March 2007

Legal Developments: Fourth Quarter, 2006

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued under Section 3 of the Bank Holding Company Act

AFNB Holdings, Inc. Houston, Texas

Order Approving the Formation of a Bank Holding Company

AFNB Holdings, Inc. ("Holdings") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company and acquire all the voting shares of American First National Bank ("AFNB"), also of Houston.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 57,511 (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.

Holdings is a newly organized corporation formed to acquire AFNB. AFNB, with total assets of approximately $355 million, is the 102nd largest insured depository institution in Texas, controlling deposits of approximately $313 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[2]

Competitive Considerations

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

Holdings does not currently control a depository institution. Based on all the facts of record, the Board concludes that consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of companies and depository institutions involved in a 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 confidential supervisory information from the Office of the Comptroller of the Currency ("OCC"), the primary federal supervisor of AFNB, publicly reported and other financial information, information provided by Holdings, and public comments received on the proposal.

In evaluating financial factors in proposals involving newly formed bank holding companies, the Board reviews the financial condition of both the applicant and the target depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of the proposal. AFNB currently is well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a share exchange. Based on its review of the record, the Board finds that Holdings has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved.[4] The Board has reviewed the

1. 12 U.S.C. § 1842.
2. Asset data are as of September 30, 2006. Deposit data and state rankings are as of June 20, 2006, and reflect merger activity through December 6, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
3. *See* 12 U.S.C. § 1842(c)(1).
4. Three commenters, including two minority shareholders of AFNB, questioned the competence and integrity of the current chairman of the board of AFNB, who also would serve as chairman of Holdings on consummation of the proposal. These commenters alleged that the chairman previously demonstrated poor performance and breached fiduciary duties while serving as chairman and chief executive officer of Texas First National Bank ("TFNB"), Houston. The Board has carefully reviewed publicly available information as well as

examination record of AFNB, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the OCC with AFNB and its record of compliance with applicable banking laws and anti-money-laundering laws. The Board has also considered the supervisory experiences of the OCC with TFNB, which was previously headed by members of the current management of AFNB. In addition, the Board has considered Holdings' plans for implementing the proposal, including the proposed management after consummation.[5]

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 proposals under section 3 of the BHC Act, the Board must also 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").[6] The Board has considered carefully all the facts of record, including reports of examination of the CRA record of AFNB, information provided by Holdings, and confidential supervisory information. AFNB received a "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 20, 2004. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance record of AFNB are consistent with approval.

Conclusion

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

The proposed transaction may not be consummated before the 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 Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 18, 2006.

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

Robert deV. Frierson
Deputy Secretary of the Board

confidential supervisory information about AFNB and TFNB in assessing the financial and managerial resources of AFNB and Holdings. In addition, the Board has consulted with the OCC, also the primary federal supervisor of TFNB, about the record of the current chairman of AFNB, including his service as chairman and chief executive officer of TFNB.

5. Two commenters expressed concern that the bylaws of Holdings would not permit cumulative voting and would thereby reduce the ability of AFNB's minority shareholders to elect directors and exert influence on the management or policies of AFNB. The Board notes that changes in the powers of common stock are not within the limited statutory factors the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

6. 12 U.S.C. § 2901 et seq.

Capital One Financial Corporation McLean, Virginia

Order Approving the Merger of Bank Holding Companies

Capital One Financial Corporation ("Capital One"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with North Fork Bancorporation, Inc. ("North Fork"), Melville, New York, and acquire its subsidiary banks, North Fork Bank ("NF Bank"), Mattituck, New York, and Superior Savings of New England, National Association ("Superior Savings"), Branford, Connecticut.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 *Federal Register* 29,627 (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.[3]

Capital One, with total consolidated assets of approximately \$89.5 billion, is the 36th largest depository organization in the United States,[4] controlling deposits of approximately \$32.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Capital One owns three subsid-

1. 12 U.S.C. § 1842. Capital One and North Fork also have requested the Board's approval to hold and exercise options to purchase up to 19.9 percent of each other's common stock. Both options would expire on consummation of the proposal.

2. North Fork engages in asset management, securities brokerage, and the sale of investment products through its nonbank subsidiaries. Capital One proposes to acquire those nonbank subsidiaries in accordance with section 4(k) of the BHC Act.

3. The Board received four comments expressing concerns about various aspects of the proposal.

4. Asset and national ranking and deposit data are as of June 30, 2006.

iary depository institutions that operate in Louisiana, Texas, and Virginia[5] and engages in numerous nonbanking activities that are permissible under the BHC Act.

North Fork, with total consolidated assets of approximately $59.4 billion, is the 41st largest depository organization in the United States, controlling deposits of $37.2 billion. North Fork owns two subsidiary depository institutions that operate in New York, New Jersey, and Connecticut. In New York, North Fork is the fifth largest depository organization, controlling deposits of $33.2 billion. North Fork is the 15th largest depository organization in Connecticut, controlling deposits of $799.9 million, and the 13th largest depository organization in New Jersey, controlling deposits of $3.2 billion.[6]

On consummation of this proposal, Capital One would become the 24th largest depository organization in the United States, with total consolidated assets of approximately $154 billion (including pro forma accounting adjustments). Capital One would control deposits of approximately $69.8 billion, which represent less than 2 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Capital One is Virginia,[7] and North Fork is located in New York, New Jersey, and Connecticut.[8]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[9] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[10]

Capital One and North Fork do not compete directly in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors 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 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, information provided by Capital One, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations.[11] In this evaluation, the Board

5. Capital One owns Capital One Bank, Glen Allen, and Capital One, F.S.B. ("Capital One FSB"), McLean, both in Virginia. Capital One also owns Capital One, National Association ("CONA"), New Orleans, Louisiana, formerly known as Hibernia National Bank, which Capital One acquired in connection with its merger with Hibernia Corporation in 2005 ("Hibernia Proposal"). *See Capital One Financial Corporation*, 91 *Federal Reserve Bulletin* 512 (2005) ("Hibernia Order").

6. State ranking and deposit data are as of June 30, 2006, and reflect merger activity through July 7, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

7. 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)).

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

9. 12 U.S.C. §§ 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). Capital One is adequately capitalized and adequately managed, as defined by applicable law. NF Bank and Superior Savings have been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Capital One would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in New York, New Jersey, and Connecticut. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

10. 12 U.S.C. § 1842(c)(1).

11. Two commenters criticized the relationships of Capital One and North Fork with unaffiliated nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. The Board considered the relationships of Capital One and Hibernia National Bank (now CONA) with these types of providers in the Hibernia Order and hereby readopts and reaffirms those findings and decisions herein. Capital One represented that it has made no significant changes to the manner in which Capital One and its affiliates

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 carefully considered the financial factors of the proposal. Capital One, all its subsidiary depository institutions, and all the subsidiary depository institutions of North Fork 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 Capital One has sufficient financial resources to effect the proposal.[12] The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Capital One will use existing resources and the proceeds of long-term debt to fund the cash purchase of 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 Capital One, North Fork, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws.[13] The Board also has considered Capital One'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 must also 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] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[15]

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary-insured depository institutions of Capital One and North Fork, data reported by Capital One and North Fork under the Home Mortgage Disclosure Act ("HMDA"),[16] other information provided by Capital One, confidential supervisory information, and public comments received on the proposal.

Two commenters opposed the proposal or expressed concern based on the levels of lending by the subsidiary depository institutions of Capital One and North Fork to LMI communities and the institutions' records of serving those communities through community development grants and loans. One of these commenters was particularly concerned that the acquisition of North Fork would adversely affect LMI residents in New York City if North Fork's current CRA programs were altered.[17] The com-

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conduct their lending relationships with such providers since the Hibernia Proposal. According to Capital One, NF Bank's Middle-Market Lending Group provides banking services to licensed check-cashing businesses in New York and New Jersey, and NF Bank's Small Business Financial Services Group extends a small number of loans to nontraditional providers of financial services. Capital One represented that NF Bank does not play any role in the lending practices or credit-review processes of these firms. In addition, North Fork owns a check-cashing business licensed by and operated exclusively in New York. The Board has consulted with the New York State Banking Department on this check-cashing business.

12. A commenter requested that, in light of the compensation to be received by certain North Fork executives in connection with the proposal, the Board consider whether it has authority to evaluate the appropriateness of compensation arrangements for executive officers in connection with merger and acquisition transactions subject to the BHC Act. The Board has taken the compensation arrangements for North Fork's executives into account in evaluating this proposal under the financial and managerial factors. As noted, Capital One and North Fork would remain well capitalized on consummation of the proposal. In addition, information about these arrangements was disclosed to the shareholders of Capital One and North Fork, and they approved the proposed transactions.

13. One commenter opposed the proposal in part based on a lawsuit and investigations undertaken by the Attorneys General of Minnesota and West Virginia in their respective states relating to Capital One's marketing of its credit cards. The Board considered this matter in the Hibernia Order and has reviewed additional information with respect to these actions, including information provided by Capital One and confidential supervisory information. The Board notes that in February 2006, Capital One and the state of Minnesota entered into a Consent Judgment, which by its terms constituted a full and final resolution of all claims brought by the state and was not deemed an admission of liability by Capital One. According to the terms of the Consent Judgment, Capital One agreed not to distribute certain advertisements in Minnesota for a period of 18 months after the date of the Consent Judgment and to pay a total of $749,999, to be divided equally among Minnesota-based chapters of the Legal Aid Society, the Minnesota Association of Community Organizations for Reform Now, and the state of Minnesota. The Board will continue to monitor the investigation by the Attorney General of West Virginia and notes that neither Board action on this proposal nor any supervisory action by the Board under the BHC Act would interfere with the Attorney General's review or with the ability of a court to resolve any litigation pertaining to this matter.

14. 12 U.S.C. § 2901 et seq.

15. 12 U.S.C. § 2903.

16. 12 U.S.C. § 2801 et seq.

17. The commenter made specific recommendations for community development programs for Capital One and its subsidiary bank after consummation of this merger that were modeled on pledges previously made by North Fork. Another commenter expressed concern that Capital One had not made community development lending commit-

menters also alleged, based primarily on 2004 and 2005 HMDA data, that Capital One and North Fork 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 relevant insured depository institutions of both organizations. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[18]

CONA, Capital One's largest subsidiary depository institution as measured by total deposits, received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of January 12, 2004. Capital One FSB and Capital One Bank both received "outstanding" ratings at their most recent CRA performance evaluations.[19] NF Bank received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC"), as of August 19, 2002, and Superior Savings received a "satisfactory" rating from the OCC, as of August 1, 2005. Capital One has indicated that it does not expect the proposed merger to result in the discontinuation of any products or services offered by North Fork, except to the extent that Capital One offers a comparable product or service.[20]

ments specific to New Jersey and to specific types of organizations. The Board notes that the CRA does not require depository institutions to engage in particular kinds of lending or in lending to specific types of organizations. Moreover, the Board views the enforceability of third-party pledges, initiatives, and agreements as matters outside the CRA. The Board has explained that an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action. In addition, 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, e.g.*, *Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005). 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.

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

19. Capital One FSB's and Capital One Bank's most recent evaluations were both as of July 18, 2005, by the Office of Thrift Supervision ("OTS") and the Federal Reserve Bank of Richmond ("Reserve Bank"), respectively.

20. A commenter expressed concern that Capital One has limited experience in branch services and mortgage lending. As noted above, Capital One intends to maintain the current services provided by North Fork. In addition, Capital One stated that it intends to retain key management personnel at North Fork's branches.

B. CRA Performance of Capital One

1. *CONA*. CONA received an overall "satisfactory" CRA performance rating at its January 2004 evaluation.[21] The Board previously considered the CRA performance of CONA in the Hibernia Order and hereby reaffirms and readopts its findings and decisions herein. Capital One represented that it has retained or expanded all CRA programs in place at CONA since it acquired the bank. As noted in the Hibernia Order, examiners commended CONA's responsiveness to the credit needs of its assessment areas, particularly in providing loan products to small businesses. Examiners noted CONA's good overall distribution of loans to borrowers of different income levels, adequate levels of community development lending and investment, and accessible service-delivery systems in its assessment areas. Examiners also commended its excellent community development services.

Since the 2004 CRA evaluation, Capital One represented that CONA has originated more than $300 million in community development loans, made or committed to make qualified investments totaling $34 million, and provided $1.8 million in community development grants.[22]

2. *Capital One FSB*. As noted, Capital One FSB received an overall "outstanding" CRA performance rating at its July 2005 evaluation.[23] The institution received a "high satisfactory" rating under the lending and services tests and an "outstanding" rating under the investment test in this evaluation.

Examiners noted that Capital One FSB's geographic distribution of consumer loans was reasonable in relation to the demographic characteristics of its assessment area and that the geographic distribution of mortgage loans and small loans to businesses was commensurate with both demographic and peer lending data. According to examiners, the percentage of consumer installment loans made to LMI borrowers in the institution's assessment area exceeded the percentage of LMI families residing in that area. Capital One FSB's distribution of consumer credit cards to borrowers of different income levels also was reasonable compared with the demographic data. In addition, examiners noted favorably the institution's special installment-loan product that was primarily used by LMI borrowers.[24]

21. The evaluation period was from October 18, 1999, through January 12, 2004, except for the lending test, which was evaluated from January 1, 2000, through December 31, 2002.

22. These amounts were provided from January 31, 2004, through March 31, 2006. In addition, CONA provided special assistance to the communities affected by Hurricane Katrina through charitable donations, fundraising coordination, grants of payment deferrals for business and individual customers, and extensions of lines of credit on favorable terms.

23. The evaluation period was from April 1, 2003, through June 30, 2005, except for the review of retail lending, which was evaluated from January 1, 2003, through March 31, 2005. Capital One FSB is a nationwide provider of consumer and commercial lending and offers consumer deposit products.

24. This product featured a low minimum loan amount of $1,000 and flexible underwriting requirements.

Examiners commended Capital One FSB for increasing its community development lending, which totaled approximately $15.8 million during the most recent evaluation period. Examiners also noted the innovative nature of Capital One FSB's lending arrangements with community development fund initiatives, affordable housing organizations, and other nonprofit organizations that served LMI individuals.

During the evaluation period, Capital One FSB's qualified investments totaled approximately $119.4 million and included purchases of qualified mortgage-backed securities and low-income-housing tax credits, investments in small business investment corporations, and deposits in community development fund initiatives. In addition, examiners noted that Capital One FSB provided approximately $8.6 million in financial grants during the assessment period.

Although Capital One FSB has no public offices, examiners noted that it provided customer-service call centers with extended hours and issued ATM cards to customers to allow them access to their money market accounts. Examiners also commended Capital One FSB for the technical assistance and financial advice it provided to a variety of nonprofit organizations in its assessment area and other communities in which Capital One FSB operated.

3. *Capital One Bank*. Capital One Bank is engaged primarily in credit card operations and has been designated as a limited-purpose bank, which is evaluated under the community development test for CRA performance.[25] In assigning a rating to a limited-purpose bank, examiners may consider the bank's community development loans, investments, and services nationwide rather than only in the bank's assessment area. In rating Capital One Bank "outstanding" at its July 2005 evaluation, Reserve Bank examiners noted that Capital One Bank's nationwide qualified investments increased from $82 million to $128 million during the evaluation period.[26] These investments included investments in low-income-housing tax credit projects, entities that support microenterprise development, and bonds issued by the Virginia Housing Development Authority.

During the evaluation period, Capital One Bank contributed more than $6.5 million to a variety of organizations that primarily assist LMI individuals or areas or support microenterprise development. Examiners also noted that Capital One Bank provided technical assistance and financial expertise to organizations dedicated to community development, including affordable housing, social services, and small business development.

25. *See* 12 CFR 228.25(a).

26. The evaluation period was from April 28, 2003, through June 30, 2005.

C. CRA Performance of North Fork

1. *NF Bank*. As noted, NF Bank received an overall "outstanding" rating in its August 2002 CRA evaluation.[27] Under the lending test, NF Bank received a rating of "outstanding," and examiners commended the bank's level of lending activity as reflecting an excellent responsiveness to the credit needs of its assessment area. Examiners found NF Bank's overall distribution of loans to borrowers of different income levels to be very good, particularly its home purchase loans. During the evaluation period, NF Bank's percentages of home purchase loans exceeded the percentages for lenders in the aggregate ("aggregate lenders").[28] Similarly, the percentage of its home purchase loans to LMI geographies exceeded the percentages for aggregate lenders during the evaluation period. Examiners also noted that the geographic distribution of the bank's loans to small businesses was excellent.[29]

Since its most recent evaluation, NF Bank has remained an active mortgage lender in its assessment area. For example, Capital One represented that NF Bank and its mortgage subsidiary, GreenPoint Mortgage Funding, Inc. ("GreenPoint"), Novato, California, closed more than $525 million of multifamily housing loans in its assessment area in 2004 and $534 million of such loans in 2005. Capital One also represented that NF Bank's percentages of home purchase loans and refinance loans originated in LMI geographies in New Jersey exceeded the percentages for aggregate lenders in 2004 and 2005. In addition, Capital One stated that NF Bank and GreenPoint, on a combined basis, made more than $1.3 billion in small business loans in the New York and New Jersey assessment area in 2004.

Examiners commended NF Bank's leadership role in making community development loans that respond to the credit needs of economically disadvantaged areas, individuals, and small businesses through its community investment efforts and innovative and flexible loan practices. During the evaluation period, NF Bank made community development loans totaling $83.4 million to affordable housing projects, nursing homes serving elderly residents in LMI neighborhoods, and other community development groups. NF Bank also originated or purchased $345 million in affordable multifamily housing loans for properties in LMI neighborhoods.

NF Bank has continued its community development lending since its most recent evaluation.[30] Capital One

27. The evaluation period was October 1, 1999, through June 30, 2002, with the exception of the lending test, for which the evaluation period was January 1, 2000, through June 30, 2002.

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

29. For purposes of the evaluation, small businesses are businesses with gross annual revenues of $1 million or less.

30. One commenter expressed concern about NF Bank's CRA programs in New Jersey. NF Bank entered the New Jersey market by acquiring The Trust Company of New Jersey ("Trust Company") in May 2004. NF Bank's CRA performance has not been evaluated since

stated that NF Bank provided $650 million in general community development loans and $450 million in affordable multifamily housing loans in 2004 and 2005. Capital One also represented that NF Bank has approved more than $6.8 million in financing for affordable housing in New Jersey since 2004.

In the 2002 CRA evaluation, NF Bank received an "outstanding" rating under the investment test, and examiners commended NF Bank for taking a leadership role in investing in innovative and complex qualified investments in its assessment area. Examiners reported that during the evaluation period, NF Bank made community development investments in its New York assessment area totaling $66.1 million, primarily in affordable housing initiatives. NF Bank also donated $1.2 million to numerous community development organizations engaged in affordable housing development, social services, and neighborhood revitalization efforts in its assessment area.

Capital One represented that NF Bank made $86.3 million in qualified community development investments, and that NF Bank and GreenPoint also made approximately $5 million in community development grants on a combined basis, in 2004 and 2005.[31] These community development investments and grants aided a broad range of community and housing development groups in its assessment area, including a $10 million investment in housing revenue bonds issued by the New Jersey State Housing Mortgage Finance Agency for development of affordable housing for LMI families in the state.

In the 2002 CRA evaluation, NF Bank also received an "outstanding" rating for the service test. Examiners noted that NF Bank's service-delivery systems were accessible to geographies and individuals of different income levels throughout its assessment areas and that its branch network was well-dispersed geographically and conducive to banking by LMI individuals.[32] In addition, examiners commended the bank for having an "excellent" level of innovative community development services. Examiners also noted that the bank's outreach efforts included extensive financial literacy programs in LMI areas and small business seminars providing financial and technical assistance.

2. *Superior Savings*. Superior Savings received an overall "satisfactory" rating in its August 2005 evaluation.[33] Examiners concluded that the bank had an adequate level of community development lending, services, and qualified investments in its assessment areas and an adequate responsiveness to the credit and community development needs in its assessment areas.

During the 2002 evaluation period, Superior Savings extended $13.7 million in community development loans and $14.7 million in qualified community investments that were primarily related to affordable housing and neighborhood revitalization initiatives in LMI areas. Superior Savings engaged in various community development programs in its assessment areas, particularly in the Bronx borough of New York City, including financial literacy seminars provided by Superior Savings' staff at local charitable institutions and schools. Although Superior Savings employed a telemarketing business strategy, examiners noted that it maintained one of its two branches in the East Tremont neighborhood, an underserved LMI area of the Bronx.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending records of Capital One and North Fork in light of public comment received on the proposal. A commenter alleged, based on 2004 HMDA data, that Capital One FSB had made higher-cost loans[34] more frequently to African Americans and Hispanics than to nonminority borrowers nationwide.[35] Another commenter asserted, based on 2005 HMDA data, that a relatively high percentage of Capital One FSB's home mortgage loans to African Americans were higher-cost loans. In addition, the commenter alleged that GreenPoint, a mortgage subsidiary of North Fork, made higher-cost loans nationwide more frequently to African Americans than to nonminorities.[36] Further, the commenter asserted that on a combined basis in the New York City Metropolitan Statistical Area ("MSA"), GreenPoint and NF Bank made higher-cost loans more frequently to African Ameri-

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the acquisition. Capital One represented that since North Fork acquired Trust Company, North Fork has assigned employees familiar with community development lending to identify and underwrite those types of loans in New Jersey, and North Fork staff has participated in outreach efforts designed to promote homeownership opportunities for LMI borrowers and in LMI communities.

31. A commenter expressed concern that NF Bank engaged in less philanthropic activities than other local financial institutions and that such activities were not focused on community priorities. The Board notes that neither the CRA nor the federal banking agencies' implementing rules require that institutions make charitable donations.

32. Capital One also stated that North Fork has hired New Jersey-based employees and senior executive officers with substantial experience in the New Jersey market to manage the bank's retail and lending operations in the state and that, based on reviews conducted by independent companies of customer service in those branches, NF Bank's New Jersey branches consistently have received excellent reports for branch service.

33. The evaluation period was from September 30, 2002, through July 31, 2005. Superior Savings focuses on offering its services primarily through telemarketing and has been designated a wholesale institution by the OCC for CRA purposes. Superior Savings does not originate small business loans.

34. 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 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

35. The commenter also alleged, on the basis of 2005 HMDA data, that GreenPoint made a high percentage of higher-cost loans to African-American borrowers in Newark, New Jersey.

36. The commenter also contended that NF Bank extended an insufficient number of home mortgage loans to African-American and Hispanic borrowers in light of the demographic profile of its lending areas.

cans than to nonminorities.[37] The Board has reviewed HMDA data reported by Capital One FSB, NF Bank, and GreenPoint.[38]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial and ethnic groups in certain local areas, HDMA data provide an insufficient basis by themselves on which to conclude whether or not Capital One's subsidiary depository institutions, NF Bank, or GreenPoint are excluding or imposing higher credit 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.[39] 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 banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or 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 an on-site evaluation of compliance with fair lending laws by Capital One, North Fork, and their subsidiaries. The Board also has consulted with the Reserve Bank, the OTS, the OCC, and the FDIC about the fair-lending compliance records of Capital One Bank, Capital One FSB, CONA, and NF Bank, respectively.

The record, including confidential supervisory information, indicates that Capital One and North Fork have taken steps to help ensure compliance with fair lending laws and other consumer protection laws. CONA, NF Bank, and GreenPoint each has a fair lending compliance program that includes a second review of all loans marked for denial and an annual fair-lending review of its mortgage portfolio to determine whether there are any race- or ethnicity-related disparities in loan underwriting. Throughout both the Capital One and North Fork organizations, employees are required to attend annual fair-lending training sessions. In addition, Capital One stated that it intends to assimilate North Fork's consumer compliance operations into its consolidated compliance function and that the resultant organization will use best practices from both Capital One and North Fork to ensure that it maintains sound internal controls to promote compliance. As part of this integration, Capital One intends to provide ongoing role-based training to all its employees to ensure that they are well prepared to carry out their individual responsibilities in accordance with applicable consumer protection laws and regulations.

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 Capital One and North Fork under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

E. 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 the applicant, comments received on the proposal, and confidential supervisory information. Capital One represented that its national presence and financial and managerial resources will enhance the ability of NF Bank and Superior Savings to serve their customers and broaden their geographic reach and that the branch networks of NF Bank and Superior Savings will allow Capital One to offer a broader variety of products and services to its customers.[40] Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[41] In reaching its conclusion, the Board

37. The Board notes that NF Bank reported no higher-cost loans in 2005.

38. The Board has focused its analysis on the 2005 HMDA data reported nationwide by Capital One FSB, NF Bank, and GreenPoint and by GreenPoint in the New York City and Newark, New Jersey MSAs.

39. 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 real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

40. One commenter expressed concern that Capital One would reduce or change the products and services it currently offers to customers in New Jersey. Capital One represented that it intends to continue offering NF Bank's current products and services to New Jersey customers and that it may offer additional products not currently offered by NF Bank.

41. 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 supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to 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

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 Capital One with the conditions 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 by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 8, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Citizens Banking Corporation Flint, Michigan

Order Approving the Acquisition of a Bank Holding Company

Citizens Banking Corporation ("Citizens"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Republic Bancorp Inc. ("Republic"), Owosso, and its subsidiary bank, Republic Bank, Lansing, both of Michigan.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 54,992 (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.

Citizens, with total consolidated assets of approximately $7.8 billion, operates two subsidiary-insured depository institutions with branches in Iowa, Michigan, and Wisconsin. Citizens' subsidiary banks are Citizens Bank, Flint, Michigan, and F&M Bank—Iowa, Marshalltown, Iowa. Citizens is the ninth largest depository organization in Michigan, controlling deposits of $4.3 billion, which represent 2.8 percent of total deposits of insured depository institutions in Michigan ("state deposits").[2]

Republic, with total consolidated assets of approximately $6.2 billion, operates one insured depository institution with branches in Michigan and Ohio. Republic is the 12th largest depository organization in Michigan, controlling deposits of approximately $2.7 billion, which represent 1.8 percent of state deposits.

On consummation of this proposal, and after accounting for the proposed divestiture, Citizens would become the seventh largest depository organization in Michigan, controlling deposits of approximately $6.8 billion, which represent 4.6 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.[3] For purposes of section 3(d) of the BHC Act, the home state of Citizens is Michigan,[4] and Republic Bank is located in Michigan and Ohio.[5]

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

Competitive Considerations

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

considered carefully in acting on the proposal. The request fails to demonstrate why written comments do not present its views adequately or why a hearing or meeting 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.

1. 12 U.S.C. § 1842.

2. Asset data are as of September 30, 2006; statewide deposit and ranking data are as of June 30, 2006, and reflect merger activity through October 18, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. 12 U.S.C. § 1842.

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

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

6. *See* 12 U.S.C. §§ 1842(d)(1)(A)–(B), (d)(2)(A)–(B). Citizens is adequately capitalized and adequately managed, as defined by applicable law. Ohio does not require a bank to be in existence for a minimum period of time before its acquisition. On consummation of the proposal, Citizens 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 total deposits held in Ohio by insured depository institutions. *See* Ohio Rev. Code 1115.05(B)(1)(a) (30 percent limit on statewide deposits). All other requirements pursuant to section 3(d) of the BHC Act would be met on consummation of the proposal.

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.[7]

Citizens and Republic have subsidiary depository institutions that compete directly in six markets in Michigan: Ann Arbor, Detroit, Flint, Jackson, Lansing, and Traverse City. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by Citizens and Republic,[8] 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"),[9] other characteristics of the markets, and commitments by Citizens to divest certain branches of Republic in the Flint banking market.

A. Two Banking Markets Warranting Special Scrutiny

Citizens and Republic compete directly in two banking markets that warrant a detailed review: Flint and Jackson. As discussed below, the post-consummation concentration levels in the Flint market (after accounting for the proposed divestiture) would exceed the thresholds of the DOJ Guidelines, and Citizens' resulting market share in the market would exceed 35 percent. The post-consummation concentration level in the Jackson market would exceed the DOJ Guidelines' thresholds.

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 each 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.[10] In both markets, the record indicates that the proposal would not have a significantly adverse affect on competition.

Flint Banking Market. In the Flint banking market,[11] Citizens' subsidiary, Citizens Bank ("Citizens Bank"), Flint, is the largest depository institution in the market, controlling deposits of approximately $1.5 billion, which represent approximately 35 percent of market deposits. Republic Bank is the third largest depository institution in the market, controlling deposits of approximately $436.9 million, which represent approximately 10 percent of market deposits.

To reduce the potential adverse effects on competition in the Flint banking market, Citizens has committed to divest seven branches of Republic, with at least $210 million in deposits, to an out-of-market insured depository organization.[12] On consummation of the proposed merger, and after accounting for the proposed divestiture, Citizens would remain the largest depository institution in the market, controlling deposits of approximately $1.8 billion, which would represent 41 percent of market deposits. The HHI would increase 350 points to 2502.

Several factors indicate that the increase in concentration in the Flint banking market, as measured by the HHI and Citizens' market share, overstates the potential adverse competitive effects of the proposal in the market. After consummation, and taking into account the proposed divestiture, at least 17 other insured depository institutions would continue to operate in the market. In addition, community credit unions exert an important competitive influence in the Flint banking market.[13] Eight community

7. 12 U.S.C. § 1842(c)(1).

8. Deposit and market-share data are as of June 30, 2006, adjusted to reflect subsequent mergers and acquisitions through October 18, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market-share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. 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.

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

11. The Flint banking market is defined as Genesee County; Hazelton, Venice, Vernon, and Burns townships in Shiawassee County; Maple Grove, Taymouth, and Birch Run townships in Saginaw County; and Arbela and Millington townships in Tuscola County, all in Michigan.

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

13. The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. *See, e.g., Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006); *F.N.B. Corporation*, 90 *Federal Reserve Bulletin* 481 (2004); *Gateway*

credit unions control approximately $887.5 million in deposits in the market, which represent approximately 9 percent of market deposits on a 50 percent weighted basis. Accounting for the revised weightings of these deposits, Citizens would control approximately 37 percent of market deposits on consummation of the proposal, and the HHI would increase 288 points to 2077.[14]

Moreover, the record of recent entry into the Flint banking market evidences the market's attractiveness for entry. Within the past five years, six de novo bank branches and one credit union have opened in the Flint market, and all remain operational. Other factors indicate that the Flint banking market remains attractive for entry. For example, from 2002 to 2005, the market's average annualized deposit growth exceeded the average annualized deposit growth for all metropolitan areas in Michigan.

Jackson Banking Market. In the Jackson banking market,[15] Citizens Bank is the third largest depository institution, controlling deposits of $275.7 million, which represent 19 percent of market deposits. Republic Bank is the fourth largest depository institution in the market, controlling deposits of $172 million, which represent 12 percent of market deposits. On consummation of the proposal, Citizens Bank would become the largest depository institution in the market, controlling deposits of approximately $447.8 million. The HHI in this market would increase 459 points to 1974, and the pro forma market share of the combined entity would be 31 percent.

Several factors indicate that the proposal would not have a significantly adverse effect on concentration in the Jackson banking market. On consummation of the proposal, at least 12 other insured depository institutions would continue to operate in the market. The Board also has evaluated the competitive influence of five active community credit unions in this market. These credit unions control approximately $192.4 million in deposits in the market, which represent approximately 6 percent of market deposits on a 50 percent weighted basis. Accounting for the revised weightings of these deposits, Citizens would control approximately 29 percent of market deposits on consummation of the proposal, and the HHI would increase 403 points to 1747.[16]

In addition, the record of recent entry into the Jackson banking market evidences the market's attractiveness for entry. Within the past five years, three de novo bank branches have opened in the Jackson market, and all remain operational. Other factors indicate that the Jackson banking market continues to be attractive for entry. From 2002 to 2005, the market's annualized population growth exceeded the average annualized population growth for all metropolitan areas and nonmetropolitan counties in Michigan. Furthermore, the market's annualized income growth exceeded the average annualized income growth for all metropolitan areas in Michigan during the same period.

B. Banking Markets within Established Guidelines

Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds of the DOJ Guidelines in the other four banking markets: Ann Arbor, Detroit, Lansing, and Traverse City.[17] On consummation of the proposal, the Ann Arbor banking market would remain unconcentrated, the Detroit and Traverse City banking markets would remain moderately concentrated, and the Lansing banking market would become moderately concentrated, as measured by the HHI. Numerous competitors would remain in each of the four banking markets.

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 any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the competitive effects of 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 six banking markets where Citizens and Republic 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

Bank & Trust Co., 90 *Federal Reserve Bulletin* 547 (2004). In the Flint and Jackson banking markets, several credit unions offer a wide range of consumer products, operate street-level branches, and have memberships open to almost all the residents in the applicable market. The Board has concluded that the activities of such credit unions in these two markets exert sufficient competitive influence to mitigate, in part, the potential adverse competitive effects of the proposal.

14. With the deposits of these credit unions weighted at 50 percent, Citizens would be the largest depository institution in the market, with approximately 32 percent of market deposits, and Republic would be the third largest depository institution in the market, controlling approximately 9 percent of market deposits.

15. The Jackson banking market is defined as Jackson County and the eastern two tiers of townships in Calhoun County, including Lee, Clarence, Marengo, Sheridan, Eckford, Albion, Clarendon, and Homer townships, all in Michigan.

16. With the deposits of these credit unions weighted at 50 percent, Citizens would be the third largest depository institution in the market, with approximately 18 percent of market deposits, and Republic would be the fourth largest depository institution in the market, controlling approximately 11 percent of market deposits.

17. The effects of the proposal on the concentration of banking resources in these markets are described in the appendix.

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, 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 Citizens.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved both on a parent-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. Citizens, all its subsidiary depository institutions, and Republic 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 Citizens has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash payment. The cash portion would be funded from the proceeds of an issuance of trust preferred securities and cash on hand.

The Board also has considered the managerial resources of Citizens, Republic, and their subsidiary banks. 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 and with anti-money-laundering laws. Citizens, Republic, and their subsidiary depository institutions are considered well managed. The Board also has considered Citizens' plans for implementing the proposal, including the proposed management after consummation, and has consulted with the other relevant supervisory agencies for Republic Bank concerning those plans.

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").[18] Citizens Bank and F&M Bank-Iowa received "outstanding" and "satisfactory" ratings at their most recent CRA performance evaluations by the Federal Reserve Bank of Chicago, as of July 18, 2005, and July 17, 2006, respectively. Republic Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Insurance Deposit Corporation, as of August 12, 2002. After consummation of the proposal, Citizens plans to implement its CRA policies at Republic Bank. Citizens has represented that the proposal will provide greater convenience to customers through a larger network of branches and ATMs 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 Citizens with the conditions imposed in this order and the commitments made to the Board in connection with the application, including the divestiture commitment discussed above. 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 Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 12, 2006.

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

Robert deV. Frierson
Deputy Secretary of the Board

18. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

Appendix

CITIZENS AND REPUBLIC BANKING MARKETS IN MICHIGAN CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES WITHOUT DIVESTITURES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Ann Arbor—Washtenaw County, excluding Salem township; and Putnam, Hamburg, and Unadilla townships in Livingston County						
Citizens Pre-Consummation	13	137.5 mil.	2.7	905	16	20
Republic	11	154.7 mil.	3.0	905	16	20
Citizens Post-Consummation	7	292.1 mil.	5.7	905	16	20
Detroit—Oakland, Macomb, and Wayne Counties; Hadley, Metamora, Dryden, and Almont townships in Lapeer County; Berlin, Riley, Columbus, Saint Clair, Casco, China, East China, Ira, Cottrellville, and Clay townships in Saint Clair County; Tyrone, Howell, Oceola, Hartland, Iosco, Marion, Genoa, Brighton, and Green Oak townships in Livingston County; Salem township in Washtenaw County; and Ash and Berlin townships in Monroe County						
Citizens Pre-Consummation	16	423.5 mil.	.5	1,562	1	49
Republic	12	530.1 mil.	.7	1,562	1	49
Citizens Post-Consummation	9	953.6 mil.	1.2	1,562	1	49
Lansing—Clinton, Eaton, and Ingham Counties; Portland and Danby townships in Ionia County; Handy, Conway, Cohoctah, and Deerfield townships in Livingston County; and Woodland and Castleton townships in Barry County						
Citizens Pre-Consummation	5	362.6 mil.	6.7	1,090	200	25
Republic	2	823.7 mil.	15.1	1,090	200	25
Citizens Post-Consummation	1	1.2 bil.	21.8	1,090	200	25
Traverse City—Antrim County, excluding Banks township; and Benzie, Grand Traverse, Kalkaska, and Leelanau Counties						
Citizens Pre-Consummation	11	45.7 mil.	2.0	1,428	4	15
Republic	12	24.7 mil.	1.1	1,428	4	15
Citizens Post-Consummation	11	70.4 mil.	3.1	1,428	4	15

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

Grupo Financiero Banorte, S.A. de C.V.
Monterrey, Nuevo León, Mexico

Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte
Monterrey, Nuevo León, Mexico

Banorte USA Corporation
Wilmington, Delaware

Order Approving the Formation of Bank Holding Companies and Acquisition of a Bank

Grupo Financiero Banorte, S.A. de C.V. ("GF Norte"), Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte ("Banorte"), and Banorte USA Corporation ("Banorte USA")[1] (collectively, "Applicants") have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[2] to become bank holding companies and to acquire 70 percent of the voting securities of INB Financial Corporation ("INB Financial"), McAllen, Texas, and thereby acquire control of its subsidiaries, INB Delaware Corporation ("INB Delaware"), Wilmington, Delaware, and Inter National Bank, McAllen, Texas.[3] GF Norte, Banorte, Banorte USA, INB Financial, and INB Delaware (jointly, "FHC electors") have also filed with the Board elections to become financial holding companies on consummation of the proposal pursuant to section 4(k) and (l) of the BHC Act and section 225.82 of the Board's Regulation Y.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 14,894 (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.

1. GF Norte has represented that Banorte USA would be formed before consummation of the transaction.

2. 12 U.S.C. § 1842.

3. Banorte USA will have an option to acquire the remaining 30 percent of INB Financial's voting securities at specified intervals during the next five years.

4. *See* 12 U.S.C. § 1843(k) and (l); 12 CFR 225.82. FHC electors have certified that Inter National Bank is well capitalized and well managed and have provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that these elections to become financial holding companies will become effective on consummation of the proposal, if on that date Inter National Bank remains well capitalized and well managed, and if it has received a rating of at least "satisfactory" at its most recent performance evaluation under the Community Reinvestment Act ("CRA") (12 U.S.C. § 2901 et seq).

Banorte, with total consolidated assets of approximately $15.1 billion, is the fifth largest bank in Mexico.[5] Banorte is a subsidiary of and represents more than 90 percent of the assets of GF Norte, a financial services holding company that owns 96 percent of the shares of Banorte. GF Norte currently has no banking operations in the United States; however, it engages through subsidiaries in investment advisory and securities brokerage activities in the United States.

INB Financial, with total consolidated assets of approximately $1.2 billion, controls one insured depository institution, Inter National Bank, in Texas. INB Financial is the 41st largest insured depository organization in the state, controlling deposits of approximately $862 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[6]

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 carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by the Applicants. The Board also has consulted with the National Banking and Securities Commission ("CNBV"), an agency of the Mexican Ministry of Finance and Public Credit that is responsible for the supervision and regulation of Mexican banks and financial services holding companies, such as GF Norte.

In evaluating the financial factors in proposals involving the formation of new bank holding companies, the Board reviews the financial condition of the Applicants and the target depository institutions. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of the proposal. Mexico's risk-based capital standards are consistent with those established by the Basel Capital Accord. The capital ratios of Banorte 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, INB Financial and Inter National Bank are well capitalized and would remain so on consummation

5. Mexican asset and ranking data are as of December 31, 2004, and are based on the exchange rate then in effect. Domestic assets are as of June 30, 2006, and deposit data and rankings are as of June 30, 2005.

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

of the proposal. The Board also has considered the financial resources of GF Norte and Banorte USA. Based on its review of these factors, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a share purchase to be funded with available cash resources.

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 INB Financial and Inter National Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has consulted with the CNBV about Applicants' managerial resources to implement the proposal, including compliance of GF Norte and Banorte with applicable laws and regulations. The Board also has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the U.S. organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws. INB Financial and Inter National Bank are considered to be well managed. The Board also has considered Applicants' 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.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[7] As noted, the CNBV is the primary supervisor of Mexican banks, including Banorte. The Board has previously determined, in an application under the International Banking Act involving BBVA Bancomer, S.A. ("Bancomer"), Mexico City, Mexico, that Bancomer was subject to home country supervision on a consolidated basis.[8] In this case, the Board has determined that Banorte is supervised on substantially the same terms and conditions as Bancomer. Based on all the facts of record, the Board has concluded that Banorte is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.[9]

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[10] The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which GF Norte and Banorte operate and has communicated with relevant government authorities concerning access to information.

In addition, GF Norte and Banorte have committed that, to the extent not prohibited by applicable law, each will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act and other applicable federal law. GF Norte and Banorte also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable their affiliates to make any such information available to the Board. In light of these commitments, the Board has concluded that GF Norte and Banorte have provided adequate assurances of access to any appropriate 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.

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. In addition, section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[11] Applicants do not currently engage in banking activities in the United States and, therefore, do not compete with Inter National Bank in any relevant banking market. Accordingly, the Board concludes, based on all the facts of record, that consummation of the proposal would not have a significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

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

8. *See BBVA Bancomer*, 89 *Federal Reserve Bulletin* 146 (2003); *Grupo Financiero Banamex Accival*, 82 *Federal Reserve Bulletin* 1047 (1996).

9. The CNBV has supervisory authority over GF Norte. In addition, the CNBV has supervisory authority, with other agencies of the Mexican Ministry of Finance and Public Credit, over the nonbanking subsidiaries of GF Norte. The CNBV has the authority to require GF Norte to submit reports about its operations on a consolidated basis and to conduct inspections of GF Norte's primary nonbanking subsidiaries. The CNBV also has authority to impose restrictions on transactions between Banorte and related parties, including GF Norte and its subsidiaries.

10. *See* 12 U.S.C. § 1842 (c)(3)(A).

11. 12 U.S.C. § 1842(c)(1).

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 CRA. 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.[12]

The Board has carefully considered the convenience and needs factor and the CRA performance record of Inter National Bank in light of all the facts of record. As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance record of Inter National Bank. The bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of April 14, 2003.

Applicants have represented that they intend to maintain Inter National Bank's CRA program. Applicants expect that the proposal will enhance the ability of Inter National Bank's customers to conduct cross-border financial transactions and business.

In light of all the facts of record, the Board has concluded that considerations relating to the convenience and needs factor, including the performance record of Inter National Bank, are consistent with approval of this proposal.

CONCLUSION

Based on the foregoing and in light of all the facts of record, the Board has determined that the proposal should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, 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 shall 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 Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 13, 2006.

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

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Regions Financial Corporation Birmingham, Alabama

Regions Bank Birmingham, Alabama

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

Regions Financial Corporation ("Regions"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with AmSouth Bancorporation ("Amsouth") and acquire its subsidiary bank, AmSouth Bank, both of Birmingham.[2] In addition, Regions' subsidiary state member bank, Regions Bank, also of Birmingham, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[3] ("Bank Merger Act") to merge with AmSouth Bank, with Regions Bank as the surviving entity. Regions Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to retain and operate branches at the locations of AmSouth Bank's main office and branches.[4] In addition, Regions has provided notice under section 25 of the Federal Reserve Act and section 211.5 of the Board's Regulation K[5] of its intention to acquire Cahaba International, Inc., also of Birmingham, an agreement corporation subsidiary of AmSouth Bank.[6]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 47,812 (2006)) and in local publications in accordance with the relevant statutes and the Board's Rules of Procedure.[7] As required by the Bank Merger Act, reports on the competitive effects of the mergers were requested from the United States Attorney General and the appropriate banking agencies. The

1. 12 U.S.C. § 1842.
2. In addition, Regions and AmSouth each has requested the Board's approval to exercise an option to purchase up to 19.9 percent of the other institution's stock on the occurrence of certain circumstances. The options would terminate on consummation of Regions' merger with AmSouth.
3. 12 U.S.C. § 1828(c).
4. 12 U.S.C. § 321.
5. 12 U.S.C. § 601 et seq.; 12 CFR 211.5.
6. Regions proposes to acquire the shares of the nonbanking subsidiaries of AmSouth in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y (12 U.S.C. § 1843(k); 12 CFR 225.87).
7. 12 CFR 262.3(b).

time for filing comments has expired, and the Board has considered the applications, notice, and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.[8]

Regions, with total consolidated assets of approximately $86.1 billion, is the 21st largest depository organization in the United States, controlling domestic deposits of approximately $57.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[9] Regions operates one subsidiary depository institution, Regions Bank, with branches in 16 states,[10] and engages in numerous nonbanking activities that are permissible under the BHC Act.

AmSouth, with total consolidated assets of approximately $53.9 billion, is the 27th largest depository organization in the United States, controlling domestic deposits of approximately $35.8 billion. AmSouth operates one subsidiary depository institution, AmSouth Bank, with branches in seven states.[11]

On consummation of this proposal, and after accounting for all proposed divestitures, Regions would become the 13th largest depository organization in the United States, with total consolidated assets of approximately $142.4 billion. Regions would control domestic deposits of approximately $90.6 billion, which represent less than 2 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[12] For purposes of section 3(d) of the BHC Act, the home state of Regions is Alabama,[13] and AmSouth Bank is located in Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Virginia.[14]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[15] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

The BHC Act and the Bank Merger Act prohibit 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. Both acts also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[16]

Regions and AmSouth have subsidiary depository institutions that compete directly in 67 banking markets in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record and public comments on the proposal.[17] In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions ("market deposits") controlled by Regions and AmSouth in those markets,[18] the concentration levels of market deposits and the increases in these levels,

8. The Board received 132 comments that supported the transaction and 18 comments that either opposed or expressed concern about various aspects of the proposal.

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

10. Regions Bank operates branches in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

11. AmSouth Bank operates branches in Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Virginia.

12. 12 U.S.C. § 1842.

13. Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on 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)).

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

15. *See* 12 U.S.C. § 1842(d)(1)(A)–(B), (d)(2)(A)–(B). Regions is adequately capitalized and adequately managed, as defined by applicable law. AmSouth Bank has been in existence and operated for the minimum period of time required by applicable law. *See* Fla. Stat. Ann. § 658.2953 (three years); Ga. Code § 7-1-622(b)(1) (three years); La. Rev. Stat. Ann. § 538 (five years); Miss. Code. Ann. § 81-23-9 (five years); Tenn. Code. Ann. § 45-2-1403 (three years); and Va. Code Ann. § 6.1–44.20 (no minimum period). On consummation of the proposal, Regions would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and, after accounting for all proposed divestitures, less than 30 percent, or the applicable percentage established by state law, of total deposits held in each relevant state by insured depository institutions. All other requirements pursuant to section 3(d) of the BHC Act would be met on consummation of the proposal.

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

17. Several commenters expressed general concerns about the competitive effects of this proposal, including that consummation of the proposal would violate antitrust law. These concerns were carefully considered as part of the analysis described above.

18. Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2005, adjusted to reflect mergers and acquisitions through August 3, 2006, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market-share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),[19] and other characteristics of the markets. In addition, the Board has considered commitments made by Regions to the Board to reduce the potential that the proposal would have adverse effects on competition by divesting 52 AmSouth branches (the “divestiture branches”), which account for approximately $2.7 billion in deposits,[20] in 17 banking markets (the “divestiture markets”).[21] Regions has proposed to transfer all but one of the branches to be divested to out-of-market competitors.[22]

A. Banking Markets within Established Guidelines

Consummation of the proposal without divestitures would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 42 banking markets.[23] On consummation of the proposal, two of these banking markets would remain unconcentrated; 32 banking markets would remain moderately concentrated; and eight banking markets would remain highly concentrated, with only moderate increases in market concentration, as measured by the HHI. Numerous competitors would remain in each of the 42 banking markets.

B. Certain Banking Markets with Divestitures

After accounting for the divestitures Regions has proposed, consummation of the merger would be consistent with the DOJ Guidelines and Board precedent in 12 banking markets.[24] In nine of these markets, Regions proposes to divest all branches to be acquired from AmSouth and, therefore, the levels of concentration as measured by the HHI would not materially increase on consummation of the merger and the proposed divestitures.[25] In the other three markets, the HHI would not exceed the DOJ Guidelines and Board precedent on consummation of the merger and the proposed divestitures.[26] Numerous competitors would remain in these three banking markets. After accounting for the proposed divestitures, two banking markets would remain moderately concentrated, and ten banking markets would remain highly concentrated on consummation of the proposal.

C. Thirteen Banking Markets Warranting Special Scrutiny

Regions and AmSouth compete directly in 13 banking markets that warrant a detailed review: Anniston Area, Decatur Area, Etowah County, Gulf Shores Area, Mobile Area, Montgomery Area, and Tuscaloosa Area, all of Alabama; Panama City Area, Florida; Shreveport-Bossier City, Louisiana; Jackson Area, Lauderdale County, and Starkville, all of Mississippi; and McComb Area, of Mississippi and Louisiana. In each of these markets, including five with proposed divestitures and eight without proposed divestitures, the concentration levels on consummation of the proposal would exceed the threshold levels in the DOJ Guidelines, or the resulting market share of Regions would exceed 35 percent.

For each of these markets, the Board has carefully considered 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 resulting level of concentration in a banking market.[27] In each of these markets, the Board has identified factors that indicate the proposal would not have a significantly adverse impact on competition, despite the post-consummation increase in the HHI and market share.

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

20. Regions proposes to divest 39 AmSouth branches with approximately $2 billion in deposits in Alabama, six AmSouth branches with approximately $304.6 million in deposits in Mississippi, and seven AmSouth branches with approximately $408.3 million in deposits in Tennessee.

21. Regions has committed that, before consummating the proposed merger, it will execute an agreement for the proposed divestures in each divestiture market with a purchaser that the Board determines to be competitively suitable. Regions also has committed to divest total deposits in each divestiture market of at least the amount specified in the commitment and discussed in this order and to complete divestitures within 180 days of consummation of the proposed merger. In addition, Regions has committed that, if it is unsuccessful in completing the proposed divestiture within this time period, it will transfer the unsold branches to an independent trustee that will be instructed to sell such branches to an alternate purchaser or purchasers, without regard to price. Both the trustee and any alternate purchaser must be acceptable to the Board. *See BankAmerica Corp.*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corp.*, 77 *Federal Reserve Bulletin* 484 (1991).

22. Regions proposes to sell the only AmSouth branch in the Paris, Tennessee, banking market to a commercial banking organization that currently operates in that banking market. Regions may divest not less than $46.9 million in deposit liabilities to an in-market depository institution with no more than 8 percent of market deposits.

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

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

25. The nine markets are: Dallas County, Alabama; Clarksdale and Greenwood, both of Mississippi; and Bedford County, Cannon County, DeKalb County, Fayetteville, Paris, and Rhea County, all of Tennessee.

26. The three markets are: Huntsville Area, Alabama; Cumberland County, Tennessee; and Greenville, Mississippi.

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

Among the factors reviewed, the Board has considered the competitive influence of community credit unions in these banking markets. In 11 of the markets, certain credit unions offer a wide range of consumer products, operate street-level branches, and have membership open to almost all the residents in the applicable market. The Board has concluded that the activities of such credit unions in those 11 markets exert competitive influence that mitigates, in part, the potential competitive effects of the proposal.[28]

1. Banking Markets in Alabama

Anniston Area. In the Anniston Area banking market,[29] Regions is the fourth largest depository organization, controlling deposits of approximately $199.5 million, which represent approximately 13 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $267.1 million, which represent approximately 18 percent of market deposits. On consummation of the proposal, Regions would become the largest depository organization in the market, controlling deposits of approximately $466.7 million, which represent approximately 31 percent of market deposits. The HHI would increase 478 points to 1960.

Several factors indicate that the increase in concentration in the Anniston Area banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, nine other commercial banking competitors would remain in the market, some with a significant presence in the market. The second and third largest bank competitors in the market would control approximately 21 and 17 percent, respectively, of market deposits.

In addition, the Board has evaluated the competitive influence of five active community credit unions in this market. These credit unions control approximately $137.6 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 4 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 30 percent of market deposits, and the HHI would increase 437 points to 1795.[30]

Furthermore, the record of recent entry into the Anniston Area banking market evidences the market's attractiveness for entry. Three depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2001 to 2004, the market's annualized income growth exceeded the average annualized income growth for metropolitan counties in Alabama.

Decatur Area. In the Decatur Area banking market,[31] Regions is the largest depository organization in the market, controlling deposits of approximately $332.3 million, which represent approximately 24 percent of market deposits. AmSouth is the fourth largest depository organization in the market, controlling deposits of approximately $183 million, which represent 13 percent of market deposits. To reduce the potential for adverse effects on competition in the Decatur Area banking market, Regions has proposed to divest one of AmSouth's branches with at least $45.3 million in deposits to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestiture, Regions would remain the largest depository organization in the market, controlling deposits of approximately $470 million, which represent 33 percent of market deposits. The HHI would increase not more than 401 points and would not exceed 1853.

Several factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Decatur Area market. After consummation of the merger and taking into account the proposed divestiture, 11 other commercial banking competitors would remain in the market, some with a significant presence in the market. Four bank competitors in the market each would control more than 10 percent of market deposits.

Furthermore, the Board has evaluated the competitive influence of one active community credit union in this market. This credit union controls approximately $102.9 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 4 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 32 percent of market deposits, and the HHI would increase 373 points to 1737.[32]

In addition, the record of recent entry into the Decatur Area banking market evidences the market's attractiveness for entry. The Board notes that three depository institutions have entered the market de novo since 2001.

Etowah County. In the Etowah County banking market,[33] Regions is the fifth largest depository organization in the market, controlling deposits of approximately $110.6 million, which represent 11 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $191.8 million, which represent 18 percent of market

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

29. The Anniston Area banking market in Alabama is defined as Calhoun County and the city of Heflin in Cleburne County.

30. With the deposits of these credit unions weighted at 50 percent, Regions would be the fourth largest depository organization in the market, with approximately 13 percent of market deposits, and AmSouth would be the second largest depository institution in the market, controlling approximately 17 percent of market deposits.

31. The Decatur Area banking market in Alabama is defined as Morgan County and the portion of the city of Decatur in Limestone County.

32. With the deposits of this credit union weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 23 percent of market deposits, and AmSouth would be the fourth largest depository organization in the market, with approximately 13 percent of market deposits.

33. The Etowah County banking market is defined as Etowah County, Alabama.

deposits. On consummation of the proposal, Regions would become the largest depository organization in the market, controlling deposits of approximately $302.4 million, which represent approximately 29 percent of market deposits. The HHI would increase 385 points to 1997.

Several factors indicate that the increase in concentration in the Etowah County banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, eight other commercial banking competitors would remain in the market, some with a significant presence in the market. The second largest bank competitor in the market would control 24 percent of market deposits, and two other bank competitors in the market each would control more than 10 percent of market deposits.

In addition, the Board has evaluated the competitive influence of three active community credit unions in this market. These credit unions control approximately $145 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 7 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 27 percent of market deposits, and the HHI would increase 337 points to 1764.[34]

Moreover, the record of recent entry into the Etowah County banking market evidences the market's attractiveness for entry. The Board notes that one depository institution has entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2001 to 2004, the market's annualized income growth exceeded the average annualized income growth for metropolitan counties in Alabama.

Gulf Shores Area. In the Gulf Shores Area banking market,[35] Regions is the largest depository organization in the market, controlling deposits of approximately $309.7 million, which represent approximately 21 percent of market deposits. AmSouth is the fifth largest depository organization in the market, controlling deposits of approximately $147.9 million, which represent approximately 10 percent of market deposits. On consummation of the merger, Regions would remain the largest depository organization in the market, controlling approximately $457.7 million in deposits, which represent 31 percent of market deposits. The HHI would increase 409 points to 1849.

Several factors indicate that the increase in concentration in the Gulf Shores Area banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, 11 other commercial banking and thrift competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The second largest bank competitor in the market would control approximately 19 percent of market deposits, and two other bank competitors in the market each would control more than 10 percent of market deposits.

In addition, the Board has evaluated the competitive influence of two active community credit unions in this market. These credit unions control approximately $48.4 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 2 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 30 percent of market deposits, and the HHI would increase 396 points to 1792.[36]

Furthermore, the record of recent entry into the Gulf Shores Area banking market evidences the market's attractiveness for entry. The Board notes that two depository institutions have entered the market de novo since 2001. Other factors indicate that the Gulf Shores Area banking market remains attractive for entry. From 2002 to 2004, the market's annualized deposit growth was more than four times the average annualized deposit growth for nonmetropolitan counties in Alabama. From 2001 to 2004, the market's annualized population growth and income growth exceeded the average annualized population and income growth for nonmetropolitan counties in Alabama.

Mobile Area. In the Mobile Area banking market,[37] Regions is the largest depository organization in the market, controlling deposits of approximately $2.5 billion, which represent approximately 36 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $1.4 billion, which represent approximately 20 percent of market deposits. To reduce the potential for adverse effects on competition in the Mobile Area banking market, Regions has proposed to divest 22 of AmSouth's branches, with at least $887.6 million in deposits, to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestiture, Regions would remain the largest depository organization in the market, controlling deposits of approximately $3 billion, which represent 44 percent of market deposits. The HHI would increase not more than 343 points and would not exceed 2440.

One thrift institution operating in the market serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products. Competition from this thrift institution closely approximates competition from a commercial bank. Accord-

34. With the deposits of these credit unions weighted at 50 percent, Regions would be the fifth largest depository organization in the market, with approximately 10 percent of market deposits, and AmSouth would be the second largest depository organization in the market, with approximately 17 percent of market deposits.

35. The Gulf Shores Area banking market in Alabama is defined as the towns of Elberta, Foley, Gulf Shores, Lillian, Magnolia Springs, and Orange Beach in Baldwin County.

36. With the deposits of these credit unions weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 20 percent of market deposits, and AmSouth would be the fifth largest depository organization in the market, with approximately 10 percent of market deposits.

37. The Mobile Area banking market in Alabama is defined as Mobile County, and the towns of Bay Minette, Daphne, Fairhope, Loxley, Point Clear, Robertsdale, Silverhill, Spanish Fort, and Summerdale in Baldwin County.

ingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in market-share calculations.[38] Accounting for the revised weighting of these deposits, Regions would control approximately 44 percent of market deposits on consummation of the proposal, and the HHI would increase 342 points to 2434.

Several factors indicate that the increase in concentration in the Mobile Area banking market, as measured by the HHI and Regions' market share, overstates the potential competitive effects of the proposal in the market. After consummation of the proposal, 17 other commercial banking and thrift competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. Two bank competitors each would control approximately 12 percent of the market.

In addition, the Board has evaluated the competitive influence of one active community credit union in this market. This credit union controls approximately $66.4 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 1 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 44 percent of market deposits, and the HHI would increase 339 points to 2410.[39]

In addition, the record of recent entry into the Mobile Area banking market evidences the market's attractiveness for entry. The Board notes that two depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2002 to 2005, the market's annualized deposit growth was more than twice the average annualized deposit growth for metropolitan counties in Alabama. From 2001 to 2004, the market's annualized population growth exceeded the average annualized population growth for metropolitan counties in Alabama.

Montgomery Area. In the Montgomery Area banking market,[40] Regions is the largest depository organization in the market, controlling deposits of approximately $1.5 billion, which represent approximately 27 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $750.1 million, which represent approximately 14 percent of market deposits. To reduce the potential for adverse effects on competition in the Montgomery Area banking market, Regions has proposed to divest six of AmSouth's branches, with at least $183.9 million in deposits, to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestiture, Regions would remain the largest depository organization in the market, controlling deposits of approximately $2 billion, which represent approximately 38 percent of market deposits. The HHI would increase not more than 508 points and would not exceed 1886.

Several factors indicate that the increase in concentration in the Montgomery Area banking market, as measured by the HHI and Regions' market share, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, 19 other commercial banking competitors would remain in the market.

The Board also has evaluated the competitive influence of five active community credit unions in this market. These credit unions control approximately $408.1 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 7 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control less than 35 percent of market deposits, and the HHI would increase 438 points to 1652.[41]

In addition, the record of recent entry into the Montgomery Area banking market evidences the market's attractiveness for entry. The Board notes that three depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2002 to 2005, the market's annualized deposit growth substantially exceeded the average annualized deposit growth for metropolitan counties in Alabama.

Tuscaloosa Area. In the Tuscaloosa Area banking market,[42] Regions is the largest depository organization in the market, controlling deposits of approximately $766.5 million, which represent approximately 34 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $466 million, which represent approximately 20.8 percent of market deposits. To reduce the potential for adverse effects on competition in the Tuscaloosa Area banking market, Regions proposed to divest four of AmSouth's branches, with at least $361.3 million in deposits, to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestiture, Regions would remain the largest depository organization in the market, controlling deposits of approximately $871 million, which represent approximately 39 percent of market deposits. The HHI would increase not more than 168 points and would not exceed 2069.

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38. 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. *See, e.g., Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). The thrift in the Mobile Area banking market has a ratio of commercial and industrial loans to assets of approximately 10 percent, which is comparable to the national average for all commercial banks. *See First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998).

39. With the deposits of this credit union weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 36 percent of market deposits, and AmSouth would be the second largest depository organization in the market, controlling approximately 20 percent of market deposits.

40. The Montgomery Area banking market in Alabama is defined as Autauga, Elmore, Lowndes, and Montgomery counties, and the towns of Tallassee and East Tallassee in Tallapoosa County.

41. With the deposits of these credit unions weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 25 percent of market deposits, and AmSouth would be the eighth largest depository organization in the market, controlling approximately 10 percent of market deposits.

42. The Tuscaloosa Area banking market in Alabama is defined as Tuscaloosa County, and the city of Moundville in Hale County.

One thrift institution operating in the market serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products. Competition from this thrift institution closely approximates competition from a commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in market-share calculations.[43] Accounting for the revised weighting of these deposits, Regions would control 38 percent of market deposits on consummation of the proposal, and the HHI would increase 164 points to 2020.

Several factors indicate that the proposal would not have a significantly adverse effect on concentration in the Tuscaloosa Area banking market. After consummation of the proposal, 14 other commercial banking and thrift competitors would remain in the market.

In addition, the Board has evaluated the competitive influence of five active community credit unions in this market. These credit unions control approximately $216.5 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 9 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control less than 35 percent of market deposits, and the HHI would increase 137 points to 1714.[44]

In addition, the record of recent entry into the Tuscaloosa Area banking market evidences the market's attractiveness for entry. The Board notes that two depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. For example, from 2000 through 2005, the market's annualized deposit growth exceeded the average annualized deposit growth for metropolitan counties in Alabama.

2. Banking Market in Florida

Panama City Area. In the Panama City Area banking market,[45] Regions is the largest depository organization in the market, controlling deposits of approximately $500.1 million, which represent 22 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $327.4 million, which represent 14 percent of market deposits. On consummation of the merger, Regions would remain the largest depository organization in the market, controlling deposits of approximately $827.5 million, which represent 36 percent of market deposits. The HHI would increase 614 points to 1792.

Several factors indicate that the increase in Region's market share in the Panama City Area banking market would not have a significant adverse effect on competition in the market. On consummation of the proposal, 15 other commercial banking and thrift competitors would remain in the market, some with a significant presence in the market. The second largest bank competitor in the market would control 11 percent of market deposits, and two other bank competitors in the market each would control slightly less than 10 percent of market deposits.

Furthermore, the Board has evaluated the competitive influence of four active community credit unions in this market. These credit unions control approximately $568.4 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 11 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 32 percent of market deposits, and the HHI would increase 486 points to 1475.[46]

In addition, the record of extensive recent entry into the Panama City Area banking market evidences the market's attractiveness for entry. The Board notes that six depository institutions have entered the market de novo since 2001. Other factors indicate that the Panama City Area banking market remains attractive for entry. From 2002 through 2005, the market's annualized deposit growth substantially exceeded the average annualized deposit growth for metropolitan counties in Florida. In addition, the market's annualized income growth from 2001 through 2004 exceeded the average annualized income growth for metropolitan counties in Florida.

3. Banking Market in Louisiana

Shreveport-Bossier City. In the Shreveport-Bossier City banking market,[47] Regions is the fourth largest depository organization in the market, controlling deposits of approximately $491.5 million, which represent 11 percent of market deposits. AmSouth is the third largest depository organization in the market, controlling deposits of approximately $768 million, which represent 17 percent of market deposits. On consummation of the proposal, Regions would become the largest depository organization in the market, controlling deposits of approximately $1.3 billion, which represent 28 percent of market deposits. The HHI would increase 379 points to 1952.

In addition, one thrift institution operating in the market serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other

43. This thrift institution has a ratio of commercial and industrial loans to assets of approximately 16 percent, which is comparable to the national average for all commercial banks. *See First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998).

44. With the deposits of these credit unions weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 31 percent of market deposits, and AmSouth would be the second largest depository organization in the market, controlling approximately 17 percent of market deposits.

45. The Panama City Area banking market in Florida is defined as Bay County and the southern half of Washington County, including the towns of Vernon and Wausau.

46. With the deposits of these credit unions weighted at 50 percent, Regions would be the largest depository organization in the market, with approximately 19 percent of market deposits, and AmSouth would be the second largest depository organization in the market, controlling approximately 13 percent of market deposits.

47. The Shreveport-Bossier City banking market in Louisiana is defined as Bossier, Caddo, DeSoto, and Webster Parishes.

banking products. Competition from this thrift institution closely approximates competition from a commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in market-share calculations.[48] Accounting for the revised weighting of these deposits, Regions would control approximately 27 percent of market deposits on consummation of the proposal, and the HHI would increase 353 points to 1914.

Several factors indicate that the increase in concentration in the Shreveport-Bossier City banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, 21 other commercial banking and thrift competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The second and third largest bank competitors in the market would control 25 percent and 18 percent, respectively, of market deposits.

In addition, the Board has evaluated the competitive influence of five active community credit unions in this market. These credit unions control approximately $505.9 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 5 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 27 percent of market deposits, and the HHI would increase 334 points to 1736.[49]

Furthermore, the record of recent entry into the Shreveport-Bossier City banking market evidences the market's attractiveness for entry. The Board notes that three depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2001 to 2004, the market's annualized income growth exceeded the average annualized income growth for metropolitan counties in Louisiana.

4. Banking Markets in Mississippi

Jackson Area. In the Jackson Area banking market,[50] Regions is the fifth largest depository organization in the market, controlling deposits of $440.5 million, which represent approximately 6 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $1.5 billion, which represent approximately 20 percent of market deposits. On consummation of the proposal, Regions would become the second largest depository organization in the market, controlling deposits of approximately $1.9 billion, which represent 26 percent of market deposits. The HHI would increase 246 points to 2240.

A number of factors indicate that the increase in concentration in the Jackson Area banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, 21 other commercial banking and thrift competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The largest depository organization in the market would control 37 percent of market deposits, and two other bank competitors in the market each would control slightly more than 5 percent of market deposits.

In addition, the Board has evaluated the competitive influence of three active community credit unions in this market. These credit unions control approximately $117.2 million in deposits in the market, which, on a 50 percent weighted basis, represent less than 1 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 26 percent of market deposits, and the HHI would increase 242 points to 2205.[51]

In addition, the record of significant recent entry into the Jackson Area banking market evidences the market's attractiveness for entry. The Board notes that five depository institutions have entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. For example, the market's annualized deposit growth from 2002 to 2005 exceeded the average annualized deposit growth for metropolitan counties in Mississippi, and in 2004 the market's per capita income exceeded the per capita income for metropolitan counties in Mississippi.

Lauderdale County. In the Lauderdale County banking market,[52] Regions is the sixth largest depository organization in the market, controlling deposits of approximately $76.3 million, which represent approximately 8 percent of market deposits. AmSouth is the fourth largest depository organization in the market, controlling deposits of approximately $120.3 million, which represent approximately 13 percent of market deposits. On consummation of the merger, Regions would become the second largest depository organization in the market, controlling deposits of approximately $196.7 million, which represent approximately 21 percent of market deposits. The HHI would increase 208 points to 1959.

Several factors indicate that the increase in concentration in the Lauderdale County banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the

48. This thrift institution has a ratio of commercial and industrial loans to assets of approximately 9 percent, which is comparable to the national average for all commercial banks. *See First Union Corporation*, 84 *Federal Reserve Bulletin* 489 (1998).

49. With the deposits of these credit unions weighted at 50 percent, Regions would be the fourth largest depository organization in the market, with approximately 10 percent of market deposits, and AmSouth would be the third largest depository organization in the market, controlling approximately 16 percent of market deposits.

50. The Jackson Area banking market in Mississippi is defined as Hinds, Madison, and Rankin counties; Copiah County, excluding the town of Wesson; and the town of Mendenhall in Simpson County.

51. With the deposits of these credit unions weighted at 50 percent, Regions would be the fifth largest depository organization in the market, with approximately 6 percent of market deposits, and AmSouth would be the second largest depository organization in the market, controlling approximately 20 percent of market deposits.

52. The Lauderdale County banking market is defined as Lauderdale County, Mississippi.

proposal, seven other commercial banking competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The largest depository organization in the market would control 30 percent of market deposits, and two other bank competitors in the market each would control more than 10 percent of market deposits.

In addition, the Board has evaluated the competitive influence of three active community credit unions in this market. These credit unions control approximately $62.7 million in deposits in the market, which, on a 50 percent weighted basis, represent approximately 3 percent of market deposits. Accounting for the revised weightings of these deposits, Regions would control approximately 20 percent of market deposits, and the HHI would increase 195 points to 1838.[53]

Furthermore, the record of recent entry into the Lauderdale County banking market evidences the market's attractiveness for entry. The Board notes that one depository institution has entered the market de novo since 2001. Other factors indicate that the market remains attractive for entry. From 2002 to 2005, the market's annualized deposit growth exceeded the average annualized deposit growth for nonmetropolitan counties in Mississippi, and in 2004 the market area's per capita income exceeded the per capita income for nonmetropolitan counties in Mississippi. Furthermore, from 1999 to 2004, the market's annualized population growth exceeded the average annualized population growth for nonmetropolitan counties in Mississippi.

Starkville. In the Starkville banking market,[54] Regions is the fourth largest depository organization in the market, controlling deposits of approximately $115.4 million, which represent 14 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $180 million, which represent 22 percent of market deposits. To reduce the potential for adverse effects on competition in the Starkville banking market, Regions has proposed to divest three of AmSouth's branches, with at least $50 million in deposits, to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestiture, Regions would become the second largest depository organization in the market, controlling deposits of approximately $245.4 million, which represent 30 percent of market deposits. The HHI would increase not more than 249 points and would not exceed 2231.

Several factors indicate that the proposal would not have significantly adverse competitive effects in the Starkville banking market. After consummation of the proposal, six other commercial banking and thrift competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The largest bank competitor in the market would control 30 percent of market deposits, and two other bank competitors in the market each would control 9 percent or more of market deposits.

In addition, the market appears to be attractive for entry. From 2002 to 2005, the market's annualized deposit growth exceeded the average annualized deposit growth for nonmetropolitan counties in Mississippi. For example, the market's annualized income growth from 1999 to 2004 exceeded the average annualized income growth for nonmetropolitan counties in Mississippi.

5. Banking Market in Mississippi and Louisiana

McComb Area. In the McComb Area banking market,[55] the HHI would slightly exceed the DOJ Guidelines on consummation of the proposal. Regions is the fifth largest depository organization in the market, controlling deposits of approximately $30.2 million, which represent 5 percent of market deposits. AmSouth is the second largest depository organization in the market, controlling deposits of approximately $141.3 million, which represent approximately 22 percent of market deposits. On consummation of the merger, Regions would become the second largest depository organization in the market, controlling deposits of $171.5 million, which represent approximately 27 percent of market deposits. The HHI would increase 201 points to 1934.

Several factors indicate that the increase in concentration in the McComb Area banking market, as measured by the HHI, overstates the potential anticompetitive effects of the proposal in the market. After consummation of the proposal, nine other commercial banking competitors would remain in the market. The Board notes that there are other competitors with a significant presence in the market. The largest bank competitor in the market would control 27 percent of market deposits, and two other bank competitors in the market each would control 15 percent of market deposits. In addition, the market appears to be moderately attractive for entry. For example, from 2001 to 2004, the market's annualized population growth exceeded the average annualized population growth for nonmetropolitan counties in Mississippi.

D. 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, in light of the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have

53. With the deposits of these credit unions weighted at 50 percent, Regions would be the sixth largest depository organization in the market, with approximately 8 percent of market deposits, and AmSouth would be the fourth largest depository organization in the market, controlling approximately 12 percent of market deposits.

54. The Starkville banking market in Mississippi is defined as Choctaw, Oktibbeha, and Webster counties.

55. The McComb Area banking market is defined as Pike County and the portion of Amite County east of the West Fork of the Amite River, all in Mississippi, and the town of Kentwood in Tangipahoa Parish, Louisiana.

been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 67 banking markets where Regions and AmSouth compete directly or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and 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, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Regions and AmSouth, and public comments on the proposal.[56]

In evaluating financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' 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 carefully considered the financial factors of the proposal. Regions, AmSouth, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Regions has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.[57]

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization.[58] The Board has reviewed the examination records of Regions, AmSouth, and their subsidiary depository institutions, including assessments of their management,[59] 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 and with anti-money-laundering laws.[60] Regions, AmSouth, and their subsidiary depository institutions are considered to be well managed.[61] The Board also has considered Regions' plans for

56. Two commenters expressed concern about Regions' and AmSouth's relationships with unaffiliated retail check cashers, pawn shops, and other nontraditional providers of financial services. In approving Regions' application to acquire Union Planters Corporation, Memphis, Tennessee, the Board considered this concern and reviewed Regions' relationships with nontraditional providers of financial services. *Regions Financial Corporation*, 90 *Federal Reserve Bulletin* 389 (2004) ("Union Planters Order"). Regions represented that there have been no material changes in the way Regions conducts such relationships since it acquired Union Planters. With regard to AmSouth, Regions represented that AmSouth plays no role in the lending practices or credit review processes of such firms. As noted in the Union Planters Order, the activities of the consumer finance businesses identified by the commenters are permissible, and the businesses are licensed by the states where they operate.

57. Regions will use existing resources to fund the cash purchase of fractional shares.

58. One commenter expressed generalized concerns about the management and customer service at a branch of AmSouth Bank. Another commenter expressed concern about a press report that Regions and the Internal Revenue Service ("IRS") are currently litigating the extent of the IRS's ability to access the tax accrual working papers of Regions' outside accounting firm. The federal courts, and not the Board, have jurisdiction to adjudicate disputes between the IRS and Regions.

59. Several commenters asserted that the boards of directors and management of Regions, AmSouth, and their subsidiary banks lack ethnic diversity. One commenter suggested that both Regions and AmSouth should implement supplier diversity programs. The Board notes that the racial, ethnic, or gender composition of a banking organization's management and suppliers are not factors the Board is permitted to consider under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); *Deutsche Bank AG*, 86 *Federal Reserve Bulletin* 509, 513 (1999).

60. Two commenters expressed concern about AmSouth's record of compliance with anti-money-laundering laws in light of past enforcement actions taken against the organization. In October 2004, AmSouth and AmSouth Bank consented to a cease and desist order issued by the Board and the Alabama Department of Banking to address deficiencies in the bank's anti-money-laundering program (the "C&D Order"). Simultaneous with the C&D Order, AmSouth and AmSouth Bank: (1) consented to an order issued by the Board, and the bank consented to an order issued by the U.S. Department of the Treasury's Financial Crimes Enforcement Network, that assessed concurrent $10 million civil money penalties (the "CMP Orders"); and (2) entered into a deferred-prosecution agreement (the "Agreement") with the U.S. Attorney for the Southern District of Mississippi that included a $40 million penalty to be paid to the U.S. Department of the Treasury. AmSouth and AmSouth Bank have fully complied with the requirements of the C&D Order, the CMP Orders, and the Agreement. The C&D Order was terminated as of April 2006, and the criminal complaint filed against AmSouth and AmSouth Bank as part of the Agreement was dismissed in October 2005.

61. One commenter expressed concern about investigations by regulatory agencies of Morgan Keegan & Company, Inc. ("Morgan Keegan"), Memphis, Tennessee, a subsidiary of Regions that engages in securities brokerage and investment banking activities. The commenter also expressed concern about an investigation by the Securities and Exchange Commission ("SEC") of AmSouth's mutual fund unit in connection with its investigation of an unaffiliated third party provider of administrative support to AmSouth funds. The Board is aware of public settlements entered into by Morgan Keegan and the SEC on February 8 and May 31, 2006, respectively, relating to late trades in mutual funds and to inadequate disclosure to investors of certain auction-rate securities practices. The Board also is aware that Morgan Keegan has publicly disclosed that it may be under investigation by

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 the Board must consider under the BHC Act.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act and the Bank Merger 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").[62] 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 an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[63]

In response to the Board's request for public comment on this proposal, several commenters expressed concern about Regions' and AmSouth's records of lending to LMI or minority individuals or in LMI communities and to small businesses. Some commenters who opposed the proposal criticized the adequacy and enforceability of a lending and investment plan announced in July by Regions and AmSouth in connection with the proposal. In addition, several commenters questioned the sufficiency of assistance that Regions and AmSouth provided to individuals and communities affected by Hurricanes Katrina and Rita. Some commenters also expressed concern that the proposal would result in possible branch closings. A significant number of commenters also expressed support for the services of Regions and AmSouth and for the merger.

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Regions Bank and AmSouth Bank, data reported under the Home Mortgage Disclosure Act ("HMDA")[64] by the subsidiaries of Regions and AmSouth that engage in home mortgage lending, other information provided by Regions, confidential supervisory information, and public comments received on the proposal.

various state and federal regulators. The Board has consulted with the SEC about these matters and notes that AmSouth sold its mutual fund services unit, as of September 2005. As part of its ongoing supervision of Regions and AmSouth, the Board monitors the status of publicly disclosed investigations and consults as needed with relevant regulatory authorities.

62. 12 U.S.C. § 2901 et seq.

63. 12 U.S.C. § 2903.

64. 12 U.S.C. § 2801 et seq.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[65]

Regions Bank received a "satisfactory" rating from the Federal Reserve Bank of Atlanta ("Reserve Bank") at its most recent CRA performance evaluation, as of October 20, 2003. AmSouth Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 12, 2004.[66] Regions expects to continue the existing CRA programs of Regions Bank and AmSouth Bank, but the combined institution's community development program would be modeled on AmSouth's program.

CRA Performance of Regions Bank. In addition to the overall "satisfactory" rating that Regions Bank received at its most recent CRA performance evaluation,[67] the bank received separate overall "outstanding" or "satisfactory" ratings[68] in all but one of the MSAs and states reviewed.[69]

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

66. One commenter requested that the Board postpone consideration of the proposal until after completion of a new CRA performance evaluation for AmSouth Bank. The Board must take into account the actual records of the relevant insured depository institutions under the CRA as of the time of the proposal in acting on proposals under section 3 of the BHC Act and the Bank Merger Act. Neither these acts nor the CRA require the initiation of new performance evaluations in connection with such proposals. Moreover, the BHC Act, the Bank Merger Act, and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods.

67. The evaluation period was July 1, 2001, through June 30, 2003, and the review included data from Regions Mortgage, Inc., Montgomery, Alabama, and EquiFirst Corporation ("EquiFirst"), Charlotte, North Carolina, which were both wholly owned subsidiaries of Regions Bank during the evaluation period.

68. Full-scope evaluations were conducted in Regions Bank's assessment areas in the Augusta-Aiken (GA-SC), Chattanooga (TN-GA), Columbus (GA-AL), Memphis (TN-AR-MS), Texarkana (TX-AR) multistate metropolitan statistical areas ("MSAs"). Full-scope evaluations were also conducted in other select MSAs in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, and Texas. Limited-scope evaluations were conducted in other relevant MSAs in those states.

69. Several commenters expressed concern about the less-than-satisfactory ratings the bank received for its CRA performance in some of its assessment areas. The bank received an overall rating of "needs to improve" in the Chattanooga multistate metropolitan area, and received "low satisfactory" ratings under the lending test for Louisiana and the Augusta and Texarkana multistate metropolitan areas. In each of these assessment areas, examiners noted that there are a relatively high proportion of families below the poverty level and that these families may not qualify for residential real estate loans because of their lower capacity for debt repayment. Examiners indicated that these conditions may have hindered the bank's efforts to lend to LMI individuals in these assessment areas. The bank received higher ratings under the lending and other tests in other areas, and examiners con-

Examiners reported that the bank's lending levels reflected excellent responsiveness to community credit needs and that the bank had an excellent level of qualified community development investments and grants.

Examiners rated Regions Bank's performance under the lending test as "outstanding," "high satisfactory," or "low satisfactory" in all MSAs and states reviewed, based on a review of the bank's housing-related loans reported under HMDA, small loans to businesses,[70] and qualified community development loans. Examiners stated that the bank's distribution of loans to geographies and borrowers of different income levels was good.[71] They noted that Regions Bank offered affordable housing loan programs, and made more than 357 loans totaling $10.6 million during the evaluation period using flexible lending products.

Examiners generally characterized Regions Bank's distribution of small loans to businesses in each of the MSAs or states reviewed as good or adequate. They reported that the bank made 72,657 small loans to businesses during the evaluation period, totaling $7.6 billion, and that 18 percent of those loans by dollar volume were to businesses located in LMI census tracts. Examiners also concluded that Regions Bank's distribution of loans to businesses of different sizes was good. In addition, examiners reported that the bank's community development lending total of $294.7 million during the review period was a relatively high level of community development lending.

Examiners rated Regions Bank's performance under the investment test as "outstanding" or "high satisfactory" in most of the MSAs and states reviewed. They reported that the bank often exercised leadership by making investments and grants not routinely provided by private investors. During the evaluation period, the bank's qualified investments totaled more than $161 million, and it contributed more than $1.9 million to charities with community development purposes.

Examiners rated Regions Bank's performance under the service test as "high satisfactory" or "low satisfactory" in most of the MSAs and states reviewed. They concluded that the bank's distribution of branch offices and ATMs generally was accessible to all portions of the bank's assessment areas and that services offered generally did not vary in any way that inconvenienced any portion of the bank's assessment areas. In addition, examiners concluded that the bank's community development services were responsive to affordable housing needs in the bank's assessment areas, and that the bank exhibited a reasonable level of community development services to assist small business owners.

In 2005, Regions originated housing-related loans reported under HMDA in its assessment areas totaling more than $6.7 billion. Of this amount, 10.2 percent by dollar volume was loaned to borrowers in LMI census tracts, and 18.6 percent to LMI borrowers. In addition, Regions represented that, in 2005, Regions Bank made approximately $316 million in qualified community development loans and approximately $232 million in qualified investments and grants in its assessment areas.

CRA Performance of AmSouth Bank. In addition to the overall "outstanding" rating that AmSouth Bank received at its most recent CRA performance evaluation,[72] the bank received separate overall "outstanding" or "satisfactory" ratings in all the MSAs and states reviewed.[73] Examiners reported that the bank's levels of lending demonstrated excellent responsiveness to community credit needs. They also concluded that the bank had an excellent level of qualified community development investments and grants.

Examiners rated AmSouth Bank "outstanding" or "high satisfactory" under the lending test in all MSAs and states reviewed, based on a review of the bank's housing-related loans reported under HMDA, small loans to businesses, and qualified community development loans. They reported that the bank's overall distribution of lending within geographies of different income levels was adequate, and its distribution of loans to borrowers of different income levels was good. In addition, examiners reported that AmSouth Bank made use of flexible lending practices to serve community credit needs and made more than 2,300 loans, totaling approximately $188 million, under these programs during the evaluation period. Examiners also reported that AmSouth Bank made $1.7 billion of community development loans during the evaluation period, a level which the examiners characterized as relatively high.

Examiners generally characterized AmSouth Bank's distribution of small loans to businesses among geographies of differing income levels and to businesses in LMI areas as good in the MSAs and states reviewed.[74] They reported that

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cluded that the bank's record of CRA performance during the review period, when viewed as whole, merited a rating of "satisfactory."

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

71. Several commenters specifically criticized Regions Bank's levels of lending to small businesses in LMI areas in the Birmingham, Alabama, and Jackson, Tennessee MSAs. In the most recent CRA performance evaluation for Regions Bank, examiners stated that the bank had an adequate distribution of small business loans to businesses in LMI areas in the Birmingham assessment area. In addition, Regions made 1,589 small loans to businesses in the Birmingham MSA in 2005, and more than 25 percent of those loans by number were to businesses located in LMI census tracts. Regions entered the Jackson MSA in July 2004, on consummation of its acquisition of Union Planters Corporation. In 2005, Regions made 97 small loans to businesses in the Jackson MSA, and more than 15 percent of those loans by number were to businesses in LMI census tracts.

72. The evaluation period was January 1, 2002, through December 31, 2003.

73. Full-scope evaluations were conducted in AmSouth Bank's assessment areas in the Chattanooga (TN-GA), Johnson City-Kingsport-Bristol (TN-VA), and Memphis (TN-AR-MS) MSAs. Full-scope evaluations were conducted in other select MSAs in Alabama, Florida, Louisiana, Mississippi, and Tennessee, and limited-scope evaluations were conducted in other relevant MSAs in those states. In addition, a full-scope evaluation was conducted in the bank's assessment areas in Georgia.

74. One commenter criticized the levels of participation of both AmSouth Bank and Regions Bank in Small Business Administration ("SBA") loan programs. Regions represented that Regions Bank is an

the bank made more than 84,000 small loans to businesses, totaling approximately $7.4 billion, during the evaluation period. Examiners also concluded that the bank's distribution of loans to businesses of different sizes was good or excellent in the MSAs and states reviewed.

Under the investment test, examiners rated AmSouth Bank "outstanding" for all the MSAs and states reviewed. They stated the bank was often in a leadership position with regard to investments and grants not routinely provided by private investors. During the evaluation period, the bank's qualified community development investments totaled more than $234 million, and the bank contributed approximately $7.4 million to organizations with community development purposes.

Examiners rated AmSouth Bank "outstanding" or "high satisfactory" under the service test for all the MSAs and states reviewed.[75] They concluded that the bank's ATMs and branch locations were readily accessible to all portions of the bank's assessment areas and that services offered generally did not vary in any way that inconvenienced any portion of the bank's assessment areas. Examiners commended the bank for being a leader in providing community development services, and noted that the services provided are responsive to affordable housing needs and assist small business owners in the bank's assessment areas.

B. Assistance to Communities Affected by Hurricane Katrina

Several commenters asserted that Regions and AmSouth should demonstrate greater support for recovery and reconstruction efforts in areas affected by Hurricane Katrina, and should detail plans for financing the rebuilding efforts and working with borrowers with mortgage loans at risk of default due to the hurricane.

Regions represented that it and AmSouth originated more than 23,000 HMDA-reportable mortgage loans, totaling approximately $3.8 billion, in 2005 in portions of their assessment areas affected by Hurricane Katrina. The banks also originated approximately $2.3 billion in small loans to businesses in 2005 in those areas. Moreover, Regions is involved in programs created under the Gulf Opportunity Zone Act ("GO Zone") to support housing and small business lending in areas affected by Hurricane Katrina and has represented that it has closed on $26.6 million of those loans, as of July 31, 2006.[76]

Regions also indicated that it expects to have made approximately $70 million in community development loans in parts of Mississippi in the GO Zone by the end of 2006. For example, Regions stated that it is providing construction and permanent financing to a low-income housing tax credit project in New Orleans that will result in the construction of 29 housing units. AmSouth indicated that it has provided $3.5 million of financing in the parts of Mississippi affected by Hurricane Katrina to rebuild a senior citizens complex and to build 71 new affordable homes, and that it has committed more than $25 million to purchase and rehabilitate a 307-unit senior citizens apartment complex in New Orleans.

Regions also represented that it and AmSouth continue to work with affected residential mortgage loan customers, and that assistance provided to these borrowers has included modifying mortgages, providing forbearance relief, and suspending credit bureau reporting. Regions represented that Regions Mortgage has modified more than 2,800 of the approximately 54,000 residential mortgage loans it serviced in FEMA-declared disaster areas at the time of Katrina's landfall, and has itself absorbed the $800,000 cost of these modifications. AmSouth indicated that only ten of the nearly 3,300 mortgage loans it held in the affected areas at the time of landfall are currently in foreclosure, six of which were delinquent before Hurricane Katrina. In addition, Regions has stated that it is involved with state programs in Louisiana and Mississippi to provide grants to homeowners in affected areas.

C. Branch Closings

Two commenters expressed concern about the proposal's possible effect on branch closings. Regions has represented that it and AmSouth have identified specific branches in overlapping markets as candidates for closure, relocation, or consolidation, but they have not made final decisions on closures. Regions has stated that, on consummation of the proposal, it expects that the combined institution's branch closing policy would likely closely resemble AmSouth's current branch closing policy.

The Board has considered carefully Regions' and AmSouth's branch closing policies and the banks' records of opening and closing branches. AmSouth's branch closing policy requires the bank to make every effort to minimize the customer impact within the local market and to provide a reasonable alternative for customers to acquire similar

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SBA Preferred Lender and currently offers several SBA loan programs, including SBAExpress loans. The bank also offers other loan programs targeted to small businesses, including the Right Business Line of Credit, which provides revolving lines of credit of up to $250,000 to small businesses. Regions also represented that AmSouth Bank also offers other loan programs targeted to small businesses, such as the Flexline product, under which small businesses may borrow up to $100,000 on an unsecured basis and can apply on a one-page application.

75. Several commenters criticized the levels of service of both AmSouth Bank and Regions Bank to LMI individuals.

76. One commenter criticized the level of Region Bank's investments in nonprofit organizations involved in microenterprise lending and providing affordable housing in the Gulf Coast region. As noted, Regions Bank represented that it has made a number of investments to construct or rehabilitate affordable housing in the region. The CRA does not require banks to provide any particular type of qualified CRA investments in its efforts to meet the credit needs of their communities.

services. The policy requires that, before a final decision is made to close a branch, management consult with members of the community in an effort to minimize the impact of the closing. In the most recent CRA performance examinations, examiners found that the banks' records of opening or closing branches had not adversely affected the accessibility of delivery systems, particularly to LMI geographies and to LMI individuals.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.[77] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Reserve Bank will continue to review the branch closing record of Regions Bank in the course of conducting CRA performance evaluations.

D. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Regions and AmSouth Bank in light of public comments received on the proposal. Commenters alleged, based on 2004 and 2005 HMDA data, that Regions made higher-cost loans[78] in various states more frequently to African-American borrowers than to nonminority borrowers, and made a disproportionate share of its subprime loans in certain MSAs to African Americans.[79] Commenters also alleged that Regions denied the home mortgage loan applications of African-American borrowers more frequently than those of nonminority applicants in various states and MSAs, and that the amount of Regions' and AmSouth's mortgage lending to African Americans in the Birmingham MSA lagged behind the performance of the aggregate of lenders.[80] The Board focused its analysis on the 2005 HMDA data reported by Regions Bank, EquiFirst, and AmSouth Bank.[81]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Regions or AmSouth Bank are excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[82] 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.[83] 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 by Regions and AmSouth Bank with fair lending laws.

In the fair lending review conducted in conjunction with the most recent CRA performance evaluation of AmSouth Bank, examiners found no substantive violations of applicable fair lending laws. Moreover, the record indicates that both Regions and AmSouth have taken steps to ensure compliance with fair lending and other consumer protection laws. Regions monitors Regions Bank's and EquiFirst's compliance with fair lending laws through internal audits that include comparative file analyses, and through self-assessments that include pricing, underwriting, and regression analysis of HMDA data.[84] In addition, Regions

77. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r–1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

78. 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 exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

79. As the Board previously has noted, subprime lending is a permissible activity that provides needed credit to consumers who have difficulty meeting conventional underwriting criteria. *See Royal Bank of Canada*, 88 *Federal Reserve Bulletin* 385, 388 n. 18 (2002). The Board continues to expect all bank holding companies and their affiliates to conduct their subprime lending operations without any abusive lending practices and in compliance with all applicable laws.

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

81. The Board reviewed the HMDA data for Regions and AmSouth Bank in various markets of concern to the commenters, in the combined CRA assessment areas for each bank, and on a nationwide basis.

82. 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.

83. One commenter complained that AmSouth provided HMDA data of AmSouth Bank on paper rather than electronically in the format requested by the commenter. The Board notes that neither HMDA nor the CRA require financial institutions to provide HMDA data in an electronic format on written request. *See* 12 CFR 203.5. Moreover, HMDA data may be obtained electronically via the HMDA web site maintained by the Federal Financial Institutions Examination Council.

84. In the fair lending review conducted in conjunction with Regions Bank's 2003 CRA performance evaluation, examiners cited failures to comply with the Board's Regulation B (Equal Credit

employs a second-review process under which applications that have been preliminarily denied are reviewed by a second credit officer. Regions also requires all new employees to complete fair lending training during the first six months of their tenure and to take annual refresher courses. AmSouth employs similar compliance techniques, such as self-assessments, a second-review process, and annual fair lending training. AmSouth also employs an independent consultant to conduct internal audits that include comparative file reviews. Regions represented that it is reviewing the compliance programs of both organizations and that the combined organization will adopt the best practices of both Regions and AmSouth.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of Regions Bank and AmSouth Bank discussed above.[85] Based on all the facts of record, the Board concludes that Regions' and AmSouth's established efforts and record demonstrate that they are active in helping to meet the credit needs of their entire communities.[86]

E. Community Development Plan

In connection with the proposed transaction, Regions and AmSouth announced a plan to invest at least $100 billion over seven years across the Southeast, Midwest, and Texas to support community development, small business lending, and mortgage lending for low-income communities and borrowers. Several commenters expressed concerns about the plan, arguing that it lacked sufficient detail or did not represent increases over the organizations' current lending levels.[87] Commenters also requested that the plan's goals be made enforceable by the Board, or that the plan be embodied in an agreement with one or more community groups.[88]

The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.[89] As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.[90] Moreover, 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.

In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

F. Conclusion on Convenience and Needs Factor

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 Regions, comments received on the proposal, and confidential supervisory information.[91] Regions represented that the proposal would provide customers of both organizations with increased credit availability and expanded access to products and services. Based on a review of the entire record and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

ESTABLISHMENT OF BRANCHES

As previously noted, Regions Bank has also applied under section 9 of the FRA to establish branches at the locations of AmSouth Bank's main office and branches. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and

Opportunity Act) in a nonmortgage lending program. The Board has considered that the failure was discovered by the bank and the bank took immediate corrective action. The Board also notes that the compliance failure was limited to one product line and the bank no longer offers that product line.

85. One commenter speculated about the Board's analysis of 2004 HMDA data for Regions and AmSouth Bank. The Board uses HMDA data as a screen to identify institutions with application denial rates or pricing patterns that appear to differ significantly based on borrower ethnicity or sex. Examiners typically review loan files and other information from institutions identified by the screen, and an array of supervisory actions can be taken if no credible nondiscriminatory explanation can be found for the disparities. *See* Robert B. Avery, et al., "New Information Reported under HMDA and Its Application in Fair Lending Enforcement," 91 *Federal Reserve Bulletin* 344 (2005). Such matters are handled in the regular course of the examination and supervision process.

86. One commenter noted press reports about litigation against Regions by several immigrant chicken farmers who alleged that Regions Bank made loans to them knowing that they could not afford repayment. Because these matters are unresolved, they do not provide a factual basis for Board consideration. The courts, and not the Board, have jurisdiction to adjudicate the legal claims of these plaintiffs against Regions. Board action on the proposal would not interfere with the ability of the courts to resolve any litigation pertaining to these matters.

87. One commenter specifically alleged that the small business component of the pledge does not represent any increase over the two organizations' current small business lending levels.

88. One commenter expressed concern that Regions' acquisition of Union Planters Corporation in 2004 did not include a community development plan that was the subject of an agreement between Regions and one or more community groups.

89. *See, e.g., Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 233 (2004); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485, 488 n.18 (2002).

90. *See Wachovia Corporation*, 91 *Federal Reserve Bulletin* 77 (2005); *J.P. Morgan Chase & Co.*, 90 *Federal Reserve Bulletin* 352 (2004); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217 (2004); *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 858 (1998).

91. One commenter expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the limited factors the Board is authorized to consider under the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. *See, e.g., Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

the Board's Regulation H and finds those factors to be consistent with approval.[92]

Foreign Activities

As noted above, Regions also proposes to acquire Cahaba International, Inc., the agreement corporation subsidiary of AmSouth Bank. The Board has concluded that all the factors required to be considered under section 25 of the Federal Reserve Act and section 211.5 of Regulation K are consistent with approval.[93]

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved.[94] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA.[95] The Board's approval is specifically conditioned on compliance by Regions and Regions Bank with the conditions imposed in this order, the commitments made to the Board in connection with the applications, and receipt of all other regulatory approvals. 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 banking acquisitions 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 Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 20, 2006.

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

Jennifer J. Johnson
Secretary of the Board

92. 12 U.S.C. § 322; 12 CFR 208.6(b).

93. 12 CFR 211.5.

94. Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. The Bank Merger Act and the FRA do not require the Board to hold a public meeting or hearing. 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 262.3(i)(2), 262.25(d)). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. Moreover, the commenters' requests fail to demonstrate why their written comments do not present their 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 requests for a public hearing or meeting on the proposal are denied.

95. Several commenters also requested that the Board extend the comment period or delay action on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comments. As noted, the commenters have had ample opportunity to submit their views and, in fact, have provided multiple written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is necessary.

Appendix A

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines without Divestitures

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Alabama Banking Markets						
Auburn and Opelika—Lee County, excluding that portion of the county that is within 12 road miles of Phenix City, Alabama or Columbus, Georgia						
Regions Pre-Consummation	8	63.9 mil.	4.7	1,695	72	10
AmSouth	4	104.5 mil.	7.7	1,695	72	10
Regions Post-Consummation	3	168.4 mil.	12.4	1,695	72	10
Birmingham—Bibb, Blount, Chilton, Jefferson, St. Clair, Shelby, and Walker Counties						
Regions Pre-Consummation	4	2.5 bil.	12.8	1,600	517	40
AmSouth	1	3.9 bil.	20.3	1,600	517	40
Regions Post-Consummation	1	6.3 bil.	33.0	1,600	517	40
Cullman—Cullman County						
Regions Pre-Consummation	5	123.9 mil.	11.6	1,207	169	9
AmSouth	7	78.0 mil.	7.3	1,207	169	9
Regions Post-Consummation	1	201.9 mil.	18.9	1,207	169	9
DeKalb—DeKalb County						
Regions Pre-Consummation	8	32.2 mil.	5.2	1,394	222	10
AmSouth	1	134.3 mil.	21.6	1,394	222	10
Regions Post-Consummation	1	166.5 mil.	26.7	1,394	222	10
Dothan—Houston and Henry Counties; Midland City and Newton in Dale County; and Hartford and Slocomb in Geneva County						
Regions Pre-Consummation	2	347.1 mil.	17.7	1,462	269	15
AmSouth	3	149.1 mil.	7.6	1,462	269	15
Regions Post-Consummation	1	496.2 mil.	25.3	1,462	269	15
Florence—Colbert and Lauderdale Counties						
Regions Pre-Consummation	5	139.9 mil.	7.1	1,554	93	10
AmSouth	8	129.3 mil.	6.6	1,554	93	10
Regions Post-Consummation	3	269.2 mil.	13.6	1,554	93	10
Marshall—Marshall County						
Regions Pre-Consummation	4	151.7 mil.	11.6	1,506	382	12
AmSouth	1	214.7 mil.	16.4	1,506	382	12
Regions Post-Consummation	1	366.4 mil.	28.0	1,506	382	12
Florida Banking Markets						
Beverly Hills—Citrus County, excluding the city of Citrus Springs						
Regions Pre-Consummation	5	175.3 mil.	8.7	1,478	125	11
AmSouth	7	144.0 mil.	7.2	1,478	125	11
Regions Post-Consummation	4	319.3 mil.	15.9	1,478	125	11

Appendix A—*Continued*

REGIONS AND AMSOUTH BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES WITHOUT DIVESTITURES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Brevard—Brevard County						
Regions Pre-Consummation	14	89.2 mil.	1.4	1,559	7	19
AmSouth	8	172.5 mil.	2.6	1,559	7	19
Regions Post-Consummation	7	261.7 mil.	4.0	1,559	7	19
Daytona Beach—Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County						
Regions Pre-Consummation	5	398.7 mil.	5.7	1,667	[1]	22
AmSouth	19	n.a.[1]	n.a.[1]	1,667	[1]	22
Regions Post-Consummation	5	398.7 mil.	5.7	1,667	[1]	22
Fort Walton Beach—Okaloosa and Walton Counties, and the city of Ponce de Leon in Holmes County						
Regions Pre-Consummation	4	334.4 mil.	7.8	999	214	22
AmSouth	1	595.9 mil.	13.8	999	214	22
Regions Post-Consummation	1	930.4 mil.	21.6	999	214	22
Ocala—Marion County, and the town of Citrus Springs in Citrus County						
Regions Pre-Consummation	13	62.2 mil.	1.4	1,463	39	20
AmSouth	4	574.5 mil.	13.4	1,463	39	20
Regions Post-Consummation	4	636.6 mil.	14.8	1,463	39	20
Orlando—Orange, Osceola, and Seminole Counties; the western half of Volusia County; and Clermont and Groveland in Lake County						
Regions Pre-Consummation	17	291.9 mil.	1.1	1,354	7	47
AmSouth	6	926.5 mil.	3.4	1,354	7	47
Regions Post-Consummation	5	1.2 bil.	4.5	1,354	7	47
Pensacola—Escambia and Santa Rosa Counties						
Regions Pre-Consummation	6	405.9 mil.	7.8	1,359	292	18
AmSouth	1	978.2 mil.	18.8	1,359	292	18
Regions Post-Consummation	1	1.4 bil.	26.5	1,359	292	18

Appendix A—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines without Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Sarasota—Manatee and Sarasota Counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida); and Gasparilla Island (the town of Boca Grande) in Lee County						
Regions Pre-Consummation	17	162.3 mil.	1.0	1,305	3	43
AmSouth	11	261.2 mil.	1.6	1,305	3	43
Regions Post-Consummation	8	423.5 mil.	2.7	1,305	3	43
Tallahassee—Leon County, and the towns of Quincy and Havana in the eastern half of Gadsden County						
Regions Pre-Consummation	14	6.7 mil.	.2	1,221	3	12
AmSouth	5	360.1 mil.	9.1	1,221	3	12
Regions Post-Consummation	5	366.8 mil.	9.2	1,221	3	12
Tampa Bay—Hernando, Hillsborough, Pinellas, and Pasco Counties						
Regions Pre-Consummation	15	325.0 mil.	.8	1,540	13	64
AmSouth	4	3.2 bil.	7.9	1,540	13	64
Regions Post-Consummation	4	3.5 bil.	8.7	1,540	13	64
Georgia Banking Markets						
Dalton—Murray and Whitfield Counties						
Regions Pre-Consummation	4	164.4 mil.	9.5	1,512	22	12
AmSouth	12	19.4 mil.	1.1	1,512	22	12
Regions Post-Consummation	3	183.8 mil.	10.7	1,512	22	12
Gordon—Gordon County						
Regions Pre-Consummation	7	10.0 mil.	1.6	2,948	21	5
AmSouth	5	44.6 mil.	6.9	2,948	21	5
Regions Post-Consummation	5	54.6 mil.	8.5	2,948	21	5
Rome—Floyd and Polk Counties						
Regions Pre-Consummation	3	192.4 mil.	12.4	1,411	119	11
AmSouth	8	73.7 mil.	4.8	1,411	119	11
Regions Post-Consummation	2	266.1 mil.	17.2	1,411	119	11

Appendix A—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines without Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
LOUISIANA BANKING MARKETS						
Baton Rouge—Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes; the northern half of Assumption Parish, including the towns of Napoleonville, Pierre Part, and Plattenville; and the town of Union in St. James Parish						
Regions Pre-Consummation	3	1.0 bil.	11.9	1,852	62	37
AmSouth	6	228.1 mil.	2.6	1,852	62	37
Regions Post-Consummation	3	1.3 bil.	14.5	1,852	62	37
Monroe—Caldwell, Ouachita, and Union Parishes						
Regions Pre-Consummation	4	211.8 mil.	9.8	1,134	92	15
AmSouth	9	102.8 mil.	4.7	1,134	92	15
Regions Post-Consummation	2	314.6 mil.	14.5	1,134	92	15
New Orleans—Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint John the Baptist, and Saint Tammany Parishes; and Saint James Parish excluding the town of Union						
Regions Pre-Consummation	4	1.5 bil.	7.6	1,577	40	40
AmSouth	5	516.6 mil.	2.7	1,577	40	40
Regions Post-Consummation	4	2.0 bil.	10.3	1,577	40	40
MISSISSIPPI BANKING MARKETS						
Biloxi—Hancock County, Harrison County, and the City of Ocean Springs in Jackson County						
Regions Pre-Consummation	6	158.5 mil.	5.2	2,965	11	11
AmSouth	9	31.5 mil.	1.0	2,965	11	11
Regions Post-Consummation	4	190.0 mil.	6.2	2,965	11	11
Columbus—Lowndes County						
Regions Pre-Consummation	7	21.8 mil.	3.2	2,245	110	6
AmSouth	3	117.5 mil.	17.2	2,245	110	6
Regions Post-Consummation	2	139.4 mil.	20.4	2,245	110	6
Hattiesburg—Lamar and Forrest Counties						
Regions Pre-Consummation	2	245.6 mil.	15.1	1,780	218	13
AmSouth	5	117.9 mil.	7.2	1,780	218	13
Regions Post-Consummation	2	363.5 mil.	22.3	1,780	218	13
Jones—Jones County						
Regions Pre-Consummation	8	39.4 mil.	4.5	1,738	77	7
AmSouth	5	76.1 mil.	8.6	1,738	77	7
Regions Post-Consummation	4	115.5 mil.	13.1	1,738	77	7

Appendix A—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines without Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Oxford—Lafayette and Yalobusha Counties						
Regions Pre-Consummation	2	120.2 mil.	15.3	1,547	[2]	9
AmSouth	10	n.a.[2]	n.a.[2]	1,547	[2]	9
Regions Post-Consummation	2	120.2 mil.	15.3	1,547	[2]	9
Tupelo—Chickasaw, Itawamba, Lee, Pontotoc, Prentiss, and Union Counties in Mississippi; and the portion of Monroe County, Mississippi, north of U.S. Highway 278 and State Route 41, including the cities of Amory, Quincy, and Greenwood Springs						
Regions Pre-Consummation	4	212.0 mil.	6.7	1,908	49	13
AmSouth	8	116.4 mil.	3.7	1,908	49	13
Regions Post-Consummation	3	328.4 mil.	10.4	1,908	49	13
TENNESSEE BANKING MARKETS						
Athens—McMinn, Meigs, and Monroe Counties plus the town of Delano in Polk County						
Regions Pre-Consummation	8	51.9 mil.	4.3	1,479	81	13
AmSouth	3	114.5 mil.	9.5	1,479	81	13
Regions Post-Consummation	3	166.4 mil.	13.7	1,479	81	13
Cleveland—Bradley County plus the towns of Benton and Ocoee in Polk County						
Regions Pre-Consummation	9	15.5 mil.	1.2	1,650	34	8
AmSouth	3	193.1 mil.	14.4	1,650	34	8
Regions Post-Consummation	3	208.6 mil.	15.6	1,650	34	8
Cookeville—Jackson, Overton, and Putnam Counties						
Regions Pre-Consummation	5	145.1 mil.	9.7	1,315	215	12
AmSouth	4	164.7 mil.	11.1	1,315	215	12
Regions Post-Consummation	1	309.8 mil.	20.8	1,315	215	12
Dickson—Dickson County						
Regions Pre-Consummation	9	16.3 mil.	3.3	1,710	102	7
AmSouth	3	74.7 mil.	15.3	1,710	102	7
Regions Post-Consummation	2	91.0 mil.	18.6	1,710	102	7
Jackson—includes all of Crockett and Madison Counties; Chester County, excluding the city of Enville; Henderson County, excluding the Sardis census county division; and the Humboldt, Gibson, Medina, and Milan census county divisions in southern Gibson County						
Regions Pre-Consummation	2	445.6 mil.	18.4	1,663	411	18
AmSouth	4	270.1 mil.	11.2	1,663	411	18
Regions Post-Consummation	1	715.8 mil.	29.6	1,663	411	18

Appendix A—*Continued*

REGIONS AND AMSOUTH BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES WITHOUT DIVESTITURES—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Knoxville—Anderson, Knox, Loudon, Roane, and Union Counties; the portion of Blount County northwest of Chilhowee Mountain; the towns of Chestnut Hill, Danridge, Dumplin, Friends Station, Hodges, New Market, and Strawberry Plains in Jefferson County; the towns of Harriman and Oliver Springs in Morgan County; the towns of Seymour and Kodak in Sevier County; and the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs in Grainger County						
Regions Pre-Consummation	6	462.4 mil.	4.9	1,441	167	35
AmSouth	3	1.6 bil.	17.0	1,441	167	35
Regions Post-Consummation	2	2.1 bil.	21.9	1,441	167	35
Maury—Maury County						
Regions Pre-Consummation	5	46.8 mil.	4.4	2,496	132	9
AmSouth	3	163.4 mil.	15.2	2,496	132	9
Regions Post-Consummation	3	210.2 mil.	19.5	2,496	132	9
McMinnville—Warren County, and the town of Altamont in Grundy County						
Regions Pre-Consummation	2	139.6 mil.	24.7	2,708	188	6
AmSouth	6	21.5 mil.	3.8	2,708	188	6
Regions Post-Consummation	2	161.1 mil.	28.5	2,708	188	6
Morristown-Newport Area—Cocke, Grainger, and Hamblen Counties, excluding the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Spring in Grainger County; the towns of Baneberry, Jefferson City, Jefferson Estates, Leadvale, Talbot, and White Pine in Jefferson County						
Regions Pre-Consummation	5	110.1 mil.	7.9	1,008	93	15
AmSouth	8	83.2 mil.	5.9	1,008	93	15
Regions Post-Consummation	2	193.3 mil.	13.8	1,008	93	15
Nashville—Cheatham, Davidson, Robertson, Rutherford, Sumner, Williamson, and Wilson Counties						
Regions Pre-Consummation	4	1.6 bil.	6.7	1,404	243	45
AmSouth	2	4.3 bil.	18.2	1,404	243	45
Regions Post-Consummation	1	5.8 bil.	24.9	1,404	243	45

Appendix A—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines without Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Banking Market in Arkansas, Mississippi, and Tennessee						
Memphis Area—Fayette, Shelby, and Tipton Counties in Tennessee; the city of Grand Junction in Tennessee; Crittenden County in Arkansas; Benton, De Soto, Marshall, Tate, and Tunica Counties in Mississippi; the northern part of Coahoma County, Mississippi, including the cities of Friars Point, Coahoma, Lula, and Jonestown; the portion of Panola County, Mississippi, north of State Route 315 east to Sardis Lake, including the city of Sardis; and the portion of Quitman County, Mississippi, north of State Route 315, including the cities of Birdie and Sledge						
Regions Pre-Consummation	2	2.9 bil.	10.6	3,351	52	57
AmSouth	6	647.5 mil.	2.4	3,351	52	57
Regions Post-Consummation	2	3.5 bil.	13.1	3,351	52	57
Banking Market in Georgia and Tennessee						
Chattanooga Area—Hamilton and Marion Counties in Tennessee, excluding the portion of the town of Monteagle that lies in Marion County; Catoosa, Dade, and Walker Counties in Georgia						
Regions Pre-Consummation	8	206.4 mil.	3.2	1,460	108	22
AmSouth	3	1.1 bil.	17.0	1,460	108	22
Regions Post-Consummation	3	1.3 bil.	20.1	1,460	108	22
Banking Market in Tennessee and Kentucky						
Clarksville and Hopkinsville Area—Christian, Todd, and Trigg Counties in Kentucky; Montgomery and Stewart Counties in Tennessee						
Regions Pre-Consummation	16	39.2 mil.	1.7	823	33	15
AmSouth	3	226.0 mil.	9.7	823	33	15
Regions Post-Consummation	2	265.1 mil.	11.4	823	33	15

Note: Data are as of June 30, 2005. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

1. AmSouth recently entered the Daytona Beach market with a de novo branch. Accordingly, June 30, 2005, figures are unavailable.

2. AmSouth recently entered the Oxford market with a de novo branch. Accordingly, June 30, 2005, figures are unavailable.

Appendix B

REGIONS AND AMSOUTH BANKING MARKETS CONSISTENT WITH BOARD PRECEDENT AND DOJ GUIDELINES AFTER DIVESTITURES

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
ALABAMA BANKING MARKETS REQUIRING DIVESTITURE						
Dallas—Dallas County						
Pre-Divestiture						
Regions Pre-Consummation	2	141.8 mil.	28.7	3,656	717	2
AmSouth	4	61.8 mil.	12.5	3,656	717	2
Regions Post-Consummation	1	203.5 mil.	41.2	3,656	717	2
Post-Divestiture						
Regions Post-Consummation	2	141.8 mil.	29.9	2,983	44	3
Branches Divested to Out-of-Market Purchaser	4	55.6 mil.[1]	11.3	2,983	44	3
ALABAMA BANKING MARKETS REQUIRING DIVESTITURE						
Huntsville Area—Madison County; Limestone County, excluding both the town of Ardmore and the portion of the city of Decatur located in Limestone County						
Pre-Divestiture						
Regions Pre-Consummation	1	1.1 bil.	23.5	2,141	777	15
AmSouth	2	789.0 mil.	16.6	2,141	777	15
Regions Post-Consummation	1	1.9 bil.	40.0	2,141	777	15
Post-Divestiture						
Regions Post-Consummation	1	1.6 bil.	34.6	1,765	402	16
Branches Divested to Out-of-Market Purchaser	7	258.4 mil.[2]	5.4	1,765	402	16
MISSISSIPPI BANKING MARKETS REQUIRING DIVESTITURE						
Clarksdale—Coahoma County, excluding the northern part of the county that includes the cities of Friars Point, Coahoma, Lula, and Jonestown						
Pre-Divestiture						
Regions Pre-Consummation	4	66.0 mil.	15.7	3,283	604	3
AmSouth	2	81.2 mil.	19.3	3,283	604	3
Regions Post-Consummation	2	147.2 mil.	34.9	3,283	604	3
Post-Divestiture						
Regions Post-Consummation	4	66.0 mil.	17.6	2,672	–7	4
Branches Divested to Out-of-Market Purchaser	3	73.1 mil.[1]	17.4	2,672	–7	4
Greenville—Washington County						
Pre-Divestiture						
Regions Pre-Consummation	3	110.3 mil.	17.1	2,394	478	5
AmSouth	5	90.6 mil.	14.0	2,394	478	5
Regions Post-Consummation	3	201.0 mil.	31.1	2,394	478	5

Appendix B—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines after Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Greenville—Washington County—Continued						
Post-Divestiture						
Regions Post-Consummation	3	133.5 mil.	21.7	1,986	71	6
Branches Divested to Out-of-Market Purchaser	5	60.8 mil.[1]	9.4	1,986	71	6
Greenwood—Carroll and Leflore Counties						
Pre-Divestiture						
Regions Pre-Consummation	4	53.6 mil.	10.5	2,035	409	6
AmSouth	2	99.4 mil.	19.5	2,035	409	6
Regions Post-Consummation	1	153.0 mil.	30.0	2,035	409	6
Post-Divestiture						
Regions Post-Consummation	4	53.6 mil.	12.5	1,598	–28	7
Branches Divested to Out-of-Market Purchaser	3	89.5 mil.[1]	17.5	1,598	–28	7
Tennessee Banking Markets Requiring Divestiture						
Bedford—Bedford County						
Pre-Divestiture						
Regions Pre-Consummation	2	97.6 mil.	21.8	3,005	653	4
AmSouth	3	67.3 mil.	15.0	3,005	653	4
Regions Post-Consummation	2	164.9 mil.	36.8	3,005	653	4
Post-Divestiture						
Regions Post-Consummation	2	97.6 mil.	23.3	2,377	24	5
Branches Divested to Out-of-Market Purchaser	3	60.5 mil.[1]	13.5	2,377	24	5
Cannon—Cannon County						
Pre-Divestiture						
Regions Pre-Consummation	1	52.3 mil.	39.3	5,634	2,240	1
AmSouth	3	38.0 mil.	28.5	5,634	2,240	1
Regions Post-Consummation	1	90.3 mil.	67.8	5,634	2,240	1
Post-Divestiture						
Regions Post-Consummation	1	52.3 mil.	42.2	3,471	77	2
Branches Divested to Out-of-Market Purchaser	3	34.2 mil.[1]	25.7	3,471	77	2
Cumberland—Cumberland County						
Pre-Divestiture						
Regions Pre-Consummation	1	156.7 mil.	24.8	3,189	1,179	5
AmSouth	2	149.9 mil.	23.7	3,189	1,179	5
Regions Post-Consummation	1	306.6 mil.	48.6	3,189	1,179	5
Post-Divestiture						
Regions Post-Consummation	1	199.3 mil.	33.3	2,171	161	6
Branches Divested to Out-of-Market Purchaser	3	96.6 mil.[1]	15.3	2,171	161	6

Appendix B—*Continued*

Regions and AmSouth Banking Markets Consistent with Board Precedent and DOJ Guidelines after Divestitures—Continued

Bank	Rank	Amount of deposits (dollars)	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
DeKalb—DeKalb County						
Pre-Divestiture						
Regions Pre-Consummation	3	62.8 mil.	21.8	3,667	975	2
AmSouth	2	64.4 mil.	22.4	3,667	975	2
Regions Post-Consummation	1	127.2 mil.	44.2	3,667	975	2
Post-Divestiture						
Regions Post-Consummation	2	62.8 mil.	24.0	2,699	7	3
Branches Divested to Out-of-Market Purchaser	3	58.0 mil.[1]	20.1	2,699	7	3
Fayetteville—Lincoln County, excluding the portion of the town of Petersburg that lies in Lincoln County						
Pre-Divestiture						
Regions Pre-Consummation	2	97.8 mil.	23.0	2,477	467	6
AmSouth	4	43.2 mil.	10.2	2,477	467	6
Regions Post-Consummation	1	141.0 mil.	33.2	2,477	467	6
Post-Divestiture						
Regions Post-Consummation	2	97.8 mil.	24.0	2,038	28	7
Branches Divested to Out-of-Market Purchaser	4	38.9 mil.[1]	9.1	2,038	28	7
Paris—Henry County						
Pre-Divestiture						
Regions Pre-Consummation	3	54.3 mil.	12.1	2,809	282	6
AmSouth	4	52.1 mil.	11.6	2,809	282	6
Regions Post-Consummation	3	106.5 mil.	23.7	2,809	282	6
Post-Divestiture						
Regions Post-Consummation	3	54.3 mil.	13.3	2,531	4	6
Branches Divested to In-Market Purchaser	4	46.9 mil.[1]	10.5	2,531	4	6
Rhea—Rhea County						
Pre-Divestiture						
Regions Pre-Consummation	4	39.4 mil.	13.6	2,840	533	3
AmSouth	3	56.6 mil.	19.6	2,840	533	3
Regions Post-Consummation	1	96.0 mil.	33.2	2,840	533	3
Post-Divestiture						
Regions Post-Consummation	4	39.4 mil.	14.9	2,288	6	4
Branches Divested to Out-of-Market Purchaser	5	32.3 mil.[1,3]	11.2	2,288	6	4

Note: Data are as of June 30, 2005. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. Amounts of deposits for branches divested to purchasers take into account potential deposit runoff of up to 10 percent.

1. One branch.
2. Five branches.
3. On September 29, 2006, prior to the merger, AmSouth sold one branch with deposits of $20.7 million to SouthEast Bank and Trust, a market competitor. Those deposits are therefore not reflected in the post-divestiture amount.

Sky Financial Group, Inc.
Bowling Green, Ohio

Order Approving Acquisition of a Bank Holding Company

Sky Financial Group, Inc. ("Sky"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Wells River Bancorp, Inc. ("Wells River") and its subsidiary bank, Perpetual Savings Bank ("Perpetual"), both of Wellsville, Ohio.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 47,226 (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.

Sky, with total consolidated assets of $15 billion, controls Sky Bank,[3] Salineville, Ohio, with branches in Ohio, Indiana, Michigan, Pennsylvania, and West Virginia. Sky is the eighth largest depository organization in Ohio, controlling deposits of $8.1 billion, which represent 4 percent of total deposits of insured depository institutions in Ohio ("state deposits").[4]

Wells River, a small bank holding company with banking assets of approximately $72.6 million, operates one insured depository institution, Perpetual, in Ohio. Perpetual is the 179th largest depository institution in the state, controlling deposits of approximately $57.4 million. On consummation of this proposal, Sky would remain the eighth largest depository organization in Ohio, controlling deposits of approximately $8.2 billion, which represent approximately 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 an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5] The Board has carefully considered the competitive effects of the proposal in light of all the facts of record.

Sky and Wells River compete directly in the Youngstown-Warren, Ohio banking market.[6] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market ("market deposits") controlled by Sky and Wells River,[7] 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"),[8] and other characteristics of the market.

In the Youngstown-Warren banking market, Sky is the largest depository organization, controlling deposits of $2.5 billion, which represent 35.5 percent of market deposits. Perpetual is the 17th largest depository institution in the market, controlling deposits of $57.4 million, which represent less than 1 percent of market deposits. On consummation, Sky would remain the largest depository organization in the market, controlling deposits of approximately $2.5 billion, which represent 36.2 percent of market deposits. The HHI would increase 44 points to 1809.

The proposal would be consistent with DOJ Guidelines in the Youngstown-Warren banking market. Although the market would become highly concentrated as measured by

1. 12 U.S.C. § 1842.

2. In other pending applications, Perpetual has applied to state authorities to convert to a state-chartered commercial bank and to the Board to become a state member bank. Sky plans subsequently to merge Perpetual with Sky Bank, with Perpetual as the surviving entity, and to operate Sky Bank's offices as branches of Perpetual pursuant to section 18(c) of the Federal Deposit Insurance Act and section 9 of the Federal Reserve Act (12 U.S.C. § 1828(c); 12 U.S.C. § 321). Sky intends to change the name of Perpetual to Sky Bank and to move its headquarters to Salineville.

3. Sky also controls Sky Trust, National Association, Pepper Pike, Ohio ("Sky Trust"), a limited-purpose bank that provides only trust services.

4. Asset and deposit data are as of June 30, 2006, and statewide deposit and ranking data are adjusted for subsequent acquisitions through September 12, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. 12 U.S.C. § 1842(c)(1).

6. The Youngstown-Warren banking market is defined as Mahoning County, excluding Smith township; Trumbell County, excluding Brookfield and Hartford townships; and Columbiana County, all in Ohio; and the Grant District in Hancock County, West Virginia.

7. Deposit and market data are as of June 30, 2006, reflect merger activity through September 12, 2006, 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).

8. 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.

the HHI, the increase in the HHI would be small. As noted, Sky currently controls 35.5 percent of the market, and on consummation of the proposal, Sky's market share would increase less than 1 percent. Furthermore, 16 insured depository institutions other than Sky would continue to operate in the market, including two institutions, each with more than 10 percent of market deposits, and three other institutions, each with more than 5 percent of market deposits. These factors, therefore, indicate that the proposal is not likely to have a significantly adverse competitive effect in the Youngstown-Warren banking market.

The DOJ also has 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 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 the Youngstown-Warren banking market, where Sky and Wells River 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, other supervisory information from the primary supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

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 expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. 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. Sky, Sky Bank, and Perpetual are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Sky has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange and cash purchase. Sky will use existing resources to fund the cash portion of the transaction.

The Board also has considered the managerial resources of Sky, Wells River, and their subsidiary banks. 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 and anti-money-laundering laws. Sky, Wells River, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Sky'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").[9] Sky Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland, as of October 14, 2004. Perpetual also received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of July 1, 2005. After consummation of the proposal, Sky plans to implement its CRA policies at Perpetual. The proposal would result in efficiencies that would allow Sky to better serve the customers of Sky Bank and Perpetual and would expand the products and services available to Perpetual customers. 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 the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors

9. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Sky 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 Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 6, 2006.

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

Robert deV. Frierson
Deputy Secretary of the Board

Orders Issued under Section 4 of the Bank Holding Company Act

National City Corporation Cleveland, Ohio

Order Approving the Acquisition of a Savings Association and a Notice to Engage in Nonbanking Activities

National City Corporation ("National City"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire Harbor Federal Savings Bank ("Harbor FSB"), a savings association, by merging with its holding company, Harbor Florida Bancshares, Inc. ("Harbor"), both of Fort Pierce, Florida. National City also has requested the Board's approval under those provisions to acquire Appraisal Analysis, Inc. ("Appraisal Analysis"), Fort Pierce, a subsidiary of Harbor, and thereby provide appraisal services for real estate and personal property in accordance with section 225.28(b)(6) of the Board's Regulation Y.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (71 *Federal Register* 41,219 (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 4 of the BHC Act.

National City, with total consolidated assets of $141.5 billion, is the 13th largest depository organization in the United States, controlling deposits of approximately $83.2 billion, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in the United States.[3] National City operates one insured depository institution, National City Bank, Cleveland, Ohio, with branches in seven states.[4] Harbor, with total consolidated assets of approximately $3.2 billion, operates one insured depository institution, Harbor FSB, with branches only in Florida. Harbor is the 11th largest depository organization in Florida, controlling deposits of approximately $2.2 billion, which represent approximately 2 percent of the total amount of deposits of insured depository institutions in the state.

On consummation of the proposal, National City would remain the 13th largest insured depository organization in the United States, with total consolidated assets of approximately $145.4 billion. National City would control deposits of approximately $85 billion, representing 1 percent of the total amount deposits of insured depository institutions in the United States.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[5] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.[6] National City has committed to conform all the activities of Harbor FSB to those permissible under section 4(c)(8) of the BHC Act and Regulation Y. In addition, the Board has determined that appraising real estate and personal property is closely related to banking.[7] National City has committed to conduct this activity in accordance with the Board's regulations and orders.

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of Harbor FSB and Appraisal Analysis "can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[8] As part of its evaluation under these public interest factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, and the

1. 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.
2. 12 CFR 225.28(b)(6).
3. Asset, deposit, and ranking data are as of June 30, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
4. National City Bank operates in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, and Pennsylvania.
5. 12 CFR 225.28(b)(4)(ii).
6. *Id*.
7. 12 CFR 225.28(b)(2)(i).
8. 12 U.S.C. § 1843(j)(2)(A).

public benefits of the proposal.[9] In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10] The Board has considered the proposal under these factors in light of all the facts of record, including confidential supervisory and examination information, publicly reported financial and other information, and public comments submitted on the proposal.[11]

Competitive Considerations

As part of the Board's consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposed acquisition of Harbor FSB in light of all the facts of record. National City and Harbor do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not result in any significantly adverse effect on competition in any relevant banking market.[12]

The Board has considered the effects of the proposed transaction on competition for appraisal services. Harbor and National City do not compete directly in providing the proposed appraisal services. Moreover, the markets for these nonbanking activities are local or regional in scope and are unconcentrated. The record in this case indicates that there are numerous providers of these services. Based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition among providers of appraisal services.

Financial and Managerial Resources

In reviewing the proposal under section 4 of the BHC Act, the Board has carefully considered the financial and managerial resources of National City, Harbor, and their subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by National City, and public comments received on the proposal.

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

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

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 National City, Harbor, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. National City, Harbor, and their subsidiary depository institutions are considered to be well managed. The Board also has considered National City's plans for implementing the proposal, including the proposed management after consummation.[13]

Based on all the facts of record, the Board has concluded that the financial and managerial resources of the organiza-

9. *See* 12 CFR 225.26; *see, e.g., BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

10. 12 U.S.C. § 2901 et seq.

11. One of the two commenters on the proposal expressed concern that National City's acquisition of Appraisal Analysis could erode the separation between appraisers and the loan-production and credit decision-making processes. National City has committed that it will conduct all appraisal services in compliance with applicable federal regulations and guidance requiring functional separation of appraisals from credit-solicitation and decision-making processes.

12. Another commenter expressed concern about the existing concentration levels of market deposits in markets where Harbor FSB has offices. Because National City Bank currently does not have branches in any of these banking markets, the proposal would not increase the concentration levels of deposits in Harbor FSB's banking markets. Furthermore, the Board reviewed the concentration levels in the Indian River County, Florida banking market, one of the markets where Harbor FSB has branches, in its recent review of the proposed acquisition of Golden West Financial Corporation, Oakland, California, by Wachovia Corporation, Charlotte, North Carolina. The Board found no adverse competitive impact in the market as a result of that transaction. *See Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

13. A commenter expressed concern about National City's relationships with unaffiliated pawn shops, cash-advance lenders, and other nontraditional providers of financial services. 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. National City has stated that it does not pursue such nontraditional providers as a line of business. National City also has represented that it does not play any role in the lending practices, credit review, or other business practices of those firms.

tions involved in the proposal are consistent with approval under section 4 of the BHC Act.

CRA Performance Records

As previously noted, the Board considers the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire a savings association. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[14]

The Board received a comment related to the CRA performance record of National City. The commenter alleged, based primarily on data reported under the Home Mortgage Disclosure Act ("HMDA"),[15] that National City extended a disproportionately high number of subprime mortgage loans in the Cincinnati area, particularly to LMI borrowers, as compared to its lending outside Cincinnati.[16]

As provided in the CRA, the Board has evaluated the proposal in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[17]

National City Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of February 22, 2000.[18] Harbor FSB received an "outstanding" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of September 30, 2005. National City has indicated that its CRA program would be implemented at Harbor FSB on consummation of the proposal.

In connection with previous applications by National City, the Board has reviewed the CRA performance records of National City's subsidiary-insured depository institutions.[19] A summary of the most recent CRA evaluations of National City Bank was included in the *Allegiant Order*. Based on its review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the *Allegiant Order*. The Board also has consulted with the OCC concerning the CRA performance of National City Bank since its last CRA evaluation.

As discussed in the *Allegiant Order*, the most recent CRA evaluation of National City Bank characterized the bank's overall record of home mortgage and small business lending as excellent and commended its level of community development lending.[20] Examiners noted favorably the use of several flexible lending products designed to address the affordable housing needs of LMI individuals and the bank's level of qualified investments. In addition, examiners reported that National City Bank's community development services were excellent and commended the geographic distribution of the bank's branches.

In 2004 and 2005, National City originated housing-related loans reported under HMDA totaling more than $11.6 billion. Of this amount, 13 percent was lent to borrowers in LMI census tracts and 26 percent to LMI borrowers. National City represented that, in 2004 and 2005, its subsidiary banks also made approximately $977 million in qualified community development loans and approximately $235 million in qualified investments and grants in their assessment areas, including significant investments in the Cincinnati area.

In the most recent CRA performance evaluation of Harbor FSB, examiners reported that the savings association's overall lending to LMI borrowers exceeded that of all other lenders in its assessment areas during the evaluation period (January 1, 2003, to December 31, 2004). In addi-

14. 12 U.S.C. § 2903.

15. 12 U.S.C. § 2801 et seq.

16. As the Board has previously noted, subprime lending is a permissible activity that provides needed credit to consumers who have difficulty meeting conventional underwriting criteria. The Board continues to expect all bank holding companies and their affiliates to conduct their lending operations without any abusive lending practices. *See, e.g., Royal Bank of Canada*, 88 *Federal Reserve Bulletin* 385, 388 (2002). The Board notes that on September 5, 2006, National City signed an agreement to sell its principal subsidiary that originates subprime mortgage loans, First Franklin Financial Corporation ("First Franklin"), San Jose, California, to Merrill Lynch & Co., New York, New York, and also announced its intention to sell to Merrill Lynch $5.6 billion of loans originated by First Franklin.

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

18. On July 22, 2006, National City consolidated five other subsidiary banks into National City Bank: National City Bank of Indiana, Indianapolis, Indiana; National City Bank of Kentucky, Louisville, Kentucky; National City Bank of Pennsylvania, Pittsburgh, Pennsylvania; National City Bank of Southern Indiana, New Albany, Indiana; and National City Bank of the Midwest, Bannockburn, Illinois. On August 19, 2006, National City also consolidated Pioneer Bank and Trust Company, Maplewood, Missouri, into National City Bank. Each of these banks received either an "outstanding" or a "satisfactory" rating at its most recent CRA evaluation, as have the other insured depository institutions that, since the most recent CRA performance evaluation of National City Bank, have been consolidated into National City Bank.

19. *National City Corporation*, 92 *Federal Reserve Bulletin* C84 (2006); *National City Corporation*, 90 *Federal Reserve Bulletin* 519 (2004); *National City Corporation*, 90 *Federal Reserve Bulletin* 236 (2004) ("*Allegiant Order*"); and *National City Corporation*, 90 *Federal Reserve Bulletin* 382 (2004) ("*Provident Order*").

20. *See Allegiant* and *Provident Orders*. In evaluating the records of performance under the CRA of National City Bank, examiners considered home mortgage loans by certain affiliates in the bank's assessment areas. The loans reviewed by examiners included loans reported by National City Mortgage Corporation, Miamisburg, Ohio (then a subsidiary of National City Bank of Indiana); National City Mortgage Services, Kalamazoo, Michigan (then a subsidiary of National City Bank of the Midwest); and other bank and nonbank affiliates of National City Bank.

tion, examiners characterized Harbor FSB's level of community development lending in the combined assessment area as strong. Examiners also commended Harbor FSB for supporting a wide variety of nonprofit civic organizations in its assessment areas and noted that the savings association offered a high level of banking services, including several products that were beneficial to LMI individuals.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to the CRA performance records of the relevant depository institutions are consistent with approval.

Other Considerations

In light of public comments on the proposal, the Board also has carefully considered the fair lending record and HMDA data reported by subsidiaries of National City in its evaluation of the public interest factors. A commenter opposed the proposal and alleged, based on 2005 HMDA data, that National City made higher-cost loans to African Americans and Hispanics more frequently than to nonminorities.[21] The Board has analyzed 2004 and 2005 HMDA data reported by subsidiaries of National City in its banks' primary assessment areas, including the Metropolitan Statistical Areas ("MSA") of Cleveland, Cincinnati, and Indianapolis, and statewide in the states where those banks operated branches.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not National City is excluding or imposing higher credit costs on those groups 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.[22] 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 banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or 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 by National City with fair lending laws. In the fair lending reviews that were conducted in conjunction with the most recent CRA performance evaluations of National City, examiners noted no substantive violations of applicable fair lending laws. The Board has also forwarded the commenter's submissions to, and consulted with, the OCC about the fair-lending and consumer-protection compliance records of National City Bank, including the records of First Franklin, which is a subsidiary of the bank.

The record also indicates that National City has taken steps to ensure compliance with fair lending and other consumer protection laws. National City represents that it has a comprehensive fair lending program consisting of lending policies, annual training and testing of lending personnel, fair lending analyses, and oversight and monitoring. In addition, National City states that it performs fair lending analysis using regression modeling and benchmarking and monitors adherence to credit policies using monthly reporting and quality control reviews. National City also represents that its fair lending policies include a second-review program for its residential lending and that its corporate underwriting department conducts a third review of denied applications from minority applicants or for loans used to finance properties in LMI areas. National City intends to implement its consumer compliance and fair lending programs at Harbor FSB after consummation of the proposal.

In addition, the Board has considered the HMDA data in light of other information, including the CRA performance records of National City Bank and Harbor FSB. Based on all the facts of record, the Board has concluded that considerations relating to the fair lending record and HMDA data of National City Bank and Harbor FSB are consistent with approval under section 4 of the BHC Act.

Public Benefits

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has reviewed carefully the public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses currently served by Harbor. National City has represented that the proposed transaction would provide Harbor's customers with expanded products and services, including expanded commercial lending products, cash management and international trade services, and fiduciary and trust services. In addition, National City has represented that its acquisition of Appraisal Analysis would increase competition for appraisal services in Florida by increasing the availability of such services.

21. 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 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages (12 CFR 203.4).

22. 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.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentrations of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Based on all the facts of record, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under section 4(j)(2) of the BHC Act is consistent with approval.

CONCLUSION

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.[23] 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 National City and Harbor with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[24] and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

The acquisition shall not be consummated 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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 13, 2006.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

23. A commenter requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner (12 CFR 225.25(a)(2)). Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application if a meeting or hearing is necessary or appropriate to provide an opportunity for testimony or other presentations. *See* 12 CFR 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 identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. Moreover, the commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

24. 12 CFR 225.7 and 225.25(c).