicial review of this Order or any provision hereof; and (c) to challenge or contest in any manner the basis, issuance, terms, validity, effectiveness, or enforceability of this Order or any provision hereof.

NOW, THEREFORE, prior to the taking of any testimony or adjudication of, or finding on, any issue of fact or law implied or set forth herein, and without this Order constituting an admission by Morgan of any allegation made or implied by the Board of Governors in connection with this proceeding, and solely for the purpose of settlement of this proceeding without protracted hearings or testimony:

IT IS HEREBY ORDERED, pursuant to sections 8(e) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1818(e) and (b)(3)), that:

1. Morgan, without the prior written approval of the Board of Governors and, where necessary pursuant to section 8(e)(7)(B) of the FDI Act (12 U.S.C. § 1818(e)(7)(B)), another federal financial institution regulatory agency, is hereby and henceforth prohibited from:
 - (a) participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution or any holding company of an insured depository institution;
 - (b) soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));
 - (c) violating any voting agreement previously approved by any federal banking agency; and
 - (d) voting for a director, or serving or acting as an institution-affiliated party, such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).
2. All communications regarding this Order shall be addressed to:
 - (a) Mr. John H. Atkinson
Assistant Vice President
Department of Banking Supervision
and Regulation
Federal Reserve Bank of Atlanta
1000 Peachtree Street, N.E.
Atlanta, GA 30309-4470
 - (b) Ms. Seresa T. Morgan
304 Highland Heights
Goodlettsville, TN 37072
With a copy to:
 - (c) Larry D. Woods, Esq.
P.O. Box 24727
Nashville, TN 37202
3. Any violation of this Order shall separately subject Morgan to appropriate civil or criminal penalties, or both, under sections 8(i) and (j) of the FDI Act (12 U.S.C. §§ 1818(i) and (j)).
4. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, or any other federal or state agency or department, from taking any other action affecting Morgan.
5. Each provision of this Order shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board of Governors.

By order of the Board of Governors effective this 22nd
day of February, 2007.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

JENNIFER J. JOHNSON
Secretary of the Board

(signed)
Seresa T. Morgan