March 2008

Legal Developments: Fourth Quarter, 2007

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued under Section 3 of the Bank Holding Company Act

First Citizens Banc Corp
Sandusky, Ohio

The Citizens Banking Company
Urbana, Ohio

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

First Citizens Banc Corp (''First Citizens''), 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 Futura Banc Corporation (''Futura'') and acquire its subsidiary bank, Champaign National Bank (''Champaign Bank''), both of Urbana, Ohio.[2] In addition, First Citizens' subsidiary state member bank, The Citizens Banking Company (''Citizens Bank''), also of Sandusky, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[3] (''Bank Merger Act'') to merge with Champaign Bank, with Citizens Bank as the surviving entity. Citizens Bank also has applied under section 9 of the Federal Reserve Act (''FRA'') to establish and operate branches at the main office and branches of Champaign Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the relevant statutes and the Board's Rules of Procedure (72 *Federal Register* 60,019 (2007)).[5] As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request was provided to the Federal Deposit Insurance Corporation. The time for filing comments has expired, and the Board has considered the applications in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

First Citizens has total consolidated assets of approximately $776.5 million and is the 27th largest depository organization in Ohio, controlling deposits of approximately $678.4 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state (''state deposits'').[6] First Citizens operates one subsidiary depository institution, Citizens Bank, with branches only in Ohio.

Futura, a small bank holding company with banking assets of approximately $274.2 million, operates one insured depository institution, Champaign Bank, in Ohio. Futura is the 67th largest depository organization in Ohio, controlling deposits of approximately $232.8 million.

On consummation of this proposal, First Citizens would become the 23rd largest depository organization in Ohio, with total consolidated assets of approximately $1.1 billion. First Citizens would control deposits of approximately $911.2 million, which represent less than 1 percent of the total amount of state deposits.

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.[7]

First Citizens and Futura have subsidiary depository institutions that compete directly in the Logan County,

1. 12 U.S.C. § 1842.
2. First Citizens proposes to acquire the shares of the nonbanking subsidiaries of Futura 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).
3. 12 U.S.C. § 1828(c).
4. 12 U.S.C. § 321. These branches are listed in the appendix.
5. 12 CFR 262.3(b).
6. Asset data are as of September 30, 2007. Statewide deposit and ranking data are as of June 30, 2007, and reflect merger activity through November 20, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
7. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

Ohio banking market.[8] 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 (''market deposits'') controlled by First Citizens and Futura in the market,[9] the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl–Hirschman Index (''HHI'') under the Department of Justice Merger Guidelines (''DOJ Guidelines''),[10] and other characteristics of the market.

In the Logan County banking market, Citizens Bank is the second largest depository institution, controlling deposits of approximately $119.6 million, which represent approximately 21.6 percent of market deposits. Champaign Bank is the fifth largest depository institution in the market, controlling deposits of approximately $42 million, which represent approximately 7.6 percent of market deposits. Based on deposit data as of June 30, 2007, Citizens Bank would become the largest depository institution in the market, controlling deposits of approximately $161.6 million, which would represent 29.1 percent of market deposits. The HHI would increase 326 points to 1963.

Several factors indicate that the increase in concentration in this banking market, as measured by the HHI, overstates the potential competitive effects of the proposal. The Board notes that First Citizens did not enter the Logan County banking market until October 4, 2007, when Citizens Bank assumed the insured deposits of a failed bank.[11] The record shows that the offices of the acquired bank incurred a significant run-off of deposits in the market between June 30, 2007, and the October 4 acquisition date, which other competitors in the market did not experience. This decline in the deposits assumed by Citizens Bank indicates that using June 30, 2007, deposit data to calculate the effects of this proposal on market concentration would overstate to some degree the actual market presence of First Citizens. In addition, nine other insured depository institutions would continue to compete in the market after consummation.

Moreover, the Board notes that one community credit union also exerts a competitive influence in the Logan County banking market.[12] This institution offers a wide range of consumer products, operates street-level branches, and has membership open to almost all the residents in the market.

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

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

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' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings

8. The Logan County banking market is defined as Logan County, Ohio.

9. Deposit and market-share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2007, adjusted to reflect mergers and acquisitions through November 20, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution deposits in the market-share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10. 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.

11. *See* Press Release, Federal Deposit Insurance Corporation, FDIC Approves the Assumption of the Insured Deposits of Miami Valley Bank, Lakeview, Ohio (October 4, 2007).

12. 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 Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004).

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. First Citizens, Futura, 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 First Citizens has sufficient financial resources to effect the proposal. The proposed acquisition is structured as a partial share exchange and a partial cash purchase of shares. First Citizens will use a combination of existing resources and 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 First Citizens, Futura, 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 laws and with anti-money-laundering laws. First Citizens, Futura, and their subsidiary depository institutions are considered to be well managed. The Board also has considered First Citizens' 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 the Board must consider under the BHC Act and the Bank Merger Act.

Convenience and Needs and CRA Performance Consideration

In acting on a proposal 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'').[13] Citizens Bank received a ''satisfactory'' rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland (''Reserve Bank''), as of September 25, 2006. Champaign Bank received a ''satisfactory'' rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of July 22, 2003. After consummation of the proposal, Citizens Bank plans to implement its CRA policies at Champaign Bank. First Citizens has represented that the proposal would 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 communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Establishment of Branches

As previously noted, Citizens Bank has also applied under section 9 of the FRA to establish branches at the locations of Champaign Bank's existing 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 the Board's Regulation H and finds those factors to be consistent with approval.[14]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its decision, 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. The Board's approval is specifically conditioned on compliance by First Citizens and Citizens Bank with the conditions imposed in this order and the commitments made to the Board in connection with the applications. 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 transactions may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 30, 2007.

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

Robert deV. Frierson
Deputy Secretary of the Board

13. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

14. 12 U.S.C. § 322; 12 CFR 208.6(b).

Appendix

BRANCHES IN OHIO TO BE ESTABLISHED BY CITIZENS BANK

Urbana
601 Scioto Street
504 North Main Street

Russells Point
330 South Orchard Island Road

West Liberty
205 South Detroit Street

Troy
115 South Market

Dublin
6400 Perimeter Drive

Hilliard
4501 Cemetery Road

Plain City
320 South Jefferson Avenue

Akron
529 North Cleveland Massillon Road

KeyCorp Cleveland, Ohio

Order Approving the Merger of Bank Holding Companies

KeyCorp, 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 U.S.B. Holding Co., Inc. (''USB''), Orangeburg, and its subsidiary bank, Union State Bank, Nanuet, both of New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 52,129 (2007)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

KeyCorp, with total consolidated assets of approximately $93.5 billion, is the 24th largest depository organization in the United States.[3] KeyCorp's only insured depository institution, KeyBank National Association (''KeyBank''), also of Cleveland, operates in 14 states.[4] In New York, KeyCorp is the 12th largest depository organization, controlling $11.5 billion in deposits, which represents 1.4 percent of the total amount of deposits of insured depository institutions in the state (''state deposits'').[5]

USB, with total consolidated assets of approximately $3 billion, controls one subsidiary bank, Union State Bank, which operates in New York and Connecticut. In New York, USB is the 30th largest depository organization, controlling approximately $1.8 billion in state deposits.

On consummation of the proposal, KeyCorp would remain the 24th largest depository institution in the United States, with total consolidated assets of approximately $96.7 billion. KeyCorp would control deposits of approximately $59.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, KeyCorp would become the ninth largest depository organization, controlling deposits of approximately $13.3 billion, which represent approximately 2 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 bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of KeyCorp is Ohio,[6] and USB is located in New York and Connecticut.[7]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[8] In light of all the facts of

1. 12 U.S.C. § 1842.

2. In connection with this proposal, KYCA, Cleveland, Ohio, a wholly owned subsidiary of KeyCorp, has applied to become a bank holding company by merging with USB. The resulting institution will merge with KeyCorp, with KeyCorp as the surviving institution. KeyCorp also proposes to acquire the nonbanking subsidiaries of USB in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

3. Asset and asset ranking data are as of June 30, 2007; national deposit and ranking data are as of March 31, 2007; statewide deposit and ranking data are as of June 30, 2006.

4. KeyBank operates branches in Alaska, Colorado, Florida, Idaho, Indiana, Kentucky, Maine, Michigan, New York, Ohio, Oregon, Utah, Vermont, and Washington.

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

6. *See* 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

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

8. 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). KeyCorp is adequately capitalized and adequately managed, as defined by applicable law. Union State Bank has been in existence and operated for the minimum period of time required by applicable New York law, and the proposal is not subject to an age requirement under Connecticut law. *See* N.Y. Banking Law § 223-a (2001) (five years). On consummation of the proposal, KeyCorp 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 (12 U.S.C.

record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[9]

KeyCorp and USB have subsidiary depository institutions that compete directly in the Metropolitan New York-New Jersey banking market.[10] 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 controlled by KeyCorp and USB in the markets (''market deposits''),[11] the concentration level of market deposits and the increases in these levels as measured by the Herfindahl–Hirschman Index (''HHI'') under the Department of Justice Merger Guidelines (''DOJ Guidelines''),[12] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Metropolitan New York-New Jersey banking market.[13] On consummation of the proposal, the market would remain moderately concentrated as measured by the HHI, and numerous competitors would remain in the market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in the 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 banking market where KeyCorp and USB compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

FINANCIAL, MANAGERIAL, AND SUPERVISORY CONSIDERATIONS

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by KeyCorp.

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 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

§ 1842(d)(2)(B)). The proposed transaction is not subject to any deposit cap in Connecticut under the BHC Act because KeyCorp does not operate in Connecticut or subject to any other relevant deposit cap under Connecticut law. *See* 12 U.S.C. § 1842(d)(2)(B)–(C). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

9. 12 U.S.C. § 1842(c)(1).

10. The Metropolitan New York-New Jersey banking market is defined as Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties and the northern portions of Mercer County, all in New Jersey; Monroe and Pike counties in Pennsylvania; Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

11. Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through August 1, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386, 387 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

12. 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.

13. On consummation, the HHI would remain unchanged at 1226 for the Metropolitan New York-New Jersey banking market. KeyCorp operates the 45th largest depository institution in the market, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of market deposits. USB controls $1.9 billion in deposits, which also represents less than 1 percent of market deposits. KeyBank would become the 29th largest depository institution in the market, controlling deposits of approximately $3.5 billion, which represent approximately 1 percent of market deposits. On consummation of the proposal, 276 depository institutions would remain in the banking market.

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 the proposal carefully under the financial factors. KeyCorp, USB, and their subsidiary depository institutions are well capitalized, and KeyCorp and its subsidiary depository institutions would remain so on consummation of the proposal. Based on its review of the record, the Board finds that KeyCorp has sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase, and KeyCorp will use existing resources to fund the cash portion of the purchase.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of KeyCorp, USB, 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 bank supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws. KeyCorp, USB, and their subsidiary depository institutions are considered to be well managed. The Board also has considered KeyCorp'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 is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (''CRA'').[14] 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.[15]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary depository institutions of KeyCorp and USB, data reported by KeyCorp and USB under the Home Mortgage Disclosure Act (''HMDA''),[16] other information provided by KeyCorp, confidential supervisory information, and a public comment received on the proposal. The commenter generally alleged that KeyCorp and USB have failed to meet the credit needs of the communities they serve, particularly the needs of LMI and predominantly minority communities in Westchester County, New York. In addition, the commenter contended that USB had not adequately served LMI communities due to an alleged insufficient number of branches and services in LMI communities. The commenter also alleged that KeyCorp and USB made an insufficient number of home mortgage and small business loans in LMI areas in Westchester County and the City of Newburgh in Orange County, New York. Furthermore, the commenter asserted, based on HMDA data reported in 2003, that Union State Bank had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

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

KeyBank received an ''outstanding'' rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (''OCC''), as of September 1, 2003 (''KeyBank 2003 Evaluation'').[18] Union State Bank received a ''satisfactory'' CRA performance rating by the Federal Deposit Insurance Corporation (''FDIC''), as of June 27, 2005 (''Union 2005 Evaluation'').[19] KeyCorp proposes to merge Union State Bank into KeyBank soon after consummation of the transaction and has represented that it will implement KeyBank's CRA program at the combined institution.[20]

CRA Performance of KeyBank. In addition to the overall ''outstanding'' rating that KeyBank received in the KeyBank 2003 Evaluation, the bank received an ''outstanding'' rating on each of the lending, investment, and service tests for its overall CRA performance. The bank also received

14. 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).
15. 12 U.S.C. § 2903.
16. 12 U.S.C. § 2801 et seq.
17. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
18. The evaluation period was January 1, 1999, through December 31, 2002, for the lending test and March 1, 1999, to August 31, 2003, for the service and investment tests.
19. The evaluation period was generally from January 1, 2003, to June 27, 2005.
20. KeyBank has filed an application under the Bank Merger Act with the OCC for approval of the merger (12 U.S.C. § 1828(c)).

''outstanding'' ratings for its overall CRA performance in New York and in each of the eleven other states reviewed. Examiners reported that KeyBank's overall lending performance with respect to HMDA-reportable loans and small loans to businesses[21] was very good and that the geographic distribution was excellent in assessment areas representing 70 percent of the bank's deposits. They further noted that KeyBank's distribution of HMDA-reportable loans and small loans to businesses among borrowers of different income levels was excellent in the majority of the assessment areas that were rated. Examiners also reported that the bank had a substantial volume of community development lending in every rated area as well as an excellent level of qualified investments in every state it served.

Examiners commented that in New York, the bank's overall distribution of loans to borrowers of different income levels was excellent and that its geographic distribution of loans was good.[22] In the bank's Newburgh and New York MSAs assessment areas, examiners concluded that KeyBank's performance under the lending test was consistent with the bank's overall excellent performance statewide under that test. Examiners commended the bank's record of extending lending small loans to business in the Newburgh and New York MSAs and noted that the bank extended a higher percentage of its business loans in LMI census tracts than the percentage of businesses that were in such tracts. They also noted KeyBank's high volume of community development loan originations in the Newburgh and New York MSAs.

Since the KeyBank 2003 Evaluation, KeyBank has maintained its high level of lending activity. For example, KeyBank's HMDA-reportable loans throughout its assessment areas totaled more than $2.8 billion in 2005 and 2006. In Orange and Westchester counties and the assessment areas in New York, KeyBank's percentage of those loans to LMI individuals exceeded the percentage of loans made by lenders in the aggregate (''aggregate lenders'')[23] during this period. KeyBank also made a substantial portion of its small loans to businesses in amounts of less than $100,000 in 2005 and 2006. In addition, KeyBank represented that it made approximately $2.4 billion in total qualified community development loans throughout its assessment areas, which included $475 million in loans in the state of New York, since the KeyBank 2003 Evaluation.

In the KeyBank 2003 Evaluation, examiners noted that KeyBank had an excellent level of qualified investments in every state it served. Examiners concluded that KeyBank's performance under the investment test in the Newburgh and New York MSAs assessment areas was consistent with the bank's overall excellent performance under the investment test in the assessment areas in New York. KeyCorp represented that its qualified investments have totaled $112 million in the bank's New York assessment areas since the KeyBank 2003 Evaluation and noted that the bank had actively participated in the New Market Tax Credit Program.

In the KeyBank 2003 Evaluation, examiners stated that overall, KeyBank had provided excellent accessibility to its branches and ATMs in LMI areas and for people of different income levels in states representing 66 percent of its bank-wide deposits and good accessibility in the remaining states. Examiners rated the bank's performance under the service test in New York as ''high satisfactory.'' They commended KeyBank's level of community development services and the overall accessibility of the bank's depository facilities in the state. Since the KeyBank 2003 Evaluation, KeyBank represented that it has expanded its services by allowing LMI customers to cash payroll and government checks for a special low fee and by offering them free checking accounts with no minimum deposit requirement.

CRA Performance of Union State Bank. As noted, Union State Bank received an overall ''satisfactory'' rating in the Union 2005 Evaluation.[24] Under the lending test, Union State Bank received a ''high satisfactory'' rating, and examiners reported that the bank's distribution of loans in its assessment area reflected a good penetration among retail customers of different income levels and business customers of varying sizes. Examiners noted that the high cost of housing and low levels of owner-occupied housing units in those tracts available for originations limited lending opportunities. They reported that USB made ongoing efforts to increase lending in LMI areas, including Union State Bank's continued use of the Federal Home Loan Bank's (''FHLB'') First Home Club program for LMI borrowers.[25]

Examiners concluded that Union State Bank's overall lending levels reflected good responsiveness to its assessment area's credit needs. They commended the bank's performance for originating loans of varying amounts to businesses of different sizes. In addition, the examiners

21. ''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.

22. KeyCorp's statewide rating for New York was based on a full-scope evaluation conducted in KeyCorp's Buffalo and Niagara Falls Metropolitan Statistical Area (''MSA'') assessment area. Limited-scope evaluations were conducted in KeyCorp's ten other New York assessment areas and in particular, in the New York MSA, which includes Westchester County and the Newburgh MSA, including the city of Newburgh.

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

24. During the Union 2005 Evaluation, USB's single assessment area included all of the areas in New York and Connecticut where USB operated branches. The FDIC's review of Union State Bank under the lending test in this evaluation included one of USB's nondepository subsidiaries for grants and donations.

25. UBS offered a first-time homebuyer's program to LMI individuals. Under this program, the FHLB provided down-payment and closing-cost assistance by granting up to $3 in matching funds for each $1 saved by the household. USB also offered participants a reduced interest rate and application fees as well as lower closing costs. Applicants were required to attend homeownership counseling with a local community housing organization.

noted that a significant majority of Union State Bank's business loan originations in 2003 were small loans to businesses with revenues of $1 million or less. They also noted that Union State Bank's level of community development lending was outstanding.

Examiners rated Union State Bank's community development investment efforts as ''outstanding'' under the investment test and reported that Union State Bank had maintained an excellent level of qualified investments (approximately $24 million) within the areas under review. In addition, they also noted that Union State Bank purchased approximately $16.9 million in CRA-qualified investments since its previous evaluation, a substantial amount of investments that evidenced USB's efforts to address qualified investment opportunities and to promote affordable housing within its assessment area. Examiners also noted that USB participated in a consortium of lending institutions operating in New York and New Jersey that provided affordable housing assistance by offering construction and permanent financing for identified community affordable housing projects, such as single-family, apartment, or elderly housing throughout the two states.

In the Union 2005 Evaluation, Union State Bank received a ''high satisfactory'' rating on the service test. Examiners reported that the bank's delivery systems were reasonably accessible to essentially all portions of the institution's assessment area, including LMI census tracts. They noted that Union State Bank's services, including business hours, were tailored to the convenience and needs of the bank's assessment area, particularly LMI areas, and included Spanish-language services for Latino customers. Examiners also commended USB for providing a relatively high level of community development services. In addition, they noted that Union State Bank personnel provided free technical assistance to small business owners and entrepreneurs in connection with the bank's establishment of a Community Business Lending Team to increase lending in LMI communities.[26]

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of KeyCorp and USB in light of the public comment received on the proposal. The commenter alleged, based on HMDA data, that USB had denied the home mortgage loan applications of African American and Latino borrowers more frequently than those of nonminority applicants. The Board has focused its analysis on the 2005 and 2006 HMDA data reported by KeyCorp and USB.[27]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not KeyCorp or USB are excluding 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.[28] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by KeyCorp, USB, and their subsidiaries. The Board also has consulted with the OCC, the primary federal supervisor of KeyCorp's subsidiary bank, and the FDIC, the primary federal supervisor of USB's subsidiary bank.

KeyCorp has stated that its fair lending and consumer compliance policies and procedures will apply to the combined organization after consummation of the proposal. KeyCorp also will continue to use its loan origination, underwriting, processing, and servicing systems. The record, including confidential supervisory information, indicates that KeyCorp has taken steps to ensure compliance with fair lending and other consumer protection laws. KeyCorp has corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and its ongoing monitoring is designed to ensure compliance with policies and procedures. In addition, KeyCorp represented that its compliance staff members frequently receive education on best compliance practices and that USB personnel will receive the same training.

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 KeyCorp and USB under the CRA. These established efforts and records of performance demonstrate

26. The commenter also challenged the location and record of opening Union State Bank's branches. As noted above, Union State Bank will be merged into KeyBank, and the OCC will review KeyBank's record of opening branches in New York in connection with the merger application and during the course of conducting CRA evaluations.

27. The Board analyzed HMDA data for KeyBank's assessment areas nationwide, KeyBank's and Union State Bank's assessment areas in NewYork, and specifically in Westchester and Orange counties, New York. The Board's analysis of HMDA data for Union State Bank's assessment area also included Fairfield County, Connecticut.

28. 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.

that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all of the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by KeyCorp, comments received on the proposal, and confidential supervisory information. KeyCorp represented that the proposal will result in greater convenience for KeyCorp and USB customers through KeyCorp's exploration of new methods and approaches to enhance the level of service provided to the communities currently served by USB, such as working to encourage residents who depend on alternative financial service providers for banking services to establish a customer relationship with KeyBank. In addition, KeyCorp stated that its customers would benefit from a more extensive network of branch offices, ATMs, telephone call centers, and other facilities. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.[29]

CONCLUSION

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, 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 KeyCorp with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 2, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Midwest Regional Bancorp, Inc. Festus, Missouri

Order Approving the Formation of a Bank Holding Company

Midwest Regional Bancorp, Inc. (''Midwest'') 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 to acquire all the voting shares of Federated Bancshares, Inc. (''Federated''), Stilwell, Kansas, and thereby acquire control of its subsidiary bank, The Bank of Otterville (''Bank''), Otterville, Missouri.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (72 *Federal Register* 19,705 (2007)). 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.

Midwest is a newly organized corporation formed for the purpose of acquiring control of Federated and Bank. Bank, with total assets of approximately $20 million, is the 298th largest insured depository institution in Missouri, controlling deposits of approximately $18.7 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[3]

COMPETITIVE CONSIDERATIONS

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or 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 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.[4]

Midwest does not currently control a depository institution. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the

29. The commenter also requested that KeyBank demonstrate that the compositions of its employees and board of directors reflect the community which it serves. The Board notes that the racial, ethnic, or gender makeup of a banking organization's staff or management is not a factor that 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).

1. 12 U.S.C. § 1842.

2. Federated owns approximately 93 percent of the voting shares of Bank.

3. Asset data, deposit data, and state rankings are as of June 30, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

4. *See* 12 U.S.C. § 1842(c)(1).

concentration of banking resources in any relevant banking 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 the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other confidential supervisory information from the Division of Finance of the State of Missouri and the Federal Deposit Insurance Corporation (''FDIC''), the primary state and federal supervisors of Bank, and information provided by Midwest.

In evaluating financial factors in bank holding company proposals, the Board reviews the financial condition of the applicant and the target subsidiary depository institutions, particularly with respect to capital adequacy, asset quality, and earnings performance. In addition, for proposals involving small bank holding companies, the Board evaluates the institutions' compliance with the Board's Small Bank Holding Company Policy Statement (''Policy Statement''), including compliance with those measures that are used to assess capital adequacy and overall financial strength.[5] 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. Bank currently is well capitalized and would remain so on consummation of the proposal, and Federated is in compliance with relevant capital standards. Based on its review of the record, the Board also finds that Midwest would have sufficient financial resources to effect the proposal and to comply with the Board's Policy Statement. The proposed transaction is structured as a cash purchase funded from the proceeds of an issuance of new holding company stock.

The Board also has considered the managerial resources of Midwest, Federated, and Bank. The Board has reviewed the examination records of Federated and Bank, 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 bank supervisory agencies with the organizations and their records of compliance with applicable banking laws and with anti-money-laundering laws. The Board also has considered Midwest's plans to implement the proposal, including the proposed management after consummation, and has consulted the other relevant supervisory agencies concerning those plans.[6]

Based on all the facts of record, including comments and information received from regulators and interested parties, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the institutions 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 also must 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'').[7] Bank received a ''satisfactory'' rating at its most recent CRA performance evaluation by the FDIC, as of August 1, 2004. After consummation of the proposal, Midwest does not plan to alter Bank's current CRA policies. Midwest has represented that the proposal would provide greater convenience to Bank's customers by offering Internet access for their accounts and electronic balance transfers, automatic bill paying, and other services not currently offered by Bank.

Based on all the facts of record, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance record of the relevant depository institution are consistent with approval.

Conclusion

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

The 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 Kansas City, acting pursuant to delegated authority.

5. 12 CFR 225, Appendix C.

6. The Board received a comment regarding a member of Midwest's proposed management from a former employer. The Board has considered carefully the management record in banking of the individual identified by the commenter and has consulted with the primary federal and state supervisors of the banks where that individual was previously employed.

7. 12 U.S.C. § 2901 et seq.

By order of the Board of Governors, effective November 8, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER SECTION 4 OF THE BANK HOLDING COMPANY ACT

Allied Irish Banks, p.l.c. Dublin, Ireland

M&T Bank Corporation Buffalo, New York

Order Approving Acquisition of a Savings Association and a Bank, Merger of Depository Institutions, Establishment of Branches, and Notice to Engage in Nonbanking Activities

Allied Irish Banks, p.l.c. (''Allied Irish'') and its subsidiary, M&T Bank Corporation (''M&T'') (collectively, ''Applicants''), bank holding companies within the meaning of the Bank Holding Company Act (''BHC Act''), have requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act to merge M&T with Partners Trust Financial Group, Inc. (''Partners'') and acquire its subsidiary savings association, Partners Trust Bank (''Partners Bank''), and Partners' other nonbanking subsidiaries, all of Utica, New York.[1] Applicants also have requested the Board's approval under section 3 of the BHC Act to acquire Partners' indirect subsidiary bank, Partners Trust Municipal Bank (''Municipal Bank''),[2] also of Utica.[3]

In addition, M&T's subsidiary state member bank, Manufacturers & Traders Trust Company (''M&T Bank''), also of Buffalo, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[4] (''Bank Merger Act'') to merge with Partners Bank and Municipal Bank, with M&T Bank as the surviving entity. M&T Bank also has applied under section 9 of the Federal Reserve Act (''FRA'') to establish and operate branches at the main office and branches of Partners Bank.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the relevant statutes and the Board's Rules of Procedure (72 *Federal Register* 56,762 (2007)).[6] As required by the Bank Merger Act, a report on the competitive effects of the mergers was requested from the United States Attorney General and a copy of the request was provided to the Federal Deposit Insurance Corporation (''FDIC''). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act, the Bank Merger Act, and the FRA.

Allied Irish, with total consolidated assets equivalent to approximately $252 billion, is the largest depository organization in Ireland and provides a full range of banking, financial, and related services primarily in Ireland, the United Kingdom, and the United States.[7] Allied Irish operates a branch in New York and through M&T controls two subsidiary banks, M&T Bank and M&T Bank, National Association, Oakfield, New York, which operate in eight states. M&T, with total consolidated assets of $57.4 billion, is the 30th largest depository organization in the United States, controlling $33.1 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States. M&T is the seventh largest depository organization in New York, controlling deposits of approximately $20.4 billion in New York, which represent approximately 2.6 percent of the total amount of deposits of insured depository institutions in the state (''state deposits'').

Partners has total consolidated assets of approximately $3.7 billion, and its subsidiary insured depository institutions operate only in New York. Partners is the 28th largest depository organization in New York, controlling deposits of approximately $2.3 billion.

On consummation of the proposal, and after accounting for proposed divestitures, Allied Irish would become the 28th largest insured depository organization in the United States, with total consolidated assets of approximately $61.1 billion. Allied Irish would control deposits of approximately $35.3 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, M&T would remain the seventh largest insured depository organization, controlling deposits of approximately $22.8 billion, which represent approximately 2.9 percent of state deposits.

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.[8] The Board requires that savings associations acquired by bank holding companies

1. 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24. The nonbanking subsidiaries of Partners and activities for which Applicants have filed a notice under sections 4(c)(8) and 4(j) of the BHC Act are listed in Appendix A.

2. Municipal Bank, a wholly owned subsidiary of Partners Bank, is a limited-purpose bank that accepts only municipal deposits.

3. 12 U.S.C. § 1842.

4. 12 U.S.C. § 1828(c).

5. 12 U.S.C. § 321.

6. 12 CFR 262.3(b).

7. Asset and nationwide deposit-ranking data are as of June 30, 2007. Statewide deposit and ranking data are as of June 30, 2006, and reflect merger activity through June 30, 2007. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

8. 12 CFR 225.28(b)(4)(ii).

conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.[9] M&T has acknowledged that it is required to conform all the activities of Partners Bank to those that are permissible under section 4(c)(8) of the BHC Act and Regulation Y. The Board also has determined that the activities conducted by the nonbanking subsidiaries of Partners are closely related to banking, and M&T has acknowledged that it must conduct those activities in accordance with the Board's regulations and orders.[10]

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that the proposed acquisition of Partners Bank and the nonbanking subsidiaries of Partners ''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.''[11] 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 public benefits of the proposal.[12] 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'').[13] 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 information, and other information provided by Applicants.

COMPETITIVE CONSIDERATIONS

The Board has considered carefully the competitive effects of Applicants' proposed acquisition of Partners, including the acquisition of Partners Bank, Municipal Bank, and Partners' nonbanking subsidiaries in light of all the facts of record. Section 3 of 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 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.[14] In addition, the Board must consider the competitive effects of a proposal to acquire a savings association and other nonbanking companies under the public benefits factor of section 4 of the BHC Act.

A. Acquisition of Insured Depository Institutions

Applicants and Partners have subsidiary insured depository institutions that compete directly in three banking markets in New York: Binghamton, Syracuse, and Utica-Rome. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative share of total deposits of Applicants and Partners in the markets (''market deposits''),[15] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index (''HHI'') under the Department of Justice Guidelines (''DOJ Guidelines''),[16] other characteristics of the markets, and commitments made by Applicants to divest three branches of M&T Bank in the Binghamton market.

Banking Market with Divestiture. M&T Bank is the largest depository institution in the Binghamton banking market, controlling deposits of approximately $650.1 million, which represent approximately 25.4 percent of market deposits.[17] Partners Bank controls deposits of approximately $680.6 million, which when weighted at 50 percent represent 13.3 percent of market deposits, making Partners Bank the fifth largest depository institution in the market. To reduce the potential adverse effects on competition in the Binghamton banking market, Applicants have committed to divest three branches of M&T Bank that have at least

9. *Id.*

10. 12 CFR 225.28(b)(1), (2)(vi), and (7)(i).

11. 12 U.S.C. § 1843(j)(2)(A).

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

13. 12 U.S.C. § 2901 et seq.

14. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

15. Deposit and market-share data are as of June 30, 2006, and reflect merger activity through June 30, 2007. The deposits of thrift institutions are included at 50 percent, except as noted below. 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 institution deposits in the market-share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). In this case, Partners Bank's deposits are weighted at 50 percent pre-merger and at 100 percent post-merger to reflect the resulting ownership by a commercial banking organization.

16. 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.

17. The Binghamton banking market is defined as Broome and Tioga counties and the townships of Afton, Coventry, German, Greene, Lincklaen, McDonough, Otselic, Oxford, Pharsalia, Pitcher, Preston, and Smithville, all in Chenango County, New York; and the townships of Apolacon, Bridgewater, Choconut, Franklin, Forest Lake, Friendsville Borough, Great Bend, Great Bend Borough, Hallstead Borough, Harmony, Jackson, Jessup, Lanesboro Borough, Liberty, Little Meadows Borough, Middletown, Montrose Borough, New Milford, New Milford Borough, Oakland, Oakland Borough, Silver Lake, and Susquehanna Depot Borough, all in Susquehanna County, Pennsylvania.

$94.5 million in total deposits.[18] On consummation of the proposed merger, and after accounting for the proposed divestiture, M&T Bank would remain the largest depository institution in the market, controlling deposits of approximately $1.2 billion, which would represent not more than 42.7 percent of market deposits. The HHI would increase not more than 876 points to 2365.

The Board has 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 Binghamton market.[19] A number of factors indicate that the increase in concentration in this banking market, as measured by the HHI and market share of the combined organization, overstates the potential competitive effects of the proposal in the market. On consummation of the transaction and the proposed divestiture to a competitively suitable insured depository institution, at least nine other insured depository institutions would continue to compete in the market, including two banks with branch networks that are larger than Partners Bank's network.

Moreover, the Board notes that three community credit unions also exert a competitive influence in the Binghamton banking market.[20] Each institution offers a wide range of consumer products, operates street-level branches, and has memberships open to almost all the residents in the market. The Board concludes that their activities in this banking market exert a sufficient competitive influence to mitigate, in part, the potential competitive effects of the proposal.[21]

Moreover, the record of recent entry into the Binghamton banking market evidences its attractiveness for entry. Since 2003, one depository institution has entered the market de novo. Other factors also indicate that the market remains attractive for entry. For example, the market's average annualized income growth from 2001 to 2005 exceeded the average annualized income growth for the same period for all metropolitan areas in New York.

Banking Markets without Divestiture. The concentration levels on consummation of the proposal in the remaining banking markets, Syracuse and Utica-Rome, would be consistent with Board precedent and within the thresholds in the DOJ Guidelines without divestiture.[22] On consummation of the proposal, the Syracuse and Utica-Rome banking markets would remain moderately concentrated and numerous competitors would remain in each market.

B. Other Nonbanking Activities

The Board also has carefully considered the competitive effects of M&T's proposed acquisition of Partners' other nonbanking subsidiaries in light of all the facts of record. M&T and Partners both engage in credit extension, asset management, and securities brokerage activities. The markets for those activities are regional or national in scope and unconcentrated, and there are numerous providers of these services.

C. Agency Views and Conclusion on Competitive Considerations

The DOJ also reviewed the probable competitive effects of the proposal and advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant banking market where the subsidiary depository institutions of Applicants and Partners compete directly or in any relevant market for the other proposed nonbanking activities. 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 proposed transaction, including the acquisition of Partners Bank, Municipal Bank, and Partners' other nonbanking subsidiaries, would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market or in any other relevant market.

Financial, Managerial, and Supervisory Considerations

In reviewing the proposal under sections 3 and 4 of the BHC Act and the Bank Merger Act, the Board is required to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory

18. Applicants have committed that, before consummation of the proposed merger, they will execute an agreement for the proposed divestiture in the Binghamton banking market with a purchaser that the Board determines to be competitively suitable. Applicants also have committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Applicants have committed that, if they are unsuccessful in completing the proposed divestiture within such time period, they will transfer any unsold branches to an independent trustee who will be instructed to sell the branches 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 deemed acceptable by the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

19. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and resulting level of concentration in a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

20. 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 Bank & Trust Co.*, 90 *Federal Reserve Bulletin* 547 (2004).

21. The three community credit unions control approximately $1 billion in deposits in the market, which represents approximately 16 percent of market deposits on a 50 percent weighted basis. Accounting for the revised weightings of these deposits and taking the proposed divestitures into account, Applicants would control approximately 36.3 percent of market deposits on consummation of the proposal, and the HHI would increase not more than 631 points to 1886.

22. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

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 Applicants. The Board also has consulted with the Central Bank of Ireland (''CBI''), the agency with primary responsibility for the supervision and regulation of Irish financial institutions, including Allied Irish.

In evaluating the 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 measures, 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 financial resources of the organizations involved in the proposal. The capital levels of Allied Irish would continue to exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, M&T, Partners, and the subsidiary depository institutions involved are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of the shares.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, Partners, 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 other relevant banking supervisory agencies, including the Office of Thrift Supervision (''OTS'') and the FDIC, with the organizations and their records of compliance with applicable banking law and with anti-money-laundering laws. Applicants, Partners, and their subsidiary depository institutions 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, as are the other supervisory factors.[23] 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.[24] As noted, the CBI is the primary supervisor of Irish financial institutions, including Allied Irish. The Board previously has determined that Allied Irish is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.[25] Based on this finding and all the facts of record, the Board has concluded that Allied Irish continues to be subject to comprehensive supervision on a consolidated basis by its home-country supervisor.

Convenience and Needs and CRA Performance Considerations

In acting on a proposal 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 CRA. As noted, the Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire a savings association.[26] M&T Bank received an ''outstanding'' rating at its most recent CRA

23. Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act (12 U.S.C. § 1842(c)(3)(A)). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Allied Irish previously has committed that, to the extent not prohibited by applicable law, it 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, the International Banking Act, and other applicable federal laws. Allied Irish also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. In light of these commitments, the Board has concluded that Allied Irish has provided adequate assurances of access to any appropriate information the Board may request.

24. 12 U.S.C. § 1843(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 with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. *See* 12 CFR 211.24(c)(1).

25. *See Anglo Irish Bank Corporation, p.l.c.*, 85 *Federal Reserve Bulletin* 587 (1999); *Allied Irish Banks, p.l.c.*, 83 *Federal Reserve Bulletin* 607 (1997).

26. *See, e.g., North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767 (2000).

performance evaluation by the Federal Reserve Bank of New York, as of May 8, 2006.[27] Partners Bank received a ''satisfactory'' rating at its most recent CRA performance evaluation by the OTS, as of January 15, 2005.[28] After consummation of the proposal, M&T Bank plans to maintain its CRA policies at Partners Bank. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

PUBLIC BENEFIT

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 Partners. Applicants have represented that the proposed transaction would provide Partners' customers with expanded products and services, including discount broker services, mutual funds, and insurance products, and an expanded branch network.

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 concentration 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.

ESTABLISHMENT OF BRANCHES

As previously noted, M&T Bank has also applied under section 9 of the FRA to establish branches at the locations of Partners 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 the Board's Regulation H and finds those factors to be consistent with approval.[29]

CONCLUSION

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications and notice should be, and hereby are, 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, the Bank Merger Act, and the FRA. The Board's approval is specifically conditioned on compliance by Applicants with the conditions in this order and with all the commitments made to the Board in connection with this proposal, including the branch divestiture commitments discussed above, and receipt of all other regulatory approvals. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y and to the Board's authority to require such modification or termination of the activities of a 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, 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 banking acquisitions shall not be consummated before the 15th calendar day after the effective date of this order, and no part of the proposal may 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 New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 7, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

NONBANKING ACTIVITIES OF PARTNERS

(1) Extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y (12 CFR 225.28(b)(1)), through Partners Preferred Capital Corporation, Utica;
(2) Asset management, servicing, and collection activities, pursuant to section 225.28(b)(2)(vi) of Regulation Y (12 CFR 225.28(b)(2)(vi)), through Partners NEWPRO, Inc., Utica;
(3) Operating savings associations, pursuant to section 225.28(b)(4)(ii) of Regulation Y (12 CFR 225.28(b)(4)(ii)), through Partners Bank; and
(4) Securities brokerage activities, pursuant to section 225.28(b)(7)(i) of Regulation Y (12 CFR 225.28(b)(7)(i)), through Partners Trust Investment Services, Inc., Utica.

27. M&T, National Association was rated ''satisfactory'' by the Office of the Comptroller of the Currency, as of May 26, 2006.
28. Municipal Bank is a special-purpose bank not subject to the CRA. *See* 12 CFR 345.11(c)(3).
29. 12 U.S.C. § 322; 12 CFR 208.6(b).

Appendix B

NEW YORK BANKING MARKETS WITHOUT DIVESTITURES

Bank	Rank	Amount of deposits	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of Competitors
Syracuse—Cayuga, Onondaga, and Oswego counties; the townships of Cortlandville, Cuyler, Homer, Preble, Scott, Solon, Taylor, and Truxton in Cortland County; and the townships of Cazenovia, DeRuyter, Eaton, Fenner, Georgetown, Lebanon, Lenox, Lincoln, Nelson, Smithfield, and Sullivan in Madison County						
Applicants Pre-consummation	1	$1.8 bil.	20.7	1,308	113	27
Partners	10	$311.3 mil.	1.8	1,308	113	27
Applicants Post-Consummation	1	$2.1 bil.	23.9	1,308	113	27
Utica-Rome—Herkimer and Oneida counties; the townships of Greig, Lewis, Leyden, Lyonsdale, Martinsburg, Montague, Osceola, Turin, Watson, and West Turin in Louis County; and the townships of Brookfield, Hamilton, Madison, Oneida, and Stockbridge in Madison County						
Applicants Pre-Consummation	13	$63.7 mil.	1.7	1,590	489	15
Partners	1	$1.3 bil.	18.2	1,590	489	15
Applicants Post-Consummation	1	$1.4 bil.	32.3	1,590	489	15

NOTE: All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent, except that Partners Bank's thrift institiution deposits are weighted at 50 percent pre-merger and 100 percent post-merger.

Citigroup Inc.
New York, New York

Order Determining That Certain Pension Activities are Financial in Nature

Citigroup Inc. (''Citigroup''), a financial holding company (''FHC'') within the meaning of the Bank Holding Company Act (''BHC Act''),[1] has proposed to acquire, manage, and operate in the United Kingdom defined benefit pension plans established and maintained by unaffiliated third parties (''third-party U.K. pension plans''). These activities would be conducted by or through a nonbank subsidiary of Citigroup. Citigroup proposes to acquire third-party U.K. pension plans in stand-alone transactions and not as part of the acquisition of all or part of the ongoing business operations of the third parties.

Section 4 of the BHC Act generally prohibits a bank holding company, including an FHC, from directly or indirectly engaging in, or acquiring the shares of a company engaged in, any nonbanking activity unless the activity is otherwise permissible under the act. Section 4(k) of the BHC Act, as amended by the Gramm-Leach-Bliley Act (''GLB Act''), permits a bank holding company that qualifies to be an FHC to engage in, and acquire and retain shares of any company engaged in, a broad range of activities that are defined by statute to be financial in nature.[2] The BHC Act also permits an FHC to engage in, and acquire and retain shares of any company engaged in, any activity that the Board determines, by order or regulation and in consultation with the Secretary of the Treasury,

1. 12 U.S.C. §§ 1841 et seq.

2. *See* 12 U.S.C. § 1843(k)(4).

to be financial in nature or incidental to a financial activity.[3] As the Board previously has noted, the ''financial in nature or incidental'' standard represents a significant expansion of the ''closely related to banking'' standard that the Board previously was required to apply in determining the permissibility of nonbanking activities for bank holding companies.[4]

The BHC Act directs the Board to consider a variety of factors in considering whether an activity is financial in nature or incidental to a financial activity, including: (1) the purposes of the BHC and GLB Acts; (2) the changes or reasonably expected changes in the marketplace in which FHCs compete; (3) the changes or reasonably expected changes in technology for delivering financial services; and (4) whether the proposed activity is necessary or appropriate to allow an FHC to compete effectively with companies seeking to provide financial services in the United States, efficiently deliver financial information and services through the use of technological means, and offer customers any available or emerging technological means for using financial services or for the document imaging of data.[5] The Board also may consider other factors and information that it considers relevant to its determination.

As noted above, Citigroup proposes to acquire, manage, and operate third-party defined benefit pension plans in, and subject to the laws of, the United Kingdom. Citigroup initially proposes to acquire, through a nonbank subsidiary, a third-party pension plan in the United Kingdom with approximately $400 million in gross liabilities to the plan's existing beneficiaries.

A defined benefit pension plan generally is a plan established by or on behalf of an employer (the plan ''sponsor'') that provides for the payment to employees, typically beginning on their retirement or other termination of service, of benefits in an amount that is specified in and determinable under the plan, typically through a formula that takes into account the employee's pay, years of employment, age at retirement, and other factors.[6] The terms of the plan itself also typically specify the circumstances under which benefits will be paid under the plan to an employee, former employee, or related person (such as a spouse) (collectively a ''beneficiary''), and the length of time such payments will be made to a beneficiary. The benefits payable under a plan typically take the form of a specified stream of payments that begin on retirement or, at the employee's option, a lump sum payable at retirement, and may include other ancillary benefits provided under plan rules, such as spousal or survivor benefits.[7]

The nonbank subsidiary of Citigroup that directly acquires a third-party U.K. pension plan would assume the responsibilities of the plan's sponsor under applicable U.K. law. In the United Kingdom, defined benefit pension plans are regulated by the U.K. Pensions Regulator under the Pensions Act of 1995, the Pensions Act of 2004, and the general law of trusts. These laws provide that pension plans must be managed and administered by a trustee that is independent of the plan sponsor. Plan sponsors also must provide sufficient assets to a pension plan to pay all benefits under the plan,[8] consult with the trustees for the pension plan concerning the investment strategy of the plan, and agree with the plan trustees on a statement of funding principles that sets out the plan's funding target, methods, and assumptions. In addition, trustees and plan sponsors must agree on amendments to any part of the plan.

Citigroup proposes to acquire a third-party U.K. pension plan only if no additional beneficiaries may be added to the plan and existing beneficiaries may not accrue additional benefits under the plan (a ''hard-frozen'' plan). In addition, Citigroup proposes that it would acquire a third-party U.K. pension plan only if the plan at the time of acquisition is fully funded by the selling sponsor based on the plan's assets and projected liabilities (using appropriate actuarial assumptions).[9] Citigroup has indicated that, as part of its due diligence process for each transaction, Citigroup will employ qualified actuaries to review and analyze the present value of benefits owed to plan beneficiaries to ensure that all pension plans acquired are fully funded by the selling sponsor.

The activity of acquiring, operating, and managing third-party pension plans has not been determined to be financial in nature or incidental to a financial activity for purposes of the BHC Act. The proposed activity is broader than the pension plan activities that FHCs currently are permitted to conduct for third parties. For example, as discussed above, a nonbank subsidiary of Citigroup would assume the rights and obligations of the sponsor of an acquired third-party U.K. pension plan and would do so in transactions that do not represent the acquisition of a going concern or ongoing business operations by Citigroup. In addition, the assets and liabilities of an acquired third-party U.K. pension plan (unlike assets held by an FHC as trustee for third parties or assets held by the pension plans

3. *Id*. at § 1843(k)(1)(A) and (2). In addition, the BHC Act permits an FHC to engage in any activity that the Board (in its sole discretion) determines, by regulation or order, is ''complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.'' *Id*. at § 1843(k)(1)(B).

4. *See* 66 *Federal Register* 307, 308 (Jan. 3, 2001).

5. 12 U.S.C. § 1843(k)(3).

6. On the other hand, a defined contribution plan is a benefit plan under which an individual account is established for each participant and the benefits payable to each participant are based on the amount contributed to the participant's account, plus or minus income, gains, expenses, and losses allocated to that account.

7. For purposes of this order, the term ''defined benefit pension plan'' does not include a plan that provides health insurance to employees or that guarantees or indemnifies employees for healthcare costs.

8. On the other hand, the sponsor may recover assets contributed to or held on behalf of a plan after all of the plan's obligations to beneficiaries have been satisfied and the plan is closed out.

9. For purposes of this order, the term ''fully funded'' means that, at the time of acquisition, the current value of the plan's assets is at least equal to the present value of the plan's projected liabilities. The selling sponsor may issue debt to the plan or Citigroup to fully fund the plan at acquisition. In some situations, the requirement of this order that a plan be fully funded may require funding in excess of the statutory funding requirements of the relevant jurisdiction.

maintained for Citigroup's own employees) would be fully consolidated with the assets and liabilities of Citigroup on its balance sheet.[10]

The Board concludes for the reasons set forth below, however, that there is a reasonable basis for determining that the acquisition, management, and operation by Citigroup of hard-frozen, fully funded third-party U.K. pension plans is an activity that is financial in nature within the meaning of the BHC Act. The activity involves, at its core, the types of investment advisory and investment management skills that are routinely exercised by banking organizations and the types of operational and investment risks that banking organizations routinely incur and manage.

FHCs currently are permitted by the BHC Act to engage in activities that are related or operationally and functionally similar to the proposed activity and that involve similar risks. For example, an FHC already is permitted to provide a wide variety of services to third-party pension plans, including acting as trustee, custodian, or investment adviser (with or without investment discretion) for a third-party benefit plan, as well as designing, assisting in the implementation of, providing administrative services to, and developing employee communication programs for third-party benefit plans.[11] FHCs engaged in these activities have gained substantial expertise with the laws, regulations, and fiduciary obligations associated with providing fiduciary, custodial, and administrative services to pension plans. Moreover, FHCs engaged in these plan-related activities have developed risk-management systems and internal controls to monitor, manage, and address the legal, operational, and reputational risks associated with managing the investments of and administering third-party pension plans.

The proposed activity also bears a strong functional resemblance to issuance of a group annuity contract. The BHC Act, as amended by the GLB Act, expressly states that providing and issuing annuities is an activity that is financial in nature.[12] A company that issues a fixed annuity becomes obligated to make periodic payments to the annuitant during his or her lifetime and to pay any death or survivor benefits in accordance with the terms of the annuity contract. The company that issues a fixed annuity assumes responsibility for investing and managing the funds received from the annuitant and bears the risk that such funds and the returns earned on the funds will not be sufficient to pay out the full amount of benefits promised under the annuity contract. The company also assumes responsibility for administering the annuity contract both before and during its payout period.

In connection with these activities, the issuer of fixed annuities is exposed to certain types of risks, which are part of the activity determined to be financial in the GLB Act. These risks include the risk that (1) the life expectancy of annuitants, on average, will exceed the actuarial estimates used in establishing the terms of and funding for the annuities; (2) the inflation rate and other assumptions used to determine the expected obligations under the annuity contracts underestimate these obligations; and (3) payments from the annuitant and the return obtained through the investment of such payments will fall short of estimates.

Citigroup would perform essentially the same financial functions and assume essentially the same financial obligations and risks through the acquisition of a third-party U.K. pension plan as an insurance company performs and assumes in connection with the issuance of fixed annuities. The functional similarity between a plan sponsor's obligations under a defined benefit pension plan and an insurance company's obligations under an annuity contract is especially close where, as proposed, the pension plan is both fully funded and hard-frozen. In situations where a pension plan's obligations to plan beneficiaries are hard-frozen and the plan is fully funded, one method commonly used by a plan sponsor to close out a plan is to purchase a terminal funding group annuity contract from an insurance company. Through such an annuity contract, the provider of the annuity becomes obligated to satisfy the responsibility to pay the benefits promised under the plan to the plan's beneficiaries. Accordingly, Citigroup's proposed activities would be specifically permitted under the BHC Act if provided through an annuity contract or other form of insurance. By permitting Citigroup to provide these services in an alternative way, the proposed activities should help Citigroup respond to changes or reasonably expected changes in the marketplace for financial products and services.

In evaluating this proposal, the Board considered that, under U.K. law, the nonbank subsidiary established by Citigroup to acquire a third-party U.K. pension plan generally will bear sole responsibility for making additional contributions to the plan if the plan assets are not sufficient to meet the plan's expected or actual liabilities. However, U.K. law also permits the U.K. Pensions Regulator in certain circumstances to commence proceedings to hold an affiliate of a plan sponsor (including a depository institution affiliate) responsible for the sponsor's obligations to the plan.[13]

10. Because Citigroup would acquire each third-party U.K. pension plan in a stand-alone transaction, and not as part of a business combination involving Citigroup and the selling sponsor, Citigroup has stated that it will fully reflect the assets and liabilities of an acquired plan as assets and liabilities of Citigroup on its balance sheet. This treatment differs from the manner in which the assets and liabilities of an internal pension plan of an employer typically are accounted for on the balance sheet of the employer under U.S. generally accepted accounting principles. *See* FAS 158, *Accounting for Defined Benefit Pension and Other Post Retirement Plans*.

11. *See* 12 CFR 225.28(b)(5), (6), and (9)(ii).

12. *See* 12 U.S.C. § 1843(k)(4)(B).

13. *See* U.K. Pensions Act of 2004, § 38 (contribution notices) and § 43 (financial support directives). The U.K. Pensions Regulator may issue a contribution notice or financial support directive to an affiliate of a sponsor only if, among other things, the Pensions Regulator determines that it is reasonable to impose the proposed financial obligations on the affiliate.

The Board generally has taken the position that, when a depository institution is secondarily liable for a financial obligation of an affiliate, even if the depository institution's liability is created by statute or regulatory action, the institution has issued a guarantee on behalf of an affiliate for purposes of section 23A of the Federal Reserve Act and the Board's Regulation W.[14] Section 23A and Regulation W impose quantitative and qualitative limits on covered transactions between a depository institution and its affiliates. Covered transactions include, among other things, an extension of credit by a depository institution to an affiliate and the issuance of a guarantee by a depository institution on behalf of an affiliate.[15] The limitations in section 23A and Regulation W provide important protections against a depository institution suffering losses due to covered transactions with its affiliates, and also limit the ability of a depository institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net.

To address the potential section 23A and Regulation W issues presented by its initial proposed transaction, and in accordance with U.K. law,[16] Citigroup has obtained written assurances from the U.K. Pensions Regulator that it will not seek to hold any of Citigroup's depository institution subsidiaries that are subject to section 23A responsible for any shortfalls that may occur in the pension plan proposed to be acquired by Citigroup in this initial transaction. As a condition of this order, Citigroup must obtain similar written assurances from the U.K. Pensions Regulator before acquiring any additional third-party U.K. pension plan.[17]

Based on the foregoing and other facts of record, the Board concludes that the acquisition, management, and operation by Citigroup of hard-frozen, fully funded third-party U.K. pension plans, when conducted in accordance with the conditions and limitations set forth in this order, is an activity that is financial in nature within the meaning of section 4(k) of the BHC Act. Any investment made by a third-party U.K. pension plan acquired by Citigroup must otherwise be permissible for an FHC under the BHC Act and the Board's Regulation Y.[18] The statutory and regulatory framework governing the establishment, operation, and management of pension plans varies considerably across jurisdictions and, accordingly, the nature and scope of risks associated with such activities may differ materially depending on the jurisdiction involved.[19] To provide for the consideration of any special issues that may be associated with the acquisition of third-party pension plans in jurisdictions other than the United Kingdom, the authorization and determination granted by this order are limited to the acquisition, management, and operation by Citigroup of third-party pension plans in the United Kingdom.[20]

Under the BHC Act, the Board may not determine, by regulation or order, that an activity is financial in nature or incidental to a financial activity if the Secretary of the Treasury (''Secretary'') notifies the Board in writing that the Secretary believes the activity is not financial in nature, incidental to a financial activity, or otherwise permissible under section 4 of the BHC Act.[21] The Board has provided the Secretary notice of Citigroup's proposal in accordance with the BHC Act, and the Secretary has informed the Board in writing that the Secretary does not intend to prevent the Board from authorizing Citigroup to engage in the proposed U.K. pension activities, subject to the conditions and limitations set forth in this order.

The Board's determination and approval is subject to all the conditions set forth in Regulation Y, including those in section 225.7,[22] and to the Board's authority to require modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the request, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connec-

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14. *See* 12 U.S.C. § 371c(b)(7)(E); 12 CFR 223.3(h)(5); Board Letter dated October 25, 2005, to Carl V. Howard, Esq. (Citigroup).

15. *See* 12 U.S.C. § 371c(b)(7); 12 CFR 223.3(h).

16. The Pensions Act of 2004 expressly authorizes the U.K. Pensions Regulator, on application by a plan or other person, to issue a ''clearance statement'' that determines that it would be unreasonable to issue a contribution notice or financial support directive to the plan or person under the circumstances described in the application. *See* Pensions Act of 2004, §§ 42 and 46. Citigroup has received such a clearance statement with respect to its initial proposed acquisition of a third-party pension plan in the United Kingdom.

17. Citigroup has indicated that the written assurances provided by the U.K. Pensions Regulator are subject to review and renewal by the regulator no later than five years after issuance. Before the expiration of any written assurances provided by the U.K. Pensions Regulator in connection with the acquisition by Citigroup of a third-party U.K. pension plan, Citigroup must either ensure that its activities conform with those permitted under section 23A and Regulation W or obtain an exemption from the Board from the limitations of section 23A and Regulation W with respect to the plan. The Board has not determined that section 23A applies to the contingent liabilities that may arise under applicable pension law from the establishment or operation by an affiliate of a depository institution of employee benefit plans in the ordinary course of its other business to provide benefits to the employees or former employees of the affiliate.

18. *See, e.g.*, 12 U.S.C. § 1843(c)(5), (c)(6), and (k)(4)(H).

19. In the United States, for example, the establishment and operation of defined benefit pension plans are subject to extensive regulation under the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). *See* 29 U.S.C. §§ 1400 et seq. ERISA provides that all entities under common control with the sponsor of a defined benefit plan are jointly and severally liable for the obligations of the plan at termination. For ERISA purposes, companies under common control with a plan sponsor include any company that directly or indirectly owns 80 percent or more of the voting stock of the plan sponsor (the ''parent company'') and any company in which the parent company directly or indirectly owns 80 percent or more of the voting stock. *See* 29 U.S.C. §§ 1301(a)(14)(A) and (B), (b)(1), and 1362(a); 26 CFR 1.414(c)–2.

20. Other FHCs may seek approval to engage in similar activities by requesting a determination with respect to their own proposed activities under section 4(k)(2)(A) of the BHC Act and section 225.88 of the Board's Regulation Y (12 CFR 225.88).

21. *See* 12 U.S.C. § 1843(k)(2)(A).

22. 12 CFR 225.7.

tion with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective October 12, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Fortis S.A./N.V.

Fortis, N.V.

Fortis Brussels S.A./N.V.

Fortis Bank S.A./N.V.
All of Brussels, Belgium

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

Fortis S.A./N.V. (''Fortis''), a financial holding company (''FHC'') for purposes of the Bank Holding Company Act (''BHC Act''), Fortis, N.V., Fortis Brussels S.A./N.V., and Fortis Bank S.A./N.V. (collectively, ''Fortis'') have requested the Board's approval under section 4 of the BHC Act[1] and the Board's Regulation Y[2] to provide energy management services (''Energy Management Services'') to owners of power generation facilities under energy management agreements (''EMAs'') as an activity that is complementary to the financial activities of engaging as principal in commodity derivatives and providing financial and investment advisory services for derivatives transactions.[3]

BACKGROUND

Regulation Y permits bank holding companies (''BHCs'') (i) to act as principal in derivative contracts based on financial and nonfinancial assets (''Commodity Derivatives Activities'') and (ii) to provide information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions; commodities; and any forward contract, option, future, option on a future, and similar instruments (''Derivatives Advisory Services'').[4] Energy Management Services combine many of these permissible financial activities and other activities that the Board has not previously determined to be permissible for a BHC. Energy Management Services generally entail acting as a financial intermediary for a power plant owner to facilitate transactions relating to the acquisition of fuel and the sale of power by the power plant owner and providing advice to assist the owner in developing its risk-management plan.

The BHC Act, as amended by the Gramm-Leach-Bliley Act (the ''GLB Act''), permits BHCs that qualify as FHCs to engage in an expanded set of activities that are defined by statute to be financial in nature,[5] as well as any additional activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.[6]

The BHC Act also permits FHCs to engage in any activity that the Board determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.[7] The Congress intended that the Board use this complementary authority to allow FHCs to engage, on a limited basis, in activities that, although not necessarily financial in nature, are so meaningfully connected to financial activities that they complement those activities. In this way, FHCs would not be disadvantaged by market developments if commercial activities evolve into financial activities or competitors find innovative ways to combine financial and nonfinancial activities. The BHC Act provides the Board with exclusive authority to determine that an activity is complementary to a financial activity.

The BHC Act further provides that any FHC seeking to engage in a complementary activity must obtain the Board's prior approval. In reviewing such a proposal, the BHC Act requires the Board to consider whether performance of the activity by the FHC can reasonably be expected to produce public benefits that outweigh possible adverse effects.[8] The Board has approved physical commodity trading (''Physical Commodity Trading'') for Fortis and other FHCs, on a limited basis, as an activity that is

1. 12 U.S.C. § 1843.
2. 12 CFR Part 225.
3. In connection with its acquisition of Cinergy Marketing & Trading LP (''CMT'') from Duke Energy Corp., Fortis received approval to engage in the United States in physical commodity trading activities, on a limited basis, as an activity that is complementary to the financial activity of engaging in commodity derivatives activities. *See* Board Letter to David R. Sahr, Esq., dated September 29, 2006. In addition to its physical commodity trading activities, CMT, now Fortis Energy Marketing & Trading GP (''FEMT''), also serves as an energy manager under EMAs with several power generators. At the time Fortis's request was approved, Fortis was informed that FEMT's activities under the EMAs would continue to be reviewed for permissibility as an FHC activity.
4. 12 CFR 225.28(b)(8) and (b)(6).
5. 12 U.S.C. § 1843(k)(4). This set of financial activities includes any activity that the Board had determined to be closely related to banking, by regulation or order, prior to November 12, 1999. Commodity Derivatives Activities and Derivatives Advisory Services were determined to be closely related to banking before that date and, accordingly, providing those services are financial activities for purposes of the BHC Act (12 U.S.C. § 1843(k)(4)(F)).
6. 12 U.S.C. § 1843(k)(1)(A).
7. 12 U.S.C. § 1843(k)(1)(B).
8. 12 U.S.C. § 1843(j)(2)(A).

complementary to the financial activity of engaging in Commodity Derivatives Activities.[9]

Fortis currently engages in Commodity Derivatives Activities and Derivatives Advisory Services (as noted, both financial activities) in the United States and has requested approval to provide Energy Management Services as an activity that is complementary to those activities.

FORTIS'S ENERGY MANAGEMENT SERVICES

Under FEMT's current EMAs, FEMT, as energy manager, assists power plant owners by providing transactional and advisory services. The transactional services consist primarily of FEMT acting as a financial intermediary, substituting its credit and liquidity for those of the owner to facilitate the owner's purchase of fuel and sale of power. FEMT's advisory services include providing market information to assist the owner in developing and refining a risk-management plan for the plant.

FEMT provides services under an EMA within a strategic framework established by the owner. The owner, in consultation with FEMT, establishes an energy-management plan and risk-management policy to govern how the generation facility should be operated. The energy-management plan sets out the amount of power the plant should generate and determines how the plant will meet its reliability obligations to the power transmission grid. The plant owner must approve all commodity contracts, including all contracts for the purchase of fuel or the sale of electricity. In some cases, authority to enter into power or fuel contracts may be delegated to FEMT if the contracts satisfy specific criteria established by the owner; other contracts must be approved by the owner. The owner also maintains the right, subject to FEMT's right of first refusal, to market and sell power directly to third parties. The owner ultimately retains all decisionmaking authority, including decisions relating to the facility's generation output and, in particular, whether the facility should be shut down for any period of time.

An EMA's compensation structure reflects this allocation of responsibilities. When the facility is in operation, FEMT is typically compensated on a monthly basis at the greater of a monthly fixed fee or a stated percentage of the spread between delivered fuel prices and the realized power revenues (adjusted to reflect certain fees and costs). When the facility is not in operation, FEMT is not responsible for the fixed costs of the facility and is not entitled to revenues or other compensation, apart from the monthly fees.

FEMT does not provide day-to-day operational services to the facility. Those tasks are generally performed by the owner or by an operator who is hired directly by the owner and is not affiliated with FEMT. The operator manages and maintains the facility on a daily basis, which typically includes providing labor and support services. The operator provides FEMT with information on the operating status of the facility, maintenance issues that might affect the availability of the facility to generate power, and scheduled outage and maintenance periods.

FEMT may buy fuel for the facility from third parties and enter into a mirror transaction for the fuel with the owner. The owner may then sell the power generated by the facility to FEMT, and FEMT generally resells the power in the market. In these circumstances, FEMT would be acting as the financial intermediary for the owner, providing credit and liquidity support, including posting any required collateral for transactions. Because FEMT substitutes its name and credit rating for the owner's, the terms of the transactions are generally more favorable than the owner could negotiate on its own.

In addition, FEMT assumes responsibility for administrative tasks related to the fuel and power transactions so that the owner does not have to maintain an administrative infrastructure to support its transactions with third parties. These services include arranging for third parties to provide fuel transportation or power transmission services, scheduling those services, and resolving any resulting imbalances; ensuring that fuel deliveries and power sales are properly coordinated; negotiating contracts with and monitoring the credit support and collateral requirements of the owner's counterparties; assisting in complying with power tariffs; and paying fuel suppliers. FEMT also may enter into transactions with third parties as necessary to ensure that the owner meets its power generation obligations to the power grid in accordance with the energy-management plan.

FEMT may also provide risk-management and hedging services to the owner in connection with both the purchase of fuel and the sale of power. These transactions may be entered into with third parties back to back (with FEMT in the middle) or may be direct hedging transactions between the owner and FEMT in which FEMT retains the risk that the owner is hedging. In the first type of transaction, the owner would inform FEMT of its intention to hedge the price of fuel or power for a specified term, and FEMT would then solicit bids or offers. After reviewing the competing bids or offers, the owner would make a selection and direct FEMT to enter into the transaction with that counterparty. FEMT and the owner then would enter into a mirror transaction so that FEMT would not retain any risk exposure on the overall transaction. In the second type of transaction, FEMT would submit the offer for a hedging transaction to the owner, who can accept or reject the offer.

9. Board Letters to Gregory A. Baer, Esq., dated April 24, 2007 (Bank of America Corp.); Paul E. Glotzer, Esq., dated March 27, 2007 (Credit Suisse Group); and Elizabeth T. Davy, Esq., dated April 13, 2006 (Wachovia Corporation); and *Société Générale*, 92 *Federal Reserve Bulletin* C113 (2006); *Deutsche Bank AG*, 92 *Federal Reserve Bulletin* C54 (2006); *JPMorgan Chase & Co.*, 92 *Federal Reserve Bulletin* C57 (2006); *Barclays Bank PLC*, 90 *Federal Reserve Bulletin* 511 (2004); *UBS AG*, 90 *Federal Reserve Bulletin* 215 (2004); and *Citigroup Inc.*, 89 *Federal Reserve Bulletin* 508 (2003).

If the owner accepts the proposal, FEMT may enter into the transaction directly with the owner. All these transactions would be governed by International Swaps and Derivatives Association master agreements between the owner and FEMT. The owner may also enter into hedging transactions directly with a third party without FEMT's involvement.

FEMT generally provides two types of market-information services to the owner. First, FEMT provides market and risk information to assist the owner in developing its risk-management plan and strategy. Because FEMT is a direct market participant, it has access to information that may help the owner refine its risk-management strategies. Second, FEMT provides the owner with day-to-day market information that the owner, in consultation with the operator of the power facility, uses to determine its short-term dispatch guidelines (that is, the amount of power the facility should generate to meet its contractual requirements and reliability obligations).

Energy Management as a Complementary Activity

For the reasons set forth below, the Board believes that Energy Management Services are complementary, within the meaning of the GLB Act, to the financial activities of Commodity Derivatives Activities and Derivatives Advisory Services. Energy Management Services would add to these financial activities a number of agency and administrative services that would facilitate providing Commodity Derivatives Activities and Derivatives Advisory Services on behalf of the plant owner. This combination of services would complement and enhance Fortis's Commodity Derivatives Activities and Derivatives Advisory Services by allowing Fortis to offer power plant owners an integrated approach to managing the commodity-related aspects of their business. Many owners need assistance in devising energy-management strategies and a market participant that can substitute its credit and liquidity for the owner's to facilitate transactions, and they would prefer to receive those services from a single source. Fortis also would gain additional information about energy markets in the course of providing Energy Management Services that would improve Fortis's ability to manage its own commodity risks and to advise its clients on their commodity-related activities.

A number of non-BHC participants in the energy trading markets, including diversified financial services companies, offer Energy Management Services to clients in connection with their commodity derivatives business. These companies can, and regularly do, provide Energy Management Services to owners. Permitting FHCs to provide these services in connection with their commodity derivatives business and commodity trading activities, therefore, would enable FHCs to offer the same integrated services that are provided by a number of their competitors.

Based on the foregoing and all other facts of record, the Board concludes that Fortis's Energy Management Services complement its Commodity Derivatives Activities and Derivatives Advisory Services.

Risks and Public Benefits of Energy Management Services

As noted above, to authorize Fortis to provide Energy Management Services as a complementary activity under the GLB Act, the Board must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. In addition, the Board must determine that the performance of Energy Management Services by Fortis ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.''[10] Moreover, the Board previously has stated that complementary activities should be limited in size and scope relative to an FHC's financial activities.[11]

Revenues attributable to FEMT's Energy Management Services have been small relative to Fortis's total revenues on a consolidated basis. To limit the size, scope, and safety and soundness risks of Energy Management Services, Fortis has committed that the revenues attributable to FEMT's Energy Management Services will not exceed 5 percent of Fortis's total consolidated operating revenues.[12]

Fortis's authority to provide Energy Management Services is subject to several conditions that limit the responsibilities and potential liabilities Fortis may assume under an EMA. Specifically, Fortis may only act as energy manager if the relevant EMA provides that:

- owner retains the right to market and sell power directly to third parties, which may be subject to the energy manager's right of first refusal;
- owner retains the right to determine the level at which the facility will operate (i.e., to dictate the power output of the facility at any given time);
- Neither the energy manager nor its affiliates guarantee the financial performance of the facility; and
- Neither the energy manager nor its affiliates bear any risk of loss if the facility is not profitable.

Permitting Fortis to engage in Energy Management Services in the limited amounts and situations described above would not appear to pose a substantial risk to Fortis, depository institutions, or the U.S. financial system generally. As an energy manager, Fortis would enter into the

10. 12 U.S.C. § 1843(j)(2)(A).

11. *See* 68 *Federal Register* 68493, 68497 (Dec. 9, 2003); *see also* 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) (''It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.'').

12. Total operating revenues are defined as net interest income and all non-interest revenue, including net securities gains but excluding extraordinary items.

same type of commodity derivatives transactions that it is permitted to enter into currently, only it would enter into these transactions to facilitate the business strategies of a third-party owner. Through its existing authority to engage in Commodity Derivatives Activities, Fortis already may incur the price risk of commodities. Allowing Fortis to expand its activities to enter into back-to-back commodity transactions in connection with advice given as part of its Energy Management Services would not appear to increase its potential exposure to commodity price risk but only to counterparty risk. Granting Fortis the authority to act as an energy manager also would not expand its ability to engage in Physical Commodity Trading beyond what has been authorized by the Board. The potential safety and soundness risks of entering into these transactions are already mitigated by the limits imposed on Fortis's Commodity Derivatives Activities and Physical Commodity Trading by regulation and order.[13]

In addition, Fortis would remain subject to the securities, commodities, and energy laws and to the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Commodity Futures Trading Commission and the Federal Energy Regulatory Commission generally and specifically to the extent applicable to Fortis's Energy Management Services.

The advisory services Fortis would provide under the EMAs also would not expose it to significant additional risks. The added risk to Fortis from providing these services would principally be legal and reputational risks that are generally present in any contractual relationship. Because Fortis would assume specific responsibilities under an EMA, it could be subject to claims for breach of contract if it fails to perform its duties under the contract or does so in a negligent fashion (for example, by providing bad advice).

The Board believes that Fortis has the managerial expertise and internal control framework to manage the risks of providing Energy Management Services. Fortis has shown it has the expertise and internal controls necessary to effectively integrate the risk management of Energy Management Services into its overall risk-management framework.

As noted above, to approve this proposal, the Board must find that the public benefits from Fortis's performance of these services outweigh the potential adverse effects, such as undue concentration of resources, decreased or unfair competition, or conflicts of interests. Approval of the proposal would likely benefit Fortis's customers by enhancing its ability to provide efficiently a full range of commodity-related services consistent with existing market practice. Approval would likely enable Fortis to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in those markets.

The Board has considered the market for Energy Management Services and the potential adverse effects arising from Fortis's provision of those services. Fortis's Energy Management Services should not result in an undue concentration of resources or other adverse effects on competition because the market for Energy Management Services is regional or national in scope. Any potential conflicts of interests associated with Fortis's Energy Management Services should be mitigated by the anti-tying provisions in section 106 of the Bank Holding Company Act Amendments of 1970.

For these reasons, and based on Fortis's policies and procedures for monitoring and controlling the risks of Energy Management Services, the Board concludes that consummation of the proposal does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

CONCLUSION

Based on all the facts of record, including the representations and commitments made by Fortis to the Board in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be 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.

By order of the Board of Governors, effective December 4, 2007.

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

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

13. The scope of Fortis's Commodity Derivatives Activities is limited by the restrictions in 12 CFR 225.28(b)(8)(ii) and its Physical Commodity Trading is limited by its commitment to the Board that the market value of commodities it holds as a result of these activities will not exceed 5 percent of its consolidated tier 1 capital and by several other commitments designed to address potential risks associated with the activities.

ORDERS ISSUED UNDER INTERNATIONAL BANKING ACT

China Merchants Bank Co., Ltd. Shenzhen, People's Republic of China

Order Approving Establishment of a Branch

China Merchants Bank Co., Ltd. (''CMB''), Shenzhen, People's Republic of China, a foreign bank within the meaning of the International Banking Act (''IBA''), has applied under section 7(d) of the IBA[1] to establish a branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, March 7, 2007). The time for filing comments has expired, and the Board has considered all comments received.

CMB, with total assets of approximately $145.6 billion, is the sixth largest bank in China.[2] CMB is indirectly controlled by the Government of China through a number of wholly owned companies. One of these companies, China Merchants Group, Limited, Shenzhen, People's Republic of China, indirectly owns approximately 17.6 percent of CMB's total outstanding shares.[3] Two other government-owned companies, China Ocean Shipping (Group) Company and China Shipping (Group) Company, own 6.4 percent and 5.4 percent, respectively, of the shares of CMB. No other shareholder owns more than 5 percent of the shares of CMB.

CMB engages primarily in corporate and retail banking and treasury operations throughout China and operates a branch and an investment advisor subsidiary in Hong Kong. In the United States, CMB operates a representative office in New York. CMB would be a qualifying foreign banking organization under Regulation K.[4]

The proposed New York branch would engage in wholesale deposit-taking, lending, trade finance, and other banking services. Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisors.[5] The Board also considers additional standards as set forth in the IBA and Regulation K.[6]

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.[7] This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application if: (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.[8] In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.[9] The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.[10] This is the standard applied by the Board in this case.

As noted above, CMB engages directly in the business of banking outside the United States. CMB also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

Based on all the facts of record, the Board has determined that CMB's home-country supervisory authority is actively working to establish arrangements for the consolidated supervision of CMB and that considerations relating to the steps taken by CMB and its home jurisdiction to combat money laundering are consistent with approval under this standard. The China Banking Regulatory Commission (''CBRC'') is the principal supervisory authority of CMB, including its foreign subsidiaries and affiliates, for

1. 12 U.S.C. § 3105(d).
2. Asset and ranking data are as of June 30, 2007.
3. China Merchants Group Limited has six director interlocks with CMB and is considered to control CMB for purposes of the Bank Holding Company Act (12 U.S.C. § 1841 et seq).
4. 12 CFR 211.23(a). China Merchants Group Limited and CMB would also together meet the standards to be a qualifying foreign banking organization.
5. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home-country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.
6. 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).
7. 12 U.S.C. § 3105(d)(6).
8. 12 U.S.C. § 3105(d)(6)(A).
9. 12 U.S.C. § 3105(d)(6)(B).
10. *Id.*

all matters other than laws with respect to money laundering.[11] The CBRC has the authority to license banks, regulate their activities, and approve expansion, both domestically and abroad. It supervises and regulates CMB, including its subsidiaries and overseas operations, through a combination of targeted on-site examinations and continuous consolidated off-site monitoring. Since its establishment in 2003, the CBRC has enhanced existing supervisory programs and developed new policies and procedures designed to create a framework for the consolidated supervision of banks in China.

On-site examinations by the CBRC cover, among other things, the major areas of banks' operations: corporate governance and senior management responsibilities, capital adequacy, asset structure and asset quality (including structure and quality of loans), off-balance-sheet activities, earnings, liquidity, liability structure and funding sources, expansionary plans, internal controls (including accounting control and administrative systems), legal compliance, accounting supervision and internal auditing (including accounting control and administrative systems), and any other areas deemed necessary by the CBRC.

Off-site monitoring is conducted through the review of required annual, semiannual, quarterly, or monthly reports on, among other things, asset quality, capital adequacy, liquidity, corporate governance, affiliate transactions, and internal controls.

CMB is required to be audited annually by an accounting firm approved by the PBOC, and the results are shared with the CBRC and the PBOC. The scope of the required audit includes a review of CMB's financial statements, asset quality, and internal controls. The CBRC may order a special audit at any time. In addition, in connection with its listing on the Shanghai and Hong Kong stock exchanges, CMB is required to have external audits conducted under both International Financial Reporting Standards and generally accepted accounting practices under Chinese law. CMB is required to publish its financial statements annually. CMB conducts internal audits of its offices and operations, including its overseas operations, generally on an annual schedule. The internal audit results are shared with the CBRC, the PBOC, and CMB's external auditors. The proposed branch would be subject to internal audits.

Chinese laws impose various prudential limitations on banks, including limits on transactions with affiliates and large exposures. The CBRC is authorized to require any bank to provide information and to impose sanctions for failure to comply. The CBRC also has authority to impose administrative penalties, including warnings, fines, and removal from office, for violations of applicable laws and rules. Criminal violations are transferred to the judicial authorities for investigation and prosecution.

In recent years, the Chinese government has enhanced its anti-money-laundering regime. In 2005, the Chinese government took initial steps to adopt an anti-money-laundering law, the PRC Anti-Money Laundering Law (''AML Law''). The AML Law and two related rules, the Rules for Anti-Money Laundering by Financial Institutions (''AML Rules'') and the Administrative Rules for the Reporting of Large-Value and Suspicious Transactions by Financial Institutions (''LVT/STR Rules'') were enacted in October 2006 and December 2006, respectively. The AML Law and AML Rules became effective on January 1, 2007, and the LVT/STR Rules became effective on March 1, 2007. Together, the law and two related rules establish a regulatory infrastructure to assist China's anti-money-laundering effort.

An Anti-Money Laundering Bureau (''AML Bureau'') was established within the PBOC in 2003.[12] The AML Bureau coordinates anti-money-laundering efforts at the PBOC and among other agencies. The AML Bureau also supervised the creation in September 2004 of the China Anti-Money Laundering Monitoring and Analysis Center (''AML Center''). The AML Center collects, monitors, analyzes, and disseminates suspicious transaction reports and large-value transaction reports. The AML Center sends suspicious transaction reports to the AML Bureau for further investigation. The PBOC issued additional rules in June 2007 providing clarification on reporting suspicious transactions to the AML Center and on customer due diligence and recordkeeping.

China participates in international fora that address the prevention of money laundering and terrorist financing. China is a member of the Financial Action Task Force (''FATF'')[13] and is a party to the 1988 U.N. Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the U.N. Convention Against Transnational Organized Crime, the U.N. Convention Against Corruption, and the U.N. International Convention for the Suppression of the Financing of Terrorism.

As noted, the PBOC is China's primary supervisor for anti-money-laundering matters. Like the CBRC, the PBOC supervises and regulates CMB through a combination of on-site examinations and off-site monitoring. On-site examinations focus on CMB's compliance with anti-money-laundering laws and rules, including the AML Law and the AML and LVT/STR Rules. Off-site monitoring is conducted through the review of periodic reports. In performing its responsibilities, the PBOC may require any bank to provide information and can impose administrative penalties for violations of applicable laws and rules.

11. Before April 2003, the People's Bank of China (''PBOC'') acted as both China's central bank and primary banking supervisor, including with respect to anti-money-laundering matters. In April 2003, the CBRC was established as the primary banking supervisor and assumed the majority of the PBOC's regulatory functions. The PBOC maintained its roles as China's central bank and primary supervisor for anti-money-laundering matters.

12. The AML Bureau conducts administrative investigations and handles violations of AML Rules. Money laundering cases are referred to the Ministry of Public Security, China's main law enforcement body, for investigation and prosecution.

13. China became a member of FATF in June 2007.

CMB has policies and procedures to comply with Chinese laws and rules regarding anti-money laundering. CMB has represented that it has taken additional steps on its own initiative to combat money laundering and other illegal activities. CMB states that it has implemented measures consistent with the recommendations of FATF and that it has put in place policies, procedures, and controls to ensure ongoing compliance with all statutory and regulatory requirements, including designating anti-money-laundering officers and conducting employee training at the head office, branch, and sub-branch levels. CMB's compliance with anti-money-laundering requirements is monitored by the PBOC and by CMB's internal and external auditors.

The Board also has taken into account the additional standards set forth in section 7 of the IBA and Regulation K.[14] The CBRC has no objection to CMB's establishment of the proposed branch.

The Board has also considered carefully the financial and managerial factors in this case. China has adopted risk-based capital standards that are consistent with those established by the Basel Capital Accord (''Accord''). CMB's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of CMB are consistent with approval, and CMB appears to have the experience and capacity to support the proposed branch. In addition, CMB has established controls and procedures for the proposed branch to ensure compliance with U.S. law. In particular, CMB has stated that it will apply strict anti-money-laundering policies and procedures at the branch consistent with U.S. law and regulation and will establish an internal control system at the branch consistent with U.S. requirements to ensure compliance with those policies and procedures.

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

On the basis of all the facts of record, and subject to the commitments made by CMB, as well as the terms and conditions set forth in this order, CMB's application to establish a branch is hereby approved. Should any restrictions on access to information on the operations or activities of CMB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by CMB or its affiliates with applicable federal statutes, the Board may require termination of any of CMB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by CMB with the commitments made in connection with this application and with the conditions in this order.[15] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings under 12 U.S.C. § 1818 against CMB and its affiliates.

By order of the Board of Governors, effective November 8, 2007.

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

Robert deV. Frierson
Deputy Secretary of the Board

ICICI Bank Limited
Mumbai, India

Order Approving Establishment of a Branch

ICICI Bank Limited (''Bank''), a foreign bank within the meaning of the International Banking Act (''IBA''), has applied under section 7(d) of the IBA[1] to establish a federal branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*The Daily News*, June 21, 2004). The time for filing comments has expired, and all comments received have been considered.

14. *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). The additional standards set forth in section 7 of the IBA and Regulation K include the following: whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

15. The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York or its agent, the New York State Banking Department (''Department''), to license the proposed office of CMB in accordance with any terms or conditions that the Department may impose.

1. 12 U.S.C. § 3105(d).

Bank, with total assets of approximately $91.5 billion, is the second largest bank in India.[2] The Government of India and the Government of Singapore own approximately 9.6 percent and 8.3 percent of Bank's shares, respectively. [3] No other shareholder owns directly more than 5 percent of Bank's shares.

Bank is a private sector bank and engages primarily in corporate and retail banking and foreign exchange operations. Bank also provides through its subsidiaries insurance, brokerage, investment banking, and asset management services in India. Outside India, Bank operates subsidiary banks in the United Kingdom, Canada, and Russia and branches in Bahrain, the Dubai International Financial Center, Hong Kong S.A.R., Singapore, and Sri Lanka. In the United States, Bank operates a representative office in New York, New York, and engages indirectly in nonbank activities in the United States through a number of subsidiaries.[4] Bank would be a qualifying foreign banking organization under Regulation K.[5]

The proposed New York branch would engage in a wholesale banking business, including providing lending, trade financing, and factoring services to U.S.-based subsidiaries of Indian companies.

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

The IBA includes a limited exception to the general requirement relating to comprehensive, consolidated supervision.[8] This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application, provided that (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.[9] In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board shall also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.[10] The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.[11]

As noted, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

Based on all the facts of record, the Board has determined that Bank's home jurisdiction supervisory authority is actively working to establish arrangements for the consolidated supervision of Bank and that considerations relating to the steps taken by Bank and its home jurisdiction to combat money laundering are consistent with approval under this standard. The Reserve Bank of India (''RBI'') is the principal supervisory authority of Bank, including its foreign subsidiaries and affiliates. The RBI has the authority to license banks, regulate their activities, and approve expansions, both domestically and abroad. It supervises and regulates Bank through a combination of regular on-site reviews and off-site monitoring. On-site examinations cover the major areas of operations, capital adequacy, management (including risk-management strategies), asset quality (including detailed loan portfolio analysis), earnings, liquidity, and internal controls and procedures (including anti-money-laundering controls and procedures). The frequency of on-site examinations depends on a bank's risk profile, but generally all Indian banks, including Bank, are examined at least annually.

Off-site monitoring is conducted through the review of required quarterly or monthly reports on, among other things, asset quality, earnings, liquidity, capital adequacy, loans, and on- and off-balance-sheet exposures. The RBI monitors the foreign activities of Indian banks using guidelines designed to ensure that banks identify, control, and minimize risk in the bank and in its joint ventures and subsidiaries. The RBI also periodically audits Indian banks' foreign operations.

Bank is required to be audited annually by a firm of chartered accountants approved by the RBI, and the audit

2. Asset data are as of March 31, 2007. Ranking data are as of March 31, 2006.

3. The Life Insurance Corporation of India and other government-owned companies collectively own approximately 9.6 percent of Bank's shares. The Government of Singapore directly owns approximately 1.8 percent of Bank's shares. Allamanda Investments Pte. Limited, an investment company wholly owned by the Ministry of Finance of Singapore, indirectly owns 6.5 percent of Bank's shares.

4. *See ICICI Bank Limited*, 88 *Federal Reserve Bulletin* 227 (2002).

5. 12 CFR 211.23(a).

6. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home-country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

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

8. 12 U.S.C. § 3105(d)(6).

9. 12 U.S.C. § 3105(d)(6)(A).

10. 12 U.S.C. § 3105(d)(6)(B).

11. *Id.*

report is submitted to the RBI. The scope of the required audit includes a review of financial statements, asset quality, internal controls, and anti-money-laundering procedures. The RBI may order a special audit at any time. In connection with its listing of American Depositary Shares on the New York Stock Exchange, Bank files a financial report with the Securities and Exchange Commission that also is subject to annual external audit. In addition, Bank conducts internal audits of its offices and operations generally on an annual schedule. The proposed branch would be subject to internal audits to determine compliance with internal controls and RBI guidelines.

Indian laws impose various prudential limitations on banks, including limits on transactions with affiliates and large exposures. The RBI is authorized to request and receive information from any bank and its domestic and foreign affiliates and to impose penalties for failure to comply with a disclosure request or for providing false or misleading information. The RBI also has the authority to impose conditions on licensees and to impose penalties for failure to comply with the RBI's rules, orders, and directions. Penalties include monetary fines, removal of management, and the revocation of the authority to conduct business.

In recent years, the Indian government has enhanced its anti-money-laundering regime. In January 2003, India took initial steps to adopt an anti-money-laundering law, the Prevention of Money Laundering Act. The law, related amendments, and implementing rules (collectively, the ''PMLA'') became effective in July 2005 and established a regulatory infrastructure to assist the anti-money-laundering effort. In accordance with the PMLA, India has established the Financial Intelligence Unit, India (''FIU-IND''), which reports directly to the Economic Intelligence Council headed by the Finance Minister of India. The FIU-IND is responsible for receiving, processing, analyzing, and disseminating information related to cash and suspicious transaction reports. The Directorate of Enforcement, a department within the Ministry of Finance, is responsible for investigating and prosecuting money laundering cases. In addition, the RBI issued ''Know Your Customer (KYC) Guidelines—Anti-Money Laundering Standards'' (''Guidelines'') in November 2004 that require financial institutions to establish systems for the prevention of money laundering. Indian banks were required to be fully compliant with the Guidelines by December 31, 2005. The RBI issued further guidelines in February 2006 providing clarification on reporting cash and suspicious transactions to the FIU-IND.

India participates in international fora that address the prevention of money laundering and terrorist financing. India is a member of the Asia/Pacific Group on Money Laundering (Financial Action Task Force for the Asia/Pacific region), an observer organization to the Financial Action Task Force (''FATF''), and is actively seeking to join FATF as a member.[12] India is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. International Convention for the Suppression of the Financing of Terrorism.

Bank has policies and procedures to comply with Indian laws and regulations and the RBI's Guidelines regarding anti-money laundering. Bank has also taken additional steps on its own initiative to combat money laundering and other illegal activities. Bank states that it has implemented the relevant recommendations of the FATF and that it has put in place enterprise-wide, risk-based anti-money-laundering policies and procedures to ensure ongoing compliance with all statutory and regulatory requirements, including designating compliance officers and conducting training for staff at all levels. Bank's compliance with anti-money-laundering requirements is monitored by the RBI and by Bank's internal and external auditors.

The Board also has taken into account the additional standards set forth in section 7 of the IBA and Regulation K.[13] The RBI has no objection to Bank's establishment of the proposed branch.

The Board has also considered carefully the financial and managerial factors in this case. India's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. In addition, Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act (''BHC Act''), and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described

12. India became an observer to FATF in February 2007.

13. *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). The additional standards set forth in section 7 of the IBA and Regulation K include the following: whether the bank's home- country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

below, the Board has determined that Bank has provided adequate assurances of access to any necessary information that it may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish a branch in New York, New York, is hereby approved. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States, or in the case of any such operation licensed by the Office of the Comptroller of the Currency (''OCC''), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by Bank with the commitments[14] made in connection with this application and with the conditions in this order.[15] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order of the Board of Governors, effective October 19, 2007.

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

JENNIFER J. JOHNSON
Secretary of the Board

14. Bank has committed that it will conform its existing direct and indirect nonbanking activities and investments to the requirements of the BHC Act. Bank owns subsidiaries that engage in activities in the United States that are not permissible for a bank holding company. Indian laws and rules restrict Bank's ability to conform its holdings of these companies within the time period provided for in section 4(a)(2) of the BHC Act. The Board has granted Bank an exemption under section 4(c)(9) of the BHC Act that will permit Bank to hold its shares of these companies for a temporary period.

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