



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ
GENERAL COUNSEL

December 20, 2007

Rebecca H. Laird, Esq.
Kirkpatrick & Lockhart Preston Gates Ellis LLP
1601 K Street, NW
Washington, DC 20006-1600

Dear Ms. Laird:

This is in response to your request for a determination that Davis Selected Advisers, L.P., Venture Advisers, Inc., and Davis Investments, LLC (together, "Davis"), all of Tucson, Arizona, may acquire up to 15 percent of any class of voting securities of a bank holding company or bank without being deemed to have acquired control of that institution under the Bank Holding Company Act ("BHC Act") or the Change in Bank Control Act ("CIBC Act") when the acquisition complies with certain conditions described in this letter and related correspondence.

Davis proposes to hold bank holding company and bank shares through a variety of investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, institutional private accounts, and managed money/wrap accounts that are advised by Davis (collectively, the "Davis-Advised Entities").

For purposes of the BHC Act, a company controls a bank holding company or bank if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank holding company or bank; (ii) controls in any manner the election of a majority of the directors of the bank holding company or bank; or (iii) directly or indirectly exercises a controlling influence

over the management or policies of the bank holding company or bank.¹ The Board's Regulation Y also sets forth several rebuttable presumptions of control.²

Under the proposal, Davis would not own, control, or hold with power to vote 25 percent or more of a class of voting securities of, or control the election of a majority of the directors of, any bank holding company or bank. In addition, Davis would not trigger any of the BHC Act rebuttable presumptions of control under Regulation Y with respect to any bank holding company or bank. Davis would only be deemed to control a bank holding company or bank under the BHC Act if the Board were to find that Davis exercises a controlling influence over the management or policies of a bank holding company or bank.

For purposes of the CIBC Act, Davis is presumed by Regulation Y to control a bank holding company or state member bank if "immediately after the transaction ... [it] will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution" and the institution has registered securities or no other person owns or controls a greater percentage of the same class of voting securities.³ Davis proposes at times to acquire in excess of 10 percent of a class of voting securities of a bank holding company or state member bank through the Davis-Advised Entities, without regard to whether any such institution has registered securities or whether Davis is the largest shareholder in the institution.

Davis seeks to establish that it does not exercise a controlling influence over a bank holding company or bank for purposes of the BHC Act and to rebut the regulatory presumption of control for purposes of the CIBC Act in specific circumstances. In particular, Davis and the Davis-Advised Entities collectively would not own or control more than 15 percent of any class of voting securities of a bank holding company or bank; and none of Davis or any Davis-Advised Entity would individually own or control more than 10 percent of any class of voting securities of a bank holding company or bank. In addition, Davis

¹ 12 U.S.C. § 1841(a)(2); 12 C.F.R. 225.2(e).

² 12 C.F.R. § 225.31(d).

³ 12 C.F.R. § 225.41(c).

has committed to use its best efforts to vote shares owned or controlled by Davis or any of the Davis-Advised Entities in excess of 10 percent (“excess shares”) in the same proportion as all other shares that are not excess shares are voted. In the event that Davis’ best efforts are unsuccessful, Davis would not vote any excess shares.

Moreover, Davis has made a number of commitments designed to mitigate the ability of Davis to control a bank holding company or bank. Among these commitments, Davis has committed that, whenever Davis or the Davis-Advised Entities own or control, in the aggregate, 10 percent or more of any class of voting securities of a bank holding company or bank, Davis and the Davis-Advised Entities will not, individually or collectively:

- 1) take any action to control the bank holding company or bank within the meaning of the BHC Act;
- 2) have any director, officer, or employee interlocks with the bank holding company or bank;
- 3) except in the context of a tender offer or in certain other transactions, dispose of voting shares of the bank holding company or bank (i) to any person seeking control over the institution or (ii) in block transactions exceeding 5 percent of any class of voting shares of the institution; or
- 4) threaten to dispose of voting shares in any manner as a condition of specific action or non-action by the bank holding company or bank.⁴

In addition to considering the commitments made by Davis, Board staff has considered the nature of Davis and its proposed investments. Davis operates and provides investment advice to the Davis-Advised Entities. The proposed acquisitions in bank holding companies or banks would not be proprietary investments by Davis. Rather, they would be investments made by Davis-Advised Entities and on behalf of the beneficial owners of the Davis-

⁴ For a complete list of the commitments that Davis has made to the Board, see the Appendix.

Advised Entities. The Davis-Advised Entities are not operating companies, and Davis does not lend to the Davis-Advised Entities or to their portfolio companies. Moreover, Davis is not in the business of operating or controlling banks, bank holding companies, or other companies. The proposed acquisitions will be made for investment purposes with the expectation of resale and not for the purpose of exercising a controlling influence over the management or policies of any bank holding company or bank.

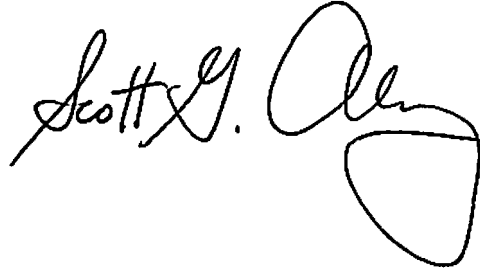
In view of the commitments made by Davis and the facts described in this letter, Board staff would not recommend that the Board find that acquisitions made within the parameters set forth in this letter would cause Davis or any of the Davis-Advised Entities: (i) to control a bank holding company or bank for purposes of the BHC Act; or (ii) to control a bank holding company or state member bank for purposes of the CIBC Act.⁵

The preceding opinions are based expressly on the facts and circumstances of this case as they have been described to Board staff, and any change in these facts or circumstances may result in a different opinion. In addition, this letter expresses no opinion as to whether a CIBC Act notice would be required for transactions involving direct investments in national banks or state

⁵ In your letter, you also request confirmation that Davis has not acquired control of Commerce Bancorp, Inc. ("CBI"), Cherry Hill, New Jersey, for purposes of the CIBC Act or BHC Act as a result of its acquisition of 10.3 percent of outstanding CBI voting shares. Davis does not own, control, or hold with power to vote 25 percent or more of a class of voting securities of CBI and does not control the election of a majority of its directors. In addition, Davis does not trigger any of the BHC Act rebuttable presumptions of control under Regulation Y with respect to CBI. Moreover, although Davis-Advised Entities currently hold in excess of 10 percent of a class of voting shares of CBI, Davis has voting discretion over only 9.8 percent. Davis also has entered into the passivity commitments discussed above. Accordingly, Board staff would not recommend that the Board find that Davis and the Davis-Advised Entities must obtain Board approval to acquire or retain control of CBI for CIBC Act or BHC Act purposes, subject to the commitments discussed in this letter and the Appendix.

non-member banks. If you have any questions about this matter, please contact Brian Knestout, Attorney (202-452-2249), of the Board's Legal Division.

Sincerely,

A handwritten signature in black ink that reads "Scott G. Allen". The signature is written in a cursive style with a large, looped initial "S" and a distinct "G". The name "Allen" is written in a more standard cursive. Below the signature, there is a large, empty, hand-drawn oval shape.

Commitments of Davis to the Board

Investments by Davis and the Davis-Advised Entities in 10 percent or more of any class of voting securities of U.S. bank holding companies and banks (each, a "Bank") will be conducted in accordance with the commitments and restrictions listed below.

1. Davis and the Davis-Advised Entities in the aggregate:
 - (a) will not acquire more than fifteen percent of any class or series of voting securities of any Bank; and
 - (b) will use best efforts to provide that shares in excess of 10 percent of any class or series of voting securities of a Bank ("excess shares") will be voted in proportion to the vote taken on all shares that are not excess shares or, in the event that such efforts to provide for mirror voting are not successful, will not vote any excess shares.
2. Neither Davis nor any Davis-Advised Entities will, directly or indirectly, individually or in the aggregate:
 - (a) take any action to cause a Bank or any of its subsidiaries to become a subsidiary of Davis or any Davis-Advised Entity for purposes of the BHC Act;
 - (b) unless agreed to by the Federal Reserve Board or its staff, and permitted by applicable law, seek or accept representation on the board of directors of any Bank or its subsidiaries;
 - (c) have or seek to have any representative of Davis or any Davis-Advised Entity serve as an officer, agent or employee of any Bank or its subsidiaries;
 - (d) propose a director or a slate of directors in opposition to any nominee or slate of nominees proposed by the management or board of directors of any Bank;
 - (e) exercise or attempt to exercise a controlling influence over the management or policies of any Bank or any of its subsidiaries; or

(f) attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of any Bank or any of its subsidiaries.

3. Neither Davis nor any Davis-Advised Entity will dispose of voting securities of a Bank:

(a) to any person if Davis or the Davis-Advised Entity knows that such person seeks to change the control of the Bank in any manner; or

(b) to any person whom Davis or the Davis-Advised Entity knows (i) has made a filing with the SEC or other federal agency with respect to the ownership of more than five percent of the Bank's voting securities, or (ii) would be required to do so as a result of the purchase from Davis and the Davis-Advised Entity; or

(c) in an amount of more than 5 percent of the Bank's voting securities in any single transaction;

provided that notwithstanding paragraphs (a) through (c) above, Davis and the Davis-Advised Entities may dispose of their stock in a Bank in the following circumstances:

(i) in a cross trade between two Davis-Advised Entities in compliance with the rules governing such cross trades under the Investment Company Act of 1940, as amended (the "1940 Act");

(ii) in the case of paragraph (c) above, in a bunched trade effected for two or more Davis-Advised Entities in compliance with the rules governing bunched trades under the 1940 Act;

(iii) in a sale by Davis and the Davis-Advised Entities to the Bank or one of its subsidiaries;

(iv) in a tender or exchange offer for voting stock of the Bank; or

(v) in one or more open market transactions that are effected on a stock exchange or in the over-the-counter market (which may include

a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the shares sold to it or them in accordance with its or their normal business practices).

4. Neither Davis nor any Davis-Advised Entity will threaten to dispose of voting shares in any manner as a condition of specific action or non-action by the Bank.
5. Neither Davis nor any Davis-Advised Entity will individually own, control, or hold with power to vote more than 10 percent of any class of voting securities of a Bank.