Bank, National Association, Plano, Texas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belevedre Capital LLC and Belvedere Capital Fund II, L.P., both of San Francisco, California; to become bank holding companies by acquiring up to 50 percent of the voting shares of Presidio Bank, San Francisco, California (in organization).

Board of Governors of the Federal Reserve System, April 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5103 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Kentucky Bancshares, Inc., Paris, Kentucky; to acquire Peoples Bancorp of Sandy Hook, Inc., Sandy Hook, Kentucky and thereby indirectly acquire voting shares of Peoples Secure, LLC, Lexington, Kentucky, and engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5104 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT) April 17, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

Matters to Be Considered

Parts Open to the Public

1. Approval of the minutes of the March 20, 2006, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly Reports:

—Investment Policy Report [Board Vote].
—Performance Report.
—Vendor Financial Report.

Parts Closed to the Public

5. Internal personnel matters.
6. Procurement matters.

FOR MORE INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs. (202) 942–1640.

Dated: April 5, 2006.

Thomas K. Emswiler,

Acting Secretary to the Federal Retirement Thrift Investment Board.

[FR Doc. 06–3392 Filed 4–5–06; 11:42 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Consumer Benefits and Harms: How Best to Distinguish Aggressive, Pro-Consumer Competition From Business Conduct To Attain or Maintain a Monopoly

AGENCY: Federal Trade Commission and U.S. Department of Justice, Antitrust Division.

ACTION: Notice of Public Hearings and Opportunity for Comment.

SUMMARY: The Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) will hold a series of public Hearings to explore how best to identify anticompetitive exclusionary conduct for purposes of antitrust enforcement under section 2 of the Sherman Act, 15 U.S.C. 2. Among other things, the Hearings will examine whether and when specific types of conduct that potentially implicate section 2 are procompetitive or benign, and when they may harm competition and consumer welfare.

The Agencies expect to focus on legal doctrines and jurisprudence, economic research, and business and consumer experiences. To begin, the Agencies are soliciting public comment from lawyers, economists, the business community, consumer groups, academics (including business historians), and other interested parties on two general subjects: (1) The legal and economic principles relevant to the application of section 2, including the administrability of current or potential antitrust rules for section 2, and (2) the types of business practices that the Agencies should examine in the upcoming Hearings, including examples of real-world conduct that potentially raise issues under section 2. With respect to the Agencies' request for examples of real-world conduct, the Agencies are soliciting discussions of the business reasons for, and the actual or likely competitive effects of, such conduct, including actual or likely efficiencies and the theoretical underpinnings that inform the decision of whether the conduct had or has pro-or anticompetitive effects. The Agencies will solicit additional submissions about the topics to be covered at the individual Hearings at the time that each Hearing is announced.

The Agencies encourage submissions from business persons from a variety of unregulated and regulated markets, recognizing that market participants can offer unique insight into how competition works and that the implications of various business practices may differ depending on the industry context and market structure. The Agencies seek this practical input to provide a real-world foundation of knowledge from which to draw as the Hearings progress. Respondents are encouraged to respond on the basis of their actual experiences.

The goal of these Hearings is to promote dialogue, learning, and consensus building among all interested parties with respect to the appropriate legal analysis of conduct under section 2 of the Sherman Act, both for purposes

of law enforcement and to provide practical guidance to businesses on antitrust compliance. The FTC and the DOJ plan to hold two to four days of Hearings per month between June and December 2006, exclusive of August 2006. The Agencies plan to publish a more detailed description of the topics to be discussed before each Hearing and to solicit additional submissions about each topic. The Hearings will be transcribed and placed on the public record. Any written comments received also will be placed on the public record. A public report that incorporates the results of the Hearings, as well as other research, will be prepared after the Hearings.

DATES: Any interested person may submit written comments responsive to any of the topics addressed in this **Federal Register** notice. Respondents are encouraged to provide comments as soon as possible, but in any event no later than the last session of the Hearings.

ADDRESSES: When in session, the Hearings will be held at either the FTC headquarters, 600 Pennsylvania Avenue, NW., or at 601 New Jersey Avenue, NW., Washington, DC. All interested parties are welcome to attend.

Written comments should be submitted in both paper and electronic form to both the Federal Trade Commission and the Department of Justice. All comments received will be publicly posted. The comments should be submitted as follows:

Federal Trade Commission. Two paper copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Room H–135 (Annex Z), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned ''Comments Regarding Section 2 Hearings, Project No. P062106'' to facilitate the organization of comments. The paper version of each comment should include this reference both in the text and on the envelope. The FTC is requesting that the paper copies of each comment be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. The electronic version of each comment should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-section2hearings* and following the instructions on the Web-based form.

Department of Justice. Two paper copies should be addressed to Legal Policy Section, Antitrust Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Suite 3234, Washington DC 20530. The Antitrust Division is requesting that the paper copies of each comment be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Division is subject to delay due to heightened security precautions. The electronic version of each comment should be submitted by electronic mail to *singlefirmconduct@usdoj.gov*.

FOR FURTHER INFORMATION CONTACT: Susan DeSanti, Deputy General Counsel, Policy Studies, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–2167; e-mail: *sdesanti@ftc.gov* or Gail Kursh, Deputy Chief, Legal Policy Section, Antitrust Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Suite 3234, Washington DC 20530; telephone (202) 307–5799; e-mail: *singlefirmconduct@usdoj.gov*. Detailed agendas and schedules for the Hearings will be available on the FTC Home Page (*http://www.ftc.gov*) and the DOJ single firm conduct Web site, *http://www.usdoj.gov/atr/public/hearings/single_firm/sfchearing.htm*.

SUPPLEMENTARY INFORMATION: Section 2 of the Sherman Antitrust Act condemns ''every person who shall monopolize, or attempt to monopolize, or combine or conspire * * * to monopolize * * * .'' [1] The law does not prohibit monopoly as such, however. Rather, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive exclusionary conduct. The Supreme Court has described the requisite conduct as ''the willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'' [2]

This description distinguishing when certain types of conduct should be of antitrust concern is necessarily general. Caution is necessary, because the aggressive, unilateral behavior often at issue in section 2 antitrust cases typically resembles the vigorous rivalry that the antitrust law seeks to promote.[3] Sound antitrust policy encourages all firms, regardless of size, to compete vigorously. In the long run, competition forces firms to become as or more efficient than their rivals. Those that do not lose sales and, ultimately, exit the market. Antitrust enforcers must strive to avoid ''false positives'' (erroneous antitrust condemnation) that would chill procompetitive behavior that benefits consumers. On the other hand, allowing firms with market power to use any business practice available may result in reduced competition, the consolidation and persistence of monopoly power, and ultimately, higher prices and reduced output. Under-enforcement of the antitrust laws may result in ''false negatives'' in which firms continue to engage in anticompetitive exclusionary conduct that harms consumers.

An appropriate antitrust approach, therefore, requires means for distinguishing permissible from impermissible conduct in varied circumstances. Moreover, those means should provide reasonable guidance to businesses attempting to evaluate the legality of proposed conduct before undertaking it. The development of clear standards that work to the advantage of consumers while enabling businesses to comply with the antitrust laws presents some of the most complex issues facing the FTC, the DOJ, the courts, and the antitrust bar. Commentators actively debate the character of conduct that implicates section 2, and the utility of different tests for distinguishing anticompetitive and procompetitive business practices.

Given these circumstances, and because ''[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue,'' [4] the Agencies encourage commenters to provide real-world examples of the types of conduct that the Agencies should consider in the context of these Hearings and to discuss the business reasons for their use and their actual or likely competitive effects. In addition, the Agencies encourage commenters to provide real-world examples from their own experience that illustrate the types of conduct listed below, the business reasons for the use of such conduct, the conduct's actual or likely competitive effects, what types of analyses the firm performed in deciding whether to adopt and how to implement the practice, alternative practices that were considered and why they were rejected, and how implementation of the

[1] 15 U.S.C. 2.

[2] United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966).

[3] Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, 540 U.S. 398, 414 (2004) (''Under the best of circumstances, applying the requirements of § 2 can be difficult because the means of illicit exclusion, like the means of legitimate competition, are myriad. Mistaken inferences and the resulting false condemnations are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'') (internal quotations and citations omitted).

[4] Id. at 411.

practice affected the firm's costs, prices, risks, sales, shares, and profits. Participants in markets where other firms use such practices are invited to respond with real-world examples of the practice's effect on competition in the market as a whole, including what market conditions changed when the practice was instituted or ended and whether buyers perceive specific benefits or disadvantages from the use of the practice and, if so, what they are.

The following lists particular types of conduct that commenters may wish to address, followed by sample questions that commenters may wish to consider with respect to each or all of the types of conduct they discuss.

Particular Types of Conduct for Possible Discussion

Bundled Loyalty Discounts and Market Share Discounts. Sellers sometimes offer discounts contingent upon a buyer's purchase of two or more different products—for example, restaurants may offer a choice between a la carte items and complete meals (priced at a discount). Sellers also may offer a discount on all units sold to the buyer, if the buyer meets a target (*e.g.*, volume or market share) for purchases of a single item.

Product Tying and Bundling. Tying occurs when a firm conditions the sale of one product on the customer's agreement to buy or to take a second product. Tying often involves separate prices for components that purchasers can use in different proportions, and a contractual or technological requirement that if users purchase the tying product, they must also purchase the tied product from the same seller. When a firm charges a single price for a specified bundle of tied goods, the practice has been called ''bundling.'' If the components are also sold separately, with a discount for purchasing the bundle, the practice is called ''mixed bundling.''

Exclusive Dealing. Exclusive dealing includes arrangements in which a seller agrees to sell its product to only a single distributor, a seller precludes its customer from purchasing some product from another supplier, or a buyer requires its supplier to sell some product only to the buyer.

Predatory Pricing. Predatory pricing involves pricing below ''an appropriate measure'' of a firm's costs, combined with a dangerous probability that the firm can later raise its prices to recoup its prior investment in below-cost prices.

Refusals to Deal. Refusals to deal occur when a firm chooses not to make a product or service available to another firm.

Most-Favored-Nation Clauses. A most-favored-nation clause is a contractual agreement between a buyer and a seller that requires the seller to sell to the buyer on pricing terms that are at least as favorable as, and sometimes more favorable than, the pricing terms on which the seller sells to any other buyer.

Product Design. Claims may arise under section 2 that a firm has modified its product design to exclude a competitor in a product-related market (*e.g.*, a market for an attachment that must fit with the product design), rather than to improve product design.

Misleading or Deceptive Statements or Conduct. Misleading or deceptive statements or conduct by a firm may potentially implicate section 2.

Sample Questions for Consideration With Respect to Each or All of the Types of Conduct That the Commenter Discusses

1. How should the structure of the market and the market shares of participants be taken into account in analyzing such conduct?

2. What are the likely procompetitive and antitcompetitive effects of the conduct in the short run? In the long run?

3. What specific types of cost savings, risk reduction, or other efficiencies (*e.g.*, elimination of free riding or otherwise protecting investments in services and reputation, product improvement or innovation) could be generated by such conduct? Would these efficiencies depend to any extent on the seller maintaining a certain scale or scope of operation?

4. Would a business typically analyze or estimate the likely cost savings from this type of conduct before engaging in it? After engaging in it? Why or why not? What other business practices, if any, could be used to achieve similar or greater efficiencies? What factors would influence the practical or economic feasibility of such alternative conduct?

5. How might competitors respond to counteract a loss of sales to the firm engaging in such conduct? If implemented by a firm with a very large market share, could such conduct raise the costs of the firm's rivals? If such conduct could raise the costs of the firm's rivals, could that lead to consumer harm? If so, how and under what circumstances?

6. Would you expect such conduct to affect the likelihood of entry into the market? If so, how and under what circumstances?

7. How widespread in your industry are the types of conduct that you have discussed? What features of the conduct may vary and why? What are the typical business contexts in which such types of conduct occur? How frequently do firms that lack market power undertake such conduct and why?

8. What tests and standards should courts and enforcement agencies use in assessing whether such conduct violates section 2?

9. If any scenario that you have discussed could result in liability under section 2, what remedy or remedies would you propose for consideration? What tests and standards should courts and enforcement agencies use in assessing which remedy to apply in a section 2 case? Should section 2 remedies address conduct or market structure, and why should one be preferred over the other? Would your preferred remedy require ongoing oversight by a court or agency—*e.g.*, oversight of prices, conduct between competitors (*e.g.*, licensing), or costs? If so, please describe how such oversight could be conducted.

10. In what circumstances, if any, should an agency decline to pursue a section 2 case due to an absence of a practical, judicially manageable, and economically feasible remedy?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–3366 Filed 4–6–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 051 0154]

Fresenius AG; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 2, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Fresenius AG, File No. 051 0154,'' to facilitate the